

STARTING AND MANAGING YOUR OWN BUSINESS A FREELANCING GUIDE FOR PARALEGALS

DOROTHY SECOL, CLA



ASPEN LAW & BUSINESS

This text is printed on acid-free paper.

Copyright © 1994 by John Wiley & Sons, Inc.

All rights reserved. Published simultaneously in Canada.

Reproduction or translation of any part of this work beyond that permitted by Section 107 or 108 of the 1976 United States Copyright Act without the permission of the copyright owner is unlawful. Requests for permission or further information should be addressed to the Permissions Department, John Wiley & Sons, Inc., 605 Third Avenue, New York, NY 10158-0012.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.



Published by Aspen Law & Business
Formerly published by John Wiley & Sons, Inc.

Library of Congress Cataloging-in-Publication Data

Secol, Dorothy

Starting and managing your own business : a freelancing guide for
paralegals / Dorothy Secol.

p. cm.

"Paralegal law library."

Includes bibliographical references.

ISBN 0-7355-0659-0 (cloth : acid-free paper).

1. Legal assistants—United States. 2. New business enterprises
—United States.

I. Title

KF320.L4S43 1994

346.73'065—dc20

[347.30665]

94-31541

CIP

Printed in the United States of America

10 9 8 7 6 5

To my husband Steve, who has supported me in every endeavor I have undertaken, who has always had an unshakable faith in me, and who has been patient beyond belief.

PREFACE

I established my freelance business in 1982 and since then I have been asked many times, “What do you do? How did you get started? How did you sign up your clients? Do you advertise? How do you market yourself?” and so on.

The past 12 years have been ones of great change and great challenge for me; I have grown in many ways. In 1982 the utilization of legal assistants was not a popular practice in my geographic area. I practiced in a small suburban area where attorneys viewed legal assistants as competition. The majority of the attorneys with whom I spoke predicted that my business would fail. They felt that attorneys weren’t sure how to utilize legal assistants, let alone a freelance legal assistant. I was determined to succeed and the experience has been one of growth and maturity in a multi-faceted endeavor.

The operation of my business depends on my skills both as a legal assistant and as a business person. Its success hinges on my ability to communicate with attorneys, accountants, bankers, court personnel, corporate officers, and vendors whose cooperation is integral to the everyday operation of my business. Over the years, through trial and error, failure and success, I have been able to make the financial, managerial, and ethical decisions needed to succeed in fulfilling my goals.

I have also participated in the growth of the paralegal profession, in turn that participation has been educational as well as extremely satisfying to me. I have shared in the responsibility of improving the paralegal education and in the creation and implementation of an ethical standard for all legal assistants.

What does it take to be a freelance legal assistant? On the following pages is my answer to you. The book is divided into nine chapters, each chapter addressing the important subjects basic to the success of the freelance legal assistant. The topics covered in the pages of this book include:

- The evolution and growth of the paralegal profession, highlighting changes.
- Ethical responsibilities of legal assistants. Freelance legal assistants must be especially mindful of these ethical obligations.
- The decisions to freelance. How do you make the decision to go into business? Do you want to go into business? What type of person do you have to be? Where do you start? The answers to these questions will help you find out if you have what it takes.

- Office logistics. Where should you set up your office? How do you organize your business? Analyze different areas of law in which a paralegal can practice. Interviews with freelance legal assistants who practice in different parts of the country will give you insight into the daily life of the freelance legal assistant.
- Marketing and advertising. Discover different ways to market your services. You will be operating a service-oriented business with specific marketing requirements. Only sound marketing techniques that are professional as well as ethical may be utilized.
- Implementing Systems. The heart of this book is the information contained in setting up your office, negotiating a lease, leasing or buying equipment, start-up costs, substantive systems, billing and collection, and finances and insurance. What kinds of computer software will be beneficial? The growth and expansion of your business will depend on the proper organization of this information and the implementation of the systems.
- Organizations and opportunities. Learn about the national and local paralegal organizations and the importance of continuing legal education. Membership in these organizations as well as your state bar associations is important to your personal growth and the growth of the profession.
- Case law. The issue of regulation is being studied throughout the country. Be informed and know the issues. Become familiar with case law involving legal assistants.

It is my hope that the contents of this book will guide you in the formation, implementation, management and ultimately, the success of your business. This book is addressed to the experienced legal assistant. Freelancing is not for the paralegal student or those with limited experience. To those in these categories, I hope the book gives you insight into the demands of and the skills needed to operate and sustain a freelance business. When you have gained the experience you need, and feel confident, go for it!

To those seasoned legal assistants who are considering freelancing, I hope you find this book to be informative and helpful as each of you make the decisions necessary to enter the business world.

Good luck!

*Allenhurst, New Jersey
July 1994*

DOROTHY SECOL

ACKNOWLEDGMENTS

I would like to acknowledge those who have been extremely helpful to me in the successful completion of this book:

my husband, Steve, for the portable computer
my friend, Barbara Simon, for editing the manuscript
my son, Geoffrey Secol, for helping me with computerized research
my business partner, Peggy Stalford, for listening, and for her suggestions and encouragement
the National Association of Legal Assistants for once again being there for me, to provide information and guidance—special thanks to Marge Dover

I would also like to thank the following for permission to reprint copyrighted material:

Model Code of Professional Responsibility, American Bar Association, ©1982, reprinted with permission.

Model Guidelines for the Utilization of Legal Assistant Services, American Bar Association, ©1991, reprinted with permission.

Model Standards and Guidelines for Utilization of Legal Assistants Annotated, National Association of Legal Assistants ©1984, revised 1991, and Code of Ethics and Professional Responsibility, ©1979, reprinted with permission, together with the Certified Legal Assistant (CLA) Program.

Model Code of Ethics and Professional Responsibility and National Federation of Paralegal Associations, Inc., ©copyright 1993, Mission Statement, March 1987, ©1993, reprinted with permission.

Model Rules of Professional Conduct, American Bar Association, ©1993, reprinted with permission.

ABOUT THE AUTHOR

Dorothy Secol, CLA, has worked in the legal profession for over 30 years and has been a freelance legal assistant since 1982. She maintains an office in Allenhurst, New Jersey. Dorothy is a graduate of Monmouth College, West Long Branch, New Jersey.

Ms. Secol is a member of the National Association of Legal Assistants (NALA) and received her CLA status in 1978. In addition to NALA, she is a trustee of the Central Jersey Paralegal Association and a former vice president and trustee of Legal Assistants Association of New Jersey. She also serves on the Paralegal Committee of the New Jersey State Bar Association and is on the Advisory Board of Brookdale College, Lincroft, New Jersey. She also serves on the Board of Trustees of Temple Beth El, and has recently been appointed to the newly-formed Dispute Resolution Committee in Ocean Township, mediating matters for the Ocean Township Municipal Court.

Ms. Secol has also given seminars on real estate sponsored by title insurance companies as well as independent seminars for paralegals and legal secretaries. In addition, she was a petitioner in the case of *In re Opinion 24 of the Committee on the Unauthorized Practice of Law*, 128 N.J. 114 (1992). The case validated the fact that “there is no distinguishable difference between an in-house and freelance paralegal working under the direct supervision of an attorney.”

DETAILED CONTENTS

Chapter 1 Introduction

- § 1.1 Evolution of the Paralegal Profession
- § 1.2 Role of the American Bar Association
- § 1.3 ABA Subcommittee on Certification

Chapter 2 Ethical Considerations

- § 2.1 Background
- § 2.2 ABA Model Guidelines
- § 2.3 Unauthorized Practice of Law
- § 2.4 Conflict Control

Chapter 3 Making the Decision

- § 3.1 Terminology
- § 3.2 Independent Contractor or Employee?
- § 3.3 Flexibility of Self-Employment
- § 3.4 Advantages and Disadvantages
- § 3.5 Necessary Skills
- § 3.6 Dealing with Stress

Chapter 4 Setting Up Practice

- § 4.1 The Decision is Made
- § 4.2 Home or Office
- § 4.3 —Pros and Cons
- § 4.4 Business Organization
- § 4.5 Type of Organization
- § 4.6 Business Name
- § 4.7 Business Plan
- § 4.8 Types of Assignments
- § 4.9 Generalist or Specialist
- § 4.10 Sample Specialties—Areas of Law

Chapter 5 Marketing Your Business

- § 5.1 Targeting the Market
- § 5.2 Marketing Interview

- § 5.3 Sample Letter
- § 5.4 Profitability Chart
- § 5.5 Projecting a Professional Image
- § 5.6 Do's and Don'ts in the Business World
- § 5.7 Client Selection
- § 5.8 Survey Questionnaire
- § 5.9 Advertising
- § 5.10 Pro Bono Work

Chapter 6 Business Organization

- § 6.1 Choices
- § 6.2 Negotiating a Lease
- § 6.3 Office Setup
- § 6.4 Equipment
- § 6.5 Leasing versus Buying
- § 6.6 Computer Software
- § 6.7 Start-up Costs
- § 6.8 Financial Help—Raising Money
- § 6.9 Insurance

Chapter 7 Organization

- § 7.1 Office Systems—Organization
- § 7.2 Office Systems—Procedures
- § 7.3 Office Systems—Substantive
- § 7.4 Billing and Collection
- § 7.5 Sample Billing—Retainer Agreements
- § 7.6 Sample Time Sheets
- § 7.7 Office Assistance

Chapter 8 Professional Growth

- § 8.1 Continuing Education
- § 8.2 Paralegal Organizations
- § 8.3 State Bar Associations Membership

Chapter 9 Recent Developments in Case Law

- § 9.1 Regulation
- § 9.2 Case Law

Appendixes

- A The American Bar Association Model Guidelines for the Utilization of Legal Assistant Services

- B** Code of Ethics and Professional Responsibility of National Association of Legal Assistants, Inc.
- C** The National Association of Legal Assistants, Inc. Model Standards and Guidelines for Utilization of Legal Assistants Annotated
- D** NFPA Model Code of Ethics and Professional Responsibility
- E** National Association of Legal Assistants, Inc. The Certified Legal Assistant Program—Selected Provision

Index

SUMMARY CONTENTS

Chapter 1	Introduction	1
Chapter 2	Ethical Considerations	11
Chapter 3	Making the Decision	35
Chapter 4	Setting Up Practice	53
Chapter 5	Marketing Your Business	79
Chapter 6	Business Organization	109
Chapter 7	Organization	155
Chapter 8	Professional Growth	181
Chapter 9	Recent Developments in Case Law	205
Appendixes		223
Index		271

CHAPTER 1

INTRODUCTION

- § 1.1 Evolution of the Paralegal Profession
- § 1.2 Role of the American Bar Association
- § 1.3 ABA Subcommittee on Certification

§ 1.1 Evolution of the Paralegal Profession

Paralegal, legal assistant, lay assistant, and legal advocate are all names that have been used at one time or another to describe one who is not an attorney but who works under the supervision of an attorney, and performs a number of important legal tasks.

The term “paralegal” is defined by Black’s Law Dictionary as follows:

A person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer . . . or who is otherwise authorized by law to use those legal skills. . . .¹

Thus the term paralegal would indicate someone who works near or with an attorney, one who works beside an attorney or subordinate to an attorney. The paralegal is an individual who is part of a group critical to the future delivery of legal services in this country—a group that represents, in the words of one legal scholar, “an idea whose time has come.”²

The legal assistant evolved from the role of the legal secretary. In earlier years, before photocopiers, fax machines, and computers, legal secretaries used their skills in typing and sometimes in longhand, to produce the dictated material required.

When I first started working as a legal secretary in 1957, there wasn’t a copy machine in the office. Photocopiers were practically nonexistent; they were just becoming available. If I needed a copy of a document, I typed it! For example, if I were preparing documents for a real estate closing, and needed extra copies of the title binder, I actually had to type them! Easements,

¹ Black’s Law Dictionary 712 (6th ed. 1990).

² Thomas E. Eimermann, *Fundamentals of Paralegalism* 34 (1980).

restrictions, abstracts, and so forth had to be retyped. I took out carbon paper and typed. That was the only way to secure an extra copy. In 1958 our office purchased the first photocopy machine in our county and it certainly made work easier. We couldn't have imagined a future filled with fax machines.

With the advent of the photocopier, the secretary had more time to pursue other duties. As the legal secretary became more proficient in rendering services, prescient attorneys recognized that certain services, routinely performed by them, could be performed by properly trained laypersons. In training secretaries to do legal research, draft pleadings, and interview witnesses and clients, those attorneys unknowingly formed the concept of the legal assistant profession as it is defined today.

In the early 1960s I worked as a legal secretary for a sole practitioner. I was the only employee. As the practice grew, a part-time file clerk was eventually hired. That allowed me to spend more time learning procedures in order to expand my capabilities. For example, if we needed to institute a quiet title procedure, or institute foreclosure proceedings, or draft certain pleadings, I would consult the appropriate Practice Series, read the section on the specific procedure, outline it, and help draft the pleadings. My employer, Donald J. Pappa, always had faith in my ability to master a procedure, complete it, and learn it for future use. Because of the manner in which I was trained, and the faith that my employer had in my abilities, it was possible for me to eventually proceed on my own, with a firm grasp of the areas of substantive law that I chose as my specialties.

As legal secretaries incurred more complex legal responsibilities, they sought out seminars given for attorneys to increase their knowledge or expertise in specific areas of law. Prior to the 1970s, there was no formal training for paralegals; consequently they attended the seminars given by the bar associations, by the Institute for Continuing Education, by the Practicing Law Institute, and so forth. Although these courses were given for attorneys, paralegals were allowed to attend. Colleges and proprietary schools eventually formulated programs in which paralegals could intensify their training and education.

In the 1950s and 1960s several major professional groups began to make extensive use of paraprofessionals. This movement was led by medical doctors who had begun to utilize nurses as paraprofessionals. The doctors had discovered that by delegating such tasks as taking temperatures and giving injections, they had more time to devote to what they considered to be more challenging and rewarding aspects of their profession. Today the field is populated by such positions as registered nurses, licensed practical nurses, nurses's aides, physical therapists, inhalation therapists, radiologic technologists, laboratory technicians, operating room technicians, and medical records technicians. Other professionals who have made use of paraprofessionals include dentists, teachers, architects, and law enforcement personnel.³

³ *Id.*

§ 1.2 Role of the American Bar Association

In 1967 the American Bar Association (hereafter referred to as ABA) Committee on Professional Ethics issued Formal Opinion 316 that clarified the legitimacy of delegating legal work to nonlawyers:

A Lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scribes, lay draftsmen, or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court, or appear in formal proceedings as part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client. In other words, we do not limit the kind of assistance that a lawyer can acquire in any way to persons who are admitted to the Bar, so long as the nonlawyers do not do things that lawyers may not do or do the things that lawyers only may do.⁴

In 1968 the ABA created the Special Committee on Lay Assistants for Lawyers. This committee was charged with developing, encouraging, and increasing the training and utilization of nonlawyer assistants to enable lawyers to better discharge their professional responsibilities. The ABA Code of Professional Responsibility and Canons of Judicial Ethics, revised in 1969, included favorable support for the extensive use of paralegals in Ethical Consideration 3-6 by stating "Such delegation {of specialized tasks delegated by an attorney} is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product."⁵

In August 1968 the ABA's House of Delegates adopted Report Number 3 of the association's Special Committee on Availability of Legal Services and formed the Special Committee on Lay Assistants for Lawyers to carry out recommendation number three. That report contained the following recommendation:

Recognizing that freeing a lawyer from tedious and routine detail thus conserving his time and energy for truly legal problems will enable him to render his professional services to more people, thereby making legal services more fully available to the public, this Committee recommends:

1. That the legal profession recognize that there are many tasks in serving a client's needs which can be performed by a trained, nonlawyer assistant working under the direction and supervision of a lawyer;

⁴ ABA Comm. on Professional Ethics, Formal Op. 316 (1967).

⁵ ABA Model Code of Professional Responsibility, 1982, American Bar Ass'n. Reprinted with permission. Copies of this publication are available from Order Fulfillment, American Bar Ass'n, 750 N. Lake Shore Dr., Chicago, IL 60611.

2. That the profession encourage the training and employment of such employees; and
3. That there be created a special committee of this Association to consider:
 - (a) The kinds of tasks which may be competently performed by a non-lawyer working under the direction and supervision of a lawyer,
 - (b) The nature of the training which may be required is provided to develop competence and proficiency in the performance of such tasks;
 - (c) The role, if any, to be played by the legal profession and the bar in providing such training;
 - (d) The desirability of recognizing competence and proficiency in such assistants as by academic recognition or other suitable means; and
 - (e) All appropriate methods for developing, encouraging, and increasing the training and utilization of nonlawyer assistants to better enable lawyers to discharge their professional responsibilities.⁶

In 1971 this special committee was renamed the Special Committee on Legal Assistants and conducted studies of the duties performed by legal assistants in large and small law firms throughout the country. The committee undertook a pilot project for the on-the-job training of legal assistants and completed a study of the use of legal assistants in other professions. It began development of a curriculum for the training of legal assistants by educational institutions. The committee released preliminary drafts of reports on results of research done on paralegal usage, suggested guidelines for the training of paralegals, and reviewed reports of paraprofessional usage in other professions.

In 1972 the House of Delegates asked the committee to develop standards for accreditation of formal educational programs directed to the training of legal paraprofessionals, and standards for assessment of the proficiency of legal paraprofessionals. The committee developed tentative guidelines, evaluative criteria, and program evaluation procedures.

In 1973 the American Bar Association's Special Committee of Legal Assistants commissioned Kline Strong of the University of Utah Law Research Institute to study the economics of utilizing paralegals. Strong studied 104 law firms of four or fewer partners. He analyzed typical legal tasks performed by lawyers, tasks performed by paralegals, and tasks performed by secretaries. He then calculated how much money would be saved by the use of a paralegal as opposed to the lawyer and secretary alone. Strong used an hourly rate of three dollars per hour (note that this was in 1960) for the secretaries, five dollars per hour for the paralegals and \$40 per hour for the lawyers. Strong concluded that a firm utilizing a paralegal could form a corporation for \$127.50 while it would cost the nonparalegal firm

⁶ *Id.* at 38.

\$253.50 in billable time. If the firm charged a flat fee of \$300 for the formation of the corporation, it would increase the profit from \$46.50 to \$172.50, while leaving the lawyer with 3.5 extra hours to spend on other cases. Strong believed that the key was to have each procedure completed by the least expensive person competent to handle that procedure. If the lawyer were to save just one hour a day through the utilization of paralegal services, the lawyer would be free to earn another \$9,600 per year at the billable rate of \$40 per hour! Over a 25-year period, that one hour of paralegal assistance could increase a lawyer's income by \$240,000.⁷

In May 1973 the Committee sponsored a conference at the University of Denver School of Law for review and refinement of the draft guidelines, after which a final draft was prepared and submitted for House consideration. In August 1973 the House approved the Guidelines for the Approval of Legal Assistant Education Programs and authorized the Legal Assistants Committee to begin implementation of the approval program. The following year a pilot program was undertaken to test the approval procedures.

The committee was granted standing committee status in 1975 and officially approved the first eight schools. As of August 1993, the ABA has given approval to paralegal programs in 177 schools.

In addition to its approval program, the Committee monitors trends in the field. It maintains an information service for those interested in becoming legal assistants.

The primary intention of the Committee is to foster high quality legal assistant education and training through its approval project and the development of standards. The ABA considers these efforts to have had a strong impact on the quality of legal assistant education throughout the United States.

A subcommittee on certification conducted public hearings during 1974–75 and in 1975 concluded that certification was premature.

§ 1.3 ABA Subcommittee on Certification

In December 1985 the Standing Committee on Legal Assistants issued a position paper on Licensure/Certification of Legal Assistants. The position paper was divided into separate sections:

I. Development of the Legal Assistant Profession from the Perspective of the Standing Committee

The Committee likened today's legal assistant to the British barrister's clerk, defined the services performed by the legal assistant as well as the utilization

⁷ *Id.*