An Analysis of the Paralegal's Abilities

by

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April 22, 1994
Honors College Graduate
May 7, 1994
Purpose of Thesis

To understand the paralegal profession it is necessary to take a look at the abilities acquired in a paralegal program at the university level. The following is a discussion of the paralegal's work throughout a case from initial interview to verdict memo. As examples of that work you will find a complete trial notebook for both a civil and a criminal case. I hope to form some ideas about the value of a paralegal and to do some analysis of this value in different types of work.

Acknowledgements

Thanks to my husband, Jeff, for his support and tolerance of my long hours of study and research. I know it has been rough on you.

Thanks to Monica and Melissa for keeping the project fun and interesting.

Thanks to my advisor, Eric Evans, for his support and encouragement throughout not only this project but also my entire four years at Ball State. I truly appreciate your confidence and belief in my ability.
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Interviewing</td>
<td>2</td>
</tr>
<tr>
<td>1. client</td>
<td></td>
</tr>
<tr>
<td>2. witness</td>
<td></td>
</tr>
<tr>
<td>a. purpose</td>
<td></td>
</tr>
<tr>
<td>b. strategy</td>
<td></td>
</tr>
<tr>
<td>Researching</td>
<td>5</td>
</tr>
<tr>
<td>1. issue</td>
<td></td>
</tr>
<tr>
<td>2. facts</td>
<td></td>
</tr>
<tr>
<td>3. analysis</td>
<td></td>
</tr>
<tr>
<td>4. conclusion</td>
<td></td>
</tr>
<tr>
<td>Investigation</td>
<td>7</td>
</tr>
<tr>
<td>1. direct</td>
<td></td>
</tr>
<tr>
<td>2. indirect</td>
<td></td>
</tr>
<tr>
<td>Evidence</td>
<td>8</td>
</tr>
<tr>
<td>Formulating the Theme</td>
<td>9</td>
</tr>
<tr>
<td>Trial Notebook</td>
<td>10</td>
</tr>
<tr>
<td>Courts</td>
<td>11</td>
</tr>
<tr>
<td>Making Yourself Indispensable</td>
<td>12</td>
</tr>
<tr>
<td>Ethics</td>
<td>14</td>
</tr>
<tr>
<td>1. codes</td>
<td></td>
</tr>
<tr>
<td>2. certification</td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td>15</td>
</tr>
<tr>
<td>Bibliography</td>
<td>18</td>
</tr>
</tbody>
</table>
What are my chances of finding a job after I graduate from college? This question encompassed my thoughts as I entered my senior year here at Ball State. I knew what kind of job I wanted, but I began to get concerned about my qualifications. I wanted and needed, for a myriad of reasons, to be a paralegal; however, I had not had any classes to prepare me in a practical manner for that career. It was not until late in the fall semester of 1993 that I became hopeful about participating in an intense study of paralegalism. I had stopped into the political science office to get a permission slip for an independent-study course when I noticed a flier for a new class in my major area of study. I was interested, yet afraid that I would not be able to include it in my class load. This new class was POLS 403 Advanced Paralegalism and Litigation Support. It has turned out to be one of the best classes in which I have been involved in my college career. It is also the focus of my most major piece of college level research and writing.

What is a paralegal? Depending on which source you consult, the answer to this question can be very simple or very complex. I feel that the best way to adequately describe the profession is to do an analysis of my work as a paralegal as it developed in a civil and a criminal case. Effective use of paralegals can increase revenue and improve success rates of most law offices. It is for these reasons that the use of paralegals and their work has spread far beyond law firms into corporations, banks, insurance companies, government, and even independent paralegal organizations. It will
become evident in the pages to follow that the paralegal's skills can be invaluable. There are very basic tasks that a paralegal or legal assistant must perform; however, the best of the best will be those who are familiar with all aspects of the office, the atmosphere, and the case, issue, or job at hand.

The study on which this analysis will be based is my study of a civil case involving negligence and a criminal case involving murder. I intend to explain my work in each and ultimately make a comparison of the two in order to highlight some underlying themes. I also hope to allude to the differences between the two. Each case and its file can be found in the appendices of this thesis.

**Interviewing**

As a paralegal with a law office or perhaps in any predominantly legal environment, one of the first tasks you will be expected to undertake almost immediately and without thought is gathering information. In any case, this begins with the initial client interview and continues from there throughout the case. It is this interviewing process to which I will turn my attention. There are several different methods by which a client can get to your office, some of which include: referrals, walk-ins, public defense cases etc. Some of the clients you see may be involved with litigation for the first time, and others may be self-proclaimed "professionals". No matter which situation you are exposed to, it is very important from the beginning to make the
client comfortable in your environment and comfortable giving you all of what may sometimes be quite personal information. What is paramount in dealing with any client, however, is first making sure that he or she is aware of your status as a paralegal. Introduce yourself as such, and never assume that the client already knows. You will be seen as a professional in an unfamiliar environment. It will be very appropriate for you to come to the client’s level, address his or her needs and interests, and make him or her feel good about opening up. An open and honest client is usually thorough and easy to work with. Keep this in mind as you go through this thesis. Ethical considerations will be a topic discussed further in future sections.

There are seven goals of the initial interview. Seven seems like a lot; however, the information gathered at this stage lays the foundation for the whole case. The first goal is to establish a rapport with the client and gain his or her confidence. Make the client feel comfortable having a discussion with you. Secondly, get accurate and complete facts because, what the client does not tell you could ruin the case. The third goal is evaluation—using you instincts to make a decision about taking or rejecting the case based on the client and the subject matter of his or her claims. Fourth is to determine what, if any, additional information is needed. It is important to summarize the interview afterwards and make notes to yourself about what needs to be done. The fifth goal of the interview is to identify an issue and be prepared to explore alternative solutions to the problem. Next is to advise the client
of what to expect. Never let a client leave wondering what will happen next. It is even advisable to give him or her an assignment. Finally, while not always done at the initial interview, it may be appropriate to discuss fees. These seven goals are fairly basic and should serve as a guide for outlining or controlling the initial interview. After the initial interview the paralegal will be responsible for summarizing and drawing some conclusions. In addition to this summary you will also want to prepare a written follow-up for the client.

Realize, however, that in addition to all of the above you will be faced with conducting more than just client interviews. You may be approached by your boss at any time to interview a witness for the case at hand. These times may come unexpectedly, but a productive method of factual investigation involves developing a strategy before conducting the witness interview. (Clark, p.65)

Each interview should have a purpose, and you should know which end result you are pursuing. You will want to know the role of the witness and what he or she saw or did. Once there is a purpose to your interview, you can develop a strategy. Lana J. Clark, in her article, defines strategy as "the art of devising or employing a plan or method toward a goal". (Clark, p.65) This will bring together analysis and critical thinking. It will become necessary to ask yourself some very basic questions. It is important to recognize that this is not only a factual investigation but also a search for the witness's opinions and
perceptions. This is due to the fact that perception is reality and will be integral to how the facts are presented. The best way to prepare for any interview is to have an outline of topics to discuss or points to emphasize. (Clark, p.66) Following as outline makes an interview thorough and easy to evaluate later. Know and continue to work according to your previously defined purpose.

Soon it is time to actually conduct an interview. After introducing yourself and making your status as a nonlawyer clear, find a way to establish a rapport with the witness. Explain to him or her the purpose of the interview so that expectations will be the same. Ask open questions and be prepared to move from general to specific. Finally, an interview summary is expected. Include in this summary any opinions or observations of your own. The attorney will want your input. In addition, an important post-interview activity is to update any existing chronology or summary of facts previously prepared. (Clark p.67) The "art" of interviewing, with practice, can be very beneficial to your trial preparation.

**Researching**

After your initial contact with the client and perhaps any witnesses, you should begin to form some ideas about the case and be able to extract the legal issues. Once the issues have been outlined, it is time to do some legal research in order to find statutes and cases to substantiate your claims or defenses. Of
greatest importance in this research is correctly identifying the legal issue or issues. If you are asking the wrong questions, valuable time can be wasted. (Putman, p.120) After identifying the issue, it is important to state it as specifically and completely as possible. The reader will know from this precisely what specific law will be addressed. This in turn will save time in your office, and that is definitely a plus. Time, of course, is money. A benefit for the researcher is that specifically stating the issue leads you to a specific area of law, thus weeding out, so to speak, the broad, overly general information. Once the extensive research has been done, it will be time to put the information on paper for your attorney or for use in the research section of the trial notebook.

Statement of the facts is a great way to start off your office memorandum. Two things are to be kept in mind when forming your facts. One, use the key facts, and two, include enough background to give the reader a brief overview of the situation at hand. (Putman, p.120) These two are all that are necessary; do not weigh the memo down with extra, irrelevant facts. It is usually best to present your chosen facts in chronological order, and it is most effective to state the facts of the client’s case as briefly as possible without neglecting any of those that are key to the case. After the facts summary, state the issue.

The next section should be the analysis portion. This should begin with the presentation of the rules of law that govern the issue or question. This is usually statutory or case law. The
statute will be general and the case will apply the statute more specifically to a given set of facts. It is advisable that the case you choose to include be as close to the case in question as possible. It will be important to discuss how the law or principle presented in the case applies to your client’s situation.

The final section of your memo and the fruit of your research is the conclusion or answer to your previous question or questions. The conclusion should be simple and logical, answering the question quickly and completely. Do not be too verbose; this is not the time for creative writing. You must be brief while quickly getting to the point. The conclusion should also act as a summary of the entire memo. This is especially helpful for the attorney in a hurry. He or she can obtain the basic information by reading the issue and the conclusion—again saving time. (Putman, p. 123)

Knowing how to write research memos is a valuable legal skill to have no matter how often you plan to use it. By learning to write a legal memo, you can develop the ability to integrate research with analysis and application. From this, you can better understand how the system works.

**Investigation**

After completing the research of statutes and case law, it will be time to research the facts of the case for a different purpose. Investigation is the next step in preparing for trial or possible settlement. Investigation is essentially the search for
evidence by working through all of the facts. There are two types of investigation, direct and indirect.

Direct investigation is used to get the facts and get the facts as quickly as possible. It is usually the gathering of pertinent documents and witnesses to the accident or action in question. Investigation should be as completely thorough as possible. Most times it as simple as asking questions and piggybacking on the work of others like insurance companies and newspapers. It is important to include the client in this process, but do not allow the client to control the information. YOU decide what is of importance. Neither should you assume that all of the information will be correct. Read everything, and make any necessary changes. Examples include gathering police reports, newspaper stories, and medical histories.

Indirect investigation compliments the facts obtained in direct investigation by working to add human opinion and perception to them. It is important here to make an effort to think critically, analytically, and creatively about the facts. Do not be afraid to brainstorm at this stage and come up with different ideas about how to portray the facts. Examples include acting out the facts or video taping the scene.

Investigation will produce evidence, and evidence is at the center of any legal action. Someone has the burden of proof, and proof comes from strong evidence. Evidence is anything offered to prove the existence or nonexistence of a fact. It may be oral testimony, writings, photographs, charts, diagrams, etc.
Admissible evidence has four elements.

1. Must be relevant to the issues.
2. Must be something that can be perceived.
3. Must tend to prove or disprove a relevant fact
4. Must be useful to the trier of fact in rendering a decision to the truth of the ultimate fact that is sought to be proven by the offered evidentiary fact.

(Larbalestrier, p. 134)

Just like any other part of the paralegal’s duties, here too you find an underlying need for organization and completeness. Compiling evidence is the backbone of your responsibilities and should not be taken lightly.

Formulating the Theme

After doing research and investigation it will be time to formulate a theme. The theme is the summary of your case and will be the most important product of your time spent so far. It should be stated in twenty-five words or less and be comprised of those facts that make up the heart of your case. It is important once again to remember that perception is reality, and that the jury will believe only what it perceives to be true. Before forming your theme, think about your opponent’s theme, and always remain conscious of your opponent’s position. Does your theme overcome your opponent’s most favorable facts? Your theme should be logical and consistent with common sense. Ask yourself; Is it
understandable? Does it appeal to a sense of fairness while supporting your facts as they are perceived? Be creative, be honest, and be bold. Make the theme the strongest twenty-five words you will bring together during the course of the whole case.

The finished theme will have many uses aside from being a simplification of the facts. It can be used during jury selection (voir dire), and it can help in framing your opening and closing statements. Neglecting the formation of a theme is neglecting your entire preparation for trial.

Trial Notebook

Soon after a case comes to your office, you will begin to compile a file which will become the trial notebook. Each of the previously covered topics is found in the notebook along with every other piece of information found through investigation, statements and depositions, and witness analysis. The notebook’s goal or purpose is to thoroughly prepare the case for trial by organizing and bringing together all of the facts, research, and evidence for your client’s claim or defense. Simplicity and organization are of most importance in compiling this notebook. Two examples can be found in appendix B and appendix C.

The first item to come to form in the notebook is a calendar for your entire case. This calendar should be exhaustive and set deadlines for every aspect of your litigation. It will be important to follow your calendar religiously. Procrastination has
no place in a law office, and overlooking or forgetting something can hamper your chances of promotion or upward mobility. The notebook will come together piece by piece as you begin to meet the deadlines set forth in your calendar.

In addition to the interviews, research, evidence, investigation, and summaries mentioned in the beginning, you should also include jury information, opening and closing statements, and witness examination possibilities. Preparing early and being thorough and organized can only lead to or increase the chances of success.

**Functioning in the Courts**

Together with a general knowledge of the law, paralegals should have an average working knowledge of the courts and how they operate. As a paralegal or legal assistant you should know the location, jurisdiction, and venue of all the courts of the city county, and federal district where you are working. These can vary from court to court; it is a good idea to be sure. Do not assume anything. For instance, some courts have full jurisdiction over all cases (civil, criminal, juvenile, small claims etc.). Some courts have limited jurisdiction (civil only for example). It is also a good idea to be very familiar with the appellate courts in the area. Along with the above, it is essential for the paralegal to know the rules of procedure for all the courts in which the law office files lawsuits. These rules vary from court to court and
are different for criminal and civil cases. Without this knowledge it would be impossible for the paralegal's task to be carried out smoothly. In addition, it is often, if not always, appropriate for you to become acquaintances with the county clerk and other vital personnel at the court house. Knowledge of the courts and their official rules can be a time saver in preparing, filing, amending, and obtaining copies of court documents. (Larbalestrier, p.10)

Of course this entire discussion would be without impact if I did not give some attention to further explanations of the court system. Court systems are created by the federal or state constitutions and, in specific instances, by statutes. There are established general rules for each court; however, a local court may also have specific local rules to supplement the general ones. Rules regulate the forms of pleading, time and manner of filing, and serving, and other procedural matters. These rules will also guide in determining jurisdiction of the court.

The word "court" has many meanings. Primarily, it refers to the persons assembled under authority of law at a designated place for the administration of justice. (Larbalestrier, p.11) The persons assembled are the judge, clerks, marshall, bailiff, court reporter, jurors, and attorneys, all of whom constitute a body of government. However, it is not necessary for all to the above mentioned to be present to constitute a "court"; court is frequently held without a jury. The word can also refer to the judge himself or the building in which the proceedings take place. The atmosphere can and will seem overpowering at first, however,
the assertive self-starter will fit in in no time at all.

**Making Yourself Indispensable**

Now that I have discussed the duties that a paralegal performs on a day to day basis, it is time to give you information about keeping the attorney informed about your abilities. Whether you become a staff paralegal or remain independent you need to consider what new skills you must acquire and which old ones you can improve on. "You need to make yourself so important to the attorneys you assist that they can scarcely imagine handling a case without you." (Pittman, p.89) You want to make yourself indispensable. I have always heard that to get a promotion you have got to do well not only your present job but also the job you would like to acquire. So, what does it take to be this valuable? First, is to educate the attorney about your abilities. Do not assume that just because you work in the same building everyday that he or she will know exactly what you are capable of. "It is your responsibility to constantly educate the attorney about your abilities as a paralegal," says Kathy Gideon Scott, director of career development at the Philadelphia Institute. Your reliability and predictability will create a bond between you and your attorney or group of attorneys. Show the attorney what you can add to the team effort. Do not hide your expectations; let them be known and strive to achieve them. By displaying self-confidence and enthusiasm, you automatically become more productive. (Pittman, p.89)
Secondly, be consistent and dependable. Believe it or not an attorney will want to be confident that you will succeed. In fact, you must demonstrate that you can get things done without the attorneys intervention. If you cannot do something then, by all means, ask for help. Ask for direction. It is important to develop a trusting relationship with the attorney or any boss, for that matter.

Be flexible, be involved, be organized, and be resourceful. These attributes are absolutely required in a paralegal. If you do not have these, then the previous discussion has been in vain. I realize that this a lot to ask, but the importance of your work will require these. It is these abilities that will separate the average from the outstanding. As a paralegal, you also need to learn to anticipate the outcome of your work. Have a purpose for the time you devote to a project, and work toward that.

Finally, it is unexcusable in today’s labor market if you do not have computer knowledge. You must be computer literate. More than ever before information is found on a screen instead of in a book, and nearly every law office is currently automated. "The paralegal who does not embrace the new technology will be left behind." (Pittman, p.91)

**Ethical Considerations**

As a paralegal you must realize that you are entering a fairly young profession where ethical questions are asked daily. I have
saved this topic for last because everything that has come before occurs in a regulated environment according to ethical standards. While there are no binding ethical rules published by paralegal associations, two major national association--the National Federation of Paralegal Associations (NFPA) and the National Association of Legal Assistants (NALA)--have written ethical codes. These can be found in appendix A. There is also a copy of Indiana’s Supreme Court Guidelines in appendix A.

Ethical opinions and guidelines on the proper use of a paralegal exist in almost every state; however, there are few uniform ethical rules. All states agree that the title used for this person must not mislead anyone about his or her nonattorney status. In addition, the employee must disclose his or her nonattorney status whenever necessary. (Statsky, p.127) Yet, just like an attorney, there are very basic ethical concerns for paralegals. These include maintaining honesty and competence for yourself as well as your colleagues. It is your duty to perform with the utmost professionalism and report any instances when this professionalism is violated by a colleague.

There has also been much talk recently about certification of paralegals. Change is definitely in the near future, but as of today, there is no uniformly accepted or required method of certification. We desire to be viewed as professionals, and obtaining accepted certification would be a huge step forward. However, we will first have to conquer the fears of those who believe that we will want to break out and take over the practice
of law in our tight-knit individual organizations. While this should be an option, I do not foresee it as the most common practice. We just want to be respected as professionals in the field of law for our abilities and our understanding of the legal system. I personally enjoy legal theory. I want to be the strength behind a strong speaker and presenter, otherwise known as the attorney.

In conclusion, I would like to give some insight into my more specific work as it developed in the civil and criminal cases. First, I can completely appreciate the work that paralegals in the industry do. Taking on two cases at once was a substantial amount of work, and while the similarities were extensive, there were a few distinct differences. One of these differences was the penalties associated with losing the case. I found myself more concerned with the minute details in the criminal case because of the penalties of a criminal conviction. Imprisonment is much more harsh than the chance of a large money judgement. Of course, I dedicated myself to the cause in both cases, but it became evident to me that involvement in criminal law could be much more stressful. The stakes are too high. On the other hand, the thought of losing a case where the judgement is for hundreds of thousands of dollars is not appealing either.

I feel very fortunate to have taken this class. I have compiled some comprehensive, practical information for the students in the legal administration program who come after me. I have also put together quite an impressive piece of work to show prospective
employers. I am also sure that work of this magnitude has been the capstone of my college education. I have been able to bring together most every link of my "educational chain". The Shrackle case exercised my ability to bring together several pieces of evidence while the Diamond case refined by ability to formulate a defense not only through the gathering of evidence but also the formulation of a strong theme. The burden of proof is different for civil and criminal cases, but the devotion to success should be the same. I have learned that doing thorough research and being organized in my presentation are most important within the framework of any situation or set of facts. There is no substitute for preparation!
Although no specific footnotes were made in either the analysis or the appendices, background reading was done in the following sources. Also, classroom experience in litigation support, legal research, and legal writing was an important source of information.


Appendix A

Ethical Codes and Guidelines
Affirmation of Professional Responsibility
of the National Federation of Paralegal Associations

Preamble
The National Federation of Paralegal Associations recognizes and accepts its commitment to the realization of the most basic right of a free society, equal justice under the law.

In examining contemporary legal institutions and systems, the members of the paralegal profession recognize that a redefinition of the traditional delivery of legal services is essential in order to meet the needs of the general public. The paralegal profession is committed to increasing the availability and quality of legal services.

The National Federation of Paralegal Associations has adopted this Affirmation of Professional Responsibility to delineate the principles of purpose and conduct toward which paralegals should aspire. Through this Affirmation, the National Federation of Paralegal Associations places upon each paralegal the responsibility to adhere to these standards and encourages dedication to the development of the profession.

I. Professional Responsibility
A paralegal shall demonstrate initiative in performing and expanding the paralegal role in the delivery of legal services within the parameters of the unauthorized practice of law statutes.

Discussion: Recognizing the professional and legal responsibility to abide by the unauthorized practice of law statutes, the Federation supports and encourages new interpretations as to what constitutes the practice of law.

II. Professional Conduct
A paralegal shall maintain the highest standards of ethical conduct.

Discussion: It is the responsibility of a paralegal to avoid conduct which is unethical or appears to be unethical. Ethical principles are aspirational in character and embody the fundamental rules of conduct by which every paralegal should abide. Observance of these standards is essential to uphold respect for the legal system.

III. Competence and Integrity
A paralegal shall maintain a high level of competence and shall contribute to the integrity of the paralegal profession.

Discussion: The integrity of the paralegal profession is predicated upon individual competence. Professional competence is each paralegal's responsibility and is achieved through continuing education, awareness of developments in the field of law, and aspiring to the highest standards of personal performance.

IV. Client Confidences
A paralegal shall preserve client confidences and privileged communications.

Discussion: Confidential information and privileged communications are a vital part of the attorney, paralegal, and client relationship. The importance of preserving confidential and privileged information is understood to be an uncompromising obligation of every paralegal.

V. Support of Public Interests
A paralegal shall serve the public interests by contributing to the availability and delivery of quality legal services.

Discussion: It is the responsibility of each paralegal to promote the development and implementation of programs that address the legal needs of the public. A paralegal shall strive to maintain a sensitivity to public needs and to educate the public as to the services that paralegals may render.

VI. Professional Development
A paralegal shall promote the development of the paralegal profession.

Discussion: This Affirmation of Professional Responsibility promulgates a positive attitude through which a paralegal may recognize the importance, responsibility and potential of the paralegal contribution to the delivery of legal services. Participation in professional associations enhances the ability of the individual paralegal to contribute to the quality and growth of the paralegal profession.
Code of Ethics and Professional Responsibility of the National Association of Legal Assistants

Preamble

It is the responsibility of every legal assistant to adhere strictly to the accepted standards of legal ethics and to live by general principles of proper conduct. The performance of the duties of the legal assistant shall be governed by specific canons as defined herein in order that justice will be served and the goals of the profession attained.

The canons of ethics set forth hereinafter are adopted by the National Association of Legal Assistants, Inc., as a general guide, and the enumeration of these rules does not mean there are not others of equal importance although not specifically mentioned.

Canon 1

A legal assistant shall not perform any of the duties that lawyers only may perform nor do things that lawyers themselves may not do.

Canon 2

A legal assistant may perform any task delegated and supervised by a lawyer so long as the lawyer is responsible to the client, maintains a direct relationship with the client, and assumes full professional responsibility for the work product.

Canon 3

A legal assistant shall not engage in the practice of law by accepting cases, setting fees, giving legal advice, or appearing in court (unless otherwise authorized by court or agency rules).

Canon 4

A legal assistant shall not act in matters involving professional legal judgment as the services of a lawyer are essential in the public interest whenever the exercise of such judgment is required.

Canon 5

A legal assistant must act prudently in determining the extent to which a client may be assisted without the presence of a lawyer.

Canon 6

A legal assistant shall not engage in the unauthorized practice of law and shall assist in preventing the unauthorized practice of law.

Canon 7

A legal assistant must protect the confidences of a client, and it shall be unethical for a legal assistant to violate any statute now in effect or hereafter to be enacted controlling privileged communications.

Canon 8

It is the obligation of the legal assistant to avoid conduct which would cause the lawyer to be unethical or even appear to be unethical, and loyalty to the employer is incumbent upon the legal assistant.

Canon 9

A legal assistant shall work continually to maintain integrity and a high degree of competency throughout the legal profession.

Canon 10

A legal assistant shall strive for perfection through education in order to better assist the legal profession in fulfilling its duty of making legal services available to clients and the public.

Canon 11

A legal assistant shall do all other things incidental, necessary, or expedient for the attainment of the ethics or responsibilities imposed by statute or rule of court.

Canon 12

A legal assistant is governed by the American Bar Association Model Code of Professional Responsibility and the American Bar Association Model Rules of Professional Conduct.
**Model Standards and Guidelines for Utilization of Legal Assistants**

of the National Association of Legal Assistants

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**Preamble**

Proper utilization of the services of legal assistants affects the efficient delivery of legal services. Legal assistants and the legal profession should be assured that the benefit of adopting these Model Standards and Guidelines exists for identifying delivery of services by a group of persons who have knowledge and experience in legal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.

**Definition**

Legal assistants are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.

**Standards**

A legal assistant should meet certain minimum qualifications. The following standards may be used to determine an individual's qualifications as a legal assistant:

1. Successful completion of the Certified Legal Assistant (CLA) examination of the National Association of Legal Assistants, Inc.,
2. Graduation from an ABA approved program of study for legal assistants,
3. Graduation from a course of study for legal assistants which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of 60 semester hours of classroom study,
4. Graduation from a course of study for legal assistants, other than those set forth in (2) and (3) above, plus not less than six months of in-house training as a legal assistant,
5. A baccalaureate degree in any field, plus not less than six months in-house training as a legal assistant,
6. A minimum of three years of law-related experience under the supervision of an attorney, including at least six months of in-house training as a legal assistant; or
7. Two years of in-house training as a legal assistant.

For purposes of these standards, "in-house training as a legal assistant" means attorney education of the employee concerning legal assistant duties and these Guidelines.

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**Guidelines**

These Guidelines relating to standards of performance and professional responsibility are intended to aid legal assistants and attorneys. The responsibility rests with an attorney who employs legal assistants to educate them with respect to the duties they are assigned and to supervise the manner in which such duties are accomplished.

Legal assistants should:

1. Disclose their status as legal assistants at the outset of any professional relationship with a client, other attorneys, a court or administrative agency or personnel thereof, or members of the general public.
2. Preserve the confidences and secrets of all clients; and
3. Understand the attorney's Code of Professional Responsibility and these Guidelines in order to avoid any action which would involve the attorney in a violation of that Code, or give the appearance of professional impropriety.

Legal assistants should not:

1. Establish attorney-client relationships, set legal fees, give legal opinions or advice, or represent a client before a court; nor
2. Engage in, encourage, or contribute to any act which could constitute the unauthorized practice of law.

Legal assistants may perform services for an attorney in the representation of a client, provided:

1. The services performed by the legal assistant do not require the exercise of independent professional legal judgment;
2. The attorney maintains a direct relationship with the client and maintains control of all client matters;
3. The attorney supervises the legal assistant;
4. The attorney remains professionally responsible for all work on behalf of the client, including any actions taken or not taken by the legal assistant in connection therewith; and
5. The services performed supplement, merge with, and become the attorney's work product.

In the supervision of a legal assistant, consideration should be given to:

1. Designating work assignments that correspond to the legal assistants' abilities, knowledge, training, and experience;
2. Educating and training the legal assistant with respect to professional responsibility, local rules and practices, and firm policies;
3. Monitoring the work and professional conduct of the legal assistant to ensure that the work is substantively correct and timely performed;
4. Providing continuing education for the legal assistant in substantive matters through courses, institutes, workshops, seminars, and in-house training; and
5. Encouraging and supporting membership and active participation in professional organizations.

Except as otherwise provided by statute, court rule or decision, administrative rule or regulation, or the attorney's Code of Professional Responsibility, and within the preceding parameters and prescriptions, a legal assistant may perform any function delegated by an attorney, including, but not limited to, the following:

1. Conduct client interviews and maintain general contact with the client after the establishment of the attorney-client relationship, so long as the client is aware of the status and function of the legal assistant, and the client contact is under the supervision of the attorney.
2. Locate and interview witnesses, so long as the witnesses are aware of the status and function of the legal assistant.
3. Conduct investigations and statistical and documentary research for review by the attorney.
4. Conduct legal research for review by the attorney.
5. Draft legal documents for review by the attorney.
6. Draft correspondence and pleadings for review by and signature of the attorney.
7. Summarize depositions, interrogatories, and testimony for review by the attorney.
8. Attend executions of wills, real estate closings, depositions, court or administrative hearings, and trials with the attorney.
9. Author and sign letters, provided the legal assistant's status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice.
IN THE
SUPREME COURT OF INDIANA

CORRECTING ORDER AMENDING RULES OF PROFESSIONAL CONDUCT

Pursuant to the authority vested in this Court in matters involving the discipline and disbarment of attorneys admitted to the practice of law, on October 29, 1993, this Court entered an order amending the Rules of Professional Conduct, effective January 1, 1994. In that such order was in error, it is now corrected to reflect the adoption of the following guidelines for the use of legal assistants as part of the Rules of Professional Conduct:

USE OF LEGAL ASSISTANTS

Subject to the provisions in Rule 5.3, all lawyers may use legal assistants in accordance with the following guidelines.

GUIDELINE 9.1. SUPERVISION

A legal assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana and in the employ of the lawyer or the lawyer's employer. Independent legal assistants, to-wit, those not employed by a specific firm or by specific lawyers are prohibited. A lawyer is responsible for all of the professional actions of a legal assistant performing legal assistant services at the lawyer's direction and should take reasonable measures to insure that the legal assistant's conduct is consistent with the lawyer's obligations under the Rules of Professional Conduct.

GUIDELINE 9.2. PERMISSIBLE DELEGATION

Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a legal assistant any task normally performed by the lawyer;
however, any task prohibited by statute, court rule, administrative rule or regulation, controlling authority, Indiana Rules of Professional Conduct may not be assigned to a non-lawyer.

GUIDELINE 9.3. PROHIBITED DELEGATION

A lawyer may not delegate to a legal assistant:

(a) responsibility for establishing an attorney-client relationship;

(b) responsibility for establishing the amount of a fee to be charged for a legal service; or

(c) responsibility for a legal opinion rendered to a client.

GUIDELINE 9.4. DUTY TO INFORM

It is the lawyer's responsibility to take reasonable measures to ensure that clients, courts, and other lawyers are aware that a legal assistant, whose services are utilized by the lawyer in performing legal services, is not licensed to practice law.

GUIDELINE 9.5. IDENTIFICATION ON LETTERHEAD

A lawyer may identify legal assistants by name and title on the lawyer's letterhead and on business cards identifying the lawyer's firm.

GUIDELINE 9.6. CLIENT CONFIDENCES

It is the responsibility of a lawyer to take reasonable measures to ensure that all client confidences are preserved by a legal assistant.

GUIDELINE 9.7. CHARGE FOR SERVICES

A lawyer may charge for the work performed by a legal assistant.

GUIDELINE 9.8. COMPENSATION

A lawyer may not split legal fees with a legal assistant nor pay a legal assistant for the referral of legal business. A lawyer may compensate a legal assistant based on the quantity and quality of the legal assistant's work and the value of that work to a law practice, but the legal assistant's compensation may not be contingent, by advance agreement, upon the profitability of the lawyer's practice.
GUIDELINE 9.9. CONTINUING LEGAL EDUCATION

A lawyer who employs a legal assistant should facilitate the legal assistant's participation in appropriate continuing education and pro bono publico activities.

GUIDELINE 9.10. LEGAL ASSISTANT ETHICS

All lawyers who employ legal assistants in the State of Indiana shall assure that such legal assistants conform their conduct to be consistent with the following ethical standards:

(a) A legal assistant may perform any task delegated and supervised by a lawyer so long as the lawyer is responsible to the client, maintains a direct relationship with the client, and assumes full professional responsibility for the work product.

(b) A legal assistant shall not engage in the unauthorized practice of law.

(c) A legal assistant shall serve the public interest by contributing to the delivery of quality legal services and the improvement of the legal system.

(d) A legal assistant shall achieve and maintain a high level of competence, as well as a high level of personal and professional integrity and conduct.

(e) A legal assistant's title shall be fully disclosed in all business and professional communications.

(f) A legal assistant shall preserve all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship.

(g) A legal assistant shall avoid conflicts of interest and shall disclose any possible conflict to the employer or client, as well as to the prospective employers or clients.

(h) A legal assistant shall act within the bounds of the law, uncompromisingly for the benefit of the client.

(i) A legal assistant shall do all things incidental, necessary, or expedient for the attainment
of the ethics and responsibilities imposed by statute or rule of court.

(j) A legal assistant shall be governed by the American Bar Association Model Code of Professional Responsibility and the American Bar Association Model Rules of Professional Conduct.

This amendment shall be effective January 1, 1994.

The Clerk of this Court is directed to forward a copy of this Order to the Clerk of each Circuit Court in the State of Indiana, to the Indiana State Bar Association, to the Legislative Services Agency of this state, to the Office of Code Revision of the Legislative Services Agency, to the Attorney General of Indiana, to the Indiana Judicial Center, to the Michie Company, and to West Publishing Company for publication in the advance sheets of this Court.

The Clerks of the Circuit Court are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 18th day of November, 1993.

[Signature]
Randall T. Shepard
Chief Justice of Indiana
Appendix B

Potter v. Shrackle and the Shrackle Construction Co.
SPECIAL INSTRUCTIONS FOR USE AS A FULL TRIAL

Issues for Trial
This case file may be used for a full trial on the issue of liability only or on the issues of both liability and damages. If used solely for the issue of liability, the proposed jury instructions should be modified accordingly by the deletion of instructions 15 and 16.

Witnesses
When this case file is used for a full trial, the following witnesses are available:

For the plaintiff:
   Officer Michael Young
   Marilyn Kelly
   Jim Marshall
   Jeffrey Potter
   Daniel Sloan
   Dr. Robert Glenn

For the defendants:
   Charles Shrackel
   Alice Mallory
   Victoria Williams
   Juanita Williams

A party need not call all of the persons listed as its witnesses. Any or all of the witnesses may be called by any party, subject to the limitations below. However, if a witness is to be called by a party other than the one for whom he or she is listed, the party for whom the witness is listed will select and prepare the witness.

Limitation on Witnesses
Each party is limited to four witnesses. To achieve this limitation for the plaintiff, Daniel Sloan's testimony is stipulated. (See the required stipulations below.) The plaintiff may call either Dr. Robert Glenn or Jim Marshall as a witness, and the testimony of the other witness is stipulated (see the required stipulations).

Required Stipulations
1. Daniel Sloan. The admissibility of the summary of his deposition is stipulated. Assume that Mr. Sloan is unavailable and his deposition is admissible under a state rule identical to Federal Rule of Civil Procedure 32(a)(3).

2. Dr. Robert Glenn. The admissibility of his report is stipulated. This stipulation is superseded if any party calls Dr. Glenn as a witness.

3. Jim Marshall. The admissibility of his statement is stipulated. This stipulation is superseded if any party calls Mr. Marshall as a witness.
Initial Client Interview
- essential to entire case
- first contact with client
- information gathering exercise
- it is very important to make the client comfortable

Ways that cases get to you
1. referrals
2. walk-ins
3. public defender

GOALS of Initial Interview
1. Establish a rapport with client and gain their confidence.
2. Get accurate and complete facts. (what the client doesn’t tell you will ruin the case)
3. Evaluate—follow your instincts
   a. client
      - Can the client pay?
      - Is he emotionally able to handle the case?
      - Are you compatible? (attorney-client relationship)
      - Is the client deceptive or does he appear to be lying?
   b. case—accept or reject this case
      - conflict of interests
      - case not in your expertise
      - not enough resources
      - values, morals, principles
      - Do they have a case?
4. Determine what, if any, additional information is needed. (make notes to yourself after the interview)
5. Explore other solutions to solve the client’s problem.
6. Advise the client of what to expect and what will happen next.
   - Give the client notes to take home.
7. Talk about fees.
   a. flat fee $X
   b. hourly fee $X/HR
   c. percentage fee Reward x X%

Preparation for Initial Interview
- organize the documents involved
- prepare a place for the interview
- work with the client during a time when there will be no interruptions

Controlling the Initial Interview
1. You must have control while allowing client to be comfortable.
2. Ask basic questions. Where, When, How etc.
3. Watch the time—be efficient.
4. Pay attention. It’s important to listen carefully and not get caught up in taking notes.
5. Be aware of nonverbal cues given by the client.
6. Pursue the facts chronologically.
7. Do not overload the client initially--take a break if needed.

After the Initial Interview
1. Immediately write an interview summary.
   a. impressions
   b. facts
   c. ideas
2. Do a written follow-up with the client.
   a. if reject--Send the client a letter.
   b. Give suggestions.
   c. Advise the client of the statute of limitations.
After accepting a case, organization of the trial notebook becomes paramount to your success with settlement or at trial.

The first task after initial interview is to set up a CALENDAR for the case. Make deadlines and stick to them. Keep track of all important date and write things down (this is too vital to rely only on your memory). Missing a deadline can be fatal. Always have a system and a backup system!

Initial Interview of Jeffery Potter (plaintiff)
1. Make him comfortable and introduce yourself as a paralegal.
2. Get some basic information.
   - name, address, phone #
   - occupation
   - family background
3. One question should lead to another.
4. Who’s the other party involved? Are you familiar with that person?
5. Ask about any injuries or conditions.
6. Was there a police report?
7. Were there any witnesses?
8. Were there any health problems including psychological?
9. Get some character background information.
10. Be looking for possible leads in the information given.
11. Ask about all aspects of where the incident occurred.
12. How would the client like to proceed/What does he want to see done?

Initial Interview of Charles Shrackle (defendant)
1. Much of this interview will resemble the above.
2. Go over the complaint and be prepared to file and answer.
3. Were you engaged in company business?
4. Tell me your side of the story.
   - What did you hear
   - Did you see her
   - What happened after impact
   - Did it occur near the crosswalk
   - Stay on top of the story and draw pictures if needed.
5. Were you distracted for any reason?
6. What condition is/was your truck in?

Prepare thorough summaries of each interview; include information on what you, as the paralegal, feel the issue in each case is.

Potter case: wrongful death/negligence
Shrackle case: comparative or contributory negligence
Initial Interview and Opening the File

CLIENT QUESTIONNAIRE

Date of Interview: 1/17/94
File No.: CV04-12
Referred by: Estelle Mason
Court No.: 18CO-93U -CP-15

Client

Name: Charles T. Shrackle ___________________________ Age: 32
Address: 701 w. Johnston Nixa City __________________ County: Darrow
Home Phone: 389-1503 __________________ Length of Residence: 6 yrs.

Employer: Shrackle Construction Co. __________________ Address: ________

Length of Employment: 3 yrs 7 mos. ________________

Social Security #: 321-54-9876 ________________

Checklist of Discussions

✓ Assignment to client:

✓ Books and financial records
✓ Deeds, title reports, title documents
✓ Papers and contracts
✓ Budget for current income and expenses
✓ Income tax returns
✓ List of debts
✓ List of personal property in adverse party's control

✓ Other items (please list):

  paperwork on truck maintenance
  business information about daily work

✓ Court procedures explained
✓ Office procedures explained
✓ Fees agreed to (decided on basis of work done)
✓ Summary of facts completed
Initial Interview and Opening the File

AUTHORIZATION FOR WAGE AND SALARY INFORMATION

This authorization or photocopy hereof will authorize you to furnish all information you may have regarding my wages or salary while I was employed by you. You are authorized to provide this information in accordance with the Florida Automobile Reparations Reform Act.

Charles J. Shrackle 1/17/94 321-549876
Signature Date Soc.Sec. #
**NEW MATTER REPORT**

**CLIENT INFORMATION**

**CLIENT:** Charles T. Shrackle  
**Date:** 1/17/94

**ADDRESS:** 1701 W. Johnston  
(City): Nita City  
(Code): CVD

**BUSINESS PHONE:** 289-2335  
**CONTACT:** Charles or Mrs. Shrackle  
**HOME PHONE:** 289-7583

**CLIENT NUMBER:** 3012

**MATTER INFORMATION**

**FILE NAME:** Potter v. Shrackle  
**NATURE OF MATTER:** defense  
**AMOUNT INVOLVED:** in dispute  
**OPPOSING PARTY:** Jeffrey Potter  
**OPPOSING LAWYER:** Donald Eisenberg, Wells & Wap, Nita Bank  
**AMOUNT INVOLVED:** 555-2608

**AREA OF PRACTICE CODE:** CVD

**FEE ARRANGEMENT**

<table>
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<tr>
<th>FIXED FEE OF $</th>
<th>TIME RATE</th>
<th>CONTINGENCY OF:</th>
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<td>$ _______</td>
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**FEES TO BE DETERMINED ON BASIS OF WORK DONE, TAKING INTO ACCOUNT ALL RELEVANT FACTORS.**

**ESTIMATED FEE $**

**BILLING PROCEDURE**

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<tr>
<th>NEW GENERAL RETAINER $</th>
<th>PER</th>
<th>EFFECTIVE</th>
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**BILLING INSTRUCTIONS FOR BOOKKEEPER**

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<tr>
<th>MONTHLY</th>
<th>QUARTERLY</th>
<th>CONCLUSION</th>
<th>OTHER</th>
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**FILE CARDS PREPARED BY:** A. Meeks

**FILES**

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<th>OPEN NEW FILE</th>
<th>INCLUDE IN EXISTING FILE</th>
<th>DATE</th>
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**FIRM ADMINISTRATION**

**ENGAGEMENT RECEIVED FROM:** Charles Shrackle  
**ENGAGEMENT RECEIVED BY:** Angela Meeks

**COMMENTS:** We must prove contributory negligence on the part of K. Potter.

**REMARKS:** Client going believable - I recommend that we...

**STATUTE OF LIMITATIONS DATE**
**Initial Interview and Opening the File**

**NEW MATTER CHECKLIST**

**Date:** 1/17/94

**Re:** C. Shrackle

**Code:** CVO 3019

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<tr>
<th>Actual Date</th>
<th>Advance Reminder Date(s)</th>
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</table>

17. X Prepare client account sheet (ledger sheet) and place in its file

18. X Prepare client time and expense record sheet and place in its file

19. X Prepare subfile manila folders entitled as follows and place in client's file:

- Correspondence and Pleadings
- Investigation and Exhibits
- Research
- Costs and Expenses
- Closing Documents

20. X Enter later date one (1) week from date of opening file and list on back of client's file envelope and on desk calendar

21. X Place yellow copy of new matter report in the correspondence subfile

22. X Place photocopy of this checklist in follow-up folder for one week as reminder of work left to be done on file

23. X Place this checklist in correspondence subfile
Initial Interview and Opening the File

Client's Vehicle:
Type of Vehicle: El Camino Year: 1985
Owner of Vehicle: C. Shrackle
Driven from accident scene: Yes Towed by whom: N/A
Approximate damage to vehicle: $905.00
Client advised to obtain two (2) estimates: Yes
Client advised to photograph damage: Yes

OCCURRENCE
Date of Accident: Nov 30, 1992 Time: 3:30 p.m. Location: Mathis & Kirby Aves.

DESCRIPTION
C. Shrackle made a left-hand turn onto Mathis and while driving southbound on Mathis struck a pedestrian (K. Potter) some distance from the crosswalk.

PREVIOUS INJURIES:
Hospitalization Past 5 years:
Where: Raul Memorial When: May 16, 1989
Doctor: Dr. Ralph Riley Illness: Work related injury

NAMES AND ADDRESSES OF PERSONS WHO WILL HAVE KNOWLEDGE OF CLIENT'S CASE:
Work-related: Mrs. Shrackle, Robert Lake, and Neece Brown
310 W. Jackson St. Nita City
Family: Sister, Ashley, 305 S. Nichols Ave. Nita City

Friends: Sue McCormick, 1230 S. Brotherston Nita City
Mike Spence, 508 N Broadway Nita City

ARE PHOTOGRAPHS ADVISABLE: (Car, scar, intersection, cast, etc.) Yes
ARE PHOTOGRAPHS ORDERED: Yes
due 2/1/88
NAME AND ADDRESS OF WITNESS: Victoria Williams and her mother, Sandra
Hill Marshall, Marilyn Kelly, & James Marshall

IS INVESTIGATION INDICATED: Yes
NAME OF INVESTIGATOR: A. Weeks PHONE: 289-2399 DATE: Ordered:

WAS THERE ANY DRINKING INVOLVED: NO WAS POLICE REPORT MADE: YES
CITY: Nita City COUNTY: Darrow STATE HIGHWAY: NO OTHER: City St.
WERE ANY ARRESTS MADE: NO DISPOSITION OF HEARING IF KNOWN:

DEFENDANTS:
Name: Charles T. Shrackle State License: S3157810944
Address: 1101 W. Johnston
Name: Shrackle Construction Co.
Address: 310 W. Jackson St.
Name of defendant's insurance carrier or broker:
### PERSONAL INJURY CHECKLIST

- **Re: C. Snackle**
- **File Number:** CVb 3012
- **Date of Loss:** Nov 30, 1992

<table>
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<tr>
<th>Item of Work</th>
<th>Date Required</th>
<th>Date Received</th>
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<tbody>
<tr>
<td>1. Client executed retainer agreement</td>
<td>1/18/94</td>
<td>1/18/94</td>
</tr>
<tr>
<td>2. Client executed authorization forms</td>
<td>1/17/94</td>
<td>1/17/94</td>
</tr>
<tr>
<td>7. Motor vehicle report (Form SR-1 for Illinois Department of Transportation)</td>
<td>3/17/94</td>
<td>Various</td>
</tr>
<tr>
<td>12. Medical reports and bills</td>
<td>3/17/94</td>
<td>2/1/94</td>
</tr>
<tr>
<td>17. Other proofs of loss (list item below)</td>
<td>3/17/94</td>
<td>1/24/94</td>
</tr>
</tbody>
</table>

- **Future earnings losses** R Glenn report compiled 7/1/98

- 18. Demand for appraisal
- 19. Letter to insurance company with documentation of injuries
- 20. Demand letter for settlement
- 21. Complaint and summons
- 22. Answer
- 23. Interrogatories
- 24. Request to produce documents, etc.
- 25. Answers to interrogatories
- 26. Request to disclose expert
- 27. Depositions (list names of subjects)
  - C. Snackle 4/19/93
  - S. Potter 6/17/93
  - D. Sloan 6/17/93
pedestrian K. Potter died as a result of injuries sustained on 11/30/92. See financial reports to review future worth.

<table>
<thead>
<tr>
<th>CLIENTS: (our client was not injured)</th>
<th>Date of birth</th>
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<tbody>
<tr>
<td>(1) Name: ___________________________ Age: __________ if a minor: __________</td>
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<tr>
<td>Address: ____________________________ Home Phone: ____________________________</td>
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<tr>
<td>________________________________ Bus. Phone: ________________________________</td>
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<tr>
<td>Marital Status: __________________________ Name of Spouse: if minor: __________</td>
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<tr>
<td>Employer: ____________________________</td>
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<tr>
<td>Job Description: __________________________</td>
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<tr>
<td>Address: ____________________________</td>
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<td>Weekly or Yearly Gross Income: __________________________</td>
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<tr>
<td>Wage-loss Verification forms given to client: __________________________</td>
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<tr>
<td>Passenger: ____________________________ Driver: ____________________________</td>
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</table>

| (2) Name: ___________________________ Age: __________ if a minor: __________ |
| Address: ____________________________ Home Phone: ____________________________ |
| ________________________________ Bus. Phone: ________________________________ |
| Marital Status: __________________________ Name of Spouse: if minor: __________ |
| Employer: ____________________________ |
| Job Description: __________________________ |
| Address: ____________________________ |
| Weekly or Yearly Gross Income: __________________________ |
| Wage-loss Verification forms given to client: __________________________ |
| Passenger: ____________________________ Driver: ____________________________ |

Previous Injury History:

(1) ____________________________________________

(2) ____________________________________________

Did client make a statement to anyone other than this office? Details:

No

(1) ____________________________________________

(2) ____________________________________________

Does client carry medical coverage insurance?

| Amount: (1) | C. Sprackle | Company: Blue Cross Blue Shield |
| Amount: (2) | K. Potter | Company: Mass Mutual |

Automobile Insurance:

| Amount: (1) | C. Sprackle | Company: Boston Casualty |
| Amount: (2) | K. Potter | Company: |

Uninsured Motorists' Insurance:

| Amount: (1) | Company: |
| Amount: (2) | Company: |
(K. Potter)

MEDICAL:
Attending Doctor: Dr. M. S. Huntman
Address: 1302 Lakeshore Dr. Nita City
Other Doctors (first aid, consultants, etc.) EMT - Kori Bond
Address: 
Nature of Injuries: Head injuries; internal injuries
Hospital: Ball Memorial
X rays taken: yes Where? Head, neck, back
By Whom: A. Gaither

DAMAGES:
X ray Bill: $952 Amb.: $398
Hosp. Bill: $13,150 Orthopedic App.: $0.00
Nursing Care: $0.00 Household Help: 
Other: Surgery $17,480
Lost Time: $330 (total)
M.D. Bills: $32,800

HAS CLIENT BEEN INSTRUCTED

1. To give no information to anyone other than representative of our office? Yes

2. To be patient? Case may take three to six months before settlement, if any can be effected. If lawsuit, then longer? Yes

3. To forward to this office all bills or receipts for hospital, X ray, property damage, loss of earnings, and medical reports? Yes
PLEADINGS

In this section you will include photocopies of the complaint and answer. If the pleadings are lengthy or complex, prepare a summary of the pleadings.

Complaint - 4/7/93

1. 1st Claim for Relief
   a. K. Potter died 12/4/92
   b. Plaintiff has been appointed Administrator of her estate
   c. At 3:30 on 11/30/92 Mrs. Potter was walking east on
      Ewing across Mattis.
   d. That Mrs. C. Shrackee negligently struck and subsequently
      killed Mrs. Potter while on Co. business.
   e. That she suffered severe mental and physical pain.
   f. That G. Potter and Mrs. Potter have incurred expenses
      for medical care in the amount of $30,800.
   g. That G. Potter has incurred burial expenses of $13,500.

2. 2nd Claim for Relief
   a. G. Potter has lost the reasonably expected future
      income of his wife.
   b. That she has lost services and assistance of K. Potter.
   c. That she has lost society, companionship, etc. of K. Potter.

Answer - 4/16/93

1. Admit that on day in question K. Potter was crossing
   Mattis.
2. Admit that truck was owned by C. Shrackee and his
   Company.
3. First affirmative defense
   a. K. Potter was contributorily negligent
   b. K. Potter was in violation of a Nita statute in
      failing to yield right of way.
IN THE CIRCUIT COURT OF
DARROW COUNTY, NITA
CIVIL DIVISION

Jeffrey T. Potter, the
Administrator of the Estate of Katherine Potter, and
Jeffrey T. Potter, individually,

Plaintiff,

vs.

Charles T. Shrackle and
The Shrackle Construction Company,

Defendants.

Plaintiff for his Complaint against Defendants alleges:

FIRST CLAIM FOR RELIEF

1. That at all times hereinafter mentioned, Plaintiff was, and still is, a resident of Darrow County, Nita.

2. That at all times hereinafter mentioned, Defendant Charles T. Shrackle was, and still is, a resident of Darrow County, Nita, and the Defendant Shrackle Construction Company was, and still is, doing business in Darrow County, Nita.

3. That Katherine Potter died on December 4, YR-2.

4. That Plaintiff and the decedent Katherine Potter were married at the time of her death and had been married for eight years.

5. That Plaintiff has been duly appointed the Administrator of Katherine Potter's estate.

6. That on November 30, YR-2, at about 3:30 p.m., Katherine Potter was walking in an easterly direction across Mattis Avenue at the intersection of Mattis and Kirby Avenues in Nita City, Nita.

7. At this time and place Defendant Charles T. Shrackle was driving a white YR-9 Chevrolet pickup truck which struck Katherine Potter, causing her serious injuries and that Katherine Potter died as a result of such injuries on December 4, YR-2.
8. That the pickup truck driven by Defendant Charles T. Shrackle was owned by the Defendant Shrackle Construction Company, and at the time Katherine Potter was struck by the truck, Charles T. Shrackle was performing duties for and acting on behalf of the Shrackle Construction Company.

9. That Defendant Charles T. Shrackle was driving the truck in a careless, negligent, and reckless manner, and in violation of his duties under Nita Revised Statutes 89-12 (4) (1968) to exercise due care to avoid striking the pedestrian Katherine Potter who was then lawfully walking across the street.

10. That Defendant Charles T. Shrackle carelessly, negligently, and in violation of Nita Revised Statutes 89-12 (4) (1968) failed to keep a proper lookout, to heed the fact that Katherine Potter was crossing the street in the immediate path of his truck, or to take any action to avoid striking Katherine Potter.

11. That Defendant Charles T. Shrackle carelessly, negligently, and in violation of Nita Revised Statutes 89-12 (4) (1968) failed to give proper warning of the sudden and unexpected approach of his truck either by sounding the horn or giving any other signal or warning.

12. That Defendant Charles T. Shrackle's negligence caused Katherine Potter to suffer severe physical and mental pain and suffering from the date such injuries were incurred on November 30, YR-2, until her death on December 4, YR-2.

13. That Defendant Charles T. Shrackle's negligence caused Katherine Potter to incur reasonable expenses for medical, hospital, and surgical care and the loss of wages from the time of the collision until her death, in the sum of $32,800.

14. That Defendant Charles T. Shrackle's negligence caused Jeffrey Potter, as personal representative of the Estate of Katherine Potter, to incur reasonable funeral and burial expenses, in the sum of $13,500.

SECOND CLAIM FOR RELIEF

15. Plaintiff re-alleges paragraphs 1 through 11.

16. That Defendant Charles T. Shrackle's negligence caused Jeffrey Potter, as the surviving spouse of Katherine Potter, to suffer damages for the loss of:
(a) The reasonably expected net income of Katherine Potter;

(b) Services, protection, care, and assistance of Katherine Potter, whether voluntary or obligatory, to Jeffrey Potter;

(c) Society, companionship, comfort, guidance, kindly offices, and advice of Katherine Potter to Jeffrey Potter.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of $50,000, together with interest thereon and his costs herein, and for such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury in this action.

MADDEN & JAMES

by

Attorneys for Plaintiff
Suite 720, Nita Bank Building
Nita City, Nita 99994
(721) 555-0003

DATED: April 7, YR-1

Return on Summons

I hereby certify that the above complaint was personally served on Charles T. Shrackle at his office at the Shrackle Construction Company, Nita City, Nita 99996.

James Bell
Speedy Subpoena & Process, Inc.
IN THE CIRCUIT COURT OF
DARROW COUNTY, NITA
CIVIL DIVISION

Jeffrey T. Potter, the
Administrator of the Estate
of Katherine Potter, and
Jeffrey T. Potter, individually,

Plaintiff,

vs.

Charles T. Shrackle and
Shrackle Construction Company,

Defendants.

Defendants for their Answer to Plaintiff's Complaint:

1. Admit the allegations contained in paragraphs 1-5, 7.

2. Admit that on November 30, YR-2, at or about 3:30 p.m., Katherine Potter was crossing Mattis Avenue somewhere near the intersection of Kirby and Mattis Avenues. Defendants deny all other allegations in paragraph 6.

3. Admit that the pickup truck driven by Charles T. Shrackle was owned by the Shrackle Construction Company. Defendants deny all other allegations in paragraph 8.

4. Deny the allegations contained in paragraphs 9-14, 16.

FIRST AFFIRMATIVE DEFENSE

5. Any injuries sustained or suffered by Katherine Potter at the time and place mentioned in the Complaint were caused, in whole or in part, or were contributed to, by the negligence of Katherine Potter and not by any negligence of Charles T. Shrackle.

SECOND AFFIRMATIVE DEFENSE

6. Katherine Potter violated Nita Revised Statutes 89-12 (4) (1968) by failing to cross the street in the marked pedestrian crosswalk, to keep a proper lookout for vehicles using the roadway and to yield the right of way to any such vehicles.
WHEREFORE, Defendants demand that judgment be entered in favor of the Defendants with the costs and disbursements of this action.

PIERCE, JOHNSON & CLARK

by

James Barber
Attorneys for Defendants
Nita National Bank Plaza
Nita City, Nita 99994
(721) 555-6207

DATED: April 16, YR-1

Certificate of Service

I hereby certify that a copy of the above Answer was placed in the United States Mail, postage prepaid, addressed to the law firm of Madden & James, Suite 720, Nita Bank Building, Nita City, Nita 99994.

Marilyn Maxwell
350 Court Place
Nita City, Nita 99993
(721) 555-4250
Evaluating the case: Identifying the legal issues

Strong points
- Charles is nice, sensitive, and remorseful.
- He will make a good witness.
- Alice Mallory is a strong witness for the contributory negligence defense.
- Mr. and Mrs. Potter have previously seen a marriage counselor and were having a disagreement apparently about when to start a family.
- The police report is admittedly wrong.

Defense
- contributory negligence with emphasis on K. Potter’s physical location at the time of impact
- traffic light was green in C. Shrackle’s favor

Questions to be answered
- What was Katherine Potter’s state of mind?
- Why was she in that area that day?

Witnesses
1. Alice Mallory
2. Marilyn Kelly
3. James Marshall
4. Victoria Williams (child)
5. Juanita Williams

What do we need or need to do?
- research on the issues
- scale diagram of the intersection
- expert witness as to speed of Shrackle’s truck
- information about the truck and C. Shrackle’s driving record
- information from people who have contact with K. Potter on a normal basis

Legal Issues to be researched
1. Admissibility of letter to marriage counselor
2. Contributory/Comparative negligence
   a. crosswalks
   b. medians
   c. pedestrians/autos
3. Jurisdiction
   a. Federal
   b. State
4. Child as witness—IN

*for each of the above use IN statutes and case law
To: T. Eric Evans  
From: Monica Delhart  
Re: Charles T. Shrackle  

Fact Summary  

On November 30, 1992 at approximately 3:30 p.m., Charles T. Shrackle, owner of Shrackle Construction Company, was driving a 1933 Chevrolet pickup truck on his way to Greenbriar Manor to supervise a job. Mr. Shrackle approached the intersection of Kirby and Mattis Avenues. Mr. Shrackle was proceeding west on Kirby Avenue. When he approached the intersection, Mr. Shrackle wished to turn left on to Mattis Avenue. The traffic light at the intersection was green in favor of traffic traveling east and westbound on Kirby. Mr. Shrackle slowed to let a car pass and proceeded to make his left turn. Sometime during or after completion of the turn Mr. Shrackle struck Katherine Potter, a pedestrian attempting to cross the street.

The police and emergency personnel arrived shortly thereafter. According to the police report, filed by Officer Michael Young, the body of Katherine Potter was lying 52'1" from the pedestrian crosswalk. The skid marks from Mr. Shrackle's car measured 16'11". The road and weather conditions were reportedly good. The police report also stated that Mrs. Potter was not crossing the street when the incident occurred.

According to statements taken from witnesses after the incident, there is some discrepancy as to the exact location of Mrs. Potter when she was attempting to cross the street. Marilyn Telly, driver of a car stopped in the easterly northbound lane of Mattis Ave., stated that Mrs. Potter was on the west side of Mattis Avenue and was crossing in the crosswalk. Victoria Williams, a ten year-old in her mother's car traveling east on Kirby, stated that Mrs. Potter was approximately twenty feet south of the crosswalk on the median. Alice Taller, the crossing guard, stated that Mrs. Potter was crossing the street west to east in the crosswalk and once she reached the median she turn immediately south and began walking down the median.

On December 1, 1992 Mrs. Katherine Potter died of the injuries incurred in the incident on November 30th. Mr. Charles T. Shrackle is being sued by Jeffery Potter, husband of the deceased, for wrongful death damages.

Issues  

Is there any law in the state of Indiana which could be applied to this case in order to support the Defendant's claim of contributor negligence?
Montgomery v. Oetroggen (1961) 195 N.E.2d 868 states that a pedestrian has a duty to exercise due care when crossing the street, and the pedestrian is not entitled to assume that he alone has the right to use the street.

Kilmer v. Galbreth (1966) 213 N.E.2d 361 states that a pedestrian has an equal right to proceed heedlessly into the street without first exercising ordinary care for his own safety. This case also contains similar circumstances in which the evidence showed that a woman who was struck by a vehicle coming around the corner while crossing the street was negligent because she failed to use ordinary care.

Anderson v. Pre-Fab Transit Company, Inc. (1980) 409 N.E.2d 1157 states that a pedestrian stepping out onto the street has duty to make sure he is not stepping into the path of an oncoming vehicle which would be unable to stop, and it also states that pedestrians are charged with constructive knowledge of any oncoming traffic in plain view.

Carroll v. Ply (1960) 398 N.E.2d 1364 states that a pedestrian crossing the roadway where there was no crosswalk and failing to yield right of way to oncoming traffic as required by law and failing to exercise reasonable care for his own safety, was found guilty of contributory negligence whether or not there was any negligence on the part of the driver who struck and killed the pedestrian.

Berg v. Glines (1989) 553 N.E.2d 979 states that a motorist is not required to anticipate extraordinary hazards nor to constantly expect or search for unusual danger.

I.C. 9-21-17-1 states that local authorities may pass ordinances that prohibit crossing streets in areas other than crosswalks.

I.C. 9-21-17-5 states that pedestrians may not suddenly leave the curb and walk or run into the path of a vehicle so close that it constitutes an immediate hazard.

I.C. 9-21-17-9 states that between adjacent intersections at which traffic signals are in operation, pedestrians may not cross at any place except in marked crosswalks.

**Holding**

It is possible to support the Defendant's claim of contributory negligence even through the discrepancies of Mrs. Potter's location at the time of the incident. If there is a local ordinance against jaywalking in that area, then her actions would be negligent for violating a valid city ordinance (I.C. 9-21-17-1).
Traffic lights were in operation at the intersection of Mattie and Kirby streets. If there is another intersection nearby with operating traffic lights, then Mrs. Potter may not have crossed at any place except a marked crosswalk (I.C. 9-21-17-9).

If Mrs. Potter crossed where there was no crosswalk, failed to yield the right of way to oncoming traffic and did not exercise reasonable care for her own safety, she could be found guilty of contributory negligence, regardless of any negligence on the part of Mr. Shrackle (Carroll v. Ely).

Regardless of where Mrs. Potter was located when she crossed the street, she still had a duty to exercise due or ordinary care when crossing the street for her own safety (Montgomery v. Gerteisen, Kilmer v. Galbreth).

Mrs. Potter also had a duty to make sure she was not stepping out in front of any oncoming traffic which would cause an immediate hazard (Anderson v. Pre-Fab Transit Company, Inc., I.C. 9-21-17-5).

If it can be shown that there were no obstructions in Mrs. Potter's view as she crossed the street, she then would also have been charged with constructive knowledge of any oncoming traffic in plain view (Anderson v. Pre-Fab Transit Company, Inc.)

Mr. Shrackle was not required to constantly be expecting or searching for unusual dangers (Berg v. Glines).
To: T. Eric Evans  
From: Angela Meeks  
RE: Charles Shrackle  

Fact Summary  

Our clients, Charles T. Shrackle and Shrackle Construction Company, have been sued for damages in the accidental death of Katherine Potter. On November 30, 1992, at about 3:30p.m., Mrs. Potter was walking across Mattis Avenue at the intersection of Mattis and Kirby Avenues in Nita City, Nita. At this time and place our client Charles T. Shrackle was driving a white 1985 Chevrolet pickup truck which struck Katherine Potter, causing her serious injuries. Katherine died as a result of such injuries on December 4, 1992.

As a result of Mrs. Potter's death, her husband, Jeffery Potter, has allegedly suffered much mental and emotional anguish. This anguish has grown from the loss of his one "true love". It is for these reason's that he seeks money damages in a wrongful death suit against Shrackle and his company.

On September 15, 1990, Jeffery Potter wrote a letter to Dr. Andrew Stevens concerning his marital problems with his wife. It is this letter that concerns our clients.

Issue  

Will the letter from Jeffery Potter to his marriage counselor, Andrew Stevens, be admissible into evidence?

Rules  

Valinet v. Eskew (1991) 574 N.E. 2d 283 Relevancy is a logical tendency of evidence to prove a material fact, and it is a question within the discretion of the trial court.

McMahan v. Snap On Tool Corp. (1985) 478 N.E. 2d 116 When evidence is relevant, it should be admitted regardless of its weight.

State v. Totty (1981) 423 N.E. 2d 637 If evidence has tendency to prove fact in issue it is admissible, even though its weight is slight.

McClamroch v. McClamroch (1985) 476 N.E. 2d 514 Letter to decedent from his daughter was material evidence on issue, and the content of that letter gave insight to the court as to the past relationships between decedent and his children.

Dudley Sports Co. v. Schmitt (1972) 279 N.E. 2d 266 Evidence material to establishment of a cause of action is not improper of inadmissible merely because it is damaging to the opposing party.
Snow v. Cannelton Sewer Pipe Co. (1965) 210 N.E. 2d 118 Negative evidence is admissible, although it is considered weak as opposed to positive evidence.

Conclusion

Due to my study of the outlined rules of evidence in the realm of relevancy, it is my belief that the letter from Mr. Potter to Dr. Stevens will be admissible in court. To be relevant a piece of evidence must be offered to prove a material fact at issue, and if this evidence is relevant it must be admitted into evidence according to Valinet and McMahan. The letter is relevant to Charles Shrackle's case because it will be offered to prove that the Potters were not the happy loving couple that Jeffery claims. Evidence is also given weight in a trial according to its ability to prove the fact at hand, but this shouldn't be a concern. According to State v. Totty evidence, if relevant, is admissible no matter what its weight.

In the McClamroch case it was ruled that a letter is relevant and admissible evidence in showing the nature of past relationships. This is of help to Charles Shrackle case because that is exactly what we need to do. This will be damaging to Mr. Potter's goal; however, in the Dudley Sports Co. case the court has ruled even damaging relevant evidence admissible. This negative evidence is further ruled admissible in Snow. Our case against the reward of damages is stronger with this letter at our disposal.
1993 Salary Survey (from page 52)

My billable rate of $45-55 per hour covers my salary several times over."

Handling personal injury and workers’ compensation defense, Kramer feels stuck in her job: "Like a glorified secretary — or not so glorified. Paralegals here do not have secretaries, but can use part-time high school students for our clerical chores. I type my own letters and have a partitioned space, not my own office."

Kramer’s annual reviews bring a modest raise each year. Not paid for overtime, she has averaged two extra hours a week since joining the firm in 1989.

Nona Simmons (not her real name), the only paralegal in her firm, gets no performance or annual reviews. "In a small firm, there’s no upward potential," she says. "It’s very casual here. Raises are given at the discretion of the managing partner, on no set schedule. I’m finishing my B.A. in April and I like the flexibility for my classes."

Simmons has a diverse job in estate and probate but doesn’t plan to stay much longer. "After three years in the field, I want a more sophisticated environment where I can gain more experience. Orlando has always had a problem with salary and benefits. Only the larger firms pay better. Work is completely undervalued in Florida, though the cost of living here is rising now as the city expands. We have a disparity between employers’ success and pay or benefits for employees," Simmons claims. She finds her $22,400 salary low.

**Does It Pay to Unionize?**

One path to job security and better pay: unionize! Deborah Jozwinak, paralegal at a medium-sized Philadelphia firm,

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**LEGAL ASSISTANT TODAY 1993 and 1992 Salary Comparison**

<table>
<thead>
<tr>
<th>By Education:</th>
<th>1992 Average</th>
<th>1993 Average</th>
<th>% Increase or Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>High School</td>
<td>$27,404</td>
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<td>15.8%</td>
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<tr>
<td>College Credits</td>
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<tr>
<th>By Years of Legal Experience:</th>
<th>1992 Average</th>
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<td>0-2</td>
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<td>3-5</td>
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<td>$26,079</td>
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<td>6-10</td>
<td>$30,627</td>
<td>$31,058</td>
<td>1.4%</td>
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<td>10-15</td>
<td>$34,741</td>
<td>$33,939</td>
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<tr>
<td>Over 15</td>
<td>$38,927</td>
<td>$36,264</td>
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<tr>
<th>By Employer</th>
<th>1992 Average</th>
<th>1993 Average</th>
<th>% Increase or Decrease</th>
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<tr>
<td>Private Law Firm</td>
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<td>Corporation</td>
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<td>Public Sector-Govt.</td>
<td>$25,333</td>
<td>$27,954</td>
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<th>By Number of Attorneys:</th>
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<th>1993 Average</th>
<th>% Increase or Decrease</th>
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<tr>
<td>1-5</td>
<td>$27,920</td>
<td>$28,921</td>
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<td>6-19</td>
<td>$30,183</td>
<td>$30,773</td>
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<td>20-50</td>
<td>$32,526</td>
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<td>50+</td>
<td>$30,669</td>
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<tr>
<th>By Practice Area:</th>
<th>1992 Average</th>
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<td>Personal Injury</td>
<td>$26,382</td>
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<td>Litigation-Defense</td>
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<td>Estate &amp; Probate</td>
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<td>Bankruptcy</td>
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<td>Workers' Comp.</td>
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<td>Family Law</td>
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<td>Employment/Labor</td>
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<tr>
<td>Environmental</td>
<td>$31,378</td>
<td>$27,184</td>
<td>-13.4%</td>
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Average Salary $28,429 $29,548 3.9%
Small Firm Compensation

Statistics of Firms with 0-4 Attorneys

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<th>Number of Respondents:</th>
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<td>Required to Bill Hours:</td>
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<td>Average Billable Hours Expected Per Year:</td>
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<td>Average Hours Billed:</td>
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<tr>
<td>Average Hours Worked Per Week:</td>
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<tr>
<td>How Overtime Is Compensated:</td>
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<td></td>
</tr>
<tr>
<td>Paid</td>
<td>49</td>
<td>23.8%</td>
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<tr>
<td>Time Off</td>
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<tr>
<td>Not Paid</td>
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<td>Other</td>
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<td>Average Gross Bonus:</td>
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<td>How Bonuses Are Determined:</td>
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<td>% of Salary</td>
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<td>Merit</td>
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Statistics of Firms with 5-9 Attorneys

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<td>Average Hours Worked Per Week:</td>
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<td>How Overtime Is Compensated:</td>
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<tr>
<td>Paid</td>
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<tr>
<td>Other</td>
<td>30</td>
<td>46.2%</td>
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</tbody>
</table>

1993 Salary Survey (from page 50)

After eight years elsewhere, Susan Plumlee is glad to be back at a small firm in Walla Walla, WA, where she's the legal assistant to one attorney specializing in real estate. The only person in the office to have flextime, Plumlee views this as acknowledgment of "my willingness to go the extra mile when necessary.

"We receive bonuses, on no set schedule and of no set size, in recognition of our efforts," she says. "I have a really good working relationship with my attorney. I don't watch the clock, but put forth honest effort. I'm set for 37 hours a week, and often put in more. Overtime, averaging 10 hours a month, is discretionary, at my choice, to get the job done. Within our market, a small town with a very low salary scale, I feel fairly compensated," Plumlee concludes.

"Pensacola is known for low-paying jobs," remarks Sharon Kramer. Her small firm is "a nice place to work. We're relatively independent. I like my job overall, except for the pay, which I feel is low for my education (a B.A.)

Continued on page 54