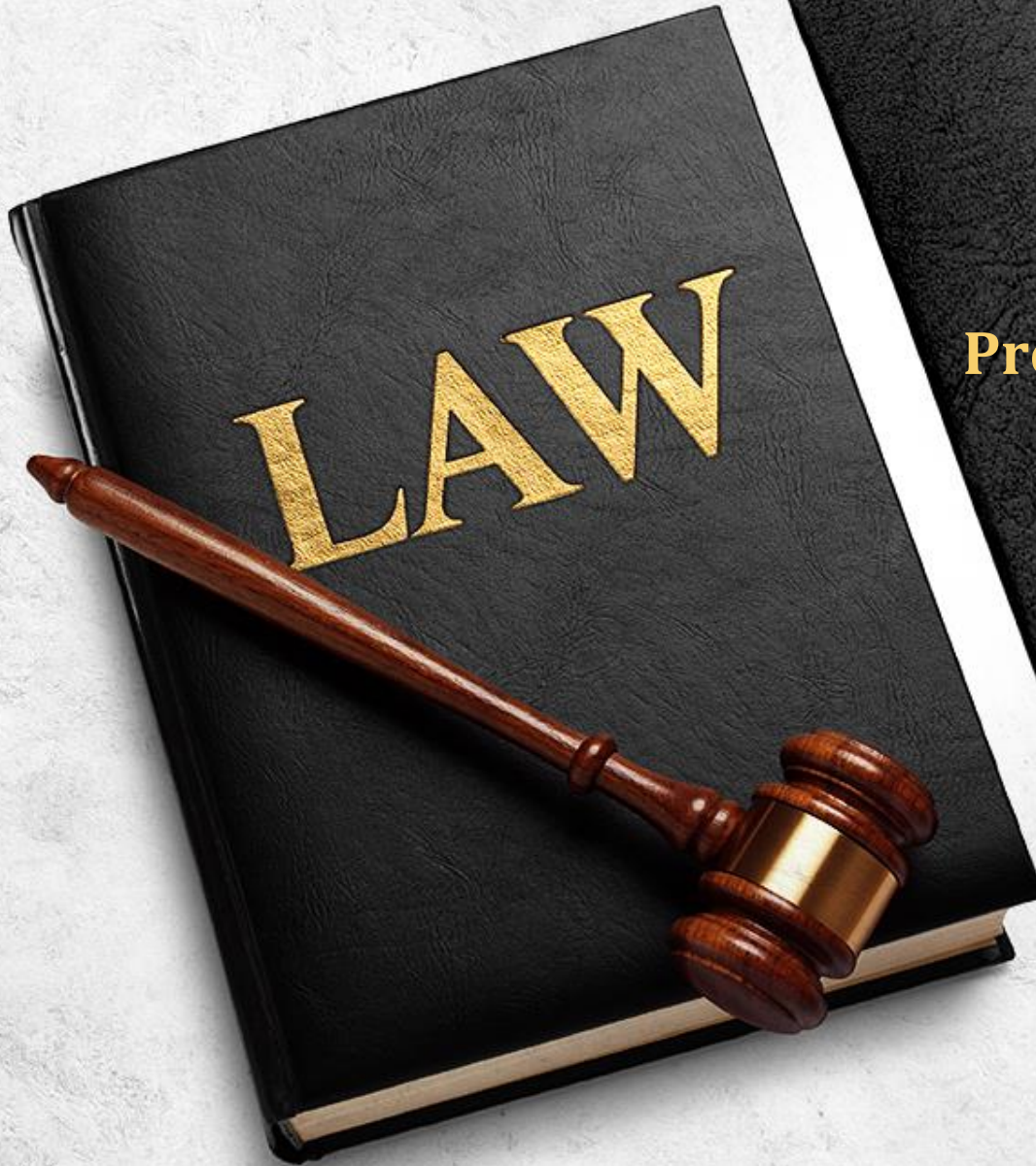


Legal Ethics

Lecture 02

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Unauthorized Practice of Law

- These may not be done by someone without a law license in the particular state:
 - Appearing in a court proceeding
 - Offering specific legal advice to a client
 - Conducting negotiations for a settlement
 - Drafting legal documents, other than just filling in blanks (can be drafted by a paralegal if a lawyer reviews it)
- Tasks that can be performed by a non-lawyer include:
 - Disseminating information on the law and explaining the legal options in a particular area to clients
 - Filling out legal documents without making the drafting decisions
 - Preparing tax returns
 - Interviewing clients and gathering information from clients and/or witnesses



Faretta v. California

422 U.S. 806 (1975)

- **Facts**

- Faretta (defendant) was charged with grand theft in state court. Faretta had a high school education and requested that he be able to represent himself at trial.
- Initially, the trial judge, after warning Faretta of the dangers of representing himself, allowed Faretta to do so.
- However, at a hearing the judge later decided that Faretta did not have sufficient legal knowledge to represent himself.
- The judge then ruled that Faretta had not knowingly and intelligently waived his right to counsel and appointed him a public defender.
- The jury found Faretta guilty, and the judge sentenced him to prison.



Faretta v. California

422 U.S. 806 (1975)

- **Issue**

- Does a defendant in a state criminal proceeding have the constitutional right to reject the assistance of counsel and represent himself at trial?



Faretta v. California

422 U.S. 806 (1975)

- **Holding**

- Yes. Defendants have the constitutional right to represent themselves at trial.
- First, such a right is implied in the Sixth Amendment.
- The Sixth Amendment outlines what a constitutionally complete defense requires.
- The rights outlined in the amendment—the right to notice, confrontation and compulsory process—are personal rights given to the defendant to make his own defense.
- He can therefore represent himself if he decides it would be the best course of action.
- Furthermore, the plain language of the Sixth Amendment speaks to the “assistance” of counsel.
- If counsel is imposed on the defendant, the defendant is no longer in charge of his own defense but is subject to the will of the attorney.



Faretta v. California

422 U.S. 806 (1975)

- **Holding**

- Second, history supports the position that states may not impose counsel on unwilling defendants.
- From the common law of the seventeenth century, to the American colonies, self-representation has been the norm.
- While the Founders saw the benefit of having counsel present, there is no indication that they intended that the right to counsel be a compulsory one.
- Finally, forcing counsel on an unwilling defendant could actually hurt his case.
- There are times when a defendant could actually represent himself more effectively than an attorney could.
- Therefore, defendants may knowingly and intelligently waive their right to counsel.
- **The right to defend is personal and defendants have the constitutional right to represent themselves at trial if they so choose.**



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 1 (<http://www.nala.org/07model.htm>)

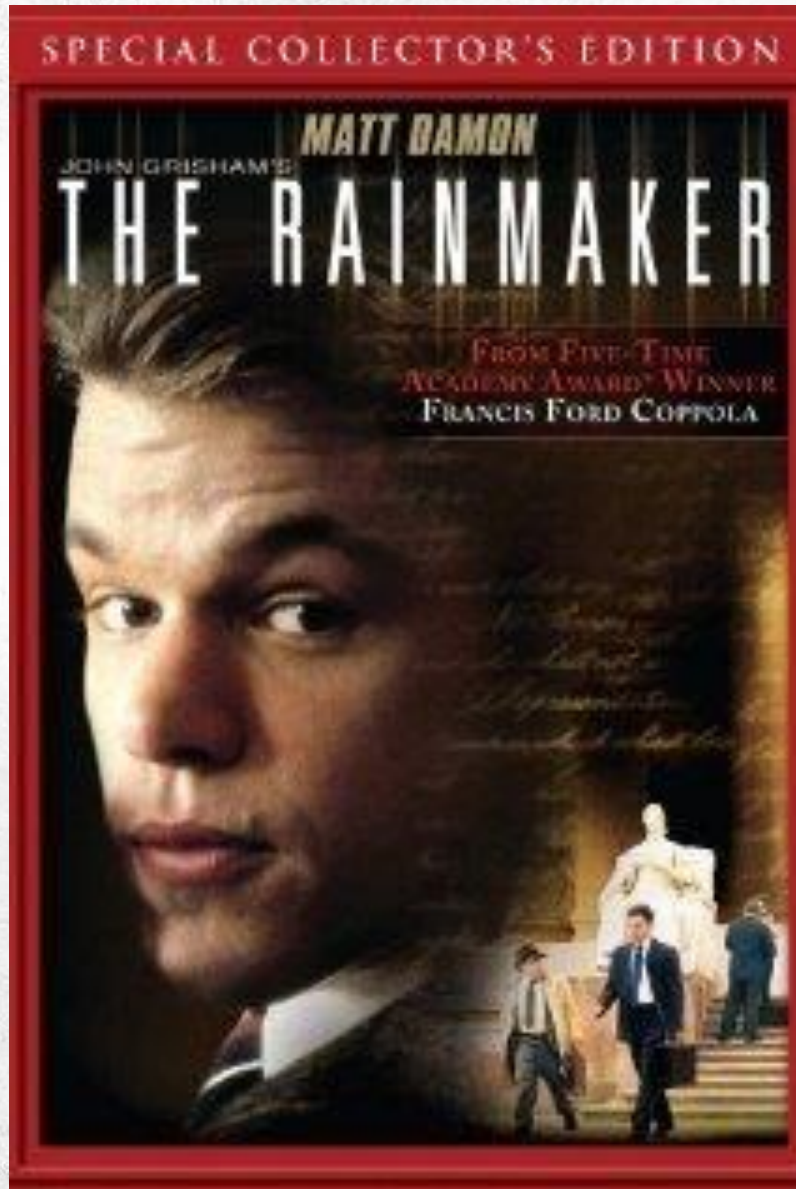
- The three basic questions:
- 1) How do you define “legal assistant” / paralegal?
 - Legal assistants, also known as paralegals, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge 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
- 2) Who is qualified to be identified as a legal assistant?
 - Few states formally regulate the definition of a paralegal
 - According to NALA’s definition:
 - Graduation from a paralegal training program
 - A bachelor’s degree plus 6 months of legal experience
 - Two years in house training as a legal assistant
 - Three years of any law related experience
 - Passing the CLA exam
- 3) What duties may a legal assistant perform?
 - Anything that is not the practice of law



The Rainmaker (1997)

M_Rainmaker_04

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NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 2

- What's the difference between a paralegal and legal secretary?
 - The paralegal or legal assistant performs “substantive” tasks that, “absent the legal assistant, the attorney would perform.”
 - As a practical matter, paralegals are also assigned “secretarial” tasks from time to time.
- Why is the distinction important?
 - In awarding and recovering legal fees, clerical / secretarial tasks are not recoverable from the client. They are considered part of the firm's overhead.
 - Paralegal tasks are recoverable as legal fees



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 3

ABA MODEL RULE 5.3 (Supervision of Legal Assistants)

With respect to a non-lawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action.



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 4

- Some states specifically allow exceptions to the unauthorized practice of law rules where the paralegal is properly supervised. For example, Kentucky has enacted the following rule:
 - [T]he unauthorized practice of law shall not include any service rendered involving legal knowledge or advice, whether representation, counsel or advocacy, in or out of court, rendered in respect to the acts, duties, obligations, liabilities or business relations of the one requiring services where:
 - The client understands that the paralegal is not a lawyer;
 - The lawyer supervises the paralegal in the performance of his or her duties; and
 - The lawyer remains fully responsible for such representation including all actions taken or not taken in connection therewith by the paralegal to the same extent as if such representation had been furnished entirely by the lawyer and all such actions had been taken or not taken directly by the attorney.



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 5

The duty of a paralegal to his or her clients includes:

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 Rules of Professional Responsibility and these Guidelines in order to avoid any action which would involve the attorney in a violation of the Rules, or give the appearance of professional impropriety.



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 6

Working within the Parameters of the Unauthorized Practice of Law rules

Legal assistants should not:

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



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 6

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.



Quick Quiz



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 7

Other Important Points

- The work product of a legal assistant is subject to civil rules governing discovery of materials prepared in anticipation of litigation, whether the legal assistant is viewed as an extension of the attorney or as another representative of the party itself.
- An attorney may not split legal fees with a legal assistant, nor pay a legal assistant for the referral of legal business. An attorney may compensate a legal assistant based on the quantity and quality of the legal assistant's work and value of that work to a law practice.
- Attorneys are responsible for the actions of their employees in both malpractice and disciplinary proceedings. The attorney's responsibility for supervision of his or her legal assistant must be more than a willingness to accept responsibility and liability for the legal assistant's work. Supervision of a legal assistant must be offered in both the procedural and substantive legal areas. The attorney must delegate work based upon the education, knowledge and abilities of the legal assistant and must monitor the work product and conduct of the legal assistant to insure that the work performed is substantively correct and competently performed in a professional manner.



NALA STANDARDS FOR THE ROLE OF THE PARALEGAL 8

NALA's "suggestions" to law firms

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

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



End Of Class Review Quiz

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**THE
BIG
QUIZ**



The End

