

# PRECEDENTS

2024 Q4

*A San Diego Paralegal Association Publication*



**ABA Formal Opinion 512**  
**Artificial intelligence & California**  
**A toxic work environment**  
**AND MORE**

**San Diego Cover/Photos by Denise Blassak, Editor**

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The Presidio

Images, other than photos taken by the editor, and those submitted by members, were created in Canva.

Welcome to Q4, SDPA Members! In this edition, we will learn about recent developments related to artificial intelligence, and how to prepare for the future. Also pick up tips on out of state and foreign subpoenas, and read about toxic work environments. Last, but not least, learn about witness interviews, educational opportunities and upcoming events. Best wishes for these last three months of 2024!



Denise Blassak, Editor

*Denise M. Blassak*



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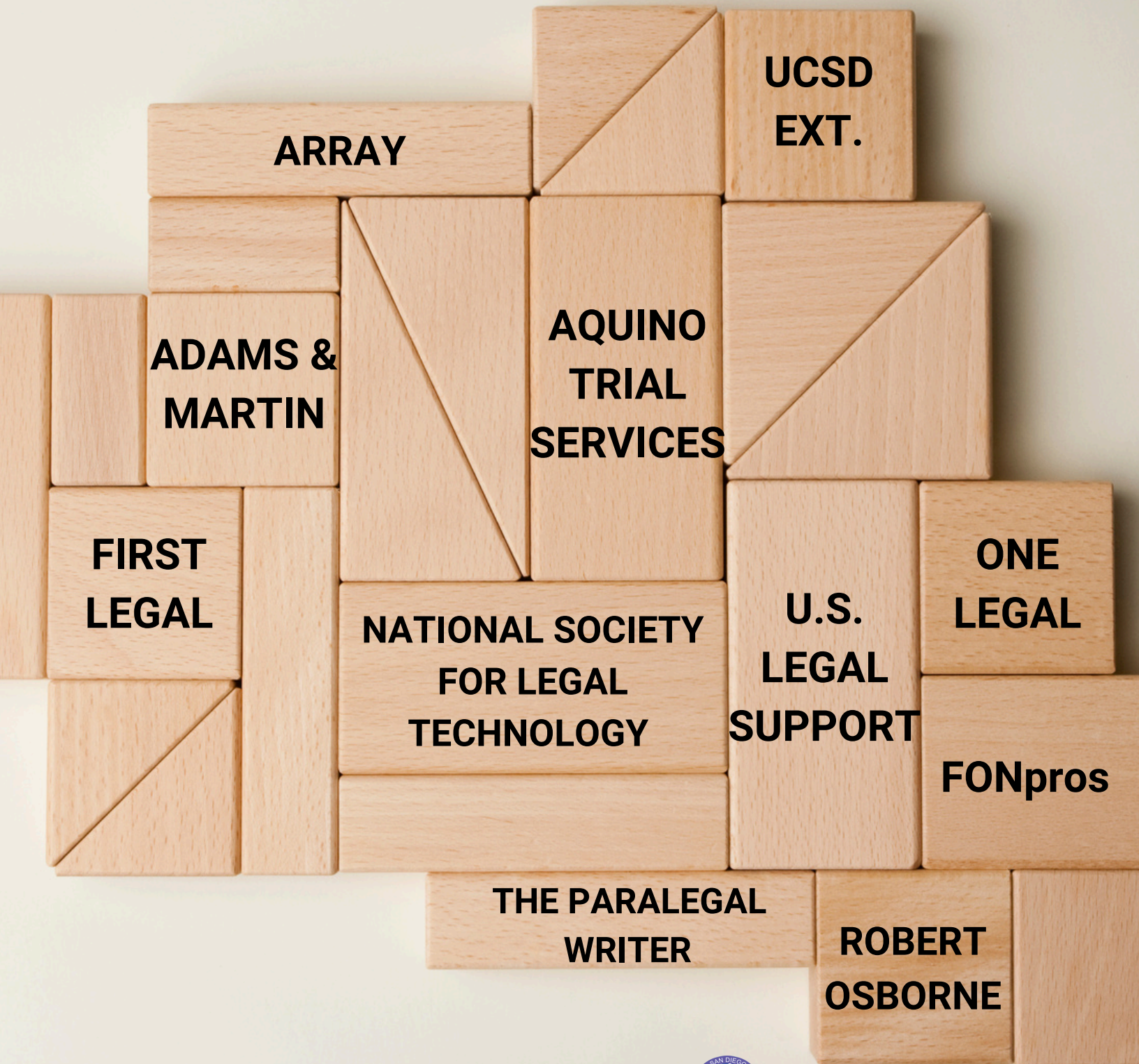


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# THANK YOU, SUSTAINING MEMBERS



**FOR HELPING TO BUILD  
ONE BLOCK AT A TIME**



# WHEN IT IS TIME TO LEAVE A TOXIC WORK ENVIRONMENT

by Hope Fletcher-Sibbald

Working in the legal industry can be stressful. When you boil down what we do, we are bastions, protectors, and fighters for our clients' rights and best interests. It is a tremendous burden to bear at times. That being said, just because the content of our work can be intense, does

not mean that our employers or work environments need to add to that intensity or stress.

Some firms have a tendency to pile unnecessary stress on paralegals, since we are easy scapegoats. Most of us have not gone



to law school; we do not have bar numbers. It is hard to become a reputable (i.e. hard to replace) paralegal in this industry when, at the end of the day, someone else's name is affixed to our hard work. In short, we are more vulnerable than I personally would like to admit.

But work does not have to be a place where you are put at fault for someone else's mistakes. It does not have to be a place

you dread going to because the partner assigns you more work than you can handle. Work does not need to be a place you think about in the middle of the night when you are trying to sleep. In fact, those kinds of work environments are toxic. It can be hard to see the writing on the wall when you are in the thick of it. Here are simple signs that your firm has become toxic.

## **High Turnover Rates**

Every firm experiences turnover. Paralegals change jobs as a way of getting ahead in this industry. However, be suspicious if not a month goes by without someone resigning or getting fired. You may want to reach out to people who have left and ask their reasons why. It is very possible they felt what you are feeling now.

## **Low Morale**

What is the line between feeling

pessimistic and genuine low morale? It looks different in every environment. In general, low morale looks like everyone focused on their own work, while feeling stressed out by the volume of work and/or their superiors. I think of a classic, firm pizza party scenario. Imagine your firm buys a few pizzas to “celebrate” a case settlement. Everyone goes in to the break-room, grabs a slice, and does one of two things. They either (1) go

back to their work with little to no conversation or (2) stay in the break-room to talk, and vent about stress, workload, this partner, or those clients.

### **Work is Affecting Your Mood Outside of Working Hours**

When you feel overworked, underpaid, and unappreciated, it is so easy to come home feeling wound up and defensive around your partner, family, and friends. This can quickly turn into arguments

with the people you love or explosions of emotion from pent up anxiety and strain.

### **Poor Sleep and/or Dreams or Nightmares about Work**

It is not normal to be thinking about work when you are in bed trying to fall asleep. Let me say that again. It is **NOT** normal.

Sometimes it is easy to romanticize yourself as a hard worker. Other times your mind races about cases. But the

truth of the matter is that you are a hard worker who deserves rest too. When it becomes impossible to stop thinking about work, that racing mind can very quickly turn into dread and more anxiety. That, in turn, causes the subconscious mind to replay and work out scenarios in dreams or nightmares. This is also **NOT** normal.

### **Complaints Are Ignored**

If you are brave enough to face managers to

tell them about how stressed out and overworked you are feeling, the correct response is for them to validate you and ask how they can help. However, so often I have seen complaints get turned into, “Well maybe you aren’t cut out for this.” That is just not true. You do not have to be a beatdown work horse to be an amazing paralegal. Even worse is when a complaint is made, and it seems the supervisor or partner heard it,

but then nothing is done. Nothing actually changes. Let me assure you, it is not because they “just forgot.” It is a perpetuation of toxicity that your supervisor is enabling, encouraging, or allowing.

If any of these points ring true to you, I encourage you to look at what options are available elsewhere. The legal community in San Diego may be small, but there are always opportunities out there that are better

than a toxic workplace. You deserve it.

Hope has been a paralegal for six years and has worked in criminal defense appeals, trusts & probate, personal injury, and employment law. She now handles sexual harassment, discrimination, and class action cases at Haeggquist & Eck, LLP.



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# ABA FORMAL OPINION 512 HIGHLIGHTS

by Denise Blassak, Editor

Recent ABA Formal Opinion 512, from the Standing Committee on Ethics and Professional Responsibility, discusses Generative Artificial Intelligence (GAI) Tools. More specifically, it defines such tools, and addresses the necessary supervision of those who use them.

GAI Tools “can create various types of new content, including text, images, audio, video, and software code in response to a user’s prompts and

questions.”<sup>1</sup> They can assist with tasks such as: legal research, document drafting, contract review, and more.<sup>2</sup>

When paralegals ('non-lawyers') use GAI Tools, their supervising lawyer needs to be in the know. Supervisory lawyers must:

- "supervise . . . non-lawyer assistants to ensure th(ey)

FN1 Page 1 of Formal Opinion 512.

FN2 Page 1 of Formal Opinion 512.

... conform to the rules";<sup>3</sup>

- "make reasonable efforts to ensure ... firm's ... nonlawyers comply with their professional obligations when using GAI Tools";<sup>4</sup> and
- "ensur[e] that ... nonlawyers are trained,<sup>5</sup> including in the ethical and practical use of the GAI Tools relevant

**FN3** Page 10 of Formal Opinion 512, citing ABA Formal Op. 08-451.

**FN4** Page 10 of Formal Opinion 512, citing MODEL RULES R. 5.1.

**FN5** Page 10 of Formal Opinion 512, referencing ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 467 (2014).

to their work as well as on risks associated with relevant GAI use."

**6**

Click [here](#) to view a full copy of this ABA Formal Opinion.



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**FN6** Page 10 of Formal Opinion 512, citing, generally, MODEL RULES R. 1.1, cmt. [8]. One training suggestion is that all materials produced by GAI Tools be marked as such when stored in any client or firm file so future users understand potential fallibility of the work.

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AMONG OTHERS

# ISSUING OUT OF STATE AND FOREIGN SUBPOENAS TO OBTAIN DISCOVERY

Authorized reprint from Bosco Legal, a Magna Legal Services Company; footnote updates by SDPA.

As you are likely aware, attorneys must take an oath before gaining the privilege to practice law. This oath mandates their commitment to uphold the Constitution of the United States and the Constitution of the State of California. It emphasizes the importance of conducting themselves with dignity, courtesy, and integrity. Like a fiduciary responsibility,

it also charges them to exert their best efforts, vowing to “faithfully discharge the duties of an attorney and counselor at law to the best of [their] knowledge and ability.” This can be likened to an attorney’s version of the Hippocratic Oath.

We know that attorneys and paralegals genuinely strive to represent their clients’ best interests; however,



execution of this commitment can be difficult. The size of the case, the scope of what needs to be done, time, or lack thereof, among other factors, can be monumental roadblocks prohibiting best efforts. While there are many such challenges that may impede the seamless execution of legal responsibilities, we would like to focus on one area specifically, that we are confident in our abilities to assist our clients with

– foreign deposition subpoenas and service.

### **What is a foreign deposition subpoena?**

In short, a foreign deposition subpoena is a legal document that allows a party in one state to subpoena discovery or testimony from someone in another state. This process can be accomplished within the 50 states and U.S. territories, but can also be used to obtain discovery internationally.

## Who needs it and why?

As residents of the United States spread out across the country, they often relocate for various reasons.

However, many may not be aware that by moving to a new state, they subject themselves to an entirely new set of laws and regulations governing state jurisdiction. While this may not pose immediate issues for the new resident, it can significantly impact legal pro-

ceedings originating in the state they have moved from.

In today's global economy, commerce frequently occurs across state lines. Businesses based in California, for instance, may have suppliers operating in various states across the country. Under normal circumstances, when business operations proceed smoothly without complications or disagreements, it's business as usual.

However, we do not live in a world where everything goes according to plan 100 percent of the time. Disagreements arise, contracts get breached, and parties may suffer damages.

As legal proceedings unfold, the need for discovery becomes inevitable. However, when dealing with subpoenas issued in different states, matching legal jurisdiction in the state where they are served

can cause significant challenges to arise. While you can opt to serve your state's subpoena and hope for compliance from the opposing party, a more robust solution exists. Empower your subpoena with the authority it needs to ensure proper execution – serve a domesticated foreign deposition subpoena.

**How to obtain and serve a foreign deposition subpoena**  
Here is where things

get complicated. As of the writing of this article, there was no universally accepted process for obtaining discovery in another state.<sup>1</sup> And at that time, 46 states had adopted the Uniform Interstate Depositions and Discovery Act (UIDDA) of 2007.<sup>2</sup> Check the Act for updates. U.S. territories may adopt it as well. In most instances, Federal Rule of Civil

**1** Original article was dated December 2023.

**2** The three sentences that originally followed this added footnote have been removed.

Procedure Rule (45), can be used to domesticate a subpoena in U.S. territories.

After the out-of-state subpoena has been domesticated within the jurisdiction of the state where service must take place, specific laws and procedures come into effect. While not all states are the same, in most cases, the jurisdiction of the court (state) where the action was filed becomes the rule of law governing that subpoena. State

service of process rules vary widely, so it is crucial to familiarize yourself with local process service requirements.

Original, December 14, 2023 article reviewed by Joseph Jones.

Deletions and footnotes here made by SDPA editor in October 2024.



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## CALIFORNIA PARALEGALS AND ARTIFICIAL INTELLIGENCE

by Denise Blassak, Editor

CLICK ON UNDERLINED TEXT IN ARTICLE  
TO VIEW REFERENCED REPORTS, OPINIONS,  
LEGISLATION, GUIDELINES, ETC.

AI, in its various forms, is evolving and changing. As time passes, it will begin to play a larger role in our careers. Paralegals should thus embrace it rather than fear it. They should consider learning about it, using related tools, disclosing such use, and polishing other skills.

According to a Thomson Reuters 2024 Report, "very few organizations say that artificial intelligence skills are a *requirement* to be hired." "[B]ut an increasing number, particularly in risk & fraud [and] also in legal . . . , call GenAI skills a *nice to have*." (Report p. 24.)

The desire for AI skills is sure to increase. As such, seek out and watch for training opportunities now. In addition, practice using current AI tools like ChatGPT, when possible.

Attorneys who delegate and supervise you may soon, if not already, set AI guidelines and ask you questions. The American Bar Association and the California State Bar have both recently provided AI-related

recommendations. As a result, some supervisor-level lawyers may begin asking you about your GAI Tool training and knowledge. Supervising attorneys may also establish office policies regarding the use of generative AI.

While working with lawyers and pursuing AI training, consider keeping abreast of related legislation. For example, take a look at California AB 2811 (2023-2024), introduced this year.

If ever adopted, it would add an artificial intelligence section to California's Business and Professions Code.

AB 2811 "would . . . require an attorney to execute and maintain, for a period of 7 years, an affidavit certifying whether generative artificial intelligence, as defined,<sup>1</sup> was

<sup>1</sup> "a machine-based system, that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions . . ."

used in the drafting of each document that the attorney files, or intends to file, in a state or federal court within [California]." A court may require an attorney to file said affidavit, provided the retention period has not expired. (*Ibid.*)

There may come a time when best paralegal practice is notifying attorneys of the tools you use. For now, AB 2811 is not likely to move forward,

according to an aide to Assemblymember Josh Lowenthal.<sup>2</sup>

There are hopes to advance it in 2025.

Beyond a 'law watch,' think about polishing skills that will remain in demand. Examples include: critical thinking, problem-solving, creativity, and communication, to name a few. You are

likely to continue utilizing those given AI limitations.

Let us hone in, for a moment, on communication or people skills. At present, per a piece in mycase, a chatbot<sup>3</sup> "cannot engender trust or sense worry. AI cannot gauge when to reassure clients or delve deeper in

<sup>2</sup> Miller, Cheryl. *Bill Requiring Lawyers to Track AI Use Shelved for the Year*, TheRECORDER on Law.Com, Apr. 26, 2024.

<sup>3</sup> "[A] computer program designed to have a conversation with a human being . . ." (<<https://dictionary.cambridge.org/us/dictionary/english/chatbot>> [as of Sep. 5, 2024].)

witness interviews.”  
Thus human interaction remains essential for certain parts of our job.

Be aware that both humans<sup>4</sup> and AI tools have something in common: bias. And unfortunately, according to the National Institute of Standards and Technology, “AI systems, including GAI systems, can

<sup>4</sup> Dhanidina, Halim.

*Addressing implicit bias starts with looking at 'The man in the mirror,'* Los Angeles Daily Journal, Aug. 20, 2024.

increase the speed and scale at which harmful biases manifest and are acted upon.” This “potentially perpetuat[es] and amplif[ies] harms to individuals, groups[ and others].” Be mindful of possible outcomes when analyzing AI results.

Reviewing results is also important because of “the possibility of hallucinations (the phenomenon by which AI chatbots may confidently

provide false information . . ." This threatens the accuracy of our work in areas such as legal research. Hallucinations, per a study published in the Journal of Legal Analysis, "increase with the complexity of the legal research task at issue . . ."

Paralegals would be wise to capitalize on their independent ideas and assessment abilities. This follows the train of thought of Chief

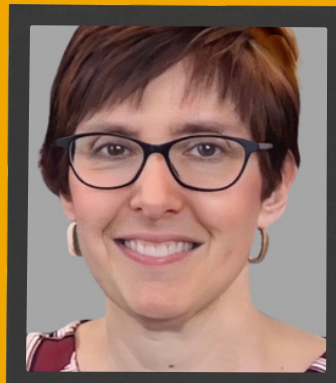
Justice John Roberts. He remarked on page six of his 2023 Year End Report that "legal determinations often involve grey areas that still require application of human judgment."

In summary, by familiarizing yourself with AI tools and their drawbacks, maintaining skills in demand, and following AI legislation, you prepare for the future. AI is here to stay and is almost certain to

change the paralegal role. Preparation will help you remain marketable and in demand in the years to come.

**Denise is a juvenile dependency paralegal with over 15 years of experience. Her ongoing**

**education includes her ABA approved, bachelor's paralegal degree. She is a member of SDPA's Board of Directors, and Southwestern College's Paralegal Program Advisory Board.**



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- Prohibits party from filing more than one MSJ against an adverse party without leave of court
- Opposition filing deadline - at least **20** days before the hearing
- Reply filing deadline - at least **11** days before the hearing
- Prohibits introduction of new facts in a reply to an opposition to MSJ

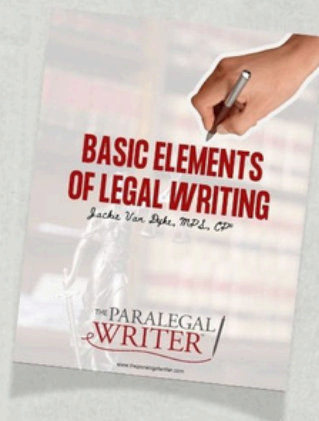
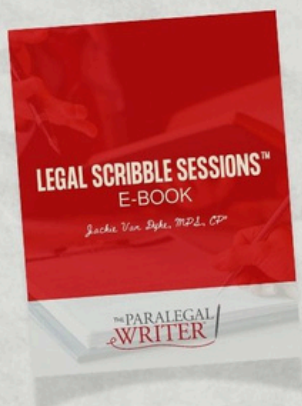
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# **WITNESS INTERVIEW TECHNIQUES: HOW PARALEGALS CAN GATHER CRITICAL TESTIMONIES**

**PARTIAL REPRINT  
AUTHORIZED BY  
AUTHOR ADAM STEELE**

Witness interviews are a cornerstone of the legal process, often making the difference between winning and losing a case. Effective witness interviews can uncover critical details that support a legal argument, clarify facts, and provide essential testimony. Paralegals play a crucial role in

this process. They are often responsible for conducting these interviews and ensuring that the information gathered is accurate, comprehensive, and legally sound.

In the legal field, the ability to gather and

present witness testimonies effectively is a skill that attorneys highly value. This article explores the techniques paralegals can use to conduct successful witness interviews, from preparation to post-interview procedures, emphasizing the importance of ethical considerations and the role of technology. By mastering these techniques, paralegals can enhance their contribution to the legal team and significantly impact case outcomes.

## **Understanding the Importance of Witness Interviews.**

Witness interviews are vital because they provide firsthand accounts that can corroborate evidence, clarify events, and offer new insights. The information gathered during these interviews can help attorneys build a strong case by identifying key facts, understanding the sequence of events, and uncovering details that might not be

evident from documents alone.

For paralegals, understanding the significance of witness interviews goes beyond merely asking questions. It involves recognizing the nuances of human memory, perception, and communication.

Witnesses may have varying levels of reliability and may present information differently depending on their comfort level and the interview environment. Effective paralegals are adept at

navigating these complexities to extract the most accurate and useful information.

Additionally, well-conducted witness interviews can help prevent surprises during trial. By thoroughly understanding what each witness will say, attorneys can better prepare their case strategy, anticipate opposing arguments, and develop effective cross-examination techniques. Paralegals

who excel in conducting witness interviews provide a valuable service by ensuring that all relevant information is gathered and accurately reported.

Moreover, witness interviews can play a crucial role in settlement negotiations. When attorneys have a comprehensive understanding of witness testimonies, they can assess the strengths and weaknesses of their

case more accurately. This leads to more informed decisions about whether to settle or proceed to trial. Paralegals who conduct thorough and effective interviews contribute to a more strategic and informed legal process, ultimately benefiting the client and the legal team.

## **Preparation: The Foundation of Effective Interviews**

### *Researching the Witness*

Preparation is critical to the success of any witness interview. Researching the witness thoroughly beforehand provides a foundation for understanding his background, potential biases, and the context of his testimony. This research can include reviewing the witness's previous statements, background information, and any relevant documents or records. A well-informed paralegal

can ask more precise questions and identify inconsistencies or gaps in the witness's account.

Background research might also involve gathering information from public records, social media profiles, and news articles. Understanding the witness's history, affiliations, and any previous involvement in similar cases can provide valuable context. This level of preparation enables

the paralegal to approach the interview with a well-rounded understanding of who the witness is, what he might say, and how he might react to certain questions.

Researching the witness also involves understanding his relationship to the case and the parties involved. Is he a direct witness to an event, or providing character testimony? Does he have any potential conflicts

of interest or biases that could influence his testimony? By gathering this information beforehand, the paralegal can tailor the approach to address these factors and ensure a more productive interview.

### *Drafting a List of Questions*

Drafting a comprehensive list of questions is another essential preparation step. These questions should be open-ended



to encourage detailed responses and cover all relevant aspects of the case. It is important to structure questions in a logical order, starting with general topics before delving into more specific details. This approach helps build rapport and makes the witness feel more comfortable.

The list of questions should be exhaustive and tailored to the specifics of the case. It should include

questions about the witness's background, his observations, and any relevant interactions or communications. Additionally, the paralegal should consider follow-up questions to probe deeper into initial responses and clarify any ambiguities. Preparing these questions in advance helps ensure that no critical topics are overlooked during the interview.

Another key aspect of drafting questions is anticipating potential objections or areas where the witness might be hesitant to provide information. Preparing alternative questions or strategies to address these challenges can help the paralegal navigate difficult moments during the interview. This level of preparation demonstrates thoroughness and a strategic approach to gathering testimony.

## **Understanding legal constraints**

Understanding legal constraints and ethical considerations is paramount during witness interviews. Paralegals must be aware of the boundaries of their role, ensuring they do not provide legal advice or coerce witnesses in any way. Familiarity with the rules of evidence and procedure is also crucial, as this knowledge helps paralegals

frame their questions appropriately and avoid inadmissible statements.

Legal constraints also include understanding the rights of the witness, such as his right to refuse to answer certain questions or to have legal representation present. Paralegals must respect these rights while still seeking to gather as much relevant information as possible. Balancing these considerations

requires a nuanced understanding of legal ethics and the specific legal context of the case.

In addition to ethical and legal constraints, paralegals must also be mindful of practical considerations, such as the confidentiality of the information shared during the interview. Ensuring that sensitive information is protected and only shared with authorized individuals is crucial to maintaining the

integrity of the legal process and protecting the rights of the witness and the parties involved.

If you want tips on what comes next, the interview, view my full article [here](#).

Adam of Steele Paralegal is based in Wisconsin. He handles various tasks in areas such as business law, personal injury, and more.



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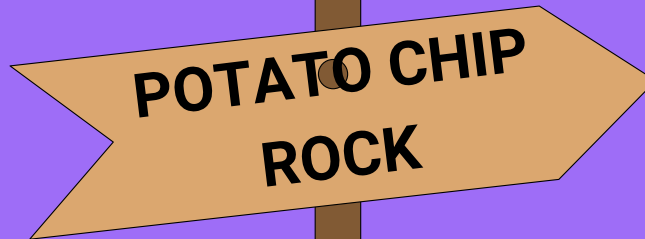
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