

LAW CLERK

THE ULTIMATE GUIDE TO LEGAL OUTSOURCING

GROWING YOUR PRACTICE AND PROFITS
THROUGH ON-DEMAND VIRTUAL ASSOCIATES



INTRODUCTION

To have a successful law practice in the 21st century, you must evolve and adapt your business model. You must be flexible and nimble to meet your clients' needs. You must have the resources to power your firm – whether that means taking bigger cases, a higher volume of cases, additional practice areas, or having the resources to compete with bigger firms.

For many lawyers, the integration of hand-selected teams of on-demand virtual associates into their practices has been the key to their evolution and success.

Table of CONTENTS

How to Grow Your Practice and Profits	3
How to Make Money Leveraging the Time of Freelance Lawyers.....	5
Building Your Team of On-Demand Virtual Associates	7
Costs Avoided by Building a Virtual Team of Freelance Lawyers	9
The Many Benefits of Delegating	11
Types of Work that Can Be Effectively Outsourced to Freelance Attorneys.....	13
Sometimes the Hardest Part Is Just Getting Started.....	14
The Skill and Experience of Lawyers Looking to Freelance Will Amaze You	16
Practical Advice on Building Your Team of On-Demand Associates	17
Finding Your Team: Doing It Yourself v. LAWCLERK	18
Revise Your Engagement Agreement	19
Communication Is Key	20
APPENDIX 1 : Examples of Work to Delegate	21
APPENDIX 2 : Legal Project Delegation Exercise	25
APPENDIX 2 : LAWCLERK's Ethical Compliance	29



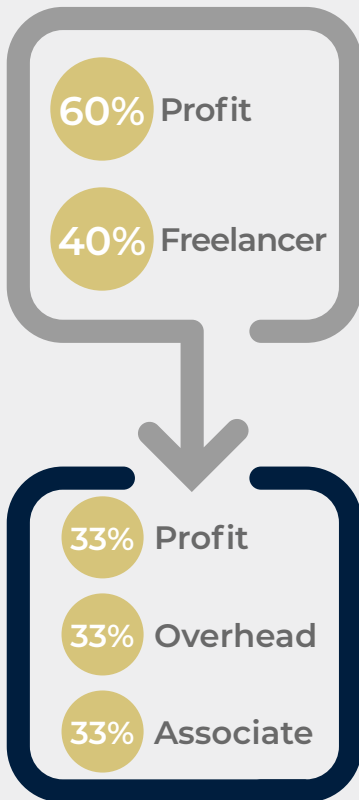
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"Using my team of freelance lawyers has allowed me to grow and scale my practice in ways I never imagined. Having a team of highly qualified lawyers available to spin up at a moment's notice has been an absolute game changer for my firm!"

- Robert Wright,
Intellectual Property Attorney

How to Grow Your PRACTICE AND PROFITS

LAW CLERK *Advantage* LAW FIRMS



TRADITIONAL LAW FIRMS

There are only 24 hours in the day to work, and if you want to do something crazy like sleep or see your friends and family, then there are far fewer hours to work. This means that to grow your firm and profits, you need to leverage the time of other lawyers.

Traditionally, this was done by hiring full-time associates whose revenue from their billings were traditionally divided 1/3 to compensate the associate, 1/3 to cover their overhead expenses, and 1/3 for your profit. This means that if you bill your associate's time at \$225 per hour, \$75 of that \$225 should be allocated for their pay, \$75 should be allocated for overhead, and \$75 should be realized as your firm's profit. But this only works if your associate is busy full time and if you collect all of their billed time, which is rarely the case. When your associate is not busy full time and when you collect less than

100% of their billed time, the 1/3 that is supposed to be your profit ends up being consumed to pay the associate's salary and benefits.

There is a better way! By using freelance lawyers, you can have the benefits of leveraging the time of associates without the overhead, commitment, and lost profits of full-time employees.

Using the same metrics, if you pay your freelance attorney \$75 per hour and you bill your client \$225 per hour for their services, your profit will be \$150 per hour because you do not have to worry about paying salary and benefits when they are not working.



Importantly, consistent with the Supreme Court's decisions in *Missouri v. Jenkins*, 491 U.S. 274 (1989) and *Richlin v. Chertoff*, 553 U.S. 571, 570 (2008) holding that you can upcharge paraprofessionals' services, in Formal Opinion 00-420, the ABA Standing Committee on Ethics and Professional Responsibility explained that attorneys may bill the services of contract lawyers to their clients at prevailing market rates (verses the rate paid to the contract lawyer) as long as the overall hourly rates satisfy Model Rule 1.5(a)'s reasonableness requirement.

Thus, you can grow your practice and profits by leveraging the time of freelance lawyers without the debilitating overhead of full-time employees.

In the 2019 Altman Weil survey, developing an on-demand component to their lawyer workforce is among the top ten strategies big law is employing to improve firm sustainability. Notably, nearly half of the firms surveyed said that their new on-demand workforce strategies had already resulted in "significant improvement in firm performance," with 46.6% reporting that it was too early to tell.

This ability to create a virtual team of on-demand lawyers to improve your firm's profits is no longer reserved for big law. With new technology and outsourcing platforms, you can easily work with talented freelancers in your state and across the country to build your teams of virtual on-demand associates.



How to Make Money Leveraging the **TIME OF FREELANCE LAWYERS**

Motion in Limine

Reasonable hourly rate: \$225

Hours billed: 20

Amount billed to client: \$4,500

Fee paid to freelancer:
\$2,000 (\$100/hr)

Profit: \$2,500

Let's take a deeper dive into some real life examples of how to leverage the time of freelance lawyers to make more money.

Our first example assumes you need a complicated motion in limine drafted (perhaps a Daubert motion). You could draft it yourself and consume days of your valuable time or you could have an experienced freelance lawyer draft it for you, thereby leveraging their time and allowing you to focus on meeting with potential clients, marketing, and growing your business.

Let's look at the economics. If it takes your freelance attorney 20 hours to complete the complex motion and you bill their time to your client at the reasonable market rate of \$225 per hour, the total billed to the client is \$4,500. If you paid the freelance lawyer \$2,000 (\$100 per hour) to prepare the motion, your profit is \$2,500, plus, you saved yourself 20 hours that you can better spend on developing your practice!

If you litigate, whether in family court, state court, or federal court, discovery is a necessary evil. Even if you do not hate doing discovery, there is no chance you think drafting or responding to requests for documents, interrogatories, or admissions is the best use of your time. This is the perfect type of work to outsource. First, instead of procrastinating until the end of the discovery period, you can keep the other side on their toes and control the pace of the case by quickly propounding your discovery. Second, you can leverage the freelance lawyer's time to make a profit for you while you spend your time focusing on your business and clients.

Discovery Requests

Reasonable hourly rate: \$225


Hours billed: 10.4

Amount billed to client: \$2,340

Fee paid to freelancer:
\$780 (\$75/hr)

Profit: \$1,560

If it takes the freelance lawyer 10.4 hours to draft your initial requests for documents, interrogatories, and admissions and you bill their time to your client at the reasonable market rate of \$225 per hour, the total billed to the client is \$2,340. If you paid the freelance lawyer \$780 (\$75 per hour), your profit is \$1,560, plus, you saved yourself 10.4 hours, you didn't have to draft the discovery, and you won't be scrambling to get your discovery done as the discovery window closes.



Can you make a profit if you bill on a flat fee basis? Yes! Say you charge \$1,000 to prepare a lease or a trust and it takes you three hours to prepare it. This equates to a \$333 hourly rate. If, instead of drafting it yourself, you pay a freelance lawyer \$400 to prepare the lease or trust and you spend one hour reviewing and finalizing the lease or trust, your effective hourly rate is now \$600. This is nearly double your effective hourly rate when you just do it yourself.

You Without Freelancer

Effective hourly rate

\$333

You With Freelancer

Effective hourly rate

\$600

Find More Success by Building Your Hand-Selected Teams of On-Demand **VIRTUAL ASSOCIATES**

Attorneys that have embraced outsourcing and incorporated it into their business model are building teams of on-demand attorneys to work with on a consistent basis. This enables them to take more cases, a wider variety of cases, and bigger cases, while allowing them to focus on growing their business.

By incorporating outsourcing into your firm, you can take on bigger cases because you are not limited by “bandwidth.” The elasticity of the on-demand virtual team of associates allows you to work with as many attorneys as you need for any given case – to flex up when you need an army of attorneys. As Tom Howlett, a small firm plaintiffs’ attorney explained, by using his team of on-demand virtual attorneys “I have the ability to leverage the kind of resources that some of my big firm opponents have.”

In another example, a boutique firm was up against AmLaw100 firms in a billion-dollar litigation. The case involved more than four million pages of documents that had to be reviewed and the material information synthesized in a useful manner for depositions and motion practice. The firm created a master spreadsheet of the relevant information to be identified in the documents and utilized a small army of freelance attorneys to complete the document review. The ability to outsource this incredible volume of document review to their on-demand discovery team was integral to maintaining the case at the firm and providing excellent service to their client.

By creating your team of on-demand virtual associates to help you when, but only when, you need it, you will have the “bandwidth” you need to take on and successfully prosecute and defend bigger cases. You can also have the workforce to take on a higher volume of cases.

“ The biggest thing is not just price control, it’s that I can have seven projects going at once. There’s no associate that can do that.

- **Morris Fischer, Employment and Business Lawyer**

”

**APPELLATE ATTORNEY**

scaled his practice and made **\$40,000** in profit in only 3 months by having his on-demand appellate team prepare the first draft of his briefs.

**HOA ATTORNEY**

that recently started her own firm built an HOA niche in only a few months using her on-demand team of HOA lawyers.

**SOLO CRIMINAL DEFENSE ATTORNEY**

is getting more clients now that he can say “he will get his people working on it right away!”

Attorneys take different approaches in creating their ideal on-demand virtual associate teams. Some attorneys create teams by types of work, while others build their teams based on practice area. For instance, a small firm with a national education practice has developed one team of on-demand virtual associates that they work with to prepare substantive demand letters, another team to prepare their litigation briefs, and a third team to handle their appellate briefs.

Conversely, a solopreneur in the rural Midwest that practices both family and criminal law has developed a separate team of freelancers that specializes in each of these practice areas. By doing this, she always has her go-to attorneys with the experience she needs for a particular matter. In fact, she will often have the same attorney on her team handle the bulk of the written work for an entire case – from propounding and responding to discovery, to drafting the briefs, to preparing her hearing notes.

In short, by creating teams of on-demand virtual associates, you can ensure that you have the skilled workforce you need to scale your business, whether that is taking on a higher volume of cases or taking on larger cases, without the expense and limitations of a full-time associate.

Costs Avoided by Building a Virtual **TEAM OF FREELANCE LAWYERS**

FULL-TIME EMPLOYEES ARE EXPENSIVE!



Recruiting



Salary



Taxes



Insurance



**Professional
Dues**



Benefits



Office Space



**Administrative
Support**

When thinking about full-time employees, there are many considerations that simply do not exist when you are working with freelance lawyers. For full-time employees, you must consider:

1. Whether you have enough work now and in the future to keep them busy full time.
2. Whether they have the requisite experience to be valuable to you immediately or whether they will require significant training (i.e. your first-year vs. a fourth-year attorney).
3. Whether the associate wants to be the workhorse you need or whether they will be focused on building their own book of business.
4. Whether they will be loyal or will take your invaluable training and put up their own shingle and compete with you.
5. Whether you can afford a full-time employee.

For many solopreneurs and small firms, number 5 can be particularly troubling because full-time employees are expensive! By using freelance lawyers, you can avoid these costs:

RECRUITING: Unless you are fortunate enough to have a qualified candidate fall in your lap, you will need to recruit candidates. If you pay a recruiter or a staffing agency, their fee is usually 25% to 50% of the lawyer's first year's salary. According to Staffing Industry Analysts, Inc., U.S. legal staffing is a +\$1 billion business.

Even if you do the recruiting yourself, you must take into account the cost to post your ad on whatever platform(s) you choose (Indeed, ZipRecruiter, Monster, etc.) and the numerous hours you will spend reviewing resumes, scheduling interviews, interviewing, and negotiating employment terms. If you spend 15 to 40 hours on this process and your hourly rate is \$400 per hour, the cost for you to recruit an associate is \$6,000 - \$16,000, plus hard costs.

SALARY: Salaries for entry level lawyers vary widely by location and experience. A review of information provided by US News and World Report, Above the Law, and Glassdoor, indicates that entry level salaries for full-time associates generally vary between \$65,000 and \$120,000, with some of the big firms paying upwards of \$190,000.

EMPLOYMENT TAXES: In addition to your employee's salary, you are also responsible for paying the employer portion of Social Security/FICA, Unemployment/FUTA, Medicare, and state unemployment taxes, in addition to worker's compensation premiums.

BENEFITS: Most employees expect some form of benefits. These often include health insurance, life insurance, disability, and 401K. According to the September 2019 report from the U.S. Bureau of Labor Statistics, employers spend an average of \$11.60 per hour per employee on benefits or \$24,128 annually. This is in addition to salary and taxes. Your \$65,000 associate is now costing you north of \$90,000.

SPACE, EQUIPMENT, AND ADMINISTRATIVE SUPPORT: Full-time employees take up space (unless they work remotely) and need tools to work. This means you need to pay for office space, furniture, a computer and other office equipment, a phone and phone line, additional software licenses, and the list goes on. You may also need additional administrative support as your headcount increases. All of these costs are in addition to salary, taxes, and benefits.

PROFESSIONAL DUES AND INSURANCE: You will also need to pay for malpractice insurance for your new lawyer, as well as their state bar dues, local bar association dues, and continuing legal education.

TRAINING: If you hire a young associate, you will need to dedicate significant time to training them. Every hour you spend training is an hour you are not billing and thus another meaningful expense.

These mounting costs often preclude solopreneurs and small firms from being able to take advantage of the leverage model. This is why outsourcing to on-demand virtual lawyers is an ideal solution. Whether you want to work with a single attorney or to build your own hand-selected virtual team of attorneys, you can leverage their time and increase your profits without the debilitating expense of full-time employees. You can also avoid concern about needing to keep them busy full time, training costs, and conflicting objectives (workhorse vs. building their own book).

The Many **BENEFITS OF DELEGATING**

FOCUS ON THE HIGHEST AND BEST USE OF YOUR TIME. If you own your practice, you are an entrepreneur. As an entrepreneur, you need to focus your time on improving and growing your practice. Whether it is client origination, client meetings, trial, case strategy – you need to focus your time on your highest and best use for your business. And you need to delegate the rest through outsourcing. You simply cannot work on your business and in your business at the same time.

BE MORE PROFITABLE WITH CONTINGENCY CASES. To be profitable with contingency cases, you must be particularly cost sensitive. Hiring full-time associates is far more expensive than working with your team of on-demand associates. The cost savings is simple to calculate. Every dollar you save by not paying overhead (benefits, employee taxes, equipment, office space, etc.) is money in your pocket when you get paid on your contingency case.

“

If you really want to grow as an entrepreneur, you've got to learn to delegate.

- Richard Branson, Founder of Virgin Group

”

MAKE MORE MONEY. There are limited ways to make more money as a lawyer. One is to increase the fees you charge to your clients, which is necessarily capped at some point. The second is to leverage the time of other attorneys and technology. Full-time employees come with significant costs irrespective of how much revenue they produce and at slower times, can be a drain on profits. Freelance lawyers, on the other hand, are only paid when they are generating revenue for you and are therefore, a profit center!

FLEXIBLE STAFFING FOR YOUR CASES. By building teams of on-demand virtual associates to work with as needed, you can take on bigger cases, more complex work, or work outside of your core practice, because you know you have the workforce standing by to help you when (but only when) you need them.

“ No person will make a great business who wants to do it all himself or get all the credit.
- **Andrew Carnegie, steel industry mogul** ”

GROW YOUR PRACTICE WITH FLAT FEES. For many clients, the uncertainty of the cost of legal services precludes them from hiring a lawyer or from taking certain legal action. By using freelance lawyers, you can provide your clients with more certainty of pricing. Appeals, for instance, can be cost prohibitive. However, if you can confidently tell your client that the

cost of an appeal will not exceed \$10,000, the client may be more inclined to file the appeal. And you can be confident quoting that fee because you know that you will pay a freelance lawyer on your team \$3,000 to draft the opening brief and \$2,000 to draft the reply brief, leaving \$5,000 available for your time to review and finalize the briefs.

“ If you want to do a few small things right, do them yourself. If you want to do great things and make a big impact, learn to delegate.
- **John C. Maxwell, American author on leadership** ”

LOWER THE COST OF LEGAL SERVICES AND BE MORE COMPETITIVE IN THE MARKET. Outsourcing is often more economical than hiring attorneys because of the overhead employees add to your business. Those savings can be passed along to your clients, which gives you a competitive advantage.

BE HAPPIER. Solopreneurs and small firms are under more pressure than ever to work constantly in order to make a profit. By using freelance lawyers, you can bring in extra help when you need it without the overhead of a full-time associate, thereby giving you more time to spend doing the things you love.

What Types of Work Can I Effectively **OUTSOURCE TO FREELANCE ATTORNEYS?**



DISCOVERY THAT CAN BE OUTSOURCED:

- Discovery plans
- Initial disclosures
- Requests for documents
- Interrogatories
- Requests for admission
- Objections & responses to discovery
- Subpoenas
- Document review
- Motions to compel & responses
- Motions to quash & responses
- Deposition preparation
- Deposition summaries

For more than a decade, “big law” has been outsourcing document review projects to contract attorneys both within the U.S. and abroad. In the last few years, big law has been expanding their use of contract/freelance lawyers and incorporating them into their business model to cut overhead. In fact, the 2019 Altman Weil survey reported that 31.3% of the “big law” firms participating have developed an on-demand component to their lawyer workforce to ensure sustainability of their firms.

The good news is that with new technology, it is not just big law that has the resources to outsource legal work. This means that virtually anything you draft, review, or prepare can be outsourced to a freelance lawyer. You simply need to ensure that you are competent to do the work (Model Rule 1.1) and you supervise your freelancer attorneys (Model Rules 5.1-5.3).

With the ease at which documents can now be shared, whether through your practice management software, dropbox, an outsourcing platform, or other similar systems, time consuming tasks like document review, due diligence, medical record summaries, and motion practice can now be efficiently completed by freelance attorneys.

Think of it this way, you are the quarterback of the case and your team of freelance lawyers will run the plays you call.

Check out our reference guide in the appendix for ideas on projects that can be outsourced in your practice areas.

Sometimes the Hardest Part Is **JUST GETTING STARTED**

“

Deciding *what not to do* is as important as deciding *what to do*.

- **Jessica Jackley, American businesswoman & entrepreneur**

”



There is nothing more limiting to your success than trying to do it all yourself. If you are spending your time drafting, that is time you are taking away from powering your firm and addressing clients' needs. Whether you want to hear it or not, the truth is that you are harming your business and your clients by refusing to delegate.

Here is a great way to get started, make a list of everything you do at work for one week.

At the end of the week, highlight the things that truly only you can do. It is going to be a much smaller list than you expect and most of them relate to developing your business. These are the things you need to focus on — and you need to delegate the rest.

You can also take that list, your normal “to-do” list, or your prebills and ask yourself these questions:

“

Are we limiting our success by not mastering the art of delegation? It's simply a matter of preparation meeting opportunity.

- **Oprah Winfrey, media mogul**

”

1 WHAT IS HANGING OUT THERE THAT YOU NEVER FIND THE TIME TO GET TO?



We all have that work that sits on the corner of our desk or at the bottom of a pile that we intend to get to, but is consistently pushed to meet other immediate deadlines. The “I need to get to it but can’t this week” work is a great place to start.

2 WHAT IS IT YOU DISLIKE DOING THE MOST?



After you say “everything” — actually take a moment to really think about the work that you put off as long as possible. Stop making yourself miserable and delegate this work to someone who is happy to do it.

3 DO YOU NEED MARKETING CONTENT, BLOGS FOR YOUR WEBSITE, PUBLICATIONS, OR HELP WITH A CLE?



You can give outsourcing a try by having freelance lawyers draft blogs, CLE materials, and articles for you.

4 DO YOU HAVE A COMPLEX MOTION, OPPOSITION, OR APPELLATE BRIEF YOU NEED DRAFTED?



Your highest and best use is not spending hours or days doing research and drafting. Have a freelance lawyer take the laboring oar on that complicated brief so that all you need to do is add your finishing touches.

The Skill and Experience of Lawyers Looking to Freelance **WILL AMAZE YOU**

You may be wondering what lawyer wants to freelance. Let me share some astonishing facts with you that hopefully will resonate as you think about your colleagues over the years. 57% of lawyers in private practice stop practicing within five years. These are attorneys that went to law school, passed the bar, possibly had a state or federal clerkship, and then worked for a firm or the government for years. I have so many brilliant colleagues that were excellent attorneys but found being a firm or government lawyer incompatible with also being a parent and ultimately left the practice of law. These talented men and women are rejoining the legal force as freelance attorneys because they can work when their kids are at school, nights, and weekends, without the commitment of full-time employment.

Here is another staggering statistic, at the 250 largest law firms, there is less than a 30% chance of making partner. This is often called the “big law up or out” system. These highly skilled lawyers without the necessary million-dollar book of business to become partner are leaving big law and many are hanging their own shingle and freelancing as they build their firms or developing freelance careers as they are keenly appreciative of its flexibility after big firm burnout.

This may shock you, but millennials are now 25 to 39 years old. While a remarkable over generalization, this is an entire generation of attorneys, many with more than a decade of legal experience, that are more concerned with work life balance than previous generations. Many of these talented lawyers are building freelance businesses for themselves so that they have total flexibility in their schedules, the ability to work and travel, and ultimate control over the type of work they do and their workload.

A new trend is also developing with retired lawyers choosing to freelance. Whether motivated by the need to “stay in the game,” a love for the law, or financial considerations, attorneys with decades of experience are offering their sage advice on a freelance basis.

There are many other life circumstances that are conducive to freelancing. Military spouses, for instance, are well-suited for a freelance career as they must frequently move. Attorneys that have opened their own practices and are working on developing their book of business often supplement their income by freelancing. And law school professors make additional money during their summers off.

The “gig economy” has reached legal and the number of highly-skilled lawyers looking to work on a freelance basis is exponentially increasing as they realize they can put their education and training to work in a way that is conducive to their families and lives.

Practical Advice on Building Your Team of **ON-DEMAND ASSOCIATES**

Hopefully you now agree that building your hand-picked team of on-demand associates is an ideal way for you to grow your practice and are ready for some practical advice on how to do it.



Finding Your Team:

DOING IT YOURSELF v. LAWCLERK

There are a number of ways to go about it. You can ask your colleagues or law school career departments for recommendations of attorneys that are looking to freelance or you can google for attorneys that have built websites to conduct their freelancing businesses. If you take these avenues, you will need to:

- **Undertake your own vetting: Are they barred and in good standing? Can you review a resume? Do they have a writing sample available? Do they have reviews/testimonials?**
- **Prepare and enter into a confidentiality and non-disclosure agreement.**
- **Complete a conflicts check.**
- **Ensure you are maintaining client confidentiality.**
- **Determine how you will exchange documents safely and security.**
- **Determine how you will pay the attorney for their services.**
- **Create and obtain a timesheet so that you can bill your client for their services.**
- **Handle all tax reporting.**

Perhaps a better way is to use a company designed to help you implement your outsourcing strategy. We built LAWCLERK (www.Lawclerk.legal) to connect you with our extensive network of freelance lawyers and to give you the systems and tools you need to seamlessly select and work with your chosen on-demand attorneys. LAWCLERK handles the vetting, payment, and tax reporting, as well as provides a mechanism for you to bill your client. LAWCLERK additionally ensures that a confidentiality and non-disclosure agreement is executed for every project, provides a two-tier conflicts check process, provides a secure and encrypted chat and document library to allow you to safely and securely share documents, and allows you to build your hand-selected teams of on-demand associates to work with.

There are also companies that help you find on-demand attorneys to work with and usually at your office. These companies, such as Montage Legal, feel a bit more like staffing companies and tend to be focused on big law, but they are a good resource if you are looking for someone to work in your office for a limited duration.

When considering your options, you should inquire whether the company is serving only attorneys and therefore attuned to the ethical and practical considerations to the practice of law (check out our ethics chart in the appendix), whether they give you a dedicated advisor to assist you in incorporating outsourcing into your practice, and whether they offer a satisfaction guaranty. LAWCLERK checks each of these boxes.

Revise Your ENGAGEMENT AGREEMENT

It is a good idea to revise your engagement agreement to discuss your use of freelance lawyers and the rates at which they will be billed to your clients.

If you are a solo attorney, perhaps you could use some variation of this sample language in your agreement:

LAW CLERK | Agreement

The principal basis for computing our fees will be the amount of time spent on the matter by various lawyers and paraprofessionals multiplied by their hourly billing rates. I will be the attorney in charge of the relationship with you and my hourly rate is currently \$____. I may allocate and assign work among paralegals, paraprofessionals, and freelance attorneys [or contract attorneys] in a manner which I believe to be most efficient. Our current rates for paralegals range from \$____ to \$____ per hour, paraprofessionals range from \$____ to \$____ per hour, and freelance attorneys [or contract attorneys] range from \$____ to \$____ per hour. These billing rates are subject to change annually and you will be notified of any changes to those billing rates whether directly or by invoice.

If you are part of a firm with other attorneys, this language may a better fit:

LAW CLERK | Agreement

The principal basis for computing our fees will be the amount of time spent on the matter by various lawyers and paraprofessionals multiplied by their hourly billing rates. I will be the attorney in charge of the relationship with you and my hourly rate is currently \$____. The Firm will allocate and assign work among our partners, associates, freelance attorneys [or contract attorneys], paralegals, and other paraprofessionals in a manner which we believe to be most efficient. Our current rates for full-time attorneys range from \$____ to \$____ per hour, freelance attorneys [or contract attorneys] range from \$____ to \$____ per hour, paralegals range from \$____ to \$____ per hour, and other paraprofessionals range from \$____ to \$____ per hour. These billing rates are subject to change annually and you will be notified of any changes to those billing rates whether directly or by invoice.

COMMUNICATION IS KEY

Whether you are working with someone in the next office or working with someone in another state, communication is key to a good working relationship. It doesn't matter whether you communicate by messaging systems, slack, email, text, or phone, it only matters that you communicate. Be sure you and your on-demand team are clear on what needs to be done, expectations, and deadlines.

When working with my on-demand team, after I assign the project, I upload the documents they need to review (or the audio recording from my client meeting), send a message with the pertinent facts (sometimes I dictate this and upload the audio file), and invite a short call to discuss the project. After the call, I also send a note reminding them to be sure to let me know if they have any questions. With these simple steps, I ensure that there is clarity on the project, expectations, and deadlines, as well as open communication.



Talitha Gray Kozlowski

**15+ year bankruptcy attorney,
partner at Garman Turner Gordon,
and co-founder of LAWCLERK.**

JUST DO IT

There is no better way to find out how outsourcing will help you grow your practice than giving it a try. So, as Nike says "Just Do It!"

Check out our worksheet for formulating your first project in the appendix.

IDEAS FOR DELEGATING

While certainly not comprehensive, here are a few ideas of work you should delegate to your team of virtual associates:

APPELLATE

- Research re: procedural issues
- Memos re: likelihood of success in appeal
- Supersedeas bond research/analysis
- Transcript summaries
- Briefing re: interlocutory appeals
- Briefing re: dismissal of appeal
- Motions seeking discretionary review
- Opening briefs
- Response briefs
- Reply briefs
- Excerpts of record/appendices
- Motions to strike & responses
- Writs of habeas corpus
- Writs of certiorari
- Writs of mandamus

COMMERCIAL LITIGATION

- Demand letters
- Complaints
- Motions to dismiss & responses
- Motions to transfer venue & responses
- TRO applications & responses
- Document review
- RFPs, Interrogatories & Admissions
- Discovery responses
- Motions to compel & responses
- Motions to quash & responses
- MSJs, responses & countermotions
- Motions in limine & responses
- Trial/bench briefs
- Jury Instructions
- Motions for reconsideration/new trial & responses

FAMILY

- Prenuptial & postnuptial agreements
- Research memorandums
- Discovery & discovery responses
- Motions re: modification of custody or support & responses
- Motions to enforce custody or support orders & responses
- Adoption documents
- Financial disclosure statements
- Motions to dismiss divorce modification
- Settlement briefs
- Trial/bench briefs
- Motions in limine
- Motions for reconsideration/new trial & responses
- Consent orders



IMMIGRATION

- Research memos
- Visa petitions
- Letters of recommendation
- Support & expert letters
- Employment letters
- Memos re: social group for asylum merits hearings
- BIA briefs
- Motions to transfer venue & replies
- Motions to terminate proceedings & replies
- Eligibility briefs
- NIV (212(d)(3)) waiver applications & memorandum of law
- NOID responses
- Asylum hearing memos & preparation
- Writs of mandamus
- Writs of habeas corpus
- Responses to motions to dismiss
- Motions in limine & responses
- Circuit appellate briefs & replies
- Motions for stay pending appeal

PERSONAL INJURY

- Demand letters
- Research memos
- Complaints
- Motions for leave to amend
- Response to motions for forum non conveniens
- Responses to motions to dismiss
- RFPs, Interrogatories & Admissions
- Objections & responses to discovery
- Motions to compel/quash discovery
- Medical record summaries
- Deposition summaries
- Expert designations
- Settlement letters/mediation briefs
- Demurrers & responses
- MSJs, countermotions & responses
- Daubert & other motions in limine
- Motions to strike & responses
- Trial statements/pre-trial briefs
- Jury verdict research
- Jury instructions
- Judgments & memorandum of costs

CRIMINAL

- Personal restraining petitions & responses
- Letters to the prosecutor or court
- Summaries of criminal history
- Motions to dismiss & replies
- Motions for pretrial diversion & replies
- Motions for a finding of innocence
- Summaries of evidence, discovery needed, & proposed witness questions
- Prepare investigator interview questions
- Motions to expunge & replies
- Motions to quash & replies
- Motions to suppress & replies
- Objections to reports & recommendations
- Motions to modify order & replies
- Motions to set aside judgment & replies
- Motions for reconsideration/new trial & responses
- Plea agreements
- Writs of habeas corpus
- Jury instructions



HEALTH

- Research memoranda
- Medical office leases
- License agreements
- Purchase & sale agreements for medical companies & practices
- Employment agreements
- Feasibility opinions
- Medical website disclosures/disclaimers
- Merger documents for medical & dental companies/practices
- Legal opinion letters for medical & dental companies & practices
- Guidance letters for medical & dental companies
- Practice-related letters for medical practices & professionals
- Discovery requests & responses
- Compliance policies/manuals
- Compliance checklists
- Responses & settlement proposals re: Medicare/Medicaid/Stark/etc. violations

ESTATE PLANNING & PROBATE

- Prenuptial & postnuptial agreements
- Wills
- Powers of Attorney
- Trusts & trust modifications
- Deeds of trust & liens
- Living wills & HIPPA directives
- Beneficiary agreements
- Financial record review & accounting
- Court supervised accountings
- Research re: optimal estate planning vehicles, gifting, property rights, etc.
- Document summaries
- Letters of administration
- Propound & respond to discovery
- Motions for reconsideration & responses
- Motions to substitute personal representative & responses
- Petitions to admit will to probate
- Petitions for family allowances & responses
- Other briefing in probate cases

EMPLOYMENT/LABOR/EDUCATION

- Research memoranda
- Independent contractor/employee analysis
- Employment agreements
- Personnel policies & procedures manual
- Employee handbooks
- NDAs & non-circumvention agreements
- Employee stock option plan (ESOP)
- TRO for former employees
- Responses to DHS revocation of security clearance
- Demand letters
- Complaints (FMLA, retaliation, etc.)
- Mediation briefs
- Discovery plans
- Propound & respond to discovery
- Responses to EEOC employer position statements
- MSJs, countermotions & responses
- Pre-trial & post-trial briefs



INTELLECTUAL PROPERTY

- Copyright & other research memos
- Trademark searches
- Trademark applications
- Opposition to trademark application
- Responses to USPTO action
- Patent applications
- Purchase & Sale Agts. for IP
- Licensing & affiliate agreements
- Software subscription agreements
- Terms of service & privacy policies
- Research memos
- Demand letters & responses
- Cease & desist letters & responses
- Complaints (under Lanham Act & otherwise)
- Motions for TRO & preliminary injunction & responses

BUSINESS/CORPORATE

- Corporate resolutions
- Operating agreements & bylaws
- CC&Rs & HOA bylaws
- Stock agreements
- Loan documents
- Agreements & contracts
- Contract review
- Redemption agreements
- Purchase & sale agreements
- Deeds of trust & lien research
- Survey reviews
- Opinion letters
- Vendor & employee letters
- Leases & notices terminating leases
- Real property transfer documents

BANKRUPTCY

- Avoidance action analysis
- Research re: eligibility to file Ch. 7 & means test
- Preparation of proofs of claim
- Motions to lift the stay & responses
- Motions to appoint a trustee & responses
- Motions to convert/dismiss & responses
- Computation of plan payments
- Chapter 11 & 13 plans
- Responses to confirmation objections
- Motions re: exemptions & responses
- Motions re: estate property & responses
- Motions for surcharge & responses
- Adversary complaints
- Adversary discovery & motions



LEGAL PROJECT

DELEGATION EXERCISE



LAW **CLERK**

Legal Project Delegation Exercise

Complete the following exercise to post a project online, delegate to an associate, train a new hire or design a set of standard operating procedures for your law firm.

Project Title

Suggested Formula: Name of Document or Task + State of Jurisdiction + Practice Area + Due Date

Example: Motion Drafted for IL Family Law Matter by Friday, February 7th, 2020

Project Description

Craft 50-100 words that describe your expectation of the finished product.

Skills Required

List the skills, background or experience necessary to complete this task proficiently.

Describe the steps you would take to complete the task yourself. Then the estimated number of minutes, or hours each will take.

Step		Estimated Time
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Calculate the Billable Rate, Project Cost and Profit

To calculate the total value, cost and profitability of each project or task, complete the formulas below.

Project Value

Tally the total amount of time projected if you were to complete the project yourself. Then, multiply that figure by your hourly rate.

$$\begin{array}{rcl} \underline{\hspace{2cm}} & \times & \underline{\hspace{2cm}} = \underline{\hspace{2cm}} \\ \text{Total Estimated Hours} & \text{Billable Rate} & \text{Project Value} \end{array}$$

Project / Freelance Cost

Multiply the total billable amount by 40%.

$$\begin{array}{rcl} \$ \underline{\hspace{2cm}} & \times & 40\% = \underline{\hspace{2cm}} \\ \text{Billable Value} & & \text{Project Fee} \end{array}$$

Project Profit

Subtract the project cost from the total billable value to estimate profit for the firm.

$$\begin{array}{rcl} \$ \underline{\hspace{2cm}} & - & \underline{\hspace{2cm}} = \underline{\hspace{2cm}} \\ \text{Billable Value} & \text{Project Fee} & \text{Project Profit} \end{array}$$

Completed Example

$$\begin{array}{rcl} \underline{6} & \times & \underline{\$150} = \underline{\$900} \\ \text{Total Estimated Hours} & \text{Billable Rate} & \text{Project Value} \end{array}$$

$$\begin{array}{rcl} \$ \underline{\$900} & \times & 40\% = \underline{\$360} \\ \text{Billable Value} & & \text{Project Fee} \end{array}$$

$$\begin{array}{rcl} \$ \underline{\$900} & - & \underline{\$360} = \underline{\$450} \\ \text{Billable Value} & \text{Project Fee} & \text{Project Profit} \end{array}$$



LAW **CLERK**

COMPLIANCE WITH THE MODEL RULES

LAWCLERK was built for attorneys by attorneys who know that ethical compliance is of utmost importance. While much more detailed information is available at lawclerk.legal, the following chart highlights the tools and protections LAWCLERK has implemented to allow you to ethically outsource to your team of on-demand virtual associates.

MODEL RULE²Rule 1.1
Competence

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

You should only outsource work that you are competent to supervise.

Rule 1.5
Fees

By encouraging the use of lower cost paralegals rather than attorneys wherever possible, permitting market-rate billing of paralegal hours encourages cost-effective delivery of legal services and, by reducing the spiraling cost of civil rights litigation, furthers the policies underlying civil rights statutes.

– U.S. Supreme Court³

For nearly thirty years, the U.S. Supreme Court has consistently recognized that paralegals, law clerks, and other paraprofessionals' services may be billed (and reimbursed by the prevailing party) at "prevailing market rates" verses at the rate actually paid to the paraprofessional."⁴

In *Missouri v. Jenkins*, the U.S. Supreme Court addressed whether paralegal and other paraprofessional services may be awarded at market rates under 42 U.S.C. § 1988. Specifically, the State of Missouri argued that paraprofessional time may only be awarded as a cost, meaning that attorneys could only recover for the amount actually paid to the paraprofessional and could not make any profit by using paraprofessional services. The U.S. Supreme Court unequivocally rejected Missouri's argument finding that paraprofessional time may be awarded at prevailing market rates. In reaching its decision, the Court noted the practical reality that "[a]ll else being equal, the hourly fee charged by an attorney whose rates include paralegal work in her hourly fee, or who bills separately for the work of paralegals at cost, will be higher than the hourly fee charged by an attorney competing in the same market who bills separately for the work of paralegals at 'market rates.'"

The Court also rejected Missouri's contention that awarding compensation for paraprofessionals at rates above cost would result in a windfall for the prevailing attorney. "Neither petitioner nor anyone else, to our knowledge, has ever suggested that the hourly rate applied to the

2. Every state other than California has implemented some form of the Model Rules and while California has not adopted the Model Rules, its professional conduct rules are generally consistent with the Model Rules.

3. See *Missouri v. Jenkins*, 491 U.S. 274 (1989).

4. See *Richlin v. Chertoff*, 553 U.S. 571, 570 (2008); see also *Missouri v. Jenkins*, 491 U.S. 274 (1989).

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

work of an associate attorney in a law firm creates a windfall for the firm's partners or is otherwise improper under § 1988, merely because it exceeds the cost of the attorney's services. If the fees are consistent with market rates and practices, the 'windfall' argument has no more force with regard to paralegals than it does for associates."

In 2008, the U.S. Supreme Court revisited the issue addressing whether the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1), and 28 U.S.C. § 2412(d)(1)(A) allows a prevailing party in a case brought by or against the government to recover fees for paralegal services at market rates or only at the attorney's cost for such paraprofessional services.⁵ In determining that paralegal services may be recovered at prevailing market rates, the Court rejected the contention that the statutes' varying use of the words "expenses" and "fees" changed the analysis. The Court explained that even if it agreed that the statutes referred to reasonable costs, one does not determine the reasonable cost of an engineering report from the perspective of what the engineering firm pays the engineer preparing the report. Similarly, one does not determine the reasonable cost of paraprofessional services from the perspective of what the attorney pays the paraprofessional.

Rather, the reasonable cost is determined by what expense is *incurred by the client*. "It seems more plausible that Congress intended all 'fees and other expenses' to be recoverable at the litigant's 'reasonable cost,' subject to the proviso that 'reasonable cost' would be deemed to be 'prevailing market rates' when such rates could be determined." Thus, whether the term "fees," "expenses," or "costs" is utilized in connection with paraprofessionals services, the analysis remains the same – paraprofessional services may be reimbursed at prevailing market rates not the cost paid by the attorney to the paraprofessional.

The Model Rules and related ethics opinions regarding how contract lawyers' fees may be billed are consistent with the U.S. Supreme Court's holdings in *Richlin* and *Jenkins* and further establish that paraprofessional services of freelance lawyers may be billed at prevailing market rates, irrespective of whether the freelance lawyers are working as lawyers or in a paraprofessional

5. *Richlin v. Chertoff*, 553 U.S. 571 (2008).

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

capacity. Model Rule 1.5, titled "Fees," provides in pertinent part:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

The ABA Standing Committee on Ethics and Professional Responsibility has given further guidance in its Formal Opinion 93-379, stating:

The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.^[6]

In its Formal Opinion 00-420, the ABA Standing Committee on Ethics and Professional Responsibility directly addressed the question of whether contract lawyers' services must be billed to the client at the rate paid to the contract lawyer or at prevailing market rates.⁷ The answer – yes, attorneys may bill the services of contract lawyers to their clients at prevailing market rates as long as the rates satisfy Model Rule 1.5(a)'s reasonableness requirement.

Formal Opinion 00-420 concludes:

Subject to the Rule 1.5(a) mandate that 'a lawyers fee shall be reasonable,' a lawyer may, under the

6. ABA Comm. On Ethics and Prof' Responsibility Formal Op. 93-379 (Dec. 6, 1993) (Billing for Professional Fees, Disbursements and Other Expenses).

7. ABA Comm. On Ethics and Prof' Responsibility Formal Op. 00-420 (Nov. 29, 2000) (Surcharge to Client for Use of a Contract Lawyer).

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

Model Rules, add a surcharge on amounts paid to a contract lawyer when services provided by the contract lawyer are billed as legal services. This is true whether the use and role of the contract lawyer are or are not disclosed to the client. The addition of a surcharge above cost does not require disclosure to the client in this circumstance, even when communication about fees is required under Rule 1.5(b). If the costs associated with contracting counsel's services are billed as an expense, they should not be greater than the actual cost incurred, plus those costs that are associated directly with the provision of services, unless there has been a specific agreement with the client otherwise.

In a 2008 opinion, the ABA Standing Committee on Ethics and Professional Responsibility affirmed its conclusion that contract lawyers may be billed to clients at prevailing market rates instead of the rate paid to the contract lawyer as long as the rate satisfies the reasonableness requirement of Model Rule 1.5.⁸

In Formal Opinion No. 00-420, we concluded that a law firm that engaged a contract lawyer could add a surcharge to the cost paid by the billing lawyer provided the total charge represented a reasonable fee for the services provided to the client. This is not substantively different from the manner in which a conventional law firm bills for the services of its lawyers. The firm pays a lawyer a salary, provides him with employment benefits, incurs office space and other overhead costs to support him, and also earns a profit from his services; the client generally is not informed of the details of the financial relationship between the law firm and the lawyer. ***Likewise, the lawyer is not obligated to inform the client how much the firm is paying a contract lawyer; the restraint***

8. ABA Comm. On Ethics and Prof' Responsibility Formal Op. 08-451 (Aug. 5, 2008) (Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services).

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

is the overarching requirement that the fee charged for the services not be unreasonable.

If the firm decides to pass those costs through to the client as a disbursement, however, no markup is permitted. In the absence of an agreement with the client authorizing a greater charge, the lawyer may bill the client only its actual cost plus a reasonable allocation of associated overhead, such as the amount the lawyer spent on any office space, support staff, equipment, and supplies for the individuals under contract. The analysis is no different for other outsourced legal services, except that the overhead costs associated with the provision of such services may be minimal or nonexistent if and to the extent that the outsourced work is performed off-site without the need for infrastructural support.

Thus, the U.S. Supreme Court, the Model Rules, and the ABA Standing Committee on Ethics and Professional Responsibility have confirmed that attorneys can bill their clients for freelance lawyers' services, irrespective of whether the lawyer is acting in a paraprofessional capacity, as long as the rate is a reasonable fee consistent with prevailing market rates.

Rule 1.6 Confidentiality

LAWCLERK spent thousands of development hours to ensure that all communications and documents shared through LAWCLERK are safe and secure. LAWCLERK Uses Amazon Web Services and AES-256 encryption, which is also used by NASA.

Unlike most practice management and document management software, even LAWCLERK's site administrators and developers cannot access your documents or communications, thereby preserving client confidentiality.

In addition to the freelance attorney certifying their ethical

MODEL RULE**LAWCLERK'S COMPLIANCE WITH THE MODEL RULES****Rules 1.7 - 1.11
Conflicts**

compliance for each project, the freelance attorney also signs a Confidentiality and Non-Disclosure Agreement.

LAWCLERK employs a two-tier conflicts check process that works as follows:

1. LAWCLERK takes conflicts so seriously that its technology blocks a freelance lawyer from even applying for a project if the freelance lawyer had done work for the opposing party through the site - even if it were permitted to do so under the ethical rules.
2. As a second layer of protection, only after you have selected a freelance lawyer to work with do they see your confidential conflict list. At this point, the freelance lawyer must review the conflict list and confirm that they do not have any conflicts.
3. The freelance lawyer is also required to review and certify that they will comply with the conflict rules for each state in which you are barred. This additional layer of contractual obligation provides even more protection than required by the Model Rules.
4. In addition to contractual compliance with the ethical rules, the freelance attorney must also sign a Confidentiality and Non-Disclosure Agreement for each project.
5. The freelance attorney can only view documents and the communication hub for the project after clearing conflicts, certifying their ethical compliance, and signing the NDA.

**Rules 5.3 & 5.5
Supervision
and the
Unauthorized
Practice of Law**

LAWCLERK allows you to work, at your election, with freelance attorneys both within and outside of your jurisdiction. To ensure compliance with the prohibition on the unauthorized practice of law, under LAWCLERK's terms and conditions, the freelance lawyers work in a paraprofessional capacity under your supervision. They are not going to court, they are not talking to your client, they are not signing pleadings, and they are not talking to opposing counsel. They are simply handling all of the time-consuming written work.

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

The Model Rules balance the need for attorneys to utilize paraprofessional services while ensuring that the public is not unknowingly receiving legal advice from unqualified professionals. The Comments to Model Rules 5.3 and 5.5 provide that:

This Rule [Model Rule 5.5] does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.

A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information.

Supervision designed to ensure that nonlawyers do not provide legal advice or otherwise violate the Rules of Professional Conduct is the key to Model Rule 5.3. By precluding any contact with an attorney's clients, opposing counsel, and witnesses, LAWCLERK eliminates the greatest concern addressed by Model Rule 5.3. LAWCLERK also requires, as more fully set forth above, conflict checks, an acknowledgment that the freelance lawyer has reviewed and will comply with the applicable state's Rules of Professional Conduct, an agreement by the attorney to supervise the freelance lawyer, and an acknowledgement by the attorney that they are solely responsible for the freelance lawyer's work product. These restrictions and requirements are designed to satisfy not only the actual text of Model Rule 5.3, but the policy behind it.

Comment 3 to Model Rule 5.3 under the heading: "Nonlawyers Outside the Firm" expressly addresses the engagement of nonlawyers outside the firm and provides as follows:

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

The addition of Comment 5.3(3) and the change from "nonlawyer assistants" to "nonlawyer assistance" in 2012 served to highlight that attorneys have an obligation to make reasonable efforts to ensure that nonlawyers that assist them act in a manner that is consistent with the attorneys' professional obligations, whether they are

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

employed or contractual paralegals, assistants within a law firm, or others engaged from outside the firm.⁹

Comment 2 to Model Rule 5.5 expounds as follows:

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. ***This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.***

Similar to the analysis under Model Rule 5.3, as the attorney has sole responsibility for the freelance lawyer's work product and the freelance lawyer is precluded from having any contact with an attorney's clients, opposing counsel, and witnesses, the freelance lawyer is precluded from providing legal advice to an attorney's client, thereby satisfying both the requirements imposed in Model Rule 5.3, as well as the policy behind the rule. Thus, by using LAWCLERK, an attorney can benefit from the skill and written work of a +20-year attorney from another state without running afoul of the prohibition on the unauthorized practice of law.

Beyond the Model Rules, the services provided by freelance lawyers to attorneys are consistent with the parameters set forth in the Second Edition of the American Jurisprudence addressing the services that may be provided by a law clerk:

The functions of an unlicensed law clerk should be limited to work of a preparatory nature, such as research, investigation of details, assemblage of data, and like work that will enable the attorney/ employer to carry a given matter to a conclusion

9. See ABA Model Guidelines for the Utilization of Paralegal Services, n.3, available at <https://apps.americanbar.org/legalservices/paralegals/downloads/modelguidelines.pdf>.

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

*through his or her own examination, approval, or additional effort; the activities of a law clerk do not constitute the practice of law so long as they are thus limited. [footnote omitted] On the other hand, an unlicensed law clerk who engages in activities requiring legal knowledge or training, such as handling probate matters, examination of abstract titles, and preparation of wills, leases, mortgages, bills of sales, or contracts, **without supervision from his or her employer**, thereby engages in the unauthorized practice of law.^[10]*

Further, while paralegals and legal assistants may not serve as freelance lawyers with LAWCLERK, the guidelines, rules, and case law analyzing the services that may be provided by legal assistants and paralegals is nonetheless instructive as to what services may be employed by a paraprofessional without engaging in the unauthorized practice of law. For instance, the National Association of Legal Assistants (NALA) has formulated its Code of Ethics and Professional Responsibility (the "NALA Code"), as well as Model Standards and Guidelines for Utilization of Paralegals (the "NALA Guidelines") that its members must follow to remain a member in good standing with the organization.¹¹ Most applicable here, the NALA Guidelines, citing to Model Rule 5.3, provide that "a paralegal is allowed to perform any task which is properly delegated and supervised by a lawyer, as long as the lawyer is ultimately responsible to the client and assumes complete professional responsibility for the work product."

The NALA Code further instructs that the attorney and not the paralegal must form and maintain the direct relationship with the client and that the paralegal is prohibited from: (i) engaging in, encouraging, or contributing to any act that could constitute the practice of law; (ii) establishing attorney-client relationships, setting fees, giving legal opinions or advice, or representing a client before a court or agency unless specifically authorized by that court or agency; and (iii) engaging in conduct or taking any action that would assist or involve the lawyer in a violation of professional ethics or giving the appearance of

10. 7 Am. Jur. 2d Attorneys at Law § 130 (emphasis added).

11. NALA Code, available at <https://www.nala.org/sites/default/files/codeofethics.pdf>; see also NALA Guidelines, available at <https://www.nala.org/sites/default/files/modelstandards.pdf>.

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

impropriety. However, such restrictions do not alter the requirement that a paralegal must use discretion and professional judgment commensurate with his knowledge and experience, but must not render independent legal judgment in place of a lawyer; rather, any legal opinion may only be rendered to the attorney.

The ABA Standing Committee on Paralegals has additionally prepared its Model Guidelines for the Utilization of Legal Assistant Services (the "ABA Guidelines"). While the ABA Guidelines refer to paralegals, the term is intended to include legal assistants.¹² ABA Guideline No. 2 states that ***"[p]rovided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer"*** unless there is a statute, court rule, administrative rule or regulation, controlling authority, the applicable rule of professional conduct of the jurisdiction in which the attorney practices, or the Guidelines that expressly precludes the attorney from delegating the specific task to a nonlawyer. The ABA Guidelines then identify three responsibilities that may not be delegated to a paralegal: (i) responsibility for establishing a lawyer-client relationship; (ii) responsibility for establishing the amount of a fee to be charged for a legal service; and (iii) responsibility for a legal opinion rendered to a client. Conversely, the preparation of factual investigation and research, legal research, and the preparation of legal documents are identified as tasks that may be delegated to paralegals subject to appropriate attorney supervision.

Consistent with the foregoing legal authorities and guidelines, LAWCLERK requires the attorney to supervise the freelance lawyer and to maintain responsibility for the freelance lawyer's work product. However, LAWCLERK is far more restrictive than the foregoing guidelines for paralegals, law clerks, and legal assistants and more protective of the public as it precludes freelance lawyers from engaging in any contact with clients, opposing counsel, or witnesses. Thus, by using LAWCLERK, you can take advantage of LAWCLERK's nationwide network of skilled freelance lawyers and grow and improve your practice while being compliant with the prohibition on the unauthorized practice of law.

¹² See ABA Guidelines, at Preamble and n. 1, available at <https://apps.americanbar.org/legalservices/paralegals/downloads/modelguidelines.pdf>.

MODEL RULE

Model Rule 5.4 Fee Sharing

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

Model Rule 5.4 provides that “[a] lawyer or law firm shall not share legal fees with a nonlawyer,” subject to several enumerated exceptions. The stated basis for the rule is to ensure the professional independence of lawyers.

There is no fee sharing when using LAWCLERK. The attorney’s fees (and any profits) received from the client are not shared with either LAWCLERK or the freelance lawyers. Rather, LAWCLERK is paid a service fee for the services provided by LAWCLERK, including without limitation access to LAWCLERK’s blog and online community, the LAWCLERK Care Team available to assist all users, a Dedicated LAWCLERK Advisor for each attorney, conflict check procedures, rating mechanisms, secure and encrypted communication tools, secure and encrypted document management system, a Confidentiality and Non-Disclosure Agreement for each project, payment processing, and tax reporting services. This is tantamount to a fee paid for other legal-related services, such as practice management software (like Clio or MyCase), document management software (like Dropbox or Box), or legal research tools (like Westlaw or Lexis). LAWCLERK has simplified the process by only requiring the attorney to identify a single project price, but this project price is comprised of two components – the service fee to LAWCLERK and the fee paid to the freelance attorney for their services. For the avoidance of doubt, there is a clear separation between the fee paid by the client to the client’s attorney, and the amount paid by the attorney for the completion of a project. At no point does LAWCLERK “share” the legal fees paid by the client.

The ABA’s Formal Opinion 88-356 explains that there is no fee sharing when an attorney pays a placement agency (or a recruiter) to obtain temporary lawyer services even where the agency’s fee is a proportion of the lawyer’s compensation. While LAWCLERK is not a staffing agency, the opinion remains on point:

This Committee is of the opinion that an arrangement whereby a law firm pays to a temporary lawyer compensation in a fixed dollar amount or at an hourly rate and pays a placement agency a fee based upon a percentage of the

MODEL RULE

LAWCLERK'S COMPLIANCE WITH THE MODEL RULES

lawyer's compensation, does not involve the sharing of legal fees by a lawyer with a nonlawyer in violation of Rule 5.4 or DR 3-102(A) of the Code. There is a distinction between the character of the compensation paid to the lawyer and the compensation paid to the placement agency. The temporary lawyer is paid by the law firm for the services the lawyer performs under supervision of the firm for a client of the firm. The placement agency is compensated for locating, recruiting, screening and providing the temporary lawyer for the law firm just as agencies are compensated for placing with law firms nonlawyer personnel (whether temporary or permanent). Moreover, even assuming there is a total amount comprised of a lawyer's compensation and the placement agency fee that is split, the total is not a "legal fee" under the commonly understood meaning of the term. A legal fee is paid by a client to a lawyer. Here the law firm bills the client and is paid a legal fee for services to the client. The fee paid by the client to the firm ordinarily would include the total paid the lawyer and the agency, and also may include charges for overhead and profit. There is no direct payment of a "legal fee" by the client to the temporary lawyer or by the client to the placement agency out of which either pays the other.

Similarly, there is no direct payment of a legal fee by the client to LAWCLERK or its freelance lawyers. Rather, the legal fee paid by the client is solely paid to the attorney.

Moreover, the purpose of the restrictions on fee sharing is to preserve the independence of the lawyer. LAWCLERK does not exercise any control over the attorney, the attorney's relationship with their client, and has no involvement in the negotiation of the client retention or fee structure. This further underscores that LAWCLERK is ethically compliant and does not engage in prohibited fee sharing.