A legal note from Marshal Willick about how feral paralegals are roaming the legal landscape, making practice harder for actual lawyers

I. THE PROBLEM

We've noted some disturbing trends relating to paralegals in Nevada, which are worthy of greater attention by lawyers generally, and the Bar disciplinary office in particular.

First, we continue to hear from a stream of folks who previously "looked up a service on the Internet" to get matters – especially domestic relations matters – filed.

One particularly notorious firm files everything in Nye County – regardless of where the parties to the case might live – and does so very, very badly. Not only do they violate the jurisdiction and venue statutes with every divorce they file in Tonopah, they are in continual violation of the unauthorized practice rules. This particular firm has a supposed "supervising attorney" who lives and works 450 miles from the paralegals supposedly being supervised.

One litigant came to us to try to get the custody and support terms fixed after that outfit had screwed up a case. We took the time to detail just what and how badly they had done, in a letter to the Bar. The Bar ultimately sent a "letter of caution" to the "supervisor," altering exactly nothing in their advertising, operations, or ongoing harm to the public. Since then, we have fixed three similar messes they have made.

The second category of problem paralegals involve attorneys who have virtually relinquished control of their offices to paralegal staff, who have arrogated tasks and responsibilities far beyond their proper limits.

One Las Vegas general practice firm has relegated all family law cases to a paralegal I'll Call "Ms. N," who has called this office to complain if she thinks an argument in one of our pleadings is "inappropriate" and to question our legal theories. She drafted for that office an argument under *Rivero* arguing that the case stood for the proposition that a court can only consider parents with 50/50 custody to have joint physical custody if the court makes a finding that such would be in a child's best interest [for non-family law attorneys reviewing this paragraph, that assertion is nonsense].

The attorney signed off on that submission – apparently without reading or understanding it. Since then the lawyer has admitted in open court that the paralegal "knows more about the case" than he does.

It's not just one office, though. A paralegal from another office came with the attorney to a settlement conference, and during a break when the lawyers were out of the room, took the opportunity to verbally attack our client, until stopped by my staff. The opposing office had submitted an outrageous proposed Parenting Plan, and briefing so defective (and untimely) that it had obviously been drafted completely by that paralegal and signed by counsel without review.

That attorney not only had the paralegal sit in on all conference calls and in every meeting, but had her do all the talking ***at*** the settlement conference. The attorney looked like a fool, and his client was effectively betrayed.

The third trend of concern is attorneys in this town using paralegals who change firms as resources for confidential information obtained during previous employment. But that unethical practice requires sufficient attention that it will be the subject of a separate future Legal Note.

This note is not a screed against paralegals, who can be vital and economically efficient components of a law practice. It is a warning about what happens when lawyers fail to provide the supervision required of them under RPC 5.3.

II. WHY FERAL PARALEGALS ARE BAD FOR THE PUBLIC

As the Nevada Supreme Court recently held in the *Lerner* case (*In the Matter of Discipline of Glen Lerner, Esq., Bar No. 4314*, 124 Nev. ___, 197 P.3d 1067 (Adv. Opn. No. 100, Dec. 24, 2008)), lawyers are specifically prohibited from doing what the attorneys described above are doing:

> RPC 5.5(a)(2) . . . provides that "[a] lawyer shall not . . . [a]ssist another person in the unauthorized practice of law."

And the "why" of it is not particularly hard to grasp, either, as also set out by the Court as early as 1958:

> [t]he public interest therefore requires that in the securing of professional advice and assistance upon matters affecting one's legal rights one must have assurance of competence and integrity and must enjoy freedom of full disclosure with complete confidence in the undivided allegiance of one's counselor in the definition and assertion of the rights in question.

Pioneer Title v. State Bar, 74 Nev. 186, 326 P.2d 408 (1958). As the *Lerner* Court summarized in more modern language: "the overarching reason for requiring that only lawyers engage in the practice of law: to ensure that the public is served by those who have demonstrated training and competence and who are subject to regulation and discipline." While people are free to have increased ***self***-reliance for whatever transactions become "routine," that reliance just can't be shifted to non-attorney third parties.

Following the lead from Florida and Louisiana decisions, the Nevada Supreme Court stated that the line is crossed for unauthorized practice when a paralegal "engaged in . . . settlement negotiations, including discussion of case authority and legal strategy with clients, speaking on clients' behalf, and arguing the legal merits of the clients' cases." That is exactly what the lawyers discussed above have permitted their paralegals to do.

The Nevada Supreme Court has recognized that there is both potential criminal penalties, and civil

injunctive relief, available as potential remedies for engaging in, or assisting, the unauthorized practice of law. *See In the Matter of Discipline of Droz*, 123 Nev. 163, 160 P.3d 881 (2007) (recognizing that NRS 7.285 prescribes criminal penalties and civil injunctions for the unauthorized practice of law, but acknowledging the very low priority given to the matter by law enforcement). But as a practical matter, the Bar is left to police its own.

III. WHY FERAL PARALEGALS ARE BAD FOR LAWYERS

OK, so allowing unauthorized practice is bad for the public and hurts those lawyers' own clients. Why should the rest of us care? The cynical amongst us might even say that there have always been lawyers who rely too heavily on their staffs, and that since it is usually easier to overcome pleadings and arguments originating from legally untrained staff, it might even be in our clients' best interest if the opposing lawyers' paralegals are effectively handling the cases on the other side.

But that is a short-sighted and ultimately self-destructive position for the organized Bar to accept. Ever-decreasing public confidence in professional ethics generally, and lawyer-client confidentiality and competence particularly, cannot help but have a downward pressure on the value that the members of the public place on legal services.

The increasingly clownish self-portrayals by our TV-advertising brethren have done plenty to erode public perception of law practice as anything requiring special skill or intelligence, or having particular value. Even those hell-bent on claiming that law practice is a "business" as ***opposed*** to a "profession" should see how such a trend is harmful to any effort to project and maintain the perceived value of legal services – and therefore their own eventual bottom lines. But such "practitioners" are too self-centeredly obsessed with short-term cashing in to care about the damage done to the future of the profession and the public it will serve.

Finally, and most crass, permitting the paralegal mills to continue cranking out hundreds or thousands of defective domestic relations complaints and orders is bad for business – except for the business of repairing the damage done.

For example, this office has a virtual sideline just fixing the screwed-up retirement and pension division orders that come from such companies. In one recent case, a local non-attorney QDRO preparer wrote an order that gave the wife 50% of a 401(k). Which was great – except that the parties had been married for only 8 out of the 24 years the husband had been contributing to the account. Took about a year, and over $20,000, to track down and recover (most) of the missing money.

Sadly, it is not always possible to repair the damage. I have seen too many people permanently dispossessed of retirement or survivorship benefits by the uneducated scribblings of unlicensed "preparers."

It is necessary for the practice of law, at minimum by way of management of supervision, to be conducted ***by lawyers*** – if we want to preserve the appearance – and substance – that legal work

merits the honor, and protections – and value – historically ascribed to it.

IV. WHAT TO DO ABOUT IT

The Bar has many employees, offices, and programs, at least some of which are supposed to be dedicated to dealing with the problem of unauthorized practice of law. And they may well be doing great work – but if so, I see little of it, which is part of the problem. I've submitted complaints over the years, when truly egregious examples have fallen in my lap, and the responses I've become aware of could be fairly described as languid and timid. Deserved or not, the common perception is that the bar just doesn't care about this problem, and is not particularly interested in taking steps to prevent its spread.

I, for one, would like to see far more direct action – and far better reporting of that action. The Bar official(s) charged with investigating and rectifying unauthorized practices should be better publicized, and should report action taken on complaints in a standing column of the *Nevada Lawyer*.

Perhaps that step could have the salutary effects of ***encouraging*** attorneys to report unauthorized practice, while ***discouraging*** attorneys from openly aiding and abetting such unauthorized practice by the feral paralegals in their own offices, and in the mills so brazenly advertised on the Internet. I certainly think it is worth trying some such steps, before the practice of law devolves entirely into a muck of uneducated, unregulated gibberish.

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