

## **What Is Paralegal Work? – The Utah Supreme Court Offers a Three-Pronged Test**

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*by Peggi Lowden*

The Utah Supreme Court's definition of a paralegal does not simply define a category of personnel within the legal profession. It is a useful tool to determine effective delegation of legal tasks to non lawyer personnel. The specific section of the definition that provides this delegation tool states, "[paralegal work] involves the performance . . . of specifically delegated substantive legal work, which work for the most part, requires a sufficient knowledge of legal concepts, that absent the [paralegal] the attorney would perform the task."<sup>1</sup>

The definition identifies the key elements in the delegation of legal work to paralegals as substantive legal work, competency, and performance. If the delegation tests are met, then the task may be paralegal work, as opposed to secretarial or other non lawyer work.<sup>2</sup>

The delegation tests consist of the following:

**Substantive Test.** The work to be delegated is considered substantive (including procedural) in nature.

**Competency Test.** Paralegals are expected to possess education, training and experience in substantive legal concepts and procedure enabling them to effectively assist lawyers. During the recent expansion of the paralegal profession, paralegals sought formal legal education through paralegal programs at colleges. Some programs were taken in addition to undergraduate and graduate degrees. Upon meeting certain requirements of formal education, legal education and experience, many passed voluntary general competency and specialty exams. The education and competency examinations that are available to paralegals are continuously refined and expanded to meet the growing needs of lawyers and the legal profession.

**Absence Test (Performance).** This test meets the requirement that "absent the [paralegal] the attorney would perform the task." Or, if the nature of the task does not require the lawyer to perform it absent the paralegal, then the task may be considered to be secretarial.

The above delegation tests are applicable to any simple or complex task in the practice of law. A simple application of the delegation tests might look like the following:

**Is summarizing discovery responses and documents properly delegated to a paralegal to perform?**

Is the Substantive Test met? Yes. Analysis and application of the facts to the issues of the case are required to accomplish this task.

**Is the Competency Test met?** Yes. A sufficient knowledge of legal concepts is required in order to apply the information in the discovery to the case facts and legal issues to identify what is important in a summary for attorneys. Further, sufficient knowledge of legal concepts and procedure is necessary for more investigation, if required.

**Is the Absence Test met?** Yes. If the paralegal is not tasked with summarizing the discovery responses and documents, then the attorney is required to perform the task. Either the paralegal or attorney is required to perform this task because of the legal knowledge that is necessary to apply the facts to the specifics of the case.

Application of the delegation tests to a more complex task, such as deposition setting, may consist of a series of questions. For example:

**What are the cut-off dates for deposing fact and expert witnesses?** Application of the delegation tests may reveal that this is paralegal work where changes to the discovery order are indicated, but not paralegal work where no changes are required.

**How many depositions are allowed under the Case Management Order?** Again, application of the delegation tests may indicate this is paralegal work where changes in the number of depositions are necessary, but not paralegal work in the event that no changes are necessary.

**Is the witness required to bring documents or items to the deposition?** If yes, what documents or items are required? This may pass the delegation tests if the deponent is required to bring anything to the deposition. Where items are required, delegation to the paralegal to describe the items for the subpoena (duces tecum) may be proper.<sup>3</sup>

Lawyers, paralegals, administrators, and clerical staff may find it useful to use the delegation tests for thoughtful and efficient determinations when distributing work to paralegals and other staff. The above delegation tests are applicable to any general or specialty law practice.

I would like to receive feedback about any application of these tests to your practice, favorable or not favorable. Please send your feedback to me at [plowden@strongandhanni.com](mailto:plowden@strongandhanni.com). Thank you.

1. Utah Supreme Court Order – Effective April 1, 1996. Please refer to the Division’s web site for a copy of the Order: [www.utahbar.org/sections/paralegals/](http://www.utahbar.org/sections/paralegals/).
2. The majority of paralegals in modern law practice markets do not possess secretarial skills and training.
3. The above examples are not comprehensive, but are offered to illustrate how the delegation tests may be used as a tool for decision-making with respect to work distribution.

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