

BWE501 - ACTIVITIES

ACTIVITY ACTIVITYS & ANSWERS (PASTE INTO BOOK)

ACTIVITY 1

Mrs Ngcobo wants to institute divorce proceedings against her husband. She consults with her attorney who advises her that he is willing to act on her behalf but that he will require a deposit of R5 000. Mrs Ngcobo decides to pay the deposit as she wants the attorney to proceed with the divorce proceedings. Answer each of the following ACTIVITYs separately with reference to the above facts

- a) Is the R5 000 trust money or business money? Give a reason for your answer

ANSWER: Trust money. The work has not been done yet and remains the clients money

- b) After Mrs Ngcobo pays the deposit but before the attorney has proceeded with the matter, Mrs Ngcobo and her husband reconcile. She tells her attorney that she no longer wants to proceed with the divorce proceedings against her husband. Is Mrs Ngcobo entitled to the return of her deposit? Give reasons for your answer

ANSWER: Yes, the attorney has not proceeded with the matter

- c) Suppose that the attorney prepares a divorce summons, issues the summons at court and sends the summons to the Sheriff to serve on Mr Ngcobo. However, after Mr Ngcobo receives the summons he and Mrs Ngcobo talk and decide to give their marriage another chance. Mrs Ngcobo then talks to her attorney and instructs him not to proceed with the divorce proceedings. The attorney provides a final settlement account in respect to the work done for R2 000 in legal fees and R140 for expenses (sheriff's fees for serving the summons). Explain what amount Mrs Ngcobo will be entitled to receive from her attorney and give reasons in your answer with reference to the difference between trust and business monies.

ANSWER: Mrs Ngcobo paid a deposit of R5000, however before the formal proceeding of the divorce Mrs Ngcobo and her husband has reconciled. In this time there were expenses incurred for legal work and expenses. Mrs Ngcobo is entitled to R2860 and the balance of the money is owned to the law firm R2140 should be transferred into the business account for legal work done.

ACTIVITY 2

- a) You are a paralegal working at a community centre. You consult with a client and realise that the matter should be referred to an attorney. You ask around and Mr Ntsimang is recommended. You go and see Mr Ntsimang to discuss the possible referral. Nowhere in Mr Ntsimang's office do you see a fidelity fund certificate and Mr Ntsimang avoids any questions you ask in this regard except to assure you that he is an attorney. What do you think would be the best action you could take in the above circumstances? Discuss all the possible options, taking into account what you have learnt about the attorney profession.

ANSWER: You should not use Mr Ntsimang as an attorney. Attorneys are required to have a fidelity fund certificate to practice and must be displayed. You could phone the Law Society and enquire whether he is an attorney, if he is not you may lay a

complaint and provide them with the details. The Law Society will investigate and take appropriate action.

- b) You are a paralegal working at Ndlovu and Mhlangu Attorneys. Your supervising attorney provides you with the necessary documents and instructs you to prepare the first draft of a will for one of his clients. You do as you are told and then give him the first draft to check and make amendments. Are you guilty of a criminal offence? Give reasons for your answer

ANSWER: No the person is not guilty of a criminal offense. The person has drafted or prepared the will in the course of employment on behalf of the employer whom is an attorney

- c) You are a paralegal working on your own in a community; you open and maintain a trust account. You are the only person who has signing powers on this account and the only person administering this trust account. Is this acceptable and what are the possible consequences?

ANSWER: No, only a practicing attorney is allowed to have a trust account and receive money on trust. You may be prosecuted. You may be ordered to pay a fine or be sentenced to time in prison.

- d) You are a paralegal working at a community centre. When you have to refer a matter to an attorney you always refer the client to a law firm that pays you a set amount for each referral. Is this permissible? What are the consequences of such action?

ANSWER: No, attorneys are not allowed to share their fees with non-attorneys. The person and the attorney will be found guilty and can be fined or sentenced. They attorney may be suspended or removed from the roll of attorneys.

- e) You are a paralegal working at a law firm. You are paid on an incentive basis based on a percentage of the fees paid by any new clients you bring to the firm. Is this permissible and what are the consequences of such action?

ANSWER: No, this will also be share with a non-attorney. Again the person and the attorney will be fined or sentenced. The attorney may be suspended or removed from eh roll of attorneys

ACTIVITY 3

Below is a table that summarises some of the most important differences between the attorney profession and the advocate profession. Insert the missing information and add a few differences between the professions that you have identified yourself.

| ATTORNEY PROFESSION | ADVOCATE PROFESSION |
|---|--|
| Attorneys work directly with the public | Advocate must receive instructions from an attorney |
| Attorneys do all types of legal work but can also specialise in a specific legal field | Advocates specialise in preparing and presenting cases in court |
| This profession is represented and controlled by the Law Society of South Africa | This profession is represented and controlled by the General Council of the Bar of South Africa |

| | |
|--|---|
| Admission to this profession requires articles of services for a period of one to five years | In order to join the Bar an advocate must complete a one-year apprenticeship (pupillage) |
| This profession is governed and regulated by the Attorneys Act | This profession is governed and regulated by the Admission of Advocates Act |
| Trainee attorneys are called candidate-attorneys | Trainee advocates who want to join the Bar are called pupils |
| Attorneys may not appear in the High Courts or the Constitutional Court unless permitted to do so by the registrar of the High Court. | Advocates may appear in all the South African courts when representing a client. |
| An attorney practising for own account or in partnership must be in possession of a fidelity fund certificate | Advocates are not required to be in possession of fidelity fund certificate. |

ACTIVITY 4

List five similarities between the attorney profession and the advocate profession.

ANSWER:

- **Both give legal advice and draft legal documents**
- **Both have professional bodies representing the professions**
- **Both are regulated by legislation and ethical rules prescribed by the professional bodies**
- **Both appear in court**
- **Both require an LLB degree**

ACTIVITY 5

Look at the following words and underline all the words you think refer to a paralegal and which words are not associated with paralegals and why?

Legal advisor notary **lawyers assistant**

Legal services assistant **paralegal specialist** attorney

Attorney's assistant candidate attorney magistrate

Legal clerk judge filing clerk

Document clerk conveyancer **lawyers aide**

Lawyer filing clerk **legal secretary**

Legal assistant **legal typist** public prosecutor

NOT ASSOCIATED WITH PARALEGALS

| | |
|---------------|---|
| Legal Advisor | refers to a legal profession with an LLB Degree |
|---------------|---|

| | |
|-------------------------------|--|
| Notary | specialist attorney |
| Attorney | legal profession with an LLB Degree |
| Candidate attorney | has an LLB and is a training attorney |
| Magistrate | has an LLB Degree |
| Judge | appointed by the State President and has an LLB Degree |
| Filing clerk / Document clerk | is not a paralegal but pure administrative work |
| Conveyancer | specialist attorney with LLB Degree |
| Lawyer | legal profession with and LLB Degree |
| Public Prosecutor | has an LLB Degree |

ACTIVITY 6

Look at the following actions and consider whether or not a paralegal may do any of them:

ANSWER

| | |
|--|---|
| Draft and sign court documents to be used in court (eg. Summons) | No, only attorneys, advocates may sign court documents |
| Draft and execute and antenuptial contract | No, only a notary may do this |
| Draft and execute all the documents necessary to transfer a property into another party's name | No, only a conveyance may do this |
| Appear in the High Court before a judge on behalf of another | No, only an admitted advocate or attorney (permitted by registrar) may do this |
| Appear in the High Court before a judge on his/her own behalf | Yes, any person may appear on their own behalf |
| Appear in the magistrates court before a magistrate on his / her own on behalf of another | No, only an advocate and attorney may do this |
| Appear in the magistrates court before the magistrate on his / her own behalf | Yes, any person may appear on their own behalf |
| Make a presentation to a group of people in respect of how the law works | Yes, there is no prohibition for this |

ACTIVITY 7

Referring to the explanation below, what do you think is the role of a paralegal in a law firm? Write your ideas down, provide some reasons for your ideas.

Role of paralegals in a law firm

Paralegals in law firms play a more supportive role although they do work independently to some extent. They have more responsibility than secretaries, typists and filing clerks but still remain under the management and control of the attorneys working in the department. For example, a paralegal working in the companies and close corporations department may be responsible for the registration of all new companies. The paralegal will receive instructions from one of the attorneys to register a specific company and must do all the related work to ensure the registration of that specific company. He or she must have the necessary knowledge and experience to know what forms must be completed and what documents must be lodged at the *Companies and Intellectual Property Commission*. He or she must further ensure that the necessary documents are lodged and must follow up on the registration process at the Commission. All of this may be done independently while keeping the instructing attorney up to date on any developments. Therefore, the paralegal does not consult with the client or take direct instructions from the client, but receives instructions from the attorney and has to report back to that attorney. This does not mean that all paralegals working at law firms have no contact with clients. Depending on the type of work and the duties of the specific paralegal, he or she may be required to contact clients directly. However, almost all paralegals must report directly to one of the attorneys in respect of all work done or an attorney must oversee or sign off on all the work done by him or her. The paralegal usually has to report to the head of the specific legal department. This is because the partners of the law firm are accountable and responsible for all work done by the employees.

ANSWER: There is no right or wrong answer to this activity but this is an outline of what should be kept in mind.

- **The paralegal must work under the supervision of an attorney.**
- **Assist attorney with drafting and preparing documents**
- **May work independently provided the attorney oversees the work done**
- **Community based paralegals will be the first point of contact with the client**
- **Law firm paralegals will receive instructions from an attorney and will not meet clients the first time they make contact with the law firm.**

ACTIVITY 8

You are working as a paralegal for a law firm of attorneys. The firm is approached by a State hospital that provides sophisticated care and is one of the best organ transplant facilities in the country. They have asked for extra funding in order to do another 100 very urgent transplants. The government has refused because the money could have better be spent on immunising children in farming communities. From a utilitarian perspective, what should be done?

NOTE: this argument may differ from individual to individual. This is my point of view.

ANSWER:

I take into the account the fact that this is a State hospital and NOT a private hospital where it could be funded for privately. However, state hospitals are there for those communities or people who are not able to afford expensive medical care. Immunising children is very important taking into account they most likely cannot afford this sort of treatment and varying with age this could be detrimental to their lives at a certain age. However everyone has the right to live and in this instance I would suggest the

100 transplant cases be dealt with individually provided information is given on the severity of the transplant applicants. Not all applicants may benefit from this but there could be an allocation of funding to some and where the rest are spent on the immunisation of the children. For example, a mother of a new born baby may need an urgent transplant due to a complication; the child has a right to both parents. Or a child of a young age needs a transplant due to an accident; again this child may end up living a long and healthy life. Depending on the severity I think both the transplants and immunisation can be attended to.

ACTIVITY 9

You are working as a paralegal for a State department. The State send you on an expensive 18*-month training course paid for by the tax payers money. You meet a lot of people there from the private sector. You impress them and a few firms make you an offer. You are extremely interested but have signed a post-training obligation with the state. You decide to do part-time wok for the firms but it soon takes up all your time.

How can the understanding and practice of personal virtue assist in this kind of situation?

ANSWER:

The virtues that come to mind in this scenario is loyalty and integrity. First you have an obligation towards the state department as you have agreed and signed a contract. The state has paid for your training course upon agreed terms. In other words it could be expected of you to work at least another two years for the State in order to pay them back for their investment in you. If you stay out of loyalty but do part time work that consumes all your time, integrity comes into play. You should not do this! Your loyalty towards the State because they funded you, means that you should also have the integrity of devoting all your time to the work you are supposed to do. This virtue of loyalty towards your employer should be cultivated in the public sector as well - the State stays an employer and is no different than a private sector employer - you owe them both your loyalty if either has invested in your training. Integrity is more of a personal nature and says something about you as a person. A person with integrity is trustworthy and can be relied upon.

ACTIVITY 10

(a) What does it mean when one says that paralegals are “subject to the

ANSWER:

The relationship of trust between an attorney and a client is also applicable to paralegals. In other words, a paralegal is not allowed to divulge any information about a case to any other person except the attorney dealing with that case.

(b) Is it permissible for a paralegal to release confidential information to a photocopying service to be copied and bound?

ANSWER:

No, generally it will not be acceptable. However, there are two possible exceptions. First, if the client consents. Secondly, the outside contractor could be requested to sign a confidentiality agreement. You should always ensure that you use a reliable contractor that employs individuals who are aware of the importance of confidentiality. The relationship of trust between an attorney and a client is also applicable to paralegals.

ACTIVITY 11

You have just started working as a paralegal with a law firm. You are given a file and, while going through it, you realise that this firm is representing a company you know; in your previous position you worked at the company against whom the litigation is now being directed. You get the feeling this might be a conflict of interest but you are still on probation and therefore unsure about whether you should tell your new employer of your past involvement with the case. What should you do? Why?

ANSWER:

This answer concerns the probability of a conflict of interest. You might have gained information which might be material to the case whilst working for the previous employer which might be subject to the attorney client privilege. You should definitely tell your employer that you suspect that there may be a conflict of interest. Even the appearance of a conflict of interest could cause severe problems for your new employer. At the least your employer could be embarrassed if they knew nothing of your previous involvement with the case and your former employer or the client calls them on it. No, generally it will not be acceptable. However, there are two possible exceptions. First, if the client consents. Secondly, the outside contractor could be requested to sign a confidentiality agreement. You should always ensure that you use a reliable contractor that employs individuals who are aware of the importance of confidentiality. The relationship of trust between an attorney and a client is also applicable to paralegals.

ACTIVITY 12

Suppose you are a paralegal at a law firm. You are reviewing a list of new clients and you notice that your law firm has initiated a lawsuit against a firm in which your wife or husband is a shareholder. Do you have a conflict of interest? What should you do?

ANSWER:

You have to tell your supervisor about the possibility of a conflict of interest. The directors of the law firm will discuss the issue and make a decision. Before, they take any decision they should inform the new client of the possible conflict of interest. Depending on how the new client feels about the conflict of interest they may decide to refuse instruction from the new client or they may move you to another department where you are not involved in the matter, provided that they make the necessary arrangements to ensure that you do not have access or insight into the matter.

ACTIVITY 13

What skills should a paralegal possess in order to be considered competent?

ANSWER:

- A paralegal should have the necessary legal knowledge.
- He or she must have background knowledge of our legal system, court structures, their procedures and functions.
- A paralegal should also work thoroughly and pay attention to detail.
- A paralegal should pursue matters on behalf of clients with commitment and dedication.

- As a paralegal, you should not accept work which you either cannot do or do not have the time to do.

ACTIVITY 14

Suppose you are a paralegal in the corporate department of a law firm. The work for a big contract is complete and you and another paralegal have made a significant contribution to the success of the case. Both of you have put in more or less the same amount of hours to complete the work; however, the other paralegal has considerably more billable time on the file than you. When you confront her she says “with a bill this size, no one will notice if I add a few extra hours”. Your principal has signed off the file already and you will be paid the following day. What, if anything, should you do? Suppose you are a paralegal at a law firm. You are reviewing a list of new clients and you notice that your law firm has initiated a lawsuit against a firm in which your wife or husband is a shareholder. Do you have a conflict of interest? What should you do?

ANSWER:

The easy way out is to do nothing. Legally you are probably not required to. However, padding a bill is wrong. It is dishonest, unethical and an attempt to cheat your client out of money. If there is a code of conduct (which does not exist at this moment for paralegals) the code might require you to report such behaviour. Otherwise you might confront her and try to persuade her to talk to the supervising attorney and claim a mistake in her timekeeping. If this isn't possible you might want to talk to the supervising attorney and explain the situation to him. He can then take further action if needed.