

L.A.W.S. LEDGER

2021—Volume 1

August 6, 2021



Wildflowers on Grand Mesa
Photo by Angela Classen

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NEXT MEETING: AUGUST 18, 2021

The next meeting of the Legal Assistants of the Western Slope is scheduled for Wednesday, August 18, 2021, at 4:00 p.m. at the offices of Hoskin, Farina & Kampf, 200 Grand Avenue, Suite 400, Grand Junction, Colorado.

Our guest speaker will be Brent Starnes who will speak on the status of current eviction/FED's in light of ever-changing CDC and Colorado executive orders.

If you plan to attend, please RSVP with Penny Landeis by phone (970-986-3400) or e-mail (plandeis@hfak.com) so we can have an accurate head count. Also, feel free to invite your friends! Let's spread the word about our great organization!

GOALS OF L.A.W.S.

- To provide local access to continuing education
- To encourage a high order of ethical and professional attainment
- To promote the legal assistant profession
- To inform and educate the public and legal community about the effective utilization of legal assistants

MESSAGE FROM THE PRESIDENT

Welcome to August. Where, oh where, did the summer go? And school starts soon! Time has definitely gotten away from me yet again. We are getting an in-person meeting scheduled in hopes to get back to some normalcy. I know many are still working and being as productive and efficient as ever. Some of you have gone back to the office ... and are utilizing your skills to be as good as you always have been, even if you don't have a full staff in place. I think we have all risen to the many challenges thrown our way—workplaces, businesses, and activities! We have all adapted. I applaud you one and all for doing what we do – adapt and thrive! With all the ups and downs, let's look forward to getting together. We hope that you will all come join us.



Penny Landeis

President

SPEAKER BIO

Our speaker will be Brent Starnes, who will speak about the current status of evictions/FED's in light of recent CDC and Colorado executive orders relating to COVID-19.

Brent Starnes joined Hoskin Farina & Kampf, P.C. in 2019 after attending law school at the University of Colorado. His practice areas include civil litigation, business law, municipal law and real estate. Outside of the office, Brent enjoys fly fishing, cycling and hiking with his wife and daughter.



FOR THE RECORD



Colorado Secretary of State Jena Griswold
www.coloradosos.gov
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Colorado Secretary of State

Our website is moving to www.coloradosos.gov. At times you may see both www.sos.state.co.us and www.coloradosos.gov in the address bar.

The Secretary of State's Office has suspended all in-person services until further notice in an effort to protect employees and customers from the spread of COVID-19. Please **do not come to our office location**. Our staff is working remotely to assist you. We apologize for any inconvenience this change in operation may cause. Most of our services remain available online. Call 303-894-2200 with any questions.

Request for Comment on Proposed Revisions to Local Rules and Forms

The United States Bankruptcy Court for the District of Colorado has proposed revisions to its Local Rules and Local Forms and has posted its proposals for public notice and comment in accordance with 28 U.S.C. § 2071 (b). The proposed revisions, a redline of proposed revisions, and a summary of revisions are available on the Court's website at <https://www.cob.uscourts.gov/local-rules>.

Please provide comments on the proposed revisions by September 3, 2021. Comments may be mailed to Clerk of Court, U.S. Bankruptcy Court, 721 19th Street, Suite 115, Denver, Colorado, 80202 or submitted via email to LocalRule_Comments@cob.uscourts.gov. The proposed revisions will take effect December 1, 2021, assuming final approval.

Summary of Proposed Revisions Local Bankruptcy Rules and Local Bankruptcy Forms U.S. Bankruptcy Court for the District of Colorado

On December 1, 2017, the Court adopted substantial revisions to its Local Bankruptcy Rules and Forms to (1) ease procedural complexity for parties, (2) reduce duplication of content in the Federal Rules of Bankruptcy Procedure and Bankruptcy Code in accordance with Federal Rule of Bankruptcy 9029(a)(1), and (3) maintain consistency with the modernized Official Bankruptcy Forms, which took effect in 2015. The Court now proposes the following additional, minor revisions designed to enhance the 2017 revisions.

1. L.B.R. 2016-3. Compensation of Chapter 13 Debtor's Attorney.
 - a. Subsections (b)(3) and (c)(3) have been revised for clarity. Specifically, the rule now provides clear direction about service of notice of long form fee applications and supplemental form fee applications before and after the filing deadlines for non-governmental proofs of claim.
2. L.B.R. 9010-1. Attorneys.
 - a. Subsection (b)(2)(B) has been revised to require out-of-state counsel to retain qualified local counsel who will appear at hearings and participate meaningfully in client representation. The Court may excuse this requirement for good cause.
3. L.B.R. 3003-1.1, 3003-1.2 and 3003-1.3. Proof of Claim and Bar Date Notice forms.
 - a. New language has been added to inform recipients of all filing methods for proofs of claim.

EDUCATIONAL ARTICLE

EDUCATION



ETHICAL PITFALLS FOR PARALEGALS:

Better Safe Than Sorry.

Written by Stacey F. Moseley

Your actions affect others. How many times have we heard this? On the first day of my first paralegal job 23 years ago, I remember my supervising attorney sitting me down and outlining all the “pitfalls” to keep in mind. I just started my paralegal education and had not taken ethics yet. Most important was the fact that my actions could affect him, and he was responsible for everything I did. But everyone makes mistakes, right? Especially in a new job? What mistakes could result in termination? My boss was a former appellate judge, a former legal advisor to a governor, and very serious about his profession. I understood my actions could affect him, but I was scared to death. His practice, his reputation, and his license to practice law could all be impacted by something I did. So, what was the sage advice given to me on that first day? A little common sense mixed in with a lot of “Rules of Professional Conduct.”¹

■ Confidentiality (Rule 1.6)

This was the number one rule impressed upon me. Lawyers rely on their paralegals to gather information from their clients, and we are privy to all information in their files. Furthermore, lawyers have a duty to protect their client’s confidentiality pursuant to Rule 1.6. Even within your firm, do not discuss the matters to which you are assigned with those not also assigned to the matter. Do not discuss the matter with anyone (not even your spouse).

■ Legal Advice (Rules 5.1, 5.2, and 5.3)

Lawyers frequently rely on their paralegals to relay information. This often leads clients to ask additional questions. A seasoned paralegal may know the answer to a client’s question, but answering the question and giving advice is a fine line that should not be crossed. Always ensure clients understand that you are a paralegal and not permitted to provide legal advice.

Avoid elaborating on the lawyer’s advice. Do not hesitate to tell the client you will have to relay their question to the attorney and get back with them. Understand what legal advice is and do not be coaxed into giving it. As a practical matter, you may consider discussing with your supervising attorney a call log with contemporaneous notes from these calls in case you need them later for reference purposes. Additionally, you should assume all telephone calls are being recorded by the person to whom you are speaking.

■ Engaging and Representing Clients

(Multiple rules)

Only lawyers can commit to accepting, handling, advising, or even reviewing a potential matter. Never commit to taking a client’s case. Never set fees. Never negotiate on behalf of a client. Always be mindful of how you “hold yourself out” to a client. As previously noted, clients and potential clients should always be aware you are a paralegal. This also holds true any time you communicate with a court on behalf of your attorney. Make sure the attorney reviews any pleading or motion you draft and never sign pleadings or motions on behalf of the attorney or client. Never attend court with your attorney for the purpose of representing a client, even at your attorney’s request. These are not your clients - they are the attorney’s clients and only the attorney is licensed to represent the client. Attempting to represent a client in this instance is tantamount to the “unauthorized practice of law.” In many jurisdictions, the unauthorized practice of law is a criminal act punishable by a fine and jail time.

■ Trust Accounts (Rule 1.15)

Attorneys are responsible for managing trust accounts. In larger firms, this is generally not an issue, but in smaller firms you could be asked to assist with bookkeeping. Do not assume sole responsibility for the »

trust account. Prior to taking on any task related to the trust account, ensure proper trust accounting checks and balances are in place. Always keep your attorney informed of your actions, no matter how much they trust you. Most states do not allow non-attorneys to be signatories on client trust accounts.

■ **Conflicts** (Rules 1.7, 1.8, 1.9, and 1.10)

If you are a new paralegal beginning your first job, conflicts likely should not be an issue. As you move along in your career, it is possible you could work for multiple firms within the same city or state and there is always a possibility of working for the firm “on the other side.” A non-lawyer must be held to the same standards as a lawyer when changing firms. Always disclose any pre-existing client relationships that could be a possible conflict. Conflicts are imputed within firms.

The American Bar Association’s Rule 5.3(c), “Rules of Professional Conduct” specifically enumerates:

“With respect to a nonlawyer employed or retained by or associated with a lawyer: a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”

Depending on the jurisdiction in which you work (many attorneys have multi-jurisdictional practices which subjects both of you to the rules of every jurisdiction where they are licensed), your actions could result in discipline for your attorney even if he or she is unaware of what you have done. For example, assume your attorney prepares an appeal brief and gave it to you to file by the deadline. You forgot, missed the deadline, and the attorney received a deficiency notice. The appellate court notified the state bar and your attorney then became the subject of a possible disciplinary matter. Depending on the harm to the client and the “Standards for Imposing Lawyer Discipline” in your jurisdiction, your lawyer could receive discipline as a result of your actions or, more precisely, your inaction.

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How do we avoid pitfalls resulting in licensing issues (and sometimes criminal penalties)? Never proceed with any action or interaction until you are confident in your task. Do not rationalize unethical conduct by justifying that “it is always done” or “the other side does it.” Never compromise your integrity as a paralegal. Ask questions. Do not take the blame for your attorney’s mistake. If it does not feel right, do not do it. It is always better to be safe than sorry.

The “NALA Code of Ethics and Professional Responsibility” set forth the standards of our profession. Most professional paralegals who adhere to these standards will not find themselves in the position of performing an act that adversely affects his or her attorney. Unfortunately, there have been multiple cases involving a paralegal that violated these cannons and an attorney was disciplined because of his or her lack of supervision. In Alabama, a lack of supervision by an attorney allowed a paralegal to steal approximately \$396,000 from her employer and his clients over a period of three years. The paralegal’s theft resulted in her incarceration and the attorney’s disbarment.

Resources:

¹American Bar Association’s “Model Rules of Professional Conduct”



Stacey Moseley is the Disciplinary Clerk for the Alabama State Bar. She previously served as Investigator/Paralegal with the Office of General Counsel. Prior to her employment with the Alabama State Bar, Stacey spent over 20 years working as a paralegal for various local and national law firms and managed two local title companies including First American Title Insurance’s local office. Stacey received both her Bachelor of General Studies in Liberal Arts degree and her Master of Science in Justice and Public Safety degree, concentrating in Judicial Administration, from Auburn University at Montgomery. She earned her Legal Assistant Technician certificate. She is a member of the Organization of Bar Investigators and the Alabama Association of Paralegals, Inc. ✉ Stacey.Moseley@alabar.org

EDUCATIONAL ARTICLE

Note from Editor: Although this article is several years old, the software discussed is still available and there are likely many, many more that are currently available. With the explosion of data saved on cell phones, your firm would no doubt see a benefit to having tools available to save this valuable information, especially for trial use.



Cell Phone Extraction for the Small Firm

Written by Lauren Doucette, ACP

In our digital age, almost all practice areas have seen a significant shift in the type of evidence provided by clients during the initial client meeting. Family law, employment, business disputes, and personal injury now rely heavily on communications among the parties and witnesses via text message. For years, our clients have emailed screen shots of their iPhone's litigation-relevant text messages to our firm. Recently, I've discovered an alternative to collecting text messages: an incredibly helpful ESI (electronically stored information) tool called Tansee iPhone Transfer SMS. I briefly introduced this tool at the San Diego Paralegal Association's CLE on eDiscovery Ethics for the Paralegal this past May, and the attendees had the same first reaction that I did—utter amazement!

In an ideal situation, the client authorizes the cost of hiring a forensic expert to perform the ESI collection, but many smaller business clients cannot afford this "best practice." Tansee iPhone Transfer SMS produces legible text message collection without burdening the smaller client with vendor expenses they cannot afford.

This inexpensive tool (less than \$30 for the full version) allows litigators to seamlessly transfer litigation-relevant ESI to their discovery platform in a way that preserves the responsive information, captures some metadata, and allows for a smooth and efficient production. Our firm uses this tool during the client's initial or subsequent meeting, when the client indicates he or she has relevant text messages. Without causing the client excessive delay, a litigation paralegal is able to plug the client's phone directly into the firm's desktop computer, start the Tansee software, select the relevant threads, and download the conversation into the firm's discovery database.

The greatest advantage of this software is the ability to produce conversation threads in a single, organized printout, complete with information regarding:

- Sender's name and phone number
- Receiver's name and phone number
- Date message was sent
- Time message was sent
- All attachments sent via text message, such as photos, videos, screenshots, etc.

The clean printout rendered by the program allows for a seamless production. The litigation paralegal has the ability to Bates-stamp each PDF page and produce the thread in one comprehensive file, rather than in disjointed screenshot images pieced together in an unorganized manner. Use of this software allows for a more efficient in-house review process, as well as a more transparent production set to opposing counsel.

A disadvantage of this software is that it does not retain the actual native file, merely an organized photocopy with some of the relevant metadata attached to each message, and that it requires the client to come to the firm's office for the exchange.

For more ESI collection tools for smaller cases, visit my eDiscovery blog at www.ediscoveryblog.tech.



Lauren Doucette is a litigation paralegal at Ferris & Britton, APC, specializing in e-discovery and legal technology. She provides clients with cutting edge technology through each step of their litigation matter, using tools such as TrialDirector, Timeline 3D, iLuvor, Adobe Creative Suite, Adobe Acrobat, PowerPoint, WestLaw, WordDoc, Tab3s, and various ESI databases. Throughout the litigation process, she works with the client to collect the necessary documents held on all potential devices, assisting them in-person, if needed, with the collection of native files. She assisted attorneys in the review, processing, and production of e-discovery in native format as well as tracking native file ESI as produced in various sets from opposing counsel by custodians.

Nov | Dec 2016 F&F 19

Reprinted with permission of Lauren Doucette, ACP and the National Association of Legal Assistants, Inc. This article originally appeared in the Nov./Dec. 2016 issue of FACTS & FINDINGS, the quarterly journal of NALA. Inquiries should be directed to NALA, 6450 S. Lewis Ave., Ste. 250, Tulsa, OK 74136, or by e-mail to: nalanet@nala.org.

WEBSITE UPDATE

After some hiccups relating to domain pointers, our new web site with Wordpress is up and running!

It boasts a brand new look and new graphics, but maintains the same type of content, including all the tabs: About Us, News & Events, Joining LAWS, Newsletters, Bylaws, Job Openings, Resources/Links and Contact Us. Various documents such as our membership application, bylaws and past newsletters are accessible via PDF links on the corresponding tabs. There is also a new “blog” tab where the webmaster (that’s me) will be able to quickly and easily add more current information. Please let me know what you think as far as ease of navigation, content, etc. and if you have suggestions, I’m always open to hear those and make changes.

Be sure to check it out:

ws-laws.com



MASK MANDATES FOR STATE COURTS?



Krista Ficco, our member from Ouray, advises that their local courthouse has reinstated mask mandates for everyone who enters the courthouse due to the uptick in COVID cases, rapid spread of the Delta variant, and recent updates to CDC guidelines.

Before you head out from your office to your local courthouse, be sure to check what the current requirements are so you aren't turned away if you don't have a mask.

GET OUT!

X U U W S F T U R W B I H F H I R P T G Y D G Z X W O Y F Q
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CARES Act

Deposit

Eviction

Forcible Entry and Detainer

Habitability

Holdover

Homeless

Landlord

Lease

Moratorium

Notice to Quit

Nuisance

Quiet Enjoyment

Tenant

Vacate

JOB ANNOUNCEMENT

Kain & Burke, P.C. is still seeking a full-time, team-oriented paralegal to work primarily in the family law area. All qualified applicants should e-mail a cover letter and resume to Stephanie Holguin at:

Stephanie@kainlaw.com

GOOD ADVICE FOR PARALEGALS REGARDING SOCIAL MEDIA



- Paralegals can't practice law, so don't do it on social media.
- Avoid friending or communicating with represented parties.
- Avoid communicating with or friending judges or court officials.
- NEVER discuss client or case information, including courtroom or case related victories, on social media.
- NEVER offer advice or opine about how to commit criminal or unethical acts.
- Before posting, remember that a forensic analysis of your device can ascertain if your account was hacked, so falsely claiming that excuse won't work and makes you a liar, so then ask yourself these questions:
 - o What will my employer think when reading this?
 - o What will my family members think when reading this?
 - o What will my pastor, priest, minister, imam, or spiritual leader think when reading this?
 - o What if this post or a screenshot of it appears on a television news network or in a national newspaper as a larger story about the subject matter?
 - o Is what I'm posting truthful?

CONFIDENTIALITY DOESN'T APPLY ONLY TO CLIENTS

We are all individuals who have the utmost appreciation for client confidentiality. However, we don't always extend that same courtesy to our co-workers. If a co-worker chooses to share something with us, we should feel honored and not entitled to share it with others in the firm. The confidentiality factor should be graciously extended to one another, as well as to our clients.

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Legal Assistants of the Western Slope (LAWS) was established to create and maintain good fellowship among association members, the National Association of Legal Assistants, Inc. (NALA), and members of the legal community.

LAWS is an affiliated association of NALA.

LAWS is dedicated to offering educational opportunities to legal support staff. Presentations offered during our meetings are designed to give our members new information and resources in the fast-paced, rapidly changing environment that impact our growth.

