

Attorney Fee Recovery for Paralegal Work
By Barbara L. Liss

It is well established in both federal and California decisions that paralegal fees are recoverable “attorneys’ fees” under the Equal Access to Justice Act (EAJA) and many California fee-shifting statutes (e.g., the elder abuse statutes contained within California Health and Welfare Code section 15600, *et seq.* and cases brought under California Code of Civil Procedure, section 1021.5). (See, *Beach Colony II. V. California Coastal Com.* (1985) 166 Cal.App.3d 106, *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, and *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848.) Whether paralegal time is awardable under California Civil Code, section 1717 remains unresolved at present, although there is an unpublished Fifth District decision which so holds (*Gunter v. Perrett*, 2002 WL 337526 at 9 (5th Dist., Mar. 4, 2002). Recent decisions clearly specify that recovery of law firm charges for paralegal time in California, however, is limited by the requirements that:

(1) The fees charged are reasonable and appropriate in terms of amount of time spent and work performed, being itemized with specificity (*American Petroleum Institute v. United States*, 52 F.3d 1113 (Fed. Cir. 1996), *Consolo v. George*, 58 F.3d 791 (1st. Cir. 1995));

(2) The hourly rates charged are fair and within “market” range (*In re Grenoble Apartments, II*, 145 Bankr. 43 (Bankr.D.S.D. 1992); and

(3) That the paralegals who performed the work for which fee recovery is sought are compliant with California Business and Professions Code, section 6450, *et seq.*, which provides:

(a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) . . .

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(See, *Richlin Security Serv. Co. v. Chertoff, Secretary of Homeland Security*, 553 U.S. ___, Case No. 06-1717 (U.S. June 2, 2008) (Slip Opn., at pp. 4-18), *Guinn v. Dotson*, (1994) 23 Cal.App.4th 262, 267-270 (in which the Court held that an award of attorney fees that did not compensate for paralegal service time would not fully compensate the attorney. The Court further examined the legislative intent of attorney fee statutes and found considerable case history to support the concept that the generic term "attorney fees" was intended to encompass paralegal fees, where the prevailing practice is to separately bill a client for paralegal service time), *Sundance v. Municipal Court*, (1987) 192 Cal.App.3d 268, 274 and *Benson v. Kwikset Corp.*, (2007) 152 Cal.App.4th 1254, 1280.)

In order that an attorney fee award includes paralegal fees, an attorney declaration and documentation must support the claim, showing that the paralegals for whom fees are sought comply with the above requirements and particularly California Business and Professions Code, section 6450 (c) and (d). (*Nichus v. Liberio*, 973 F.2d 526 (7th Cir. 1992), *White v. GMRI, Inc.*, Civ. No. S-04-1535 (E.D.Cal. Nov. 14, 2005) and *McCullough v. City of Oakland* (1996) 46 Cal.App.4th 1.) The attorney employing the paralegal for whom fee recovery is sought must ensure that the educational requirements have been met (by keeping on file a copy of the paralegal's certificate, diploma or transcript and written supervising attorney's declaration where relevant) and verify the paralegal's mandatory continuing legal education compliance by keeping records of certifications of completed MCLE hours.

The California Legislature recently enacted an amendment of California Rules of Court, Rule 7.703, effective July 1, 2010. The amendment of Rule 7.703 clarifies that paralegals who perform services for counsel for fiduciaries in decedents' estates, conservatorships and guardianships must satisfy the qualification and continuing education requirements of Business and Professions Code, section 6450, *et seq.*, for counsel to be eligible for compensation for paralegal services from the estates of decedents, conservatees and wards.

California Probate Code, sections 26409(c) and 2642(a) govern compensation of legal counsel for conservators or guardians. Probate Code section 10811(b) concerns compensation payable from a decedent's estate for extraordinary legal services by legal counsel for the estate's representative (as statutory legal fees for ordinary legal services rendered by the personal representative's counsel is a fixed percentage of the value of the estate based upon a specified formula). These code sections have identical provisions that include the services of paralegals for the attorney within the request for the attorney's compensation and require that the time spent and services performed by the attorney's paralegal be specified.

Since the implementation of this amendment to the California Rules of Court, the judiciary has become alert, aware and acquainted with the provisions of Business and Professions Code, section 6450 to a degree far more significant than first considered. And, although members of the civil litigation bar largely ignored the advent of this amendment as having naught to do with their arena, it was soon discovered that judges hearing probate matters on their calendars one day a week are often called upon to civil litigation matters on other days on their calendars. Attorney fee applications occurring in civil matters before these same judges are now scrutinized to determine whether paralegal services are incorporated into the fees for which recovery is sought. If so, these judges, who now are educated as to the provisions of Business and Professions Code, section 6450, are enforcing those provisions in civil matter attorney fee applications as well, despite the lack of mention of those matters in the amended Court Rule.

Ultimately, education of California attorneys on the subject of paralegal regulation under Business and Professions Code, section 6450, which has proven to paralegals to be an extremely daunting task until now, is happening as a result of instruction by the judiciary, since the enactment of the amendment to Court Rule 7.703. Lawyers who are denied recovery of fees for services provided by unqualified and non-compliant paralegals are now explaining to their clients why those fees have been reduced or excluded. Remedying the lack of compliance is the only avenue to gaining paralegal fee recovery, assuming that the other thresholds, as discussed within, have been met as well. This leads to better informed clients as well, many of whom are now inquiring of their counsel as to the status of compliance with Business and Professions Code 6450 for the paralegals in the employ of those attorneys. We can only breathe a collective sigh of relief!