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Commentary

By Richard R. Endacott*

Systemization and the Legal Assistant In the Law Office

I. INTRODUCTION

The legal profession is confronted with the need for serious soul searching in regard to several important problems. Ranking high in priority is at least one problem with a solution which promises very worthwhile rewards. That problem is how to practice law more efficiently.

Efforts to improve efficiency through such methods as efficiency studies, job descriptions, and procedural systems are nothing new, particularly in modern business organizations. They are also not new in most professions. Not many years ago, for example, surgeons performed a variety of auxiliary acts both in preparation for, and subsequent to, the actual operating step. Now, however, the majority of surgeons have been compelled to systematize and delegate everything except strictly professional acts to others. Many of the renowned heart surgeons now perform only the critical stage of the operation, devoting in some cases only thirty minutes of their time to an operation lasting two or three hours and involving a team of four or five semi-professional and non-professional individuals.

Necessity has forced systemization in the medical profession. The need for increased efficiency is now forcing systemization in the law practice.¹ The use of legal assistants in combination with

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1. Anyone who does not appreciate the need for increased efficiency in the practice of law should read the front page feature story in the May 8, 1974 Wall Street Journal. These quotations, necessarily taken out of context from the lengthy article, relate to the efficiency problem plaguing the profession, and indicates the urgent need for change.

Lawyers simply aren't in a laughing mood lately, and lawyer Tunney is just one of several reasons. For he is chair-

systemization of law office procedures is the key to efficient law practice.

II. THE USE OF LEGAL ASSISTANTS

Traditionally lawyers have tried to devote their working time primarily to professional tasks such as making legal decisions, counseling clients, and representing them in court. Nevertheless, far too much time normally is spent on performing so-called ministerial tasks such as making appointments, outlining depositions, and preparing repetitious forms. Though routine, these are nonetheless absolutely essential services. The legal assistant comes into the picture as a result of the lawyer's determination to limit his own time and effort as much as possible to the performance of professional tasks. This enables the lawyer to accommodate an increased work load, lighten an existing work load, or carry the same work load more effectively, while delegating to the legal assistant the performance of tasks ranging from the ministerial to the quasi-professional. Thus a legal assistant may be defined as a non-lawyer who performs or assists the lawyer in performing many of the tasks which historically have been performed by lawyers, but which do not necessarily need to be performed by lawyers.

The American Bar Association has clarified the fact that applicable rules of ethics permit a legal assistant, subject to the control and supervision of a lawyer, to perform any service which a lawyer may perform, except for giving legal advice or appearing in court or other jurisdictions in which the legal rights of the represented party are being determined.²

A. Providing a Quality Work Product

The lawyer's product is the combination of his knowledge, tal-

man of a Senate Judiciary Subcommittee examining sensitive questions about the legal profession that Congress—with its 292 lawyer-members—traditionally has ignored.

Unsettling questions are being raised: whether non-lawyers couldn't handle some of the work now done by lawyers and whether restrictions on advertising by attorneys don't inhibit competition. And in this atmosphere changes are beginning to come

Wall Street Journal, May 8, 1974, at 1, col. 6.

2. The Code of Professional Responsibility provides:

A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

ABA CODE OF PROFESSIONAL RESPONSIBILITY, EC 3-6 (footnote omitted).

ent, experience and the time required to convey it. As his practice increases and more demands are placed upon his time, he has few options. First, he can turn down the increased work. The result of this, other things being equal, is his gross income becomes static. Second, he can spend less time on each case. This does not increase his compensation, assuming he bills by the hour, since he is still spending the same amount of total time. More importantly, it means that he must take shortcuts which can involve less care in analyzing the problems and checking to ensure a top quality product. The result is that the client may well receive slower service and/or lower quality work. The third alternative is for the lawyer to systematize his work and delegate much of the time-consuming work load to a legal assistant. By doing this, the lawyer has more time available to spend on *professional* tasks. If the lawyer would pause to consider the great amount of time spent on these non-professional tasks, it would be easy for him to see how delegating them to non-lawyers can allow him to produce work for clients more promptly. It should be underscored that in this delegation process, lawyer control and review need not be sacrificed.

A system enables the lawyer to complete work more promptly and to produce a better work product. When a well-organized system is used, including checklists and procedural outlines, there is little chance of overlooking something that should be done. The work is done systematically with periodic review; thus, mistakes are eliminated. By tying the system into some type of deadline reminder system the chance of malpractice due to missing deadlines is virtually eliminated.

A system also allows the lawyer more time to think about the problem. By lifting the burden and boredom of the routine from his shoulders, a systematic approach results in more creative and thorough solutions of the legal problems confronting the lawyer. The practice of law thus can become an exciting experience.

B. Maintaining Adequate Compensation for Lawyers

Although it is difficult to generalize about a profession whose members vary so widely in their position in the firm, experience, specialty, character of clientele, etc., there seems to be little question that the compensation of lawyers relative to most other professions has slipped considerably in recent years.^{2a} The future in

2a. For example, it was recently noted that "[t]he legal profession's percentage of the national income has decreased more than 50 per cent during the past thirty years, while there has been a massive increase in the number of lawyers." Kilmer, *Space and Motion—Lessons from Industrial Engineering*, 6 A.B.A.J. 240, 242 (1975).

this respect does not seem overly promising. Overhead costs have sky-rocketed. Persons outside the legal profession continue to do more work formerly done by lawyers. No fault insurance threatens to reduce legal services. Increasing attacks on such traditional practices as fee schedules for various services further limit lawyers' compensation.

The lawyer traditionally has been able to increase his fees to offset rising overhead costs and to increase his income. However, he now is meeting public resistance to this solution. It has been said by critics that the lawyer has reached a point where he is pricing himself out of the market for a large segment of his potential clientele. Government subsidized legal aid in various forms is being extended to the needy, but the middle class client is having difficulty because he does not qualify for such assistance and he definitely cannot afford the kind of legal service which is sought by large companies and financially-able individuals. More and more the middle class is turning to persons outside of the legal profession to do their "legal work." Often these outsiders do the work more promptly and less expensively, but with the risk of producing an inferior product which may not be legally correct.

A legal assistant-systems program can help solve the problem of reduced income caused by rising expenses and loss of clients. This program increases efficiency by replacing the lawyer's time formerly spent on non-professional tasks with legal assistant's time.

There are two basic billing methods used in connection with a legal assistant. The first method is to bill on an hourly rate basis for the legal assistant's time. This type of billing is useful for those areas in which a lawyer cannot charge a set fee for the work done. Examples would include work in many areas of litigation. In this type of situation, a billable rate should be set for the legal assistant's time. The rate will depend upon the legal assistant's experience, competence, and the degree of responsibility involved, including the amount of work the legal assistant can accomplish which formerly had to be done by the lawyer. A highly competent legal assistant's billing rate might be set at three to five times that person's overhead and salary cost. Thus, every hour of billable time produced by the assistant will result in profit to the firm. If the legal assistant is doing work at a lower rate than the lawyer would charge, a considerable reduction in the ultimate fee charged to the client should result.

The second billing method is to develop a set fee system for particular types of work. The now defunct minimum fee system of the Nebraska Bar Association accomplished that. There is no reason, however, why a firm cannot develop a fair and reasonable

minimum fee system for work done by the firm.

If the set fee system is used the lawyer must decide what type of work can be properly billed in this manner and what is a fair fee for completing the work. Once the fee has been determined, he then should establish a system that will minimize the amount of time he must spend and maximize use of the legal assistant.

This method can increase the lawyers compensation in the following manner. Assume that without a system, the lawyer has been charging \$300 to form a corporation. What constitutes his cost in terms of billable hours spent to produce this \$300 fee? Although his billable hours are not equivalent to overhead cost, billable hours should be considered a cost since every hour he spends producing the \$300 fee means that that hour is not available to work on other matters which could be billed. This is particularly true if this fee can be produced though the lawyer's time spent is reduced as a result of delegating responsibility to the legal assistant. Thus, assume that the lawyer's billable rate is \$35 per hour and that he normally spends eight hours forming a corporation for which he bills a flat fee of \$300. His cost is \$280 ($8 \times \$35$) and there is a profit of \$20 over and above his time cost.

Compare this with the situation in which the lawyer has taken the time to organize a system, trained a legal assistant, and delegated much of the nonprofessional work involved in setting up a corporation.³ The lawyer might then reduce his time to about three hours (assuming no unusual problems), while the legal assistant may spend seven hours. Thus the lawyer's billable time amounts to \$105 ($3 \times \35 per hour) and the cost to the firm for the legal assistant's time amounts to \$28 ($7 \times \4 per hour). Thus the total office cost amounts to \$133. If the lawyer were to continue to bill \$300 for a corporation, the firm's profit would be \$167 compared to \$20 in the absence of a system. One objective of the legal assistant concept, however, is to pass some of the savings to the client. Thus, for example, the fee could be reduced to \$250 for a \$50 savings to the client. Even with this reduction in fee, the firm's profit would still be \$117, or more than four times what it was without a system.

There is even more monetary return available. If we assume the usual situation in which the firm has an abundance of work, under the above example the lawyer has reduced the number

3. The author has found that many hours are required to organize a system. It is difficult to do such work, particularly when the organizational process is non-billable time. However, the time spent in creating a system and training an assistant to use it will become an enormously productive investment in the long run.

of hours he must spend to produce the incorporation fee. (Before the system he spent eight hours to earn his fee. Under the system, he is required to spend only three hours). Thus, as a result of the system he has five previously unavailable billable hours for other work. The five hours multiplied by his \$35 rate means that he can produce an additional \$175 in billable time for the firm.

This example demonstrates the advantages of systemization and the legal assistant. The incorporation presumably was completed promptly and with quality service. Cost to the client was reduced and, as a result of increasing efficiency, the lawyer's income was increased.

III. IMPLEMENTING THE LEGAL ASSISTANT-SYSTEMS APPROACH

Now that an illustration of how a legal assistant, utilizing the systems approach, can help solve some of the problems facing lawyers today, the question becomes: How can such an approach be implemented? There are many ways to employ the talents of a legal assistant; two, however, stand out. First, the assistant can be trained to perform each component task of a project and then to either fit them together or pass them on to the lawyer to assemble into a finished product. Many legal secretaries now perform such tasks. An example would be a secretary in the litigation area who through years of experience has learned to prepare interrogatories, outline depositions, and screen and interview witnesses. This can work quite well, provided the lawyer is fortunate enough to have found a capable secretary who over the years has absorbed enough of the lawyer's procedures to enable the secretary to perform many legal assistant functions. However, what happens if the secretary leaves? If the secretary's knowledge was based only upon years of experience and unwritten instructions, the lawyer must start training a new secretary all over again. Obviously, this piecemeal arrangement for assistance, although better than none at all, has its shortcomings.

How much better it would have been if a specific system had been kept up-to-date so that it would be immediately available to the successor. The second method of utilizing a legal assistant is by the development of systems which provide well-structured written procedural guidelines within which the capabilities and training of the legal assistant can be applied.

Systems are nothing more than the organization and allocation of responsibility for the various action steps needed to accomplish a certain work project. These systems should be *written* so that they can be reviewed and revised and made permanent, regardless of turnover within the firm.

There are several types of systems available.⁴ The system described below is a variation of the Kline Strong system,⁵ and consists of three basic components: the "master information list," the "procedural outline," and "forms." This system is presented merely as an illustration, and it is recommended that each lawyer or firm create systems to fit other particular needs.

The first document in a system is the master information list ("MIL"). This list is designed to contain all or nearly all of the information that will be used by the legal assistant and the lawyer.⁶ It is important in creating an MIL to make it as self-explanatory as possible. This helps avoid mistakes and also enables a substitute or new legal assistant or typist to use it with a minimum of familiarity. In organizing the MIL, an attempt should be made to include all necessary information, but without unnecessary duplication. It is also important to organize the MIL so that the information is recorded in the order in which it will be used. When the MIL is lengthy (such as those prepared for use in litigation, probate, or corporate work), an index on the front of the MIL enables the legal assistant to find quickly information within the form. The MIL is also cross referenced to appropriate forms so that the person preparing a form need only refer to the MIL for the appropriate information.⁷

While each system should contain an MIL, not all MILs are completed by the same party. For example, a bankruptcy MIL can be filled out by the client. Other systems might be filled out by a legal assistant or attorney, or both. The attorney must always make this decision when establishing a system. Because the attorney must maintain his responsibility to the client for the final work product, he should carefully check all information placed on the MIL by other persons. The time required to do this is minimal, but is necessary to make certain no mistakes are included on the form.

The second document in the system is the procedural outline and checklist. The form described here varies somewhat from Kline

4. Some of the best are those developed by Kline Strong of the Utah Law Research Institute, in Salt Lake City, Utah. The Nebraska Corporation System for Legal Assistants, presented at the 1973 Nebraska State Bar Convention was patterned after the Kline Strong concept and is an excellent example of a legal assistant system.

5. *Id.*

6. See Appendix A for a sample first page of an MIL used in a probate system.

7. See *infra* at —. See also Appendix C for a sample probate form containing cross references to the Probate MIL. The numbers in the blanks correspond to the numbers on the MIL.

Strong's and that of the Nebraska Corporation System.⁸ This document is designed to accomplish three objectives. First, it provides a step by step chronological checklist of all work to be completed by all persons involved in the system. By following the checklist, the possibility of overlooking an important step in the procedure is eliminated. This document also alerts the lawyer and legal assistant to record important dates in some type of office reminder or "tickler" system. A notation is placed on the checklist at the appropriate point.⁹ When the lawyer or assistant comes to a step where the notation appears, he or she knows that an important date must be listed in the office reminder system. This procedure helps to avoid missing deadlines.

Second, the checklist allocates the responsibility for completing each step. This may be done, for example, by placing an "L" or an "A" (representing lawyer and assistant respectively) by each step.¹⁰ Thus, if a step is designated "L" the lawyer knows that it is his responsibility to complete that step and check the blank upon completion. At periodic points in the checklist the lawyer should be given the responsibility of reviewing the checklist to assure that all previous steps have been completed. Thus, the lawyer does not lose contact with the work product. Rather, he is relieved of time consuming details and is free to spend more time thinking about the problems and reviewing the progress of the matter.

Finally, the outline and checklist should explain in simple terms how to complete each step. This enables transfer of the work to others in emergency situations. Also, it makes it much easier to train replacements to use the system.

The third important part of a system includes all of the forms.¹¹ Each blank in the form includes not only the number from the MIL,¹² but also a brief description of the information to be placed in the blank. Thus, the legal assistant need only refer to the MIL for the information needed to insert in the form.

There will be some portions of forms which must be drafted by a lawyer. In these instances the procedural outline will simply allocate the drafting responsibility to him. Many forms, however, can be preprinted with blanks which can be typed in. Automatic typewriters, such as an MTST, are useful in completing these forms.

8. See Appendix B for a sample procedural outline and checklist used for probate.

9. *Id.* In this form the word "docket" is placed in the left hand margin next to a step which requires a date to be recorded.

10. *Id.*

11. See Appendix C for a simple petition for probate of will.

12. *Id.* See also notes 6-7 and accompanying text *supra*.

The lawyer must use his discretion and knowledge of the rules of the particular court or agency involved concerning the extent to which preprinted forms or varying degrees of automation would be appropriate.

The MIL, the procedural outline and checklist, and the forms are only the three main parts of a system. Other components can be added by the lawyer. For example, in a probate system, an initial interview checklist is very helpful. Also a tax checklist including matters to be considered by the lawyers regarding the gift tax, decedent's last income tax return, the estate tax return, and the estate income tax return, can assure the lawyer that every tax detail has been considered in the administration of the estate. Other sections might include a section of definitions and a section annotating the law to aid the legal assistant in understanding terms employed in the system.

IV. CONCLUSION

The need for increased efficiency in the law practice is obvious. The legal assistant-systems method is a valid approach to satisfying this need. It should be understood that this type of change does not come easily. It demands a large initial investment in terms of the lawyer's thought, energy and time to create and implement the system. Those who have already made a commitment to this approach, however, have proved that it is an investment which will pay for itself over and over again in the years ahead.

Appendix A**Master Information List**

- 1.12 Name of Court: _____
- 1.13 Name of Judge: _____
- 1.14 Address of Court: _____
- 2.00 Decedent's Name (herein "D" or "D's"): _____
- 2.01 Also known as: _____
- 2.10 D's residence at time of death: _____
- 2.11 Date established: _____
(Year)
- 2.30 Place of D's death: _____
(If different from D's address, e.g. name of hospital)
- 2.31 Date of D's Death: _____
- 2.40 Place of D's Birth: _____
(City, State or Country)
- 2.42 Date of Birth: _____
- 2.50 D's Marital Status — Circle
Single, Married, Legally Separated, Divorced, Widow, Widower
- 2.52 Place of Marriage: _____
(Town or State)
- 2.53 Date of Marriage: _____
- 2.54 If Legally Separated, Name of Legally Separated Spouse: _____
- 2.55 If Divorced, Date of Divorce: _____
- 2.56 If Widowed, Name of Spouse and Date of Spouse's Death:

(Name) (Date of Death)
- 2.60 Cause of D's Death: _____
- 2.70 Length of D's last illness: _____

[form continues]

Appendix B**Probate Procedural Outline and Checklist—Testate**

Estate of _____

Also known as _____

Estate No. _____ Court _____

I. PRIOR TO FIRST CONFERENCE WITH CLIENT

- Docket L___ 1. Lawyer sets up initial conference, fills out docket memo and gives to Assistant.
- A___ 2. If there is enough time lapse between first contact and initial conference, A prepares letter 1 (individual) or 2 (bank) and MIL to send. (Check with L on this).
- Docket A___ 3. Set up file. Docket key dates. (Include MIL, (Form A), Procedural Outline and Checklist and Initial Interview Checklist (Form B) and Initial Interview Procedure (Form C)).

II. INITIAL CONFERENCE

L— 1. Use Initial Conference Checklist and Procedure and MIL.

III. BEFORE PETITION FILED

- L— 1. Review and outline will.
- A— 2. Place outline in file.
- L— 3. L informs A of which Petition (Form 3) to use and describes any alterations in form. This will usually be done with memo. Also whether to use Form letter 4 or 4A.
- A— 4. A drafts Petition and cover letter 4 or 4A. (Form 4A if Bank is fiduciary and Form 4 if individual fiduciary). Enclose Form 4B Ledger to individual.
- L— 5. L Proofs petition and cover letter 4 or 4A, signs and returns to A for mailing.
- A— 6. Petition and cover letter mailed to client for signing. Copies sent to heirs mentioned in petition.
- A— 7. Petition received back signed.
- A— 8. Prepare order for hearing, notice of hearing and order for probate, Forms 4X, 4Y and 4Z.
- A— 9. A fills out routing slip instructing Clerk to file Petition with Court; (\$11.00 filing fee) and obtain hearing date. (If county other than Lancaster send letter F-2).

IV. PRIOR TO HEARING

- A— 1. Clerk files petition and obtains hearing date and notifies A of date and time.
- Docket A— 2. A records hearing date on docket memo, lawyer's calendar and own calendar. (Also docket 1 wk. prior to hearing, See #10).
- A— 3. A checks MIL to determine witnesses and executor; confers with L as to who to use and how to contact.
- A— 4. A notifies witnesses and Executor by phone. If any problems notify L.
- A— 5. A prepares notices of probate to be sent to executor, heirs or persons named in Will (Form 5) and Affidavit (Form 6).
- L— 6. Check over list of interested parties to make sure all are included and sign Affidavit of Mailing.

[form continues]

Appendix C

Petition for Probate of Will

IN THE COUNTY COURT OF *LANCASTER COUNTY, NEBRASKA IN THE MATTER OF THE ESTATE) OF) *Decedent's Name 2.00, (Deceased.))))))	E — (1.00) PETITION FOR PROBATE OF WILL
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COMES NOW the petitioner, * (d/s) Petitioner's Name (7.01) CRM and shows to the Court that:

1. *D's Name (2.00) died on *Date of Death (2.31), and at the time of *his death was a resident and inhabitant of Lancaster County, Nebraska. The said decedent died testate, and his last will and testament was executed in due form of law, and *he had authority and capacity to make and execute said will, and said will is being filed in this Court herewith. The said *D's Name (2.00), deceased, died seized of an estate consisting of property in *Lancaster County, Nebraska.

2. Petitioner is nominated in said last will and testament to be executor thereof, is qualified to act as executor, and will accept the appointment as executor thereof.

3. The heirs-at-law of the decedent are as follows:*

Name (6.01)	Address
_____	_____
_____	_____
_____	_____

All of the above-named heirs-at-law are of legal age.* (Or denote "Minor" behind the name and leave out preceding sentence).

4. The devisees and legatees of the last will and testament of the decedent are as follows:*

Name (6.02)	Address
_____	_____
_____	_____

All of the above-named persons are of legal age.* (See above re: "Minor").

WHEREFORE, petitioner prays that a time and place be fixed for a hearing on this petition, that all parties interested in said estate be notified as required by law of the date and place for said hearing and to appear at the time and place appointed to show cause,* if any there be, why the instrument offered as the last will and testament of *D's Name (2.00), deceased, should not be proved, allowed, and probated as the last will and testament of said decedent and execution thereof and administration of said estate granted to *Personal Representative's Name (7.02), named in said will as executor, that at said hearing said instrument be admitted, allowed, and probated as the last will and testament of *D's Name (2.00), deceased, that letters testamentary be granted to *PR's Name (7.02), and that such other and further orders and proceedings may be had in the premises as may be required by the statutes in such case made and provided.

*Petitioner's Name (7.01), Petitioner