

PERSPECTIVE

Spring 2021 Edition - Volume 38, Issue 4



PRESIDENT'S MESSAGE

By Kerry A. Mackey, CP

Happy spring my fellow paralegals! I cannot believe that this term is coming to an end! **PANJ** has had great success this term with our monthly webinars and will be continuing them in the fall. As always, if there is a certain topic that you would like to learn more about please let us know! We are here to serve you and want to keep you involved.

Last month we held a webinar regarding notary laws in New Jersey which was a great success! We are hoping to have Nicola Jackson of the National Notary Association back in the fall for another webinar. If there is a certain area within notary laws that you would like to learn more about please email me at info@njpara.org.

I hope that our members have taken the time to vote for **PANJ's** Executive board. We will be announcing the results for the 2021-2022 term soon. The installation of officers will take place on June 8, 2021.

If you are interested in becoming more involved with **PANJ** please contact us! The Association has various committees that you can help out with. Reach out to a current board member to find out more information and how you can help!

In order to qualify for discounted attendance fees at the upcoming webinars/events, please remember to register for **PANJ's** Forum www.njpara/freeforums.net if you haven't already done so. Also, stay in touch by following **PANJ** on Facebook and LinkedIn and joining our LinkedIn Group!

Interested in becoming a member of [PANJ](http://www.NJPara.org)? Please visit our website (www.NJPara.org) to review the Association Membership Application and feel free to contact Membership@NJPara.org with any questions. Some of the benefits of becoming a [PANJ](http://www.NJPara.org) member include access to our Job Bank, discounts on our webinar meetings and even a discounted membership rate for the National Association of Legal Assistants (NALA).

The [Annual New Jersey Paralegal Convention \(NJPC\)](#) was held virtually this past October and was a great success. The seminar topics were all interesting and hard to pick which ones to attend. Further feedback from a paralegal who attended the Convention is included in this addition of *Perspective*. Kudos to all involved with the planning of the virtual convention and a BIG SHOUTOUT to Convention President, Jennifer Smith, ACP. Great job!!!

Please also mark your calendars and save the date for the [Annual New Jersey Paralegal Convention \(NJPC\)](#) on **October 15, 2021**. As the date grows closer, attendee and vendor information will be available at www.njparalegalconvention.com.

I am excited that this addition of our *Perspective* includes a few Board Member Spotlights. We have asked our Board Members to answer some questions about themselves so you can get to know them. I hope you enjoy getting to know our Board Members. Our next addition of *Perspective* will include more Board Member Spotlights.

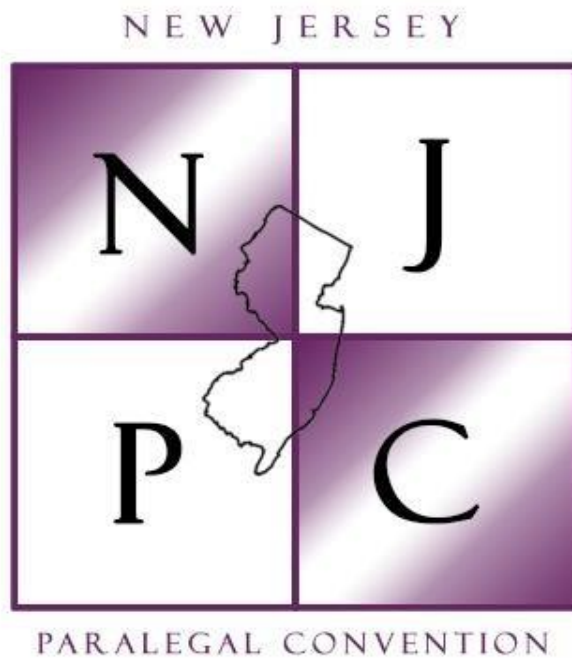
Finally, the Association is open to suggestions for improvement. [PANJ](http://www.NJPara.org) seeks to promote regulated high-level educational standards and uniform practice guidelines for paralegals throughout New Jersey. [PANJ](http://www.NJPara.org) also provides helpful resources to new and experienced paralegals and promotes the education of the public for the advancement and improvement of the profession.

What are ways the Association can further serve its members and the paralegal profession? All suggestions are welcome! Send ideas and comments to Info@NJPara.org.

If you wish to contribute to upcoming editions of Perspective, please submit your pieces for review to Info@NJPara.org.

If you know a vendor who may be interested in advertising their product/service in the Perspective or at an upcoming webinar meeting, have the vendor contact Info@NJPara.org.

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Words Matter & Personal Branding: A Paralegal's Guide

By: Amanda Sexton

For those that couldn't attend the recent PANJ meeting on the topic of how important words are both for the profession and for personal branding, we wanted to make sure still got a chance to learn about the career-impacting importance of them.

Wondering why you even need a personal brand?

If personal branding sounds like a “nice to have” or something only Instagram influencers need, consider that you already have a personal brand, whether you know or not. A good way to think about it is “what other people say about you when you leave the room”. And while odds are that no one is actually talking about you once you leave, it's all about the way people view you—and that exists right now.

Personal branding gives the power to take control of how others view you.

And that, in turn, affects things like promotions and raises.

While promotions ideally are based on skillset and merit, studies show that personality and personal brand often play a role. It can even turn into a new job. Have a strong presence on LinkedIn that touts your personal brand, and you might find yourself being approached by a recruiter for a firm looking for someone just like you.

Figuring out your personal brand

The good news is that figuring out your personal brand is easier than you think. By asking yourself just a few questions, you can likely figure out what those key pieces are:

- What are my strengths?
- What differentiates me from others?
- What do others most often praise?
- When faced with an overwhelming obstacle, what's my “go-to” skill to overcome it?
- What do others always come to me for help with?
- What do I enjoy the most about being a paralegal?

Once you have these answers, you can translate them into a personal brand. If you're feeling stuck you can also bring these questions to someone who knows you best to get their input.

Here's a quick sample personal brand that can give you some inspiration. Don't be afraid to include some personal aspects in there too, especially if you can find ways to connect them to your professional brand.

Personal Injury Paula

- Helpful advocate for injured parties
- Sherlock Holmes level research
- Fluent in medical terms, interpreting doctor's handwriting and keeping thousands of documents organized
- Runner whose endurance is helpful when dealing with trials

Choosing the right words

Before we get into the actual words that can help you create your personal brand, there's one key piece to consider: tone of voice makes up 38% of our communication. You've probably heard the phrase "it's not what you say, but how you say it". As you're communicating the items below, the right tone can make all the difference.

Confidence is key

Even if you're not 100% sure what you're doing or don't have an answer, there's still a way to respond or to speak that will still instill confidence in someone that you can get the job done.

Don't be afraid to say "I'm not sure, but I'll find out for you by this afternoon". As long as someone knows they can count on you, the end result is still the same: the work gets done and it's not on their plate.

Oftentimes even if we do know the answer, we find ourselves including phrases that detract from that perception, turning definitive responses into open to interpretation answers. I'd challenge you to remove the following from every one of your emails this week and then read it back to see how it changes the impact:

- Probably
- Most likely
- Generally
- Typically (try "in my experience", "from what I've seen")
- Usually
- I think
- I suppose

Positive vs. Negative Phrasing

Another way to create a personal brand that makes people think of you as the "get it done" person? Phrase things as a positive based on what should happen and the positive outcome, rather than negative that could happen and the potential consequences.

For example, instead of “We won’t get that document back until the process server serves the subpoena” try “We’ll get that document once the process server serves the subpoena”.

Letting people know how hard you work

As a paralegal, most people in the industry know just how much you do to support your attorney(s). They also know how important it is. And how much time it takes. And what kind of attention to detail you must have. But even your own team likely doesn’t know just how much goes into keeping all the balls moving in the air.

If there’s been a time where you’ve stayed late, skipped lunches (or do this all of the time just to stay ahead) or put in any extra time due to a last-minute request, it’s important to call attention to these. With this, the key is still that same positive framing to avoid it turning into complaining (although if you never get to eat lunch, that can certainly be something to be frustrated about!).

The next time something is requested that throws off your personal schedule so you can get it done, try this when you send your email:

“We have a lot of priority projects right now, but I made sure to stay late so to get this done. I know this is a big client and it’s important we keep them happy by getting this filed on time. So you don’t have to worry - all taken care of.”

This applies to co-workers too. The right phrasing can highlight your helpful nature. Although you shouldn’t yes to everything or you may wind up overcommitting, phrases like “I can help you with that” or “Yes, I can take that on for you” let people know you’re doing this for them.

And on the note of saying no while making sure no one feels put out or unheard, you can try these phrases: “I have x,y and z on my plate right now as priorities. Which one of those would you like me to shift to get this done?” or “X attorney asked me to Y. Would you like me to do this instead? If so, I’ll let them know to expect this a little later.”

All of these add to the same thing: generating goodwill and building your personal brand. Ultimately, others will remember how you made their lives easier. When it comes time for raises or when there’s an open position in your office, that can be very helpful to have.

Stay authentic

It’s important to keep your personal brand focused on things that are genuinely unique to you. When you’re acting like yourself, but promoting the parts that support your personal brand, it’s much easier than trying to be something that doesn’t feel naturally like yourself. And others will see that.

Always be authentic in what you say and do.

Promoting your personal brand

Once you've fine-tuned your personal brand, it can be helpful to take it beyond just your workplace. You might be 100% thrilled with your current position, but the last year has shown us how quickly things can change.

One of the best places to promote your personal brand is LinkedIn.

To figure out what to post, think back to your personal brand and choose content that supports it. Share recent cases and your thoughts on them. Share rule changes. Share that recent organizational tool you found out about.

Not into social media or the thought of finding content to post? Another way to promote your personal brand is being more active in organizations relevant to your profession. PANJ has an active board and ongoing meetings that are excellent opportunities to connect and build out your network.

No one has the time—or mental energy—to think about what they're about to say represents their personal brand all of the time. But by incorporating or eliminating key phrases into your day-to-day, you can construct what that personal brand is. A little intention and you can set yourself up for future recognition and raises.



Amanda is the founder of [FocusWorks Marketing](https://focusworks.marketing/) (<https://focusworks.marketing/>), using the power of digital marketing to grow brands and businesses. For the past 14 years, she has shaped brand development, created award-winning content, and built communities for everything from small businesses to global brands. She was selected as one of the 40 Under 40 Marketing Professionals in New Jersey in 2019, holds a standing column with the New Jersey Law Journal and has spoken across the country at bar association events and industry conferences, including ABA TechShow.

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Connecting with a Claimant

By: Rachel Gaffney

For many paralegals, they face the responsibility of following up with claimants and leads. This step is important for a law firm when obtaining new clients. But there needs to be a balance between contacting a claimant one too many times and not enough contact attempts. With suitable follow up procedure in place, a paralegal can help a firm increase their caseload and number of clients.

When Should You Contact a Claimant?

It's important to quickly follow up when your firm receives a lead. There is a high chance that your leads are also contacting other law firms. With this in mind, the more time you take to first contact a claimant, the higher the chance a lead has already contacted a different firm.

It's been found that a lead may be *nine times* more likely to convert when they are followed up with during the first five minutes of receiving the lead. When you reach out to a lead within an hour, a lead can drop to seven times more likely to convert, and so on. Because of this, creating protocol or follow up system that requires a quick initial follow up can help your firm increase conversions.

How Often Should You Call a Claimant?

On average, only around 2% of leads convert on the first call. If you do not continue to follow up after the first try, your firm may miss out on the 80% of leads that convert sometime after the fifth follow up attempt. Paralegals should follow up with a lead at least seven, if not more, times before rejecting a lead.

Should You Change How You Contact a Claimant?

If you are struggling to make contact with a claimant, try a different communication approach. Instead of only calling the lead, consider sending an email next. Depending on who your lead is, you can even consider sending a text. For example, if the lead is a 60-year-old man seeking assistance for a disability benefits hearing, he may not respond to a text. On the other hand, a 25 year old looking for help after being wrongfully terminated may respond to a text in a timely manner.

When trying to contact a claimant, consider the area of law your firm handles. Are your firm's claimants going to be at work during the day? Or are they available at all hours? Some may respond better to an email while others can only talk on the phone after traditional business hours end. Try following up at different times of the day and using different methods when reaching out to a claimant to find what is most efficient for your firm. If you begin to find commonalities, then you can update your intake up strategy accordingly.

What Should You Do After Connecting with a Claimant?

Once you have finally made contact with a lead, a paralegal's job is not done. It's likely that the claimant may not be ready to begin the legal process yet. Continue to schedule follow ups so your firm will be readily available when the lead is ready to take the next step.

Source:

<https://ircsalessolutions.com/insights/sales-follow-up-statistics>



Rachel Gaffney is a Senior Marketing Specialist at [eGenerationMarketing](https://www.egenerationmarketing.com/) (<https://www.egenerationmarketing.com/>), one of the largest online lead generation companies. For over 10 years, eGen has helped hundreds of firms across the country expand their caseload through lead generation.

If you wish to contribute to upcoming editions of *Perspective*, please submit your pieces for review to Info@NJPara.org and Newsletter@NJPara.org.

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How did you decide to become a paralegal and why did you stay as a paralegal?

“Paralegal” found me. I needed a job and accepted a position as a file clerk. Over the years, I progressed to intermediate and then senior paralegal while acting as office manager and paralegal manager. Every profession has its pressure points but I find satisfaction in research and “getting to the bottom” of things. My passion for investigation has aided me in hiring contractors, buying a car, searching for a new home, etc. I am a paralegal to the core!

What’s a helpful tip for someone in our industry?

Be Humble. Be Kind. Treat others as you would like to be treated. I know it sounds cliché and it should apply to every area of life but how many times has someone spoke to you sarcastically? Or made you feel inferior because you made a mistake? Or disregarded your opinion because they felt they knew more than you? EVERYONE starts at the bottom, as the “newbie”. Just when you think you know everything, you meet someone who knows more. And Karma has a way of finding us when we least expect it. Sow positive seeds.

What is the most important skill you have developed in your career?

Flexibility! Yes, one’s ability to adapt to change is important, but so is stretching. A healthy mind, body and soul help breed successful goal attainment whether professionally or personally.

If you worked as another profession before becoming a paralegal, how did you transition into the paralegal profession?

While most of my career was spent as a paralegal working for a law firm, I have continued my education and obtained my title producer’s license. Essential components of title searches and settlement include examination, research and investigation. While I may not currently work for a law firm, my transferable paralegal skills are still crucial to complete my current job duties.

Why did you join the PANJ Executive Board?

The desire for continuing legal education led me to PANJ’s monthly dinner meetings and the Annual New Jersey Paralegal Convention. Once I realized that “paralegal” is in my bones, advocating for my profession meant getting involved. I volunteered to assist PANJ any way I could. Yes, serving on the Board has contributed to my professional development but my service has also stimulated my own personal growth. And most important, what started out as connections with colleagues in a similar professional field have blossomed into meaningful relationships with longtime friends who happen to be in the same line of work.

Christine A. Principe, CP

NALA Liaison

How did you decide to become a paralegal and why did you stay as a paralegal?

I always thought law was interesting and liked to watch legal shows when I was young. I was on the business track in high school and took legal secretary/legal assistant classes at a business school. I became certified in 2007. I stayed a paralegal because it's interesting (and the hours are better than an attorney's ☺).



What's a helpful tip for someone in our industry?

Keep forms and procedural notes for everything you do for future reference. No sense reinventing the wheel.

What book are you currently reading?

The Litigators by John Grisham.

If you could change one thing about how you got into the legal profession, what would it be?

I would've gone to college for my 4-year degree and then pursued paralegal studies after that. I don't think there were very many college paralegal programs when I graduated high school.

What is a typical day as a paralegal like for you?

It's hard to predict, but at the start of each day I enter my time and review all emails. Although I keep a To Do list of priorities, it can change on a moment's notice.

Why did you join the PANJ Executive Board?

I was a member for years and was asked to join the Board many years ago. It was the push I needed and it's very satisfying to be involved in the Association on that level.

Michelle Mando

Corresponding Secretary; Job Bank, Social Media, and Newsletter Committees



How did you decide to become a paralegal and why did you stay as a paralegal?

I became a paralegal as what I thought was a stepping stone to eventually attend law school and become a lawyer, but I enjoyed my work so much, I made it my profession.

What's a helpful tip for someone in our industry?

Know your attorneys. I think the biggest asset a paralegal can have is to know their attorneys and be flexible. I've learned that each attorney has their own preferences, and if you complete their work with this in mind, you'll do well.

What is the most important skill you have developed in your career?

Aside from being flexible, attention to detail. I spend a countless number of hours reviewing medical records, and I have learned to review every page, carefully. I have also learned that proofreading skills are very important. If you write something, thoroughly proofread it to ensure there are no errors or omissions.

If you worked as another profession before becoming a paralegal, how did you transition into the paralegal profession?

I was a legal secretary before becoming a paralegal, so the transition was easier than it would have been from a completely different profession.

What is a typical day as a paralegal like for you?

Busy! Every day, I begin my day with a list of tasks I'd like to complete, but because I work in litigation, I have to change direction at a moment's notice, several times throughout the day. My task list is rarely completed at the end of the day.

Why did you join the PANJ Executive Board?

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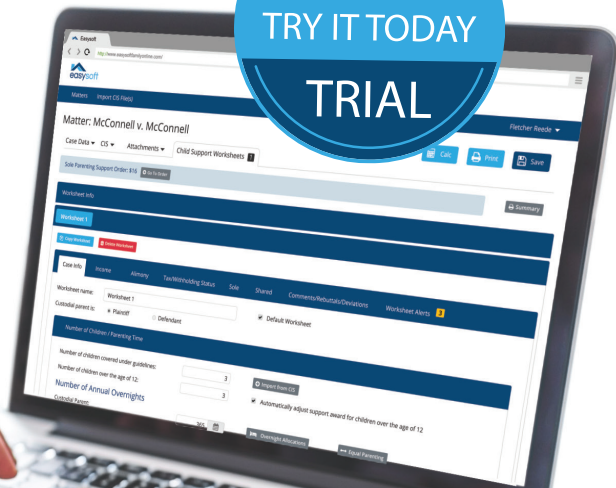


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NALA NEWS

March 2021

Membership

Not a NALA member? As a PANJ member you are entitled to a 25% discount on NALA's membership rates. NALA's membership also includes an \$80 gift certificate which can be used for a variety of things including on-demand webinars, NALA Expo and Conference, etc. What a great perk!

Badges

NALA's digital credential provider has rebranded itself. Acclaim was purchased by Credly, and the Acclaim name/logo/URL has been replaced with Credly. No action is required on your part.

NALA Expo and Conference

The 2021 Expo and Convention has gone virtual and early bird registration is now open through May 15, 2021. The early bird cost is \$149 members, \$199 for non-members and \$99 for students.

CP Exam

The Skills Exam testing window is April 2021.

The Knowledge Exam is administered all year long. PSI opened some centers. Check out their website for availability in your area: <https://www.psionline.com/closures>. If you're having difficulty finding a testing center, your workplace may be eligible. Contact NALA @ testing@NALA.org.

Your purchase of the NALA CP Practice Exam includes NALA's new Practice Exam App which is available for one year from purchase.

NALA's New Address

Effective April 1, 2021, NALA's new address is 6450 S. Lewis Avenue, Suite 250, Tulsa OK 74136.

ParalegalBrief.com

Sign up for the newsletter Paralegal Brief at paralegalbrief.com and customize the resources which interest you. I have not fully explored this yet but it looks interesting!

Utilization and Compensation Survey

It is available to purchase at NALA's store for \$79; it is free to NALA members. The last survey was done in 2018. Any comparisons mentioned in the summary below are between the 2018 and 2020 surveys.

- *Growth*
 - According to Bureau of Labor Statistics, the paralegal profession will grow by 6.7%.
- *Respondents*
 - The Survey went to 6,219 NALA members and 5,000 non-members.
 - Member response was 14%.
 - Most responses were from the Southeast and Southwest; only 7% of the respondents were from the Northeast/Mid East. New Jersey had the most respondents of the New England/Mid East states with 26 respondents.
 - Of the respondents:
 - 51% have more than 20 years' experience.
 - 19% have one to five years' experience.
 - 67% work in a law firm; 29% in public sector; 4% in nonprofit.
 - 94% female.
 - 73% NALA members
 - Average age was 50
 - 70% certified
 - 8% ACP
- *Employment and Responsibilities*
 - About 10% fewer employers offered flexible work arrangements.
 - There was a decline in increased duties: independent judgment decreased 24% and level of sophistic of work decreased 27%.
 - Specialties:
 - Civil litigation – 40%
 - Family law/domestic relations – 30%
 - Criminal – 28%
 - Between 14% and 19% **fewer** paralegals indicated they attend CLE, sought certification, or were involved in a professional association (emphasis added).
- *Compensation and Billing*
 - Salaried or hourly was split 50%/50%.
 - Paralegals work an average 40-hour work with 29 billable hours.
 - 53% of firms bill paralegal time.
 - 55% of paralegals do not have minimum billable requirement.
 - New England/Mid East region average compensation was \$67,948; average gross salary was \$63,378. It is the fourth highest paid region out of seven.
 - There was only a \$40 difference between the average gross salary of those with a high school/GED diploma (\$60,148) and those with a bachelor's degree (\$60,188). Those salaries are about \$2,000 more than a paralegal with an associate's degree and about \$4,000 less than those with a masters.

- *Employee Benefits*
 - 6% decline in employers providing retirement/pension plan.
 - 79% of respondents reported their employer did not offer health insurance or pay a portion of health insurance. That was a 67% decline from 2018.
 - Top five benefits: conference fees, mileage, professional dues, life insurance, parking.



Christine A. Principe, is a Certified Paralegal. She has been a paralegal for 34 years assisting attorneys in a variety of practice areas including commercial litigation, mortgage and tax lien foreclosures, and estate administration. Currently, she in the complex commercial litigation department at Sills Cummis & Gross, P.C. Christine is a PANJ Board Member and NALA Liaison. She is also a Board Member of NJ Paralegal Convention. Christine can be reached at: NALALiaison@NJPara.org

Professional Development and Public Relations:

- Do you have an opportunity to speak to members of your community about your professional life as a paralegal and are unsure of what to say?
- Do you wish to participate in presentations to paralegal students about the profession?

If yes, contact Info@NJPara.org for guidance, assistance and assignments!

If you know a vendor who may be interested in advertising their product/service in the *Perspective* or at an upcoming dinner meeting or webinar, have the vendor contact Info@NJPara.org.

If you would like to recommend a PANJ member to be featured in the next Member Spotlight, submit the member's name to Info@NJPara.org.

Pandemic Pushes Paralegals To Work More and Worry More, Survey Finds

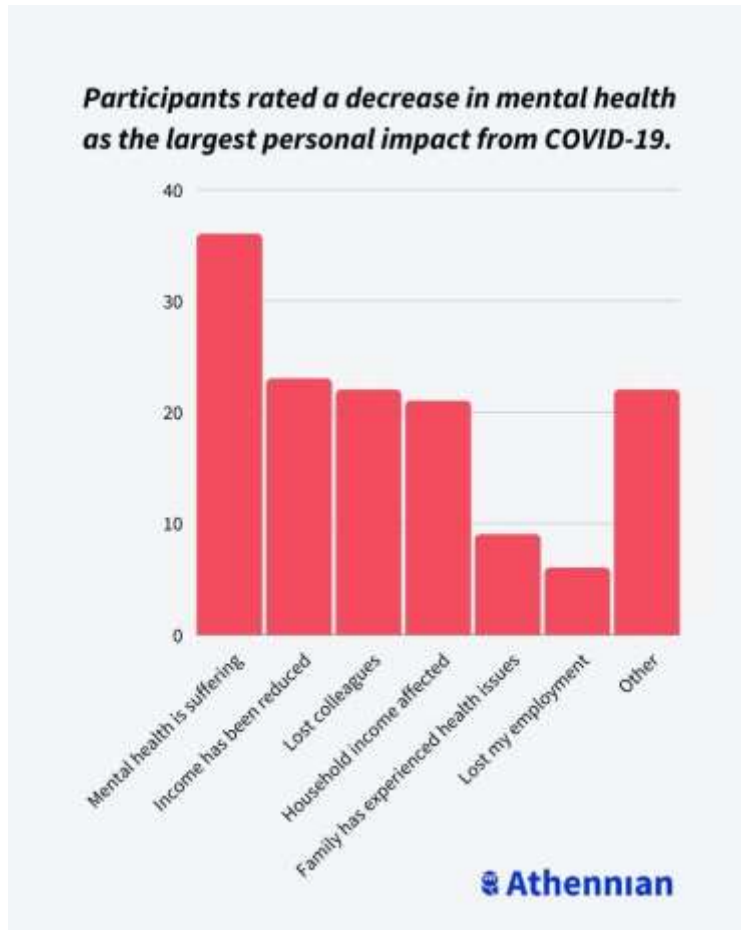
By: Bob Ambrogio



Several surveys in recent months have looked at the impact of the pandemic on lawyers, but a survey out today examines the effect the pandemic has had on paralegals and other allied professionals in law firms and legal departments, and it finds that the events of the last eight months have taken a major toll.

While paralegals, law clerks and legal administrators are essential to the functioning of law firms and legal departments, many of them report that they have experienced higher workloads, higher degrees of anxiety, reductions in income, and difficulty achieving work-life balance.

Thirty-seven percent of those who responded to the survey say that their mental health had been negatively impacted by the pandemic. Nearly a quarter say they have lost colleagues during the pandemic.



The survey was conducted between June and August by [Athennian](#), the Canada-based developer of a cloud-based, legal entity management platform that is primarily used by paralegals. (I [wrote about Athennian](#) in September, when it announced a major Series A investment.)

The survey polled 323 paralegals, law clerks and legal administrators in the United States, Canada, and the United Kingdom, with half the responses coming from the U.S. and 38% from Canada.

Among the key findings:

41% report that their workloads have increased during the pandemic.

65% of paralegals say that they feel more productive at home than in the office.

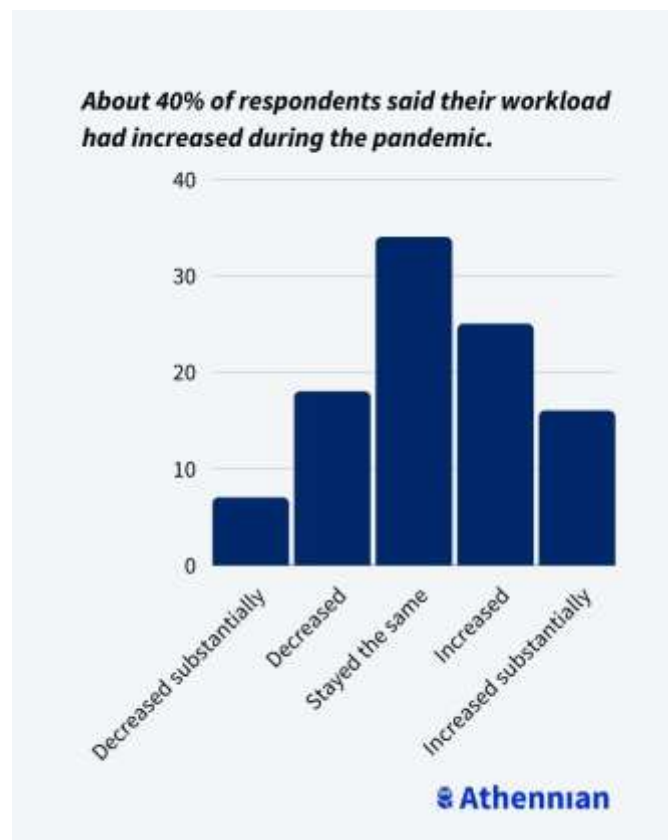
37% say that their mental health has been negatively impacted by the pandemic.

A quarter have seen their personal income reduced, while their overall household incomes also dropped.

Working from home has caused paralegals to struggle to unplug after work, stay motivated, and cope with distractions.

28% say that their biggest struggle was communicating and collaborating.

Lawyer responsiveness to paralegals has remained at the same level as office working.



Good News, Bad News

[Adrian Camara](#), CEO of Athennian, told me that he sees good and bad news in these findings. On the good news side, the survey shows that working from home has not resulted in any reduction in lawyer responsiveness to paralegals, while paralegals have been even more productive than in the office.

As firms consider what their working arrangements should be in a post-pandemic world, these findings support scenarios that continue to include working from home and other remote-working options, he said.

But on the bad news side, the survey shows that paralegals have experienced negative effects from the pandemic.

“We found that, in general, paralegals are experiencing significant pressures, including increasing workloads and anxiety around Covid-19, all of which have had an impact on mental health,” Camara said. “They are experiencing family health issues, the loss of colleagues, lost income, and isolation.”

What this means, Camara said, is that law firms and legal departments should make it a priority to provide the right tools, systems and resources to support paralegals, including cloud technology to support remote working and communication and collaboration tools to minimize isolation.

“The message to employers is loud and clear,” he said. “It’s time to take notice of employee health, both physical and mental. If the well-being of your employees is not supported, there is likely to be a real business impact on client relationships, talent retention, and the ability of legal teams to work effectively.”

Full survey results are available from [Athennian’s website](https://landing.athennian.com/pandemicresearch) (<https://landing.athennian.com/pandemicresearch>).



Bob is a lawyer, veteran legal journalist, and award-winning blogger and podcaster. In 2011, he was named to the inaugural Fastcase 50, honoring “the law’s smartest, most courageous innovators, techies, visionaries and leaders.” Earlier in his career, he was editor-in-chief of several legal publications, including The National Law Journal, and editorial director of ALM’s Litigation Services Division. At LexBlog, he oversees LexBlog.com, the global legal news and commentary network.

Reprinted courtesy of Robert Ambrogi, LawSitesBlog.com. The original article was published on December 3, 2020 and can be found at <https://www.lawsitesblog.com/2020/12/pandemic-pushes-paralegals-to-work-more-and-worry-more-survey-finds.html>.



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UNCOVERING CRYPTOCURRENCY INVESTMENTS DURING DIVORCE LITIGATION

"Cryptocurrency" has become a part of our vocabulary and plays an increasingly important role in our economy year after year. In 2021, the asset class is still considered relatively new and the term is often misunderstood. In this article, we hope to offer clarity by presenting some basic crypto facts, and answering a few common questions: What is cryptocurrency? How does one obtain it? Additionally, we will discuss how to discover if cryptocurrency is being concealed during divorce litigation.

Basic terminology and facts:

1. What is Cryptocurrency? Cryptocurrency is a digital currency exchanged between peers without requiring a third party, such as a bank or financial institution. It enables consumers to digitally connect through a transparent digital process that reveals the value of transactions, but not the identities of those conducting them. Networks consisting of a chain of computers approve cryptocurrency exchanges, preventing the duplication of transactions and potentially reducing the possibility of fraud.

2. Three Main Categories of Cryptocurrency: Bitcoin, Altcoins, and Tokens. Bitcoin (BTC) was the first cryptocurrency, created and launched in 2009. Bitcoin is a global peer-to-peer electronic payment system that allows parties to transact directly with each other without the need for an intermediary such as a bank. Bitcoin's release paved the way for thousands of other cryptocurrencies to be created, otherwise known as 'alternative coins' or 'altcoins' that use a variation of the bitcoin blockchain or a different underlying blockchain technology (for example Ethereum). Unlike Bitcoin and Altcoin, tokens cannot operate independently and are dependent on the network of another cryptocurrency, which means they are built on top of an existing cryptocurrency's blockchain (for example an ERC20 token on the Ethereum blockchain).

3. What is a Blockchain? Blockchain is the technology that records and stores data across multiple computer systems linked by a peer-to-peer network and was introduced alongside Bitcoin, as a method of recording transactional data – namely, in blocks that are linked together to form a chain. As the number of transactions grows, so does the blockchain. Blocks record and confirm the time and sequence of transactions, which are then logged into the blockchain, a discrete

network governed by rules agreed upon by network participants. Think of blockchain as an operating system, such as Microsoft Windows or MacOS, and bitcoin as one of the many applications that can be run on that operating system.

4. Cryptocurrency Wallets: A cryptocurrency wallet is a software program that stores and transfers digital currencies. Because cryptocurrency does not exist in physical form, the wallet records cryptocurrency transactions and they are stored on the blockchain. Many forms of cryptocurrency have their own wallets. Therefore, if one purchases Bitcoin, then one will have a Bitcoin wallet.

Cryptocurrency wallets can be “hot” or “cold”. “Hot wallets” have been or are connected to the internet; so they are more accessible but less secure. Hot wallets are either (1) downloaded and installed on a PC or laptop and accessible only from the computer on which they are downloaded, (2) accessible online from any device via the cloud, or (3) mobile, running on a phone app that can be used anywhere, including retail stores. “Cold wallets” (commonly referred to as cold storage) are kept offline. They are less accessible, but more secure. A user’s private and public access keys are either stored on a hardware device (such as a USB) or recorded on a physical printout.

6. Cryptocurrency ATMs. Just like a bank ATM, one can buy cryptocurrency at a stationary exchange with cash or a credit card. Some ATMs will verify the identity of its users by requesting a phone number, then send that number a text message with a code to enter into the machine. The ATM will then ask for a cryptocurrency wallet address. If no wallet address has been established, the ATM will create one. Once the ATM has processed the cash or credit card payment, cryptocurrency will be sent to a cryptocurrency wallet.

7. Cryptocurrency Keys. Each wallet has a public and private key. In simple terms, one can think of a public and private key just like an email account or bank login; the public key is like a username or email address, while the private key is like a password. Sending coins from one wallet to another requires a private key. If a private key is lost or destroyed, the wallet may be permanently inaccessible – meaning those funds will be lost. If a private key is stolen, funds can be taken from their rightful owner, who will have no recourse as cryptocurrency transactions are irreversible.

How do I know if my client or his/her spouse has cryptocurrency?

Cryptocurrency can be hard to find unless the buyer of the cryptocurrency purchases coins with a bank or credit card account, or via a financial exchange.

1. Bank and Credit Card Statements: Finding transfers to or from a cryptocurrency exchange is evidence that someone has been transacting in cryptocurrency, and will open the door for additional discovery for exchange account records. The first place to look would be monthly/periodic bank and credit card statements. One may also consider reviewing Venmo and PayPal account activity and transactions. Further, one can look for any purchases of hardware devices such as Ledger, Trezor or KeepKey.¹

2. Tax Returns: Reviewing tax returns may also reveal whether or not a client is transacting in cryptocurrency. Cryptocurrency is considered property (and not currency) by the IRS. While merely purchasing and holding cryptocurrency is not a taxable transaction, each time an individual sells cryptocurrency the transaction is characterized as the sale of property for federal tax purposes and should be reported in an income tax return (e.g., Form 1040, Schedule D) as a gain or loss. If an individual is paid (as an employee or subcontractor) in cryptocurrency, that individual should

also be provided a Form W-2 or Form 1099 that values the payments in dollars as of the date the payments were made.

Further, U.S. individual taxpayers are currently required to “check the box” on Form 1040 to disclose whether or not one received, sold, sent, exchanged, or otherwise acquired any financial interest in any cryptocurrency (referred to as “virtual currency” by the IRS). The IRS has found that taxpayers are claiming far less than they actually hold or trade. As a result, the IRS was granted access to all Coinbase (the most commonly used domestic exchange) transactions valued at more than \$20,000 by a U.S. Federal judge in 2017 to identify transactions and issue letters to taxpayers (see *United States v. Coinbase*).² Right now, it is difficult for the IRS to conduct similar investigations of foreign cryptocurrency exchanges.

3. Subpoenas: It might be possible to subpoena account records from cryptocurrency exchanges. Be aware that many cryptocurrency exchanges are not U.S. based; therefore, obtaining documents from them might prove challenging. Further, it might be possible to depose individuals or business partners who might have paid cryptocurrency to any parties involved in a dispute.

4. Public Blockchain: If one is able to obtain any public addresses, the historical transactions related to those public addresses are publicly viewable on the blockchain. The blockchain can be searched online via many free websites. Keep in mind that each cryptocurrency has its own blockchain and some cryptocurrencies have been designed for privacy, therefore not all of the underlying information would be visible on the public blockchain.

5. Physical Inspection of the Marital Residence: If the client still has legal access to the marital residence, items there could indicate the ownership of cryptocurrency. Clients can be instructed to look for evidence of paper wallets such as private keys, public addresses, QR codes and seed phrases. Specifically, the client should look for any written strings of alpha-numeric characters or random strings of words. Seed phrases are typically a listing of seemingly random words (typically 12, 18, or 24 words long). Clients can also look for hardware devices which store a user's public and private keys on them, such as Ledger, Trezor or KeepKey.³

6. The Spouse's Electronic Devices: If a party is making an intentional, careful, well-researched effort to hide marital assets, he or she might be able to avoid leaving a paper trail. In that case, the last remaining recourse may be to obtain and search the spouse's electronic devices with the help of a computer forensic expert. This can often be done through the court discovery process. If this is not preferred or not possible, attorneys may consider the legal implications of the potential clandestine forensic imaging of the spouse's electronic devices - assuming the client still has legal and physical access to them.

Computer forensic experts are able to search for evidence of cryptocurrency use—such as public addresses, private keys, software wallets, internet history and emails that might include cryptocurrency trade confirmations or other relevant information—on electronic devices.

How do I know what to ask for?

Because it is elusive and difficult to find, cryptocurrency will require special attention when clients or adversaries are not forthcoming regarding the disclosure of their assets. One may consider including language specific to cryptocurrency holding in discovery demands or interrogatories. A few examples may include requests for:

- a. Forms 1099-K issued by exchanges.
- b. List of all digital assets/digital currencies held, received, accepted, utilized, purchased

or sold as of [specify date(s)].

c. List all computer hardware (and its physical location(s)) and software devices which are or have previously been used, to accept, transfer or store virtual or digital assets.

Consider hiring a forensic accountant:

If you suspect that your client or an adversary's client is hiding cryptocurrency, you may wish to hire a forensic accountant to assist you in your case. Friedman, in conjunction with our affiliate company CyZen, has developed the sophisticated infrastructure necessary to trace blockchain transactions.

The technological concepts illustrated in this article may be equally relevant in other types of legal disputes, both civil and criminal, involving transactions, money laundering allegations and business valuation calculations.

Friedman's Forensic Accounting, Litigation and Valuation Services (FLVS) Practice and cybersecurity professionals stand at the forefront of the technology industry. We are ready to assist.

Susan Miano, CPA, ABV, CFF, Partner, and Danielle Bellomo, CPA/ABV, FLVS Manager

[1] Types of hardware wallets which are special types of bitcoin wallets which store the user's private keys in a secure hardware device.

[2] United States v. Coinbase, Inc., 2017 U.S. Dist. LEXIS 196306 (Nov. 28, 2017).

[3] Before accessing the information contained in privately owned devices, litigants should first check with their lawyers about any potential legal ramifications including the legality of accessing information without the permission of the spouse to which it may legally belong.

Susan Miano, CPA, ABV, CFF, Partner and Danielle Bellomo, Senior Manager, are members of Friedman LLP's Forensic Accounting, Litigation and Valuation Services (FLVS) Practice. Together, they provide business valuation and forensic services in the areas of commercial and matrimonial litigation, economic damages, and gift and estate taxation. In recent years, Susan and Danielle have witnessed cryptocurrency coming up in their clients cases. In conjunction with Friedman's distinguished Digital Currency and Blockchain Technology Practice, they have helped uncover these assets. Susan and Danielle are involved in many New Jersey associations including the NJSBA, AAML-New Jersey and many other regional bar associations. Please contact Susan at smiano@friedmanllp.com and Danielle at dbellomo@friedmanllp.com.

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CORPORATE TRANSPARENCY ACT

By: Jim Nash and Keith Sheppard

On January 1, the National Defense Authorization Act for Fiscal Year 2021 was enacted into law. The bill includes the Corporate Transparency Act (the "CTA") which creates a beneficial ownership registry within the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"), requiring certain corporations and limited liability companies to report information on their "beneficial owners" to FinCEN.

What information is required be reported?

Beneficial owners and companies must report a list of beneficial owners as well as the following for each beneficial owner: 1) legal name, 2) date of birth, 3) current residential or business address and 4) Government issued identification number.

What are the requirements of the CTA?

The CTA requires corporations and limited liability companies to disclose to law enforcement and others with legally mandated anti-money laundering responsibilities (for e.g. financial institutions) information on who is the real, natural person (a.k.a. beneficial owner) who owns and controls an entity at the point of formation and update such information upon any change. This rule reflects a growing international trend to require disclosure of beneficial ownership and creates a compliance regime similar to that of many other countries.

Who is FinCEN?

FinCEN is a government bureau that works to prevent and punish money laundering and related financial crimes of criminals and terrorists networks. They also track suspicious persons and activity by researching mandatory disclosures for financial institutions.

FinCEN receives its duties from the United States Congress and the director of the bureau is appointed by the Treasury Secretary

What is a Beneficial Owner?

The CTA defines a beneficial owner as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise 1) Exercises substantial control over an entity or 2) Owns or controls at least 25% of the ownership interests in an entity and 3) Receives substantial economic benefits from the assets of a corporation or limited liability company. A "beneficial owner" does not include:

- a minor child (the information of the parent or guardian must be reported instead);
- an individual acting as a nominee, intermediary, custodian or agent on behalf of another individual;
- an individual acting solely as an employee of a reporting company;
- an individual whose only interest in the reporting company is through inheritance; or



- a creditor of a reporting company.

Who will have access to this information?

Federal, state, local and tribal law enforcement would have access to the information for use in authorized investigations as would financial institutions (with customer consent) that have legally mandated anti-money laundering obligations. Note, the CTA will not require states to maintain a separate beneficial ownership information registry.

Are There Exemptions?

The CTA explicitly exempts:

- Companies that employ more than 20 people, report revenues of more than \$5 million on tax returns, and have a physical presence in the United States;
- Most financial services institutions, including investment and accounting firms, securities trading firms, banks, and credit unions that report to and are regulated by government agencies such as the Securities and Exchange Commission, the Office of the Comptroller of the Currency, or the FDIC; and
- Churches, charities, and other nonprofit organizations.

What will be the responsibilities of states on handling the new reporting requirement?

The CTA will require states to notify filers upon initial formation or registration of the federal requirement to provide beneficial ownership to FinCEN. States will have two years after the effective date of the regulations governing the CTA to begin providing such notice. States must also provide filers with the reporting company form created by the secretary of the Treasury and must also update their websites to notify filers of the federal requirements under the CTA.

When is the reporting requirement expected to take effect?

The U.S. Treasury must pass and put rules into effect by December 31, 2021, at which time reports will commence being required.

What is the grace period for existing companies to submit their information?

Starting in 2022, existing companies will have two years to submit initial reports while individuals forming or registering new companies will be required to submit reports at the time of formation or registration.

Is there a penalty for non-compliance?

Any party that intentionally fails to comply with the reporting requirements of the CTA may be liable for fines of no more than \$500 for each day that there is a willful failure to report complete beneficial ownership information and such parties may be subject to aggregate fines of up to \$10,000 or a prison term of up to two years.

How does this change how annual reports are filed?

Companies will be required to submit annual reports that identify the company's beneficial



owners and changes in beneficial ownership.

What should companies prepare for?

Consult with your attorney on the impact of the new laws and evaluate how your company can remain in compliance.

About the Authors



Jim Nash serves as the Business Development and New York City Operations Manager for United Corporate Services, Inc. Jim is a former Paralegal Manager with 30+ years of experience in the corporate and structured finance law firm arena. Jim received his MBA from Fordham University and is a long-term supporter of several paralegal associations. Contact Jim at jim.nash@unitedcorporate.com.



Keith Sheppard is the Marketing/Business Development Manager for United Corporate Services, Inc. and former Corporate Paralegal Manager. Keith received his Bachelor of Science degree in Paralegal Studies from St. John's University. As a corporate paralegal and manager with over two decades of experience in the legal services field, Keith has developed an awareness for how to assist lawyers and fellow paralegals with corporate filings and due diligence. Contact Keith at keith.sheppard@unitedcorporate.com.