

What Every Lawyer and Paralegal Must Know About the Utilization of Paralegals In New Mexico

Rules Governing Paralegal Services
Rules 20-101 through 20-115 NMRA 2006



The Paralegal Division of the State Bar of New Mexico promotes the highest ethical and professional standards for paralegal activities. The Division opposes the offering of legal services to the public by any unlicensed person or any act that constitutes the unauthorized practice of law.

What is a Paralegal?

A paralegal:

- *contracts with or is employed by a lawyer, a law firm, corporation, governmental agency or other entity;*
- *performs substantive legal work under the supervision of a licensed lawyer who assumes professional responsibility for the final work product; and*
- *meets one or more of the education, training or experience qualifications set forth in Rules Governing Paralegal Services.*

Persons not meeting the definition of a paralegal as outlined in the New Mexico Supreme Court Rules are discouraged from identifying themselves as a "paralegal". Lawyers are also discouraged from identifying non-lawyer support staff as paralegals unless s/he qualifies as a paralegal. Disbarred and suspended lawyers do not qualify as paralegals.

What is "Substantive Legal Work"?

"Substantive legal work" is work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. Examples of substantive legal work performed by a paralegal include: case planning, development and management; legal research and analysis; interviewing clients, fact gathering and retrieving information; drafting legal documents; collecting, compiling and utilizing technical information to make an independent decision and recommendation to the supervising lawyer; and representing clients before a state or federal administrative agency if that representation is authorized by law. Substantive legal work performed by a paralegal for a licensed lawyer does not constitute the unauthorized practice of law.

Paralegal v. Legal Assistant?

Historically, the terms "paralegal" and "legal assistant" have been used interchangeably. The term "legal assistant" is now being used to refer to positions outside the paralegal definition, including legal secretaries and other law office support staff, and is no longer synonymous with the term "paralegal." Within the last few years, the term "paralegal" has become the preferred term across the United States to identify highly trained, highly skilled legal support staff that engage in substantive legal work.

What are the Qualifications for a Paralegal in New Mexico?

A paralegal shall meet one or more of the following educational, training or work experience qualifications:

- A. *graduation from a paralegal program that is:*
- (1) approved by the American Bar Association (ABA); or*
 - (2) an associate degree program; or*
 - (3) a post-baccalaureate certificate program in paralegal studies; or*
 - (4) a bachelor's degree program; or*
- B. *graduation from a post-secondary paralegal program which consists of a minimum of 60 semester hours or equivalent, as defined by the ABA Guidelines for the Approval of Paralegal Education Programs, of which at least 18 semester hours are general education courses and 18 semester hours are legal specialty courses; or*
- C. *a bachelor's degree in any field plus two (2) years of substantive law-related experience under the supervision of a licensed lawyer (successful completion of at least 15 semester hours of substantive paralegal courses may be substituted for one year of law-related experience); or*
- D. *graduation from an accredited law school and not disbarred or suspended from the practice of law by the State of New Mexico or any other jurisdiction; or*

E. certification by the National Association of Legal Assistants, Inc., the National Federation of Paralegal Associations, Inc., or other equivalent national or state competency examination plus at least 1 year of substantive law-related experience under the supervision of a licensed lawyer; or
F. a high school diploma or equivalent plus seven (7) years of substantive law-related experience under the supervision of a licensed lawyer.

What Conduct is Prohibited by a Paralegal?

A paralegal shall not:

- *provide legal advice;*
- *represent a client in court except to the extent authorized by law;*
- *select, explain, draft or recommend the use of any legal document to or for any person other than the lawyer, unless the supervising lawyer or judge, in the case of paralegals employed by the courts, so directs;*
- *engage in any conduct that constitutes the unauthorized practice of law;*
- *contract with or be employed by a natural person other than a lawyer to provide paralegal services except to the extent authorized by law.*
- *in connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service or enter a transaction from which income or profit, or both, purportedly may be derived;*
- *establish fees to charge a client for the services the paralegal or lawyer perform; or*
- *perform services directly for a consumer except as performed under the supervision of a lawyer.*

A paralegal cannot appear, plead, try cases or argue in court on behalf of anyone or do anything in a representative capacity for a client unless specifically authorized by the Rules of Professional Conduct, statutes, court rules or decisions.

Are Paralegal Fees Recoverable?

In *Missouri v. Jenkins*, 491 U.S. 274 (1989), the Supreme Court gave its blessing to the practice of billing paralegal hours at market rates, stating that “[b]y encouraging the use of lower cost paralegals rather than attorneys wherever possible, permitting market-rate billing of paralegal hours encourages cost-effective delivery of legal services. . . .” Further, courts are increasingly prone to reduce fee awards when they determine that the work performed should have been done by a paralegal instead of a lawyer. *See, e.g., Lipsett v. Blanco*, 975 F.2d 934 (1st Cir. 1992).

What Is a Paralegal’s Duty to the Public?

A paralegal:

- *should disclose to the client that s/he is not a lawyer and cannot give legal advice*
- *must preserve the confidentiality of the client; and*
- *must never represent a client in court except to the extent authorized by law.*

A paralegal may not engage in any activities that, if engaged in by the lawyer, would constitute a violation of the Rules of Professional Conduct. A paralegal shall perform services for the public only when under the supervision of a lawyer unless otherwise authorized by law.

Can a Paralegal’s Name Appear on Firm Letterhead?

The letterhead of a lawyer or law firm may not include the name of a paralegal. However, a lawyer or a law firm may permit its name to appear on the business card of a paralegal, provided that the paralegal’s capacity is clearly indicated.

Accountability?

The paralegal is directly accountable to the lawyer. The lawyer maintains ultimate responsibility for and has an ongoing duty to actively supervise the paralegal’s work performance, conduct and work product.

What is the Lawyer’s Responsibility?

An attorney who supervises a paralegal:

- *must ensure that the conduct of the paralegal complies with the New Mexico Supreme Court Rules Governing Paralegal Services;*
- *must ensure that the paralegal is competent to perform the work assigned to him/her;*
- *must not permit, encourage or influence the paralegal to recommend that any person or entity retain the lawyer or the lawyer’s law firm;*
- *must not form a partnership or other entity with the paralegal for the purpose of practicing law;*
- *must not share fees with the paralegal;*
- *is responsible to ensure that no personal, social or business interest or relationship of the paralegal impinges upon, or appears to impinge upon, the services rendered to the client;*
- *has an obligation to ensure that the paralegal does not engage in any activities which, if engaged in by the lawyer, would constitute a violation of the Rules of Professional Conduct; and*
- *must, at all times, maintain ultimate responsibility for actively supervising the paralegal’s conduct, work performance, and work product.*

A paralegal cannot appear, plead, try cases or argue in court on behalf of anyone or do anything in a representative capacity for a client unless specifically authorized by the Rules of Professional Conduct, statutes, court rules or decisions.

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