

**ARKANSAS BAR ASSOCIATION  
MODEL GUIDELINES FOR PARALEGAL UTILIZATION**

Proper utilization of the services of paralegals contributes to the delivery of cost-effective, high-quality legal services. Paralegals and the legal profession should be assured that measures exist for identifying paralegals and their role in assisting attorneys in the delivery of legal services.

The primary governing rule in utilizing paralegal services is Rule 5.3 of the ABA Model Rules of Professional Conduct: “supervising lawyers should ensure that the conduct of paralegals and legal assistants is compatible with the lawyer’s professional obligations.”

In addition, several references are made to state law and regulations. Arkansas Rule of Professional Conduct 5.3 provides:

**RULE 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

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

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

As part of the utilization of paralegals, it is necessary to define a paralegal and his or her position as a nonlawyer in an attorney's office, law firm, or corporate legal department. The Committee relies upon the American Bar Association's definition of a paralegal: "A legal assistant or paralegal is a person, qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible."

**Guideline 1: A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer's direction and should take reasonable measures to ensure that the paralegal's conduct is consistent with the lawyer's obligations under the Arkansas Rules of Professional Conduct.**

A. Lawyers are encouraged to delegate appropriate tasks to paralegals in order to provide economic and efficient legal services to clients and employers.

B. A supervising lawyer is responsible for work product and for providing appropriate supervision to a paralegal.

C. A lawyer must give paralegals appropriate instructions about the rules governing the attorney's professional conduct and must require that the paralegals act accordingly.

D. The lawyer must directly supervise the paralegal to ensure that the paralegal is acting consistently with the lawyer's ethical and professional obligations.

**Guideline 2: Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer except those tasks that only a lawyer is allowed to do in accordance with law, court rule, administrative regulation, controlling authority, and the rules of professional conduct.**

A. There are three specific kinds of tasks that paralegals may perform under attorney supervision: factual investigation and research, legal research, and the preparation of legal documents. Any task performed by the paralegal must be taken to the client by the lawyer and the lawyer must vouch for the work to the client.

B. The lawyer should start supervision by ensuring that the paralegal has sufficient education, background, and experience to handle the tasks assigned.

C. The lawyer should give adequate instructions when assigning projects and should monitor the progress of the project.

D. It is the lawyer's sole responsibility to review the completed work product to make sure it is completed in accordance with the assigned task.

E. Paralegals are responsible for being familiar with the specific statutes, rules, and regulations governing the area of law in which they provide paralegal services.

F. In the supervision of a paralegal, consideration should be given to:

- Designating work assignments that correspond to the paralegal's abilities, knowledge, training and experience;
- Educating and training the paralegal with respect to professional responsibility, local rules and practices, and firm policies; and
- Monitoring the work and professional conduct of the paralegal to ensure that the work is substantively correct and timely performed.

**Guideline 3: A lawyer shall not permit a paralegal to engage in the practice of law.**

A. The following tasks may not be performed by a paralegal:

- Establishing a lawyer-client relationship and the terms of that relationship;
- Setting fees;
- Giving oral or written legal advice or rendering a legal opinion;
- Interpreting legal documents for a client; and
- Appearing before courts, administrative tribunals, or other adjudicatory bodies unless the rules of that agency or body permit such appearances.

B. While there is no standard definition of the “practice of law,” under the American Bar Association’s Model Rules of Professional Conduct, it is generally understood to be the application of the professional judgment of the lawyer in solving a client’s legal issues.

C. A paralegal has an independent obligation to avoid illegal conduct and to work directly under an attorney’s supervision.

D. The lawyer must maintain a direct relationship with the client, supervise the delegated work, and be completely responsible for the work performed.

E. A paralegal’s service must not interfere with the direct relationship between the client and the attorney. That relationship is critical to the lawyer’s exercise of professional judgment.

F. While paralegals cannot give a legal opinion, a paralegal may be authorized by his or her supervising attorney to communicate the attorney's opinion to the client. In this case, the paralegal may not interpret or expound on that opinion.

G. A paralegal shall not conduct depositions.

H. It is the lawyer's responsibility to determine whether a specific task is properly delegable in this jurisdiction, according to statute, case law, administrative regulations, and codes of professional conduct.

**Guideline 4: A lawyer is responsible for taking reasonable measures to ensure that clients, courts, and other lawyers are aware of a paralegal's position as a nonlawyer and that the paralegal is not licensed to practice law.**

A. Lawyers should require their paralegals to disclose their status as paralegals at the outset of any professional relationship with a client, other attorneys, a court or administrative agency or personnel thereof, or members of the general public.

B. Those who communicate with the paralegal should be aware that the paralegal is not a lawyer and is not licensed to practice law.

C. Any paralegal title must be clear and not deceptive as to the paralegal's status as a nonlawyer.

D. Paralegals may sign correspondence as long as their status is clearly designated.

E. Paralegals may be listed on a lawyer's letterhead so long as it is clearly indicated that they are paralegals and not attorneys.

**Guideline 5: A lawyer is responsible for taking reasonable measures to ensure that all client confidences are preserved by a paralegal.**

A. Since the operation of a law practice exposes confidential client information to nonlawyer employees, the lawyer is responsible for training his staff to keep client confidences and secrets.

B. This applies to ALL information, regardless of how it is gathered, whether directly from the client or in the context of investigation or discovery.

C. The paralegal has a continuing duty to maintain confidences. It does not cease when representation or employment has concluded.

D. The paralegal is charged with understanding the lawyer's professional responsibility and code of ethics and with avoiding any action that would involve the

lawyer in violating his or her professional responsibility or that would give the appearance of professional impropriety.

**Guideline 6: A lawyer should take reasonable measures to prevent conflicts of interest resulting from a paralegal's other employment or interests.**

A. Paralegals should inform the supervising attorney and the management of the firm of any conflict of interest or any interest that would give the appearance of a conflict.

B. "Other interests" include personal relationships, financial interests, previous employment, or other employment.

C. This should not imply that a paralegal is restricted from changing jobs. Too many restrictions would require that paralegals leave their careers, which would prove a disservice to the public.

D. Lawyers should restrict the paralegal from working on any case or matter on which the paralegal may have worked in a previous firm or may otherwise have a conflict.

E. If screening or restrictions on a paralegal's involvement are not effective, the employing law firm may be disqualified from representing the client. This disqualification may be rebutted if:

(i) the paralegal has been instructed not to disclose client information from a previous employer;

(ii) the paralegal has been instructed not to work on matters which he or she worked on in a previous firm or in which he or she has knowledge based on previous employment;

(iii) the law firm has done everything possible to ensure that the paralegal does not work on a matter on which he or she worked during previous employment; and

(iv) the client consents to the paralegal's work on the matter.

F. Screening includes building an "ethical wall" to prevent the paralegal from any involvement in a conflicted matter or from receiving or disclosing information.

**Guideline 7: A lawyer may include a charge for the work performed by a paralegal in billing for legal services.**

A. A legal fee may include a charge for paralegal services at market rate.

B. The services performed must not be clerical in nature.

C. Evidence must exist that, in the absence of a paralegal, a lawyer would have performed the task at a higher rate.

**Guideline 8: A lawyer may not split legal fees with a paralegal nor pay a paralegal for the referral of legal business. A lawyer may compensate a paralegal based on the quantity and quality of the paralegal's work and the value of that work to a law practice, but the paralegal's compensation may not be contingent, by advance agreement, upon the outcome of a particular case or class of cases.**

Paralegals who assist the legal practice in achieving a particular goal or in making a profit may be recognized with a discretionary bonus based on the overall success and not the fees generated from any particular case.

**Guideline 9: A lawyer who employs a paralegal should facilitate the paralegal's continuing self-improvement by encouraging and supporting the paralegal's participation in professionalism, continuing education, and pro bono or public service activities.**

A. A paralegal's continuing competence is critical to responsible client representation.

B. It is important for a paralegal to attend continuing education seminars, participate in professional associations to keep abreast of changes in the law, learn new practices and procedures, and network with individuals and other professionals who are more knowledgeable about certain areas of the law.

C. In the supervision of a paralegal, a lawyer should provide or encourage continuing education for the paralegal in substantive matters through courses, institutes, workshops, seminars and in-house training.

D. Education and training generally improve the legal services rendered by lawyers employing paralegals. Further, education improves job satisfaction for the paralegals themselves.

E. Including paralegals in pro bono and public service activities enhances the ability of the law practice to provide more of those services.