

**16-18-34 Definition of legal assistant paralegal**

Legal assistants (also known as ~~p~~Paralegals) are a distinguishable group of persons who assist licensed attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants paralegals have knowledge and expertise regarding the legal system, substantive and procedural law, the ethical considerations of the legal profession, and the Rules of Professional Conduct as stated in chapter 16-18, which qualify them to do work of a legal nature under the employment and direct supervision of a licensed attorney. This rule shall apply to all unlicensed persons employed by a licensed attorney who are represented to the public or clients as possessing training or education which qualifies them to assist in the handling of legal matters or document preparation for the client.

**16-18-34.1 Minimum Qualifications**

Any person employed by a licensed attorney as a legal assistant paralegal must meet the minimum qualifications of:

- (1) Successful completion of any of the following national certifying examinations for paralegals:
  - (a) the Certified Legal Assistant (CLA) or Certified Paralegal (CP) examination of the National Association of Legal Assistants, Inc., (NALA); or
  - (b) PACE Registered Paralegal (RP) examination of the National Federation of Paralegal Associations (NFPA); or
  - (c) Certified Professional Paralegal (PP) examination of NALS, Inc.; or
- (2) Graduation from an ABA approved program of study for legal assistants paralegals, grandfathering any program with an ABA application pending at the time these provisions take effect, such grandfathering to last until such time as the pending application is either approved or denied by the ABA; or
- (3) A juris doctorate degree, but not actively practicing law. Graduation from a course of study for legal assistants which is institutionally accredited, but not ABA approved, and which requires not less than the equivalent of sixty semester hours of classroom study; or
- (4) ~~Graduation from a course of study for legal assistants other than those set forth in (2) and (3) above, plus not less than 6 months in-house training as a legal assistant, whose attorney employer attests that such person is qualified as a legal assistant; or~~
- (5) ~~A baccalaureate degree in any field, plus not less than 6 months in-house training as a legal assistant;~~
- (6) ~~A minimum of three years of law related experience under the supervision of a licensed attorney, including at least six months of in-house training as a legal assistant; or~~
- (7) ~~Two years of in-house training as a legal assistant.~~

Provided, further, that a legal assistant paralegal hereunder shall have a high school diploma or general equivalency diploma (GED). In addition, persons who qualify under paragraph (1) above must keep the certification maintained.

For purposes of these standards, ~~“in-house training as a legal assistant” means legal education of the employee by a licensed attorney concerning legal assistant duties and these guidelines. In addition to review and analysis of assignments,~~ †The legal assistant paralegal and

the supervising attorney should be knowledgeable receive a reasonable amount of instruction directly related to of the duties and obligations of the legal assistant paralegal and the Rules of Professional Conduct as stated in this chapter.

Persons who have not met these minimum requirements or are in the process of meeting these requirements may not use the “paralegal” designation.

Grandfather Clause: Any person who has met the minimum qualifications of a paralegal as set forth in Supreme Court Rule 97-25 on or before July 1, 2007, shall continue to be qualified as a paralegal under this statute.

**16-18-34.2. Utilization of ~~legal assistants~~ paralegals**

Utilization of ~~legal assistants~~ paralegals by licensed attorneys is subject to the following rules:

- (1) An attorney may permit a ~~legal assistant~~ paralegal to assist in all aspects of the attorney’s representation of a client, provided that:
  - (a) The status of the ~~legal assistant~~ paralegal is disclosed at the outset of any professional relationship with a client, other attorneys, courts or administrative agencies, or members of the general public;
  - (b) The attorney establishes the attorney-client relationship, is available to the client, and maintains control of all client matters;
  - (c) The attorney reviews the ~~legal assistant’s~~ paralegal’s work product and supervises performance of the duties assigned;
  - (d) The attorney remains responsible for the services performed by the ~~legal assistant~~ paralegal to the same extent as though such services had been furnished entirely by the attorney and such actions were those of the attorney;
  - (e) The services performed by the ~~legal assistant~~ paralegal supplement, merge with and become part of the attorney’s work product;
  - (f) The services performed by the ~~legal assistant~~ paralegal do not require the exercise of unsupervised legal judgment; this provision does not prohibit a ~~legal assistant~~ paralegal appearing and representing a client at an administrative hearing provided that the agency or board having jurisdiction does not have a rule forbidding persons other than licensed attorneys to do so and providing that the other rules pertaining to the utilization of ~~legal assistant~~ paralegal are met; and
  - (g) The attorney instructs the ~~legal assistant~~ paralegal concerning standards of client confidentiality.

A ~~legal assistant~~ paralegal may not establish the attorney-client relationship, set legal fees, give legal advice or represent a client in court; nor encourage, engage in, or contribute to any act which would constitute the unauthorized practice of law.

- (2) A ~~legal assistant~~ paralegal may author and sign correspondence on the attorney’s letterhead, provided the ~~legal assistant’s~~ paralegal’s status is indicated and the correspondence does not contain legal opinions or give legal advice.
- (3) An attorney may identify a ~~legal assistant~~ paralegal by name and title on the attorney’s letterhead and on business cards identifying the attorney’s firm.

### 16-18-34.3. Ethical considerations

The proper use of assistants paralegals who are not licensed attorneys significantly increases the ability of attorneys to provide quality professional services to the public at reasonable cost. An attorney cannot, however, delegate his or her ethical proscriptions by claiming that the violation was that of an employee. Thus, in order to secure compliance with the Rules of Professional Conduct more specifically as stated in chapter 16-18, the following ethical guidelines are applicable to the attorney's use of nonlicensed assistants paralegals:

- (1) An attorney shall ascertain the assistant's paralegal's abilities, limitations, and training, and must limit the assistant's paralegal's duties and responsibilities to those that can be competently performed in view of those abilities, limitations, and training.
- (2) An attorney shall educate and train assistants paralegals with respect to the ethical standards which apply to the attorney.
- (3) An attorney is responsible for monitoring and supervising the work of assistants paralegals in order to assure that the services rendered by the assistant paralegal are performed competently and in a professional manner.
- (4) An attorney is responsible for assuring that the assistant paralegal does not engage in the unauthorized practice of law.
- (5) An attorney is responsible for the improper behavior or activities of assistants paralegals and must take appropriate action to prevent recurrence of improper behavior or activities.
- (6) Assistants Paralegals who deal directly with an attorney's clients must be identified to those clients as nonlawyers, and the attorney is responsible for obtaining the understanding of the clients with respect to the rule role of and the limitations which apply to those assistants.
- (7) A legal-assistant paralegal should understand the Rules of Professional Conduct and these rules in order to avoid any action which would involve the attorney in a violation of chapter 16-18, or give the appearance of professional impropriety.
- (8) An attorney takes reasonable measures to insure that all client confidences are preserved by a legal-assistant paralegal.
- (9) An attorney takes reasonable measures to prevent conflicts of interest resulting from a legal-assistant's paralegal's other employment or interest insofar as such other employment or interest would present a conflict of interest if it were that of the attorney.
- (10) An attorney may include a charge for the work performed by a legal-assistant paralegal in setting a charge for legal services.
- (11) An attorney may not split legal fees with a legal-assistant paralegal nor pay a legal-assistant paralegal for the referral of legal business. An attorney may compensate a legal-assistant paralegal based on the quantity and quality of the legal-assistant's paralegal's work and the value of that work to a law practice, but the legal-assistant's paralegal's compensation may not be, by advance agreement, contingent upon the profitability of the attorney's practice.

The violation of the ethical guidelines of this section by a paralegal or the supervising attorney shall be grounds for discipline of the supervising attorney under chapter 16-19.

### 16-18-34.4. Certain individuals disqualified

The following persons shall not serve as a ~~legal-assistant~~ paralegal in the State of South Dakota except upon application to and approval of the Supreme Court:

- (1) Any person convicted of a felony;
- (2) Any person disbarred or suspended from the practice of law in any jurisdiction;
- (3) Any person placed on disability inactive status under § 16-19-48 or 16-19-92;
- (4) Any person placed on temporary suspension from the practice of law under § 16-19-35.1.

**16-18-34.5. Application by disqualified persons-Requirements-Hearing-Burden of Proof**

The application by a person disqualified under § 16-18-34.4 must establish the applicant's good moral character, competency, education, training, or experience in the legal system, substantive and procedural law, and the Rules of Professional Conduct, and the ability to comply with the ethical considerations of § 16-18-34.3.

The applicant shall have the burden of demonstrating by clear and convincing evidence that the applicant has the moral and ethical qualifications, competency and learning in law required to act as a ~~legal-assistant~~ paralegal in this state and that acting as a ~~legal-assistant~~ paralegal within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest.

The Supreme Court may act upon the application or, where no recommendations have been made under § 16-18-34.7, refer the application to the Disciplinary Board if the applicant was an attorney or to a circuit judge for testimony, findings, and recommendations. The cost of such hearing will be paid as provided by § 16-19-70.1.

The Supreme Court may deny the application if it finds approval would be detrimental to the integrity and standing of the bar or the administration of justice or subversive of the public interest. If the applicant has met the burden of proof, the Supreme Court may grant the application and impose such restrictions or conditions upon the employment and supervision of ~~legal-assistants~~ the applicant as the court deems appropriate for the protection of the public.

**16-18-34.6. Revocation of order for disqualified persons-Hearing-Burden of Proof**

The order granting approval for a disqualified person to act as a ~~legal-assistant~~ paralegal may be revoked by the Supreme Court upon violation of the conditions set by the court, violations of the requirements of §§ 16-18-34 to 16-18-34.5, inclusive, or the termination of employment with the supervising attorney without an approved replacement supervising attorney. The Supreme Court may act to revoke the order upon its own motion, or upon a complaint, may refer the complaint to the Disciplinary Board or a circuit judge for testimony, findings, and recommendations. The cost of such hearing will be paid as provided by § 16-19-70.1.

**16-18-34.7. Recommendations in attorney disciplinary proceedings**

Any recommendation for disbarment or suspension made by the Disciplinary Board under § 16-19-67 or to the referee under § 16-19-68 shall contain a recommendation as to the restrictions or conditions of employment and supervision of the accused attorney as a ~~legal assistant~~ paralegal.