



**KANSAS BAR  
ASSOCIATION**

**OFFICIAL STANDARDS AND GUIDELINES  
FOR THE UTILIZATION OF  
LEGAL ASSISTANTS/PARALEGALS  
IN KANSAS**

Developed by the Kansas Bar Association  
Legal Assistants Committee  
As Amended February 2004

**DISCLAIMER:** The content, websites, and materials contained in these official standards and guidelines are current as of the date of adoption by the Kansas Bar Association Board of Governors (February 2004).

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**SCOPE AND PURPOSE OF STANDARDS AND GUIDELINES**

Attorneys have a moral and ethical duty to make legal services available to the public at affordable prices. In furtherance of this commitment, the services of legal assistants/paralegals are being utilized by attorneys. Except where prohibited by law or the Rules Relating to Discipline of Attorneys adopted by the Supreme Court of the state of Kansas, which supersede and govern these guidelines, an attorney may utilize the services of a legal assistant/paralegal to assist in the representation of a client, as more particularly provided by the guidelines hereinafter set forth.

Questions pertaining to the utilization of legal assistants/paralegals may be addressed to the KBA Legal Assistants Committee by calling the KBA at 785-234-5696 or sending e-mail to [info@ksbar.org](mailto:info@ksbar.org).

**DEFINITION OF “LEGAL ASSISTANT” OR “PARALEGAL”**

The term “legal assistant/paralegal,” as used in these standards and guidelines, is defined by adoption of the American Bar Association (ABA) definition (<http://www.abanet.org/legalservices/legalassistants>), to wit:

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.

Any attorney employing a legal assistant/paralegal shall ascertain that such person is qualified to act in that capacity either by reason of formal education, special training, and/or experience.

**STANDARDS**

Any attorney employing a legal assistant/paralegal should establish guidelines as to the expertise, educational background, and any other special requirements needed for the position. The following are recommendations to assist an attorney in determining an individual’s qualifications as a legal assistant/paralegal. Any one of the following standards may be used to determine an individual’s qualification to be employed as a legal assistant/paralegal.

## **Standard I**

Completion of an education program for legal assistants/paralegals, which has been approved by the ABA or offered by an accredited institution, which is in substantial compliance with ABA guidelines for the approval of legal assistant/paralegal programs.

Comment: Seeking approval of a legal assistant/paralegal education program from the ABA is a voluntary effort initiated by the institution offering the program. An accredited institution that does not offer an ABA-approved program may still provide a good quality education.

## **Standard II**

Completion of one of the nationally recognized examinations specially designed for legal assistants/paralegals.

Comment: At present, a certification program (including successful passing of an eight and one-half-hour competency test) is conducted by the National Association of Legal Assistants (NALA). If an individual successfully completes the NALA requirements for certification, that individual is entitled to use the designation "Certified Legal Assistant" (CLA) or "Certified Paralegal" (CP). If the individual desires to obtain advanced knowledge in a particular field of law upon attaining the CLA or CP designation, they may further the certification process by sitting for and passing the advanced specialty examination, the Certified Legal Assistant Specialist (four-hour examination in a specific field of law).

The National Federation of Paralegal Associations (NFPA) has a four-hour certifying examination called the Paralegal Advanced Competency Examination (PACE), which, if successfully completed, certifies the individual as a "PACE Registered Paralegal RP" (RP).

[See Q&A #3 for update information on certifying examinations by NALA and NFPA.]

## **Standard III**

Completion of either of the following:

- (A) a baccalaureate degree from an accredited institution and not less than one year of in-house training as a legal assistant/paralegal; or
- (B) a minimum of five years of law-related experience under the supervision of an attorney, including at least one year of in-house training as a legal assistant/paralegal.

Comment: There are a number of ways in which a person can demonstrate the competence necessary to be designated a legal assistant/paralegal in addition to a formal education program.

## **GUIDELINES**

### **Guideline I**

An attorney shall not permit a legal assistant/paralegal to give legal advice or to engage in the practice of law except as provided for herein.

Comment: The protection of the public from lack of expertise can be assured by attorneys not permitting laypersons to give legal advice. While a layperson may have some knowledge or expertise in an area, the learning alone does not justify the representation to the public that such person is qualified as a law counselor. These guidelines, therefore, provide that attorneys shall not allow a legal assistant/paralegal to give legal advice or otherwise engage in the practice of law. However, certain services may be performed by the legal assistant/paralegal for the attorney on behalf of the client. For purposes of these guidelines, a legal assistant/paralegal is not practicing law if the legal assistant/paralegal is acting under the ultimate direction and supervision of an attorney when the legal assistant/paralegal is applying knowledge of law and legal procedures on behalf of the attorney.

### **Guideline II**

An attorney shall not permit a legal assistant/paralegal to represent a client before any court or administrative agency, nor shall a legal assistant/paralegal sign any pleading, paper, or document filed on behalf of a client with any court or agency unless expressly permitted by statute or administrative regulation.

Comment: Generally, a legal assistant/paralegal cannot appear, plead, try cases, or argue in court on behalf of another person or do anything in a representative capacity for a client; only the attorney may perform these functions unless expressly permitted by statute, court rule, or administrative regulation. The provisions regarding the signing of documents or pleadings do not prohibit the legal assistant/paralegal from signing as a witness or notary public or in some other nonrepresentative capacity. This guideline is directed solely to the signing of documents as a representative of the client.

### **Guideline III**

An attorney should exercise care to prevent a legal assistant/paralegal from engaging in conduct which would involve the attorney in a violation of the Kansas Rules of Professional Conduct (Rules) or which would result in the loss of designation for the legal assistant/paralegal.

Comment: It is the responsibility of the attorney to instruct and supervise a legal assistant/paralegal so neither the attorney nor the legal assistant/paralegal will be in violation of the Rules and these guidelines. It is recommended that the Rules and these guidelines be delivered to and discussed with the legal assistant/paralegal immediately upon employment of the legal assistant/paralegal to avoid conduct that would reflect adversely on the attorney (or the legal assistant/paralegal) or that would be unethical.

See the "Attorney Checklist for Working With Legal Assistants/Paralegals" on page 17.

#### **Guideline IV**

Except as otherwise prohibited by statute, court rule or decision, administrative rule or regulation, or by the Rules or these guidelines, an attorney may permit a legal assistant/paralegal to perform services in representation of a client provided:

- A. the client is fully informed and understands that the legal assistant/paralegal is not an attorney;
- B. the attorney remains fully responsible for such representation, including all actions taken or not taken by the legal assistant/paralegal;
- C. the attorney maintains a direct relationship with the client; and
- D. the attorney supervises the performance of the legal assistant/paralegal.

Comment: The supervising attorney shall remain directly responsible for all advice given and all actions taken or omitted to be taken by the legal assistant/paralegal and shall be fully accountable to the appropriate professional disciplinary bodies for the work of the legal assistant/paralegal. It follows that where duties are delegated to a legal assistant/paralegal, the supervising attorney must be certain that the legal assistant/paralegal is given adequate guidance and assistance for the carrying out of the duties delegated. It is the attorney who is ultimately accountable for the work of the legal assistant/paralegal on behalf of the client in accordance with the Rules.

#### **Guideline V**

An attorney shall instruct the legal assistant/paralegal to preserve the confidences and secrets of a client.

Comment: The normal operation of a law office exposes legalassistants/paralegals to confidential information, and this obligates an attorney to exercise care in selecting and training legal assistants/paralegals so that the sanctity of all confidences and secrets of clients may be preserved.

## **Guideline VI**

An attorney shall not share fees with a legal assistant/paralegal.

Comment: This guideline is not intended to deny legal assistants/paralegals salaries, bonuses, or benefits, even though they may be tied to the profitability of the firm. It prohibits any form of compensation directly tied to the existence or amount of a particular legal fee. The legal assistant/paralegal should not be compensated for the recommendation of the attorney's services or be deprived of compensation because of the lack of such referrals. This does not imply that the legal assistant/paralegal cannot make the services of the attorney known, as long as it does not violate the Rules or these guidelines.

## **Guideline VII**

An attorney shall not form a partnership with a legal assistant/paralegal if any of the activities of such partnership consist of the practice of law.

Comment: This rule does not prohibit an attorney from entering into a business association with a legal assistant/paralegal for purposes other than the practice of law.

## **Guideline VIII**

A legal assistant/paralegal may have business cards and may be included on the letterhead of an attorney or law firm with their nonattorney status designated.

Comment: A legal assistant/paralegal may have business cards designed to identify the legal assistant/paralegal as such and state by whom the legal assistant/paralegal is employed. In December 1992, the KBA Professional Ethics Advisory Committee recommended allowing the name of a legal assistant/paralegal to be listed on the letterhead of an attorney or law firm.

## **Guideline IX**

An attorney shall instruct the legal assistant/paralegal to disclose at the beginning of any professional contact that the legal assistant/paralegal is not an attorney.

Comment: Disclosure must be made by the legal assistant/paralegal to clients and others outside the law firm to avoid any misunderstanding as to the role of the legal assistant/paralegal. If a legal assistant/paralegal becomes aware that another person believes the legal assistant/paralegal

is an attorney, the legal assistant/paralegal must make it clear that this is not the case. A legal assistant/paralegal may sign correspondence on the law firm's letterhead, provided the signature is followed by an appropriate designation identifying the legal assistant/paralegal as a nonattorney. In all communication, oral and written, the attorney should ensure the nonattorney status of the legal assistant/paralegal is disclosed in dealings with persons outside the office.

## **Guideline X**

An attorney is responsible to ensure that no personal, social, or business interest or relationship of the legal assistant/paralegal conflicts with the services rendered to the client.

Comment: If an attorney accepts a matter in which the legal assistant/paralegal may have a conflict of interest, the attorney should exclude that legal assistant/paralegal from participation in any services performed in connection with that matter. Furthermore, the attorney must specifically inform the client that a nonattorney employee has a conflict of interest which, were it the attorney's conflict, would prevent further representation of the client in connection with the matter. The nature of the conflict should be disclosed. The attorney should caution the legal assistant/paralegal to inform the attorney of any interest or association that might constitute or cause such a conflict or which might give the appearance of constituting or causing such a conflict. In addition, no interest or loyalty of the legal assistant/paralegal may be permitted to interfere with the attorney's independent exercises of professional judgment.

# QUESTIONS AND ANSWERS

## 1. Who is a legal assistant/paralegal?

The KBA's *Official Standards and Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas* accepts the ABA's definition: "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." (From: *KBA GUIDELINES, Definition of "legal assistant" or "paralegal"*)

The use of nonattorneys in law offices is recognized by both the profession and by the Kansas Supreme Court. *In re Wilkinson*, 251 Kan. 546, 834 P.2d 1356 (1992), the Court acknowledged that attorneys generally employ legal assistants/paralegals in their practice, including secretaries, investigators, law student interns, and paraprofessionals. "Such assistants," wrote the Court, "whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services." The Court held that a lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly relating to representation of the client, and should be responsible for their work product.

## 2. What qualifications should legal assistants/paralegals have?

Legal assistants/paralegals should be qualified through education, training, or work experience to perform substantive legal work. A legal assistant/paralegal education program should be approved by the ABA or in substantial compliance with the ABA GUIDELINES FOR ABA APPROVED PROGRAMS. (From: *KBA GUIDELINES, Definition of "legal assistant" or "paralegal" and Standard I*)

## 3. Are there any certifying examinations specially designed for legal assistants/paralegals?

At present, a certification program (including passing an eight and one-half-hour competency test) is conducted by the National Association of Legal Assistants (NALA). If an individual completes the NALA requirements for certification, that individual is entitled to use the designation "Certified Legal Assistant" (CLA) or "Certified Paralegal" (CP). If the individual desires to obtain advanced knowledge in a particular field of law upon attaining the CLA or CP designation, they may further the certification process by sitting for and passing the advanced specialty examination, the Certified Legal Assistant Specialist (four-hour examination in a specific field of law).

NALA also offers advanced examinations in many specialty areas. In order to take NALA's specialty examinations, an individual must hold the CLA designation. CLA Specialists often use the designation CLAS.

The National Federation of Paralegal Associations (NFPA) has a four-hour certifying examination called the Paralegal Advanced Competency Examination (PACE), which, if successfully completed, certifies the individual as a “PACE Registered Paralegal RP” (RP). (From: *KBA GUIDELINES, Standard I*)

#### 4. What are the requirements for taking these certifying examinations?

In order to take **NALA’S Certified Legal Assistant Examination**, an individual must:

- a) graduate from a legal assistant program that is:
  - i) approved by the ABA; or
  - ii) an associate degree program; or
  - iii) a post-baccalaureate certificate program; or
  - iv) a bachelor's degree program, which consists of a minimum of 60 semester hours of which at least 15 semester hours are substantive legal courses;
- b) obtain a bachelor's degree in any field plus one year of experience as a legal assistant. Successful completion of at least 15 semester hours of substantive legal assistant courses is equivalent to the one-year experience requirement; or
- c) obtain a high school diploma or equivalent, seven years of experience as a legal assistant under the supervision of a member of the bar, and a minimum of 20 hours of continuing legal education credit to have been completed within the two-year period prior to application for the examination.

In order to take **NFPA’s Paralegal Advanced Competency Examination** ([www.paralegals.org](http://www.paralegals.org)), an individual must obtain ONE of the following requirements:

- a) an associate degree in paralegal studies obtained from an institutionally accredited and/or ABA-approved paralegal education program and six (6) years of substantive paralegal experience; or
- b) a bachelor's degree in any course of study obtained from an institutionally accredited school and three (3) years of substantive paralegal experience; or
- c) a bachelor's degree and completion of a paralegal program with an institutionally accredited school, which paralegal program may be embodied in a bachelor's degree, and two (2) years of substantive paralegal experience; or
- d) four (4) years of substantive paralegal experience on or before December 31, 2000.

For further information about examinations, an individual should contact NALA about the Certified Legal Assistant and Certified Legal Assistant Specialist examinations and NFPA about the Paralegal Advanced Competency Examination.

## 5. What can a legal assistant/paralegal do?

### *General comments:*

Legal assistants/paralegals may be employed to do substantive work, as long as the lawyer assumes responsibility for the work.

Legal assistants/paralegals may **not**:

- a) represent a client in a Kansas court or agency;
- b) set legal fees;
- c) give legal advice; or
- d) accept cases.

### *Specific comments:*

- a) May a legal assistant/paralegal give legal advice?

No. While a legal assistant/paralegal may have knowledge or expertise in an area, he/she cannot represent to the public that he/she is qualified as a law counselor. A legal assistant/paralegal is not practicing law if he/she is (1) communicating with the client under the ultimate direction and supervision of an attorney and (2) the legal assistant/paralegal is applying knowledge of law and legal procedures as authorized by the attorney. (From: *KBA GUIDELINES, Guideline I*)

*In State ex rel. Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234 (1990), the Court adopted a general definition of practice of law from an Indiana case. "As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any matter pending, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes the legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a Court." *Williams*, citing *Eley v. Miller*, 7 Ind. App. 529, 34 N.E. 836. The *Williams* Court held the practice of law also includes "...the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent."

- b) May a legal assistant/paralegal represent a client before any Kansas court or administrative agency?

No. A legal assistant/paralegal cannot appear, plead, try cases, or argue in court in a representative capacity for a client. Only an attorney may perform these functions unless expressly permitted by statute, court rule, or administrative regulation. According to a Kansas Court of Appeals decision, four categories of individuals may appear in Kansas courts (except for out-of-state attorneys): 1) members of the bar; 2) graduates of accredited law schools who have temporary permits to practice law; 3) legal interns, who are law students supervised by members of the bar responsible for the interns' activities; and 4) non-attorneys, who may represent only themselves and not others in court. *Atchison*

*Homeless Shelters, Inc. v. The County of Atchison, Kansas*, 24 Kan.App. 2d 454, 946 P.2d 113 (1997).

c) May a legal assistant/paralegal sign any pleading, paper, or document filed on behalf of a client with any Kansas court or agency?

No. A legal assistant/paralegal can sign legal papers only in a nonrepresentative capacity, for example, as a witness or if they are a notary public. (From: *KBA GUIDELINES, Guideline I*)

d) May a legal assistant/paralegal prepare and draft a legal document?

Yes. The work of the legal assistant/paralegal becomes the attorney's work product and the attorney is responsible for reviewing and approving the contents. (From: *KBA GUIDELINES, Guideline I*)

e) May a legal assistant/paralegal communicate directly with an opposing party?

No. No attorney or attorney's legal assistant/paralegal may communicate with an opposing party who is represented by counsel. (From: *KBA GUIDELINES, Guideline III*; see *KRPC 4.2 and 5.3*)

f) May a legal assistant/paralegal communicate factual, scientific, or technical information to clients?

Yes. (From: *KBA GUIDELINES, Guideline IV*)

g) May a legal assistant/paralegal conduct legal research?

Yes. (From: *KBA GUIDELINES, Guideline IV*)

h) May a legal assistant/paralegal take a deposition?

No. A legal assistant/paralegal, however, may attend a deposition and assist the attorney during the deposition by taking notes and coordinating documents and exhibits. (From: *KBA GUIDELINES, Guideline IV. K.S.A. 60-230(h) provides that legal assistants/paralegals of the respective parties' counsel may attend and assist at depositions.*)

i) May a legal assistant/paralegal sit at counsel table in court?

Yes, if permitted by local court or practice rules. (From: *KBA GUIDELINES, Guideline IV*)

**6. May the name of a legal assistant/paralegal be printed on a firm's letterhead?**

Yes. In December 1992 the KBA Professional Ethics Advisory Committee authorized the listing of the name of a legal assistant/paralegal on the letterhead of an attorney or law firm. The status of the legal assistant/paralegal must be clearly designated. (From: *KBA GUIDELINES, Guideline VII*, and *KBA Professional Ethical Opinion 92-15. Opinion summary: Nonattorney legal assistants/paralegals may be listed on a law firm's letterhead if they have achieved some minimal training as a legal assistant/paralegal over and above that customarily given legal secretaries and such listing is explained fully on the letterhead as to their nonattorney status. Supervised nonattorney employees may use business cards or separate, nonletterhead stationery containing their name and a clear identification of their capacity. No distinction is made between private firms and corporate law departments.*)

**7. How should a legal assistant/paralegal sign correspondence on the law firm's letterhead?**

A legal assistant/paralegal may sign correspondence on the law firm's letterhead, provided the signature is followed by an appropriate designation identifying the nonattorney status. (From: *KBA GUIDELINES, Guideline IX*)

**8. May a legal assistant/paralegal have a business card?**

Yes. A legal assistant/paralegal may have business cards designed to identify him/her as a legal assistant/paralegal and to state with whom the assistant is employed. (From: *KBA GUIDELINES, Guideline VIII* and *KBA Professional Ethical Opinion 85-4. Opinion summary: Legal assistants/paralegals may use business cards, including the name and address of the attorney or law firm employing the legal assistant/paralegal, provided that the legal assistant/paralegal is clearly identified as such and provided no false or misleading claims are made considering the status or authority of the legal assistant/paralegal. The attorney is responsible for ensuring the card meets the same standards of dignity and accuracy as would be required for an attorney's business card.*)

**9. May a legal assistant/paralegal be a partner or shareholder in a law firm?**

No. This rule, however, does not prohibit an attorney from entering into a business association with a legal assistant/paralegal for purposes other than the practice of law. (From: *KBA GUIDELINES, Guideline VII*)

**10. May an attorney or law firm share legal fees with a legal assistant/paralegal?**

No. Legal assistants/paralegals may be compensated with salaries, benefits (such as insurance coverage and pension and profit sharing plans), and bonuses. There can be no compensation directly tied to the existence or amount of a par-

ticular legal fee. The legal assistant/paralegal should not be compensated for the recommendation of the attorney's services nor have a limitation on compensation because of lack of such referrals. This prohibition does not mean that the legal assistant/paralegal cannot make the services of the attorney known. (From: *KBA GUIDELINES, Guideline VI*)

**11. Are the hours of legal assistants/paralegals billable to the client, and are their fees recoverable?**

Yes, if approved by the client and/or approved by a court and provided a legal assistant/paralegal is performing substantive legal work that, absent such assistant, would be performed by an attorney. The key is the performance of substantive work. Legal assistants/paralegals perform tasks that were previously performed by attorneys. The lower hourly rate of the legal assistant/paralegal reduces the cost of legal services to the public. (From: *KBA GUIDELINES, Guideline VI*, and *Missouri v. Jenkins*, 491 U.S. 274, 109 S.Ct. 2463, 2471, n. 10 (1989)).

*Summary of Missouri v. Jenkins:*

Missouri upheld the granting of fees for paralegal services based on market value. The Court stated, "By encouraging the use of lower cost paralegals, rather than attorneys whenever possible, permitting market-rate billing of paralegal hours encourages cost effective delivery of legal services." The Court set out the following qualifications in order for fees to be recoverable: a) the paralegal must be performing "legally substantive work," not clerical work; b) the paralegal's time is recoverable at market rate; and c) the paralegal must be qualified to perform paralegal work.

**12. What are the attorney's responsibilities with respect to the use of the legal assistant/paralegal?**

An attorney shall not permit a legal assistant/paralegal to engage in the unauthorized practice of law. An attorney is also responsible for properly supervising the work of a legal assistant/paralegal and instructing the legal assistant/paralegal to preserve the confidences and secrets of clients. (From: *KBA GUIDELINES, Guideline V; see KRPC 1.6 and 5.3*)

**13. Who is responsible for identifying the employee as a legal assistant/paralegal?**

Both the attorney and legal assistant/paralegal should ensure the nonattorney status of the legal assistant/paralegal is understood by clients and others outside the law office. If an attorney and/or legal assistant/paralegal become aware that another person believes that the legal assistant/paralegal is an attorney, the

status of the legal assistant/paralegal must be communicated to the person immediately. (From: *KBA GUIDELINES, Guideline IX*)

#### **14. What if an attorney accepts a matter in which the legal assistant/paralegal may have a conflict of interest?**

A law firm that employs a legal assistant/paralegal who formerly was employed by another firm may continue representing clients whose interests conflict with the interest of clients of the firm employee if: (1) the former employing firm and their affected clients consent after consultation, or (2) the employee can meet the burden of proof that he or she did not acquire "material and confidential information during the course of his [or her] former employment." A screening wall imposed unilaterally is inappropriate to meet this burden under the Kansas case *Lansing-Delaware Water District v. Oaklane Park, Inc.*, 248 Kan. 563, 808 P.2d 1369 (1991); see also *Chrispens v. Costal Refining and Marketing, Inc.*, 257 Kan. 745, Syl. ¶¶ 2, 6, 8 and 9. (From: *KBA GUIDELINES, Guideline X*)

A recent pronouncement by the Kansas Supreme Court, *Zimmerman v. Mahaska Bottling Company*, 270 Kan. 810, 784 P.3d 784 (2001), discusses the disqualification of law firms for conflicts of interest by nonattorney staff.

##### *Summary of Zimmerman v. Mahaska:*

Attorneys generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the attorney in rendition of the attorney's professional services. An attorney should give such assistants appropriate instruction and supervision concerning the ethical aspect of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for his or her work product. The measures employed in supervising nonattorneys should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonattorney personnel are widely used by attorneys to assist in rendering legal services. Paralegals, investigators, and secretaries must have ready access to client confidences in order to assist their attorney employers. If information provided by a client in confidence to an attorney for the purpose of obtaining legal advice could be used against the client because a member of the attorney's nonattorney support staff left the attorney's employment, it would have a devastating effect both on the free flow of information between client and attorney and on the cost and quality of the legal services rendered by an attorney. Every departing secretary, investigator, or paralegal would be free to impart confidential information to the opposition without effective restraint. The only practical way to assure that this will not happen and to preserve public trust in the scrupu-

lous administration of justice is to subject these “agents” of attorneys to the same disability attorneys have when they leave legal employment with confidential information.

The policy of protecting the attorney–client privilege must be preserved through imputed disqualification when a nonattorney employee, in possession of privileged information, accepts employment with a firm who represents a client with materially adverse interests.

A law firm that employs a nonattorney who formerly was employed by another firm may continue representing clients whose interests conflict with the interests of clients of the former employer if: (1) the former employing firm and its affected clients consent after consultation, or (2) the employee can meet the burden of proof that he or she did not acquire material and confidential information during the course of his or her former employment. A screening wall imposed unilaterally is inappropriate to meet this burden under Kansas case law.

### **15. What are the attorney's responsibilities toward the activities of the legal assistant/paralegal regarding the Kansas Rules of Professional Conduct (KRPC)?**

It is the responsibility of the attorney to instruct and supervise a legal assistant/paralegal so that he/she will not involve the attorney in violations of the KRPC.

According to KRPC Rule 5.3, Responsibilities Regarding [Nonattorney] Assistants:

- a) a partner 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 attorney;
- b) an attorney having direct supervisory authority over the nonattorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of an attorney; and
- c) an attorney shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by an attorney if:
  - 1) the attorney orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - 2) the attorney is a partner in the law firm in which the person is employed, or has 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.

(From: *KBA GUIDELINES, Guideline III*)

Comment: Attorneys generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the attorney in rendition of the attorney's professional services. An attorney should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonattorneys should take account of the fact that they do not have legal training and are not subject to professional discipline.

## BENEFITS OF KBA ASSOCIATE MEMBERSHIP

The KBA exists to be of service to you. KBA membership helps you succeed in today's competitive legal market and enhances your professional image. As an associate member of the KBA, your membership includes:

- A yearly subscription to the *Journal of the Kansas Bar Association*, which contains substantive articles, court opinions, and news important to the Kansas legal community;
- Discounted meeting registrations and CLE seminars;
- Section memberships;
- Numerous member-only programs that save you time and money;
- VIP access to the KBA members-only website;
- Discounted LexisNexis research database;
- Weekly e-mails of digested court opinions and legislative updates;
- Ethics advisory opinions;
- KBA Lawyer Bookstore;
- Numerous publications; and
- Much more!

Invest in your career. Reap the benefits by association with your colleagues of the Kansas Bar Association. Join online at <http://www.ksbar.org/membership> or call 785-234-5696 for more information.

## **Attorney Checklist for Working With Legal Assistants/Paralegals**

- 1. The legal assistant/paralegal has reviewed the Kansas Rules of Professional Conduct (KRPC).
- 2. The legal assistant/paralegal has reviewed the KRPC with all attorneys having direct supervisory authority over the legal assistant/paralegal.
- 3. The legal assistant/paralegal has a copy of the KRPC and a copy of the Kansas Bar Association's *Official Standards and Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas*.
- 4. The legal assistant/paralegal has reviewed the KBA's *Official Standards and Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas*.
- 5. The legal assistant/paralegal has reviewed the KBA's *Official Standards and Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas* with all attorneys having direct supervisory authority over the legal assistant/paralegal.
- 6. The legal assistant/paralegal has reviewed the ethics code of any professional association of which the legal assistant/paralegal is a member.
- 7. The attorney has provided and reviewed with the legal assistant/paralegal any internal policies and/or procedures relating to the actions/functions of a legal assistant/paralegal that are applicable in the employment setting (government agency, corporation, or private law firm).