

MCLE ON THE WEB (\$15 PER CREDIT HOUR)  
TEST #25  
1 HOUR CREDIT  
LEGAL ETHICS

To earn 1 hour of MCLE credit in the special category of Legal Ethics, read the substantive material, then download the test, answer the questions and follow the directions to submit for credit.

### **A New Day For State's Paralegals**

New rules limit activities, establish educational requirements and protect the consumer

By DAVID M.M. BELL

With the passage of AB 1761 (Brewer) last year, new rules now regulate the paralegal profession in California. These rules, found in Bus. & Prof. Code §§6450-6455, define who may hold themselves out as "paralegals," create educational requirements for paralegals, and circumscribe permissible paralegal activities and services. Regulation of paralegals occurred with the support of the California Alliance of Paralegal Associations (CAPA) and was considered necessary to protect consumers from untrained and unqualified individuals who provide poor services and tarnish the good name of qualified paralegals.

#### **Overview of the Law**

Pursuant to the new rules, a "paralegal" means a person who contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity, who performs substantial, specifically delegated legal work under the direction and supervision of an active member of the State Bar of California or an attorney practicing law in the California federal courts. (Bus. & Prof. Code §6450(a).)

Under this definition, a paralegal may not contract with, or be employed by, a natural person other than an attorney to perform paralegal services. (Bus. & Prof. Code §6450(b)(6).)

Attorneys billing clients for support staff services should take note that the terms "paralegal," "legal assistant," "attorney assistant," "freelance paralegal," "independent paralegal" and "contract paralegal" are synonymous for purposes of the new rules. (Bus. & Prof. Code §6454.)

The rules clarify that a "paralegal" does not include a non-lawyer who provides legal services directly to members of the public, nor does it include a "legal document assistant" or "unlawful detainer assistant" as defined in Bus. & Prof. Code §6400. (Bus. & Prof. Code §6450(a).) Additionally, any individual employed by the State of California as a paralegal, legal assistant, legal analyst or similar title, is exempt from these new paralegal rules. (Bus. & Prof. Code §6456.)

Tasks that can be performed by a paralegal include, but are not limited to: case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; and collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney. (Bus. & Prof. Code §6450(a).)

A paralegal who otherwise meets the definition may also represent clients before state or federal administrative agencies if that representation is permitted by statute, court rule, or administrative rule or regulation. (Bus. & Prof. Code §6450(a).)

While these permissible activities appear expansive, there are a number of expressly prohibited activities. A paralegal may not provide legal advice, represent a client in court or otherwise engage in conduct that constitutes the unlawful practice of law. (Bus. & Prof. Code §6450(b)(1), (b)(2), and (b)(5), respectively.) As such, a paralegal may not select, explain, draft or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal. (Bus. & Prof. Code §6450(b)(3).) Additionally, a paralegal may not act as a “runner” or “capper” who solicits clients for an attorney. (Bus. & Prof. Code §6450(b)(4).)

### **Fee requirements**

In providing paralegal services, a paralegal is expressly prohibited from inducing a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit purportedly may be derived. (Bus. & Prof. Code §6450(b)(7).)

Regarding fees for services, a paralegal may set the fee paid to the paralegal by the supervising attorney, but cannot set the fee the supervising attorney charges to the attorney’s client for the paralegal’s services. (Bus. & Prof. Code §6450(b)-(8).)

Additionally, a paralegal is subject to the same duty as an attorney to maintain inviolate the confidentiality of client information, as found in Bus. & Prof. Code §6068(e). (Bus. & Prof. Code §6453.)

The new rules create educational prerequisites for paralegals, which can be met by various combinations of schooling and experience. (Bus. & Prof. Code §§6450(c)(1)-(c)(4).)

While the rules should be reviewed for specific requirements, generally, a paralegal must possess either: (1) a certificate of completion or a degree from an approved paralegal program or post-secondary institution; (2) a baccalaureate degree, combined with a minimum of one year of law-related experience under the supervision of a qualified attorney; or (3) a high school diploma or general equivalency diploma, combined with a minimum of three years of law-related experience under the supervision of a qualified attorney.

The third qualification will sunset in 2003. The qualified attorney must be an active member of the State Bar of California for at least the preceding three years, or have practiced in the federal courts in California for at least the preceding three years. (Bus. & Prof. Code §§6450(c)(3), (c)(4).) Where the educational prerequisite is met by a combination of schooling and experience, the paralegal must obtain a written declaration from the supervising attorney stating that the individual is qualified to perform paralegal services. (Id.)

Fly-by-night paralegal schools, beware!

### **CLE requirements**

The new rules also create mandatory continuing legal education requirements for paralegals. (Bus. & Prof. Code §6450(d).) Paralegals must complete four hours of continuing education in legal ethics (every three years) and four hours in either general law or a specialized area of law (every two years). All continuing education courses are required to meet the requirements of Bus. & Prof. Code §6070 regarding attorney MCLE. (Id.) Certification of the paralegal’s continuing education requirements must be made with the paralegal’s supervising attorney, and the paralegal is responsible for keeping a record of the paralegal’s certifications. (Id.)

### **Advertising requirements**

It is now also unlawful for an individual to hold out as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere, unless the individual has met educational prerequisites and performs all services under the direction and supervision of a qualified attorney. (Bus. & Prof. Code §6452(a).)

The business card of a paralegal must include the name of the law firm where the paralegal is employed, or a statement that the paralegal is employed by, or contracting with, a licensed attorney. (Id.) Remember that the terms “paralegal,” “legal assistant,” “attorney assistant,” “freelance paralegal,” “independent paralegal” and “contract paralegal” are synonymous for this purpose.

Violation of the unlawful activity or holding out rules is an infraction for the first violation, punishable upon conviction by a fine of up to \$2,500 as to each consumer to whom a violation occurs. (Bus. & Prof. Code §6455(b).)

Each subsequent violation is a misdemeanor punishable upon conviction by a fine of \$2,500 as to each consumer to whom a violation occurs, or imprisonment in a county jail for not more than one year, or by both fine and imprisonment. (Id.) Any person convicted will be ordered to pay restitution to the victim. (Id.) The attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal’s negligence, misconduct, or violation of the new paralegal rules. (Bus. & Prof. Code §6152(b).)

Consumers injured by a violation of the new rules may file a complaint and seek redress in municipal or superior court for injunctive relief, restitution and damages. (Bus. & Prof. Code §6455(a).) Attorney’s fees will be awarded to the prevailing plaintiff. (Id.)

### **Compliance and Enforcement**

The new paralegal rules raise a number of practical compliance questions and enforcement issues. For example, who supervises and directs the paralegal where there is no in-house attorney at the corporation, governmental agency or other entity where the paralegal works? In such a situation, may existing (or specifically retained) outside counsel provide such supervision and direction?

In my opinion, this should be permissible, as the rules nowhere require the “direct” supervision or “specific” direction of the supervising attorney.

However, the rules do require that the paralegal’s work be “specifically delegated” by an attorney. As such, I would recommend that the outside attorney prepare written paralegal guidelines and meet on a regular basis with in-house paralegals to specifically delegate legal work, define paralegal activities, and certify CLE compliance (in-house supervising attorneys should meet with paralegals on a regular basis as well). Additionally, I believe that outside counsel should be able to provide the declaration of qualification necessary to grandfather in paralegals based upon their work experience, so long as the outside attorney has worked with the entity for the requisite period of time necessary to provide such declaration.

When hiring new paralegals, attorneys should be careful to check their academic credentials. Thereafter, attorneys should make certain that their paralegals obtain necessary CLE.

### **Caution about titles**

Law firms should be cautious with employee titles. There is a recent trend to give legal secretaries the title of “legal assistant.” This practice must cease under the new law. Review your employees’ titles for compliance, and then also review all letterhead, business cards, billings and any other pertinent legal advertising and/or documents before you are challenged under the new law.

Assemblywoman Marilyn Brewer, co-author of AB1761, has prepared a list of frequently asked questions about the bill and compliance therewith, that is now archived in the legislative records. A copy may be viewed at the website of the California Alliance of Paralegal Associations, [www.caparalegal.org](http://www.caparalegal.org).

Regarding enforcement, the new rules depend upon self-enforcement by consumers through use of the courts, making them considerably less effective than the disciplinary rules governing lawyers, which are enforced with the assistance of the State Bar of California. Additionally, unlike an attorney, a paralegal who violates the rules does not risk losing his or her license to perform services because there is no licensing requirement for paralegals.

While consumers will often direct paralegal complaints to the State Bar of California, it is important to understand that the State Bar does not have jurisdiction over paralegals. (See Bus. & Prof. Code §6076.)

However, the State Bar can investigate and discipline attorneys who fail to competently supervise their non-attorney employees, including paralegals. (See California Rule of Professional Conduct 3-110, Discussion.)

Self-enforcement may also occur where billings are challenged and firms must prove that paralegals, and others with synonymous names, are in compliance with the law.

The new paralegal rules follow upon years of debate. How they play out in practice remains to be seen. Raising the bar for paralegals should result in higher quality services and effectuate greater consumer protection, but may also raise the costs of legal services to consumers.

*Ethics expert David M.M. Bell, now in private practice, formerly ran the State Bar's Ethics Hotline and currently serves as vice chair of the bar's Law Practice Management & Technology Section. He can be reached at [dmbell@dnai.com](mailto:dmbell@dnai.com).*

## **Certification**

- This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour, of which 1 hour will apply to Legal Ethics.
- The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

## **Test — Legal Ethics**

### **1 Hour MCLE Credit**

This test will earn 1 hour of MCLE credit in Legal Ethics.

1. True/False. Under recently enacted law, to hold out as a “paralegal” means that the individual must perform all legal work under the direction and supervision of an attorney.
2. True/False. A paralegal working under the direction and supervision of a supervising attorney may only perform legal work specifically delegated by that supervising attorney.
3. True/False. A “freelance paralegal” may contract independently with a person who is not an attorney to perform certain types of legal services for that person.
4. True/False. An attorney may bill clients for the services of a “legal assistant” who does not meet applicable paralegal requirements, so long as the attorney does not refer to that person as a “paralegal” in the billing.
5. True/False. A person employed by the State of California as a paralegal, legal assistant, legal analyst or similar title, is exempt from the new paralegal rules.
6. True/False. A paralegal may interview clients, conduct research and draft legal documents, but may not represent a client before any court or administrative agency.
7. True/False. A paralegal may not select, explain, draft or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
8. True/False. A paralegal may not only set the fee to be paid to the paralegal by the supervising attorney, but may also set the fee that the supervising attorney charges to the attorney’s client for the paralegal’s services.
9. True/False. A paralegal is required to maintain the confidentiality of client information.
10. True/False. A paralegal is prohibited from inducing a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit purportedly may be derived.
11. True/False. The new paralegal rules create educational prerequisites for paralegals, which can only be met through possession of a degree or a certificate of completion from an accredited program or school.
12. True/False. A paralegal may not act as a “runner” or “capper” to solicit clients for an attorney.

13. True/False. Any person who violates the provisions of Bus. & Prof. Code §6451 or §6452 (regarding unlawful activities or holding out by a paralegal) is guilty of an infraction for the first violation, punishable upon conviction by a fine of up to \$2,500 as to each consumer with respect to whom a violation occurs.
14. True/False. The new paralegal rules create mandatory continuing legal education (MCLE) requirements for paralegals, and a paralegal must certify with the State Bar of California that such requirements have been met.
15. True/False. A paralegal's supervising attorney must keep records of the paralegal's MCLE compliance.
16. True/False. Paralegals must certify completion: (1) every two years of four hours of continuing education in either general law or in a specialized area of law; and (2) every three years of four hours of continuing education in legal ethics.
17. True/False. The business card of a paralegal must include the name of the law firm where the paralegal is employed, or a statement that the paralegal is employed by, or contracting with, a licensed attorney.
18. True/False. An attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal's negligence, misconduct or violation of the new paralegal rules.
19. True/False. Consumers injured by a violation of the new paralegal rules may file a complaint and seek redress in municipal or superior court for injunctive relief, restitution, and damages.
20. True/False. Consumers may direct any complaints concerning a paralegal to the State Bar of California, which has disciplinary jurisdiction over non-attorney paralegals.

**MCLE ON THE WEB**

**TEST #25 – A New Day For State’s Paralegals**

**1 HOUR CREDIT**

**LEGAL ETHICS**

- Print the **answer form only** and answer the test questions.
- Mail **only form and check** for \$15 to:

**MCLE on the Web**

**The State Bar of California**

**Attn: Ibrahim Bah**

**180 Howard Street**

**San Francisco, CA 94105**

- Make checks payable to State Bar of California.
- A CLE certificate will be mailed to you within eight weeks.

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Name

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Law Firm/Organization

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Address

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State/Zip

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State Bar Number (Required)

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