

# PART C

## The Legal Profession

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***Behind every  
successful lawyers  
is an exhausted  
(and underpaid)  
paralegal***

# Chapter

# 5

## The Legal Profession: Paralegals and Attorneys

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### Definition of Paralegal from The American Bar Association [“ABA”]

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 who performs specifically delegated substantive legal work for which a lawyer is responsible  
([www.americanbar.org/groups/paralegals/resources/current\\_aba\\_definition\\_of\\_legal\\_assistant\\_paralegal.html](http://www.americanbar.org/groups/paralegals/resources/current_aba_definition_of_legal_assistant_paralegal.html))

## Basic Information About Paralegals and Legal Assistants

**Difference Between the Terms Paralegals and Legal Assistants.** There may have been a difference at one time, but modern usage of these terms makes them interchangeable.

**Calling yourself a Paralegal.** In California, in order to call yourself a “paralegal” you must be qualified education, training or work experience.<sup>1</sup>

**Employment Outlook.** Employment of paralegals and legal assistants is expected to grow by 17 percent from 2012 to 2022, “faster than average” for all occupations. This occupation attracts many applicants, and competition for jobs is strong.<sup>2</sup>

**What Paralegals Do.** Paralegals perform a wide variety of legal work under attorneys’ supervision. There are a few things paralegals can’t do: for example, trying cases in court and providing legal advice to clients. Paralegals generally will perform tasks delegated to them by an attorney, provided the attorney supervises the work and maintains responsibility for the work product.

Some Duties of a Paralegal		
Area	Duties	
1	Research	Researching statutes, cases, administrative law and other legal authority
2	Investigation	Investigating facts
3	Preparation	Preparing legal documents and forms

<sup>1</sup> California’s Business and Professions Code § 6450

(c) A paralegal shall possess at least one of the following:

- (1) A certificate of completion of a paralegal program approved by the American Bar Association.
- (2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses....
- (3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.
- (4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks....

(d) Every two years... any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law....

<sup>2</sup> For more go to their website at <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm>.

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Area	Duties
4	<b>Case Files</b> Reviewing and organizing case files
5	<b>Trial Notebook</b> Assisting at and preparing a case for trial, including the “trial notebook”
6	<b>EBTs<sup>3</sup> &amp; Depositions</b> Assisting at examinations before trial and depositions
7	<b>Digesting</b> Summarizing and digesting depositions
8	<b>Interrogatories</b> Drafting interrogatory questions and/or answers
9	<b>Interviewing</b> Interviewing clients and witnesses
10	<b>Administration</b> Handling administrative matters
11	<b>Communication</b> Communicating information to clients and other people

**Where Paralegals Work.** Paralegals are employed wherever there is legal work to be done (i.e., everywhere). They work for:

- large, medium and small law firms; solo practitioners (about 70% of all paralegals);<sup>4</sup>
- various federal, state and local governmental agencies (about 9%);
- in-house legal departments of corporations (about 6%);
- service industries such as insurance carriers (about 4%).<sup>5</sup>

They also may work in their own homes or offices as “freelance” paralegals. Freelance paralegals work for attorneys on an as-needed basis (i.e., per diem). Their work is still performed under the direction and supervision of attorneys, as they cannot work directly for clients because that would be the unauthorized practice of law.

**Why Attorneys Use Paralegals.** Attorneys use paralegals for a number of reasons, with the most popular answer being saving time and money. Attorneys who use paralegals can provide more efficient legal services by concentrating on the type of legal work that only they can perform while delegating other matters to the paralegals.

**Paralegal’s Relationship with the Client.** Paralegals work under the supervision of attorneys, but paralegals frequently engage in direct client contact. Paralegals have face-to-face meetings as well as telephone conversations with clients in order to give or request information (i.e., factual research). Paralegals review and explain documents to clients, bring clients up to date on the status of cases, help clients get ready for court and answer clients’ questions. Paralegals do not — nor can they legally —

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<sup>3</sup> EBTs are Examinations Before Trials.

<sup>4</sup> <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm>

<sup>5</sup> <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-3>

give legal advice, but they may relay advice to clients from attorneys, provided the client is told that the attorney told the paralegal to forward the legal advice.

**Ethical Obligations of Paralegals.** Although there is no certificate or license required to become a paralegal in New York (or any other state [There is a voluntary registration in Florida]), paralegals are bound by the same ethical standards as attorneys because they work for attorneys. All information a paralegal gets from a client or attorney is kept confidential, and they are not allowed to discuss the case with anyone outside their offices. The Rules of Professional Conduct require attorneys to supervise paralegals appropriately and adequately. The attorney is ultimately responsible for the paralegal's work. As such, an attorney can face disciplinary consequences for failure to adequately supervise a paralegal's work.

<b>National Organizations for Paralegals</b>	
NALS...the association for legal professionals	<a href="http://www.nals.org">www.nals.org</a>
National Association of Legal Assistants (NALA)	<a href="http://www.nala.org">www.nala.org</a>
National Federation of Paralegal Associations (NFPA)	<a href="http://www.paralegals.org">www.paralegals.org</a>
National Paralegal Association (NPA)	<a href="http://www.nationalparalegal.org/">www.nationalparalegal.org/</a>

Each has adopted its own code of ethics to assist paralegals in their work. Look at each of these websites and bookmark them in your browser.

Paralegals license or certification.<sup>6</sup> Currently, there are no states that license paralegals. There are private entities that certify paralegals.

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<sup>6</sup> Licenses are issued by a government entity (e.g., for be a lawyer), while certification is issued by a private entity. In New York the following professions are licensed through the New York Education Department (<http://www.op.nysed.gov/prof/>): Acupuncture; Architecture; Athletic Training; Audiology; Certified Shorthand Reporting; Chiropractic; Clinical Laboratory Technology (Clinical Laboratory Technologists, Cytotechnologists, Clinical Laboratory Technicians, Certified Histological Technicians); Dentistry (Dentists, Dental, Anesthesia/ Sedation, Dental Hygienists, Certified Dental Assistants); Dietetics-Nutrition; Engineering; Interior Design; Land Surveying; Landscape Architecture; Massage Therapy; Medical Physics; Medicine (Physicians, Physician Assistants, Specialist Assistants); Mental Health Practitioners (Creative Arts Therapists, Marriage and Family Therapists, Mental Health Counselors, Psychoanalysts); Midwifery; Nursing (Registered Professional Nurses, Nurse Practitioners, Licensed Practical Nurses); Occupational Therapy (Occupational Therapists, Occupational Therapy Assistants); Ophthalmic Dispensing; Optometry; Pharmacy (Pharmacists, Pharmacy Establishments); Physical Therapy (Physical Therapists, Physical Therapist Assistants); Podiatry; Polysomnographic Technology; Psychology; Public Accountancy (Certified Public Accountants, Public Accountants); Respiratory Therapy (Respiratory Therapists, Respiratory Therapy Technicians); Social Work (Licensed Master Social Worker [LMSW], Licensed Clinical Social Worker [LCSW]); Speech-Language Pathology; Veterinary Medicine (Veterinarian, Veterinary Technician). And of course Lawyer is licensed through the New York Office of Court Administration (the judiciary).

<b>Private Certification</b>	
<b>Organization</b>	<b>Available Certification</b>
National Association of Legal Assistants ( <a href="http://www.nala.org/Certification.aspx">http://www.nala.org/Certification.aspx</a> )	Certified Legal Assistant (CLA)
	Certified Paralegal (CP).
National Federation of Paralegal Associations ( <a href="http://www.paralegals.org/default.asp?page=62">http://www.paralegals.org/default.asp?page=62</a> )	Paralegal Core Competency Exam (PCC)
	Paralegal Advanced Competency Examination (PACE)
The National Association for Legal Professionals (NALS) ( <a href="http://www.nals.org/?page_id=69">http://www.nals.org/?page_id=69</a> )	Accredited Legal Secretary (ALS)
	Professional Legal Secretary (PLS)
	Professional Paralegal (PP)

### **Specific Restrictions**

**Answering Client's Questions.** Paralegals may give factual and procedural information. HOWEVER, paralegals cannot give legal opinions or advise in response to client questions. Paralegals must inform clients that as paralegals they cannot give legal advice, only a lawyer can. A paralegal may relay advice specifically given to him or her by his or her supervising attorney. It is improper for a lawyer to place a paralegal in the position of being perceived as giving legal advice to a client.

**Direct Communication with Opposing Party Represented by Counsel.** A paralegal may not communicate with an opposing party who is represented by counsel without the express written permission of opposing counsel. This rule applies to attorneys as well.

**Preparing and drafting legal documents.** Paralegals draft legal documents while lawyers write legal documents. The lawyer is responsible for reviewing and approving the contents of any legal document he or she signs and submits to a client, party and/or court or other government entity.

**Legal Research.** But the product of the research, which usually constitutes legal advice, goes directly to the lawyer, not the client.

**Paralegal at a deposition.** A paralegal may attend a deposition and assist the lawyer during the deposition by taking notes and coordinating documents and exhibits.

**Paralegal in court.** A paralegal can be in court, however, they can only sit in the counsel table if permitted by local court rules.<sup>7</sup>

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<sup>7</sup> Paralegals can be of great assistance to lawyers at trial and can sit at counsel tables if court rules do not restrict their presence. Most of the time, they will sit directly behind the attorney in the audience.

**Business Cards.** A paralegal may have business cards on which he or she is clearly identified as a paralegal.

**Paralegal's name on law office letterhead.** The paralegal's name may be used provided he or she is clearly identified as a paralegal.

**Signing correspondence from a law firm.** It is allowed as long as the paralegal's status is clearly identified.

Very truly yours,  
ALPHA & BETA, LLC  
By \_\_\_\_\_  
Deborah Delta,  
Paralegal

**Paralegal signing attorney's name to documents.** The attorney may direct the paralegal to sign the attorney's name to correspondence/pleadings on a document-by-document basis after the attorney has reviewed, supervised production, and approved the content of the document. The paralegal should indicate that he or she signed the attorney's name to the document. One method of indicating this fact is for the paralegal to initial the signature.

**Paralegal's time billed to a client.** The substantive legal work of a paralegal (work normally performed by an attorney in the absence of a paralegal) may be billed directly to the client in the same way an attorney's work is billed. To be billable, the work paralegals perform must not be clerical or ministerial. In circumstances where "attorney's fees" are reviewed or awarded by a court, the paralegal hours may be recovered as part of the attorney fee that is reviewed or awarded.

## Dealing with Clients

Law is a service industry like medicine. When you go to a doctor, the doctor should be asking you questions that only a doctor would ask you. Sometimes you might think the doctor is asking very personal questions, but in order to serve and help you, they have to ask those questions. Lawyers and their staff need to do the same thing. Sometimes they will ask the kind of questions they would never want to be asked of them.

There is an old saying: There are three topics you should never discuss: politics, sex and religion.

One particular topic that is sensitive is sex. Consider sex in the context of law. It is remarkable how much law and sex goes together. (Most people having sex will never have to worry about the law as it relates to that sexual act).



<b>Wrongful Sex and Law</b>	
<b>Factual Situation</b>	<b>Potential Consequences</b>
A person has sex in public	A criminal prosecution
A person has sex without the other person's consent	A criminal prosecution
A person has sex with someone under the age of 17	A criminal prosecution
A married person has sex with someone he or she is not married to	A criminal prosecution; and/or A ground for divorce
A spouse asks their spouse for sex and that spouse refuses for over a year	A ground for divorce
A married person wrongfully accuses the other spouse of having extramarital sex	A ground for divorce
A person has sex for money	A criminal prosecution
A person pays an actor to have sex with another person in order to make a movie	Might be protected by the First Amendment to the United States Constitution
A person pays an actor under the age of 18 to have sex with another person in order to make a movie	A criminal prosecution
A person has sex with an aunt or uncle	A criminal prosecution
A president of a corporation tells one of his or her employees that they can get a promotion if they have sex with him	A civil law suit (sexual harassment)
An adult couple have been dating for years and having sex for years and one decides to not have sex until there is an engagement ring or other gift and the person gives in and gives her an engagement ring	A criminal prosecution
A person offers to give another person illegal drugs for sex	A criminal prosecution
As result of a sexual act, a person becomes pregnant	A civil law suit (paternity)

When a client comes to you with any of the above situations, you need to be prepared to ask them about sex. Here's the good news, you will never have to talk about your life with them. Failing to ask them the appropriate questions or asking them an inappropriate question would be a violation of ethics and possibly negligence/malpractice.

You may also come across a client who either did something or is doing something that you find morally disgusting. You may think that the client doesn't deserve your time. Get over it. The greatest person in the world as well as everyone else — no matter how bad you think they are or how bad the

act they are accused of doing is — all deserve due process and equal protection under the law. It is all about serving the client, serving the public, serving the profession, serving the legal system, and serving the constitution. It is about fulfilling the oath or affirmation all attorneys take upon admission to a state to practice law: to support the United States Constitution. In the constitution is due process and equal protection (5th, 6th and 14th Amendments to the United States Constitution).

### Ethics Alert!!!

*Think about the kinds of cases you are not comfortable with (e.g., an ugly divorce, rape or murder defense). Think about the type of people with whom you would never want to deal with as clients (e.g., a nasty person, a celebrity with an unending ego, rich tax cheats, a rapist, murder, corporate executive who caused his employees to lose their jobs and retirement savings, or a cheating spouse). Now think about how you are going to deal with this and get over it in order to serve the public. As a paralegal you rarely have a choice. Assisting in the defense of a rapist is not condoning the behavior. You are condoning equal protection under the law and due process. That is what lawyers are suppose to do and that is your job as well.*

## Introduction to Lawyers

When we see lawyers on TV and in the movies they are either preparing for trial or conducting a trial. However, most lawyers never step inside of a court room. Lawyers very often help clients in matters that have nothing to do with legal disputes or legal cases. For example, clients are advised about the legal aspects of starting a business or engaging in a partnership, assisted in buying or selling a home, and counseled on tax matters or estate planning (e.g., a will). Often, clients receive a regular legal check-up that — like a medical check-up — is designed to prevent problems or simply solve them.

**Where Lawyers Practice Law.** A lawyer normally spends more time in an office than in a courtroom. The practice of law most often involves researching legal developments, investigating facts, writing and preparing legal documents, giving advice, and settling disputes. Laws change constantly. New law is enacted and prior law is amended and repealed. In addition, judicial decisions in court cases regularly alter what the law currently means, whether the source of law is the United States Constitution or a state constitution, federal or state statutes, or federal, state, and local codes and regulations. For these reasons, a lawyer must put much time into knowing how the laws and the changes will affect each circumstance.

<b>The Two Main Duties of a Lawyer</b>	
<b>1</b>	Represent the client in any forum necessary (e.g., a court, before a legislature or committee, before a government agency, before a coop board, before the public); and
<b>2</b>	Protect a client's rights.

To carry out these duties, a lawyer must know the law and be a good communicator.

Professional requirements for becoming a lawyer or attorney. To understand how laws and the legal system work together, lawyers must go to law school. Each state controls the practice of law within that state and has enacted standards that must be met before a person is licensed to practice law there.<sup>8</sup>

<b>The Path to Becoming an Attorney (Generally)</b>		
▼	<b>Undergraduate Degree</b>	Have a bachelor's degree or its equivalent (BA, BS, BBA or BFA);
▼	<b>Juris Doctor</b>	Complete a law program at an accredited law school (three or four years); <sup>9</sup>
▼	<b>Bar Exam</b>	Pass a state bar examination <sup>10</sup> , which usually lasts for two or three days <sup>11</sup> and the Multistate Professional Responsibility Exam (ethics);
▼	<b>Ethics</b>	Pass a character and fitness review; each applicant for a law license must be approved by a committee that investigates his or her character and background;
▼	<b>Oath</b>	Take an oath swearing to uphold the laws and the state and federal constitutions; and
●	<b>License</b>	Receive a license from the appropriate state court. <sup>12</sup>

<sup>8</sup> The path to becoming a lawyer and maintaining the license to practice law is found in various laws (e.g., the Judiciary Law, and The Rules of the Court of Appeals).

<sup>9</sup> There are exceptions to this rule.

<sup>10</sup> The bar examination is meant to test knowledge in selected areas of law and in professional ethics and responsibility. Graduates of the two law schools in Wisconsin get admitted to the Wisconsin bar without taking an examination. After five years they can get admitted to many states through reciprocity without taking the bar exam.

<sup>11</sup> In New York, it is a two-day exam. The first day of the examination (the New York section) consists of 50 multiple choice questions and five essay questions in substantive and procedural law, and one Multistate Performance Test (MPT) developed by the National Conference of Bar Examiners (NCBE). The second day is the Multistate Bar Examination (MBE).

<sup>12</sup> In New York, the license is issued from the state's intermediate appellate court, the Appellate Division.

Once a person becomes a lawyer, in order to maintain their license to practice law, he or she must take continuing legal education courses every year until they retire from the practice of law.

**Needing a Lawyer.** When a person has a legal problem, they probably need a lawyer. There are many types of legal problems. A person might consider retaining a lawyer if he or she is accused of committing a crime, involved in or is contemplating a lawsuit, or if he or she was involved in an auto accident. Although lawyers usually help people with legal problems after they arise, perhaps the best time to consult a lawyer is before a legal problem arises.

<b>Common Situations Where Legal Advice Is Helpful</b>	
<b>Area of Law</b>	<b>Common Situation</b>
<b>Real Estate Law</b>	The sale, purchase or lease of a home or real estate.
<b>Business Law</b>	The formation a business (e.g., corporation or partnership)
<b>Wills, Trusts and Estates</b>	The creation and/or establishment of a will, trust, or estate plan
<b>Family Law</b>	A domestic or martial issue
<b>Tax Law</b>	A tax problem
<b>Tort Law</b>	An accident involving personal injury or property damage
<b>Criminal Law</b>	An arrest or questioning by law enforcement officials concerning that person's conduct

<b>Areas of Legal Practice</b>		
<b>Area</b>	<b>What Lawyers Do</b>	<b>What Paralegals do</b>
Business Law	Advise clients about starting a new business (corporation, partnership, etc.), general corporate matters, business taxation, and mergers and acquisitions	Draft contracts, articles of corporation; investigation
Criminal Law	Defend or prosecute those accused of committing a crime	Draft motions and memoranda of law, interview clients and witnesses, prepare proposed jury instructions
Estate Planning	Advise clients in property management, drawing wills, probate, and estate planning	Interview clients, draft wills, trusts and testamentary substitutes, prepare court documents

Area	What Lawyers Do	What Paralegals do
Family Law	Represent individuals in separation, annulment, divorce, and child custody matters	Interview clients, draft complaints, prepare court documents
Immigration	Represent parties in proceedings in administrative agencies and court involving naturalization and citizenship	Interview clients, prepare administrative agency and court documents
Intellectual Property Law	Deal with issues concerning trademarks, copyright regulations, and patents	Interview clients, draft contracts, prepare agency documents
Labor Law	Advise and represent employers, unions and employees on questions of union organizing, workplace safety, and compliance with government regulations	Interview clients, draft contracts and agreements; prepare memoranda of law, prepare employment booklets.
Personal Injury	Represent clients injured intentionally or negligently, and those with workers' compensation claims	Interview clients, draft complaints, prepare court documents
Real Estate	Assist clients in developing property; re-zoning; and buying, selling, or renting homes or other property	Interview clients, draft agreements and contracts, prepare closing statements
Taxation	Counsel businesses and individuals in local, state, and federal tax matters	Interview clients, draft contracts, prepare agency documents



# Chapter

# 6

## Introduction to Legal Ethics

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The Rules of Professional Conduct, which lawyers are required to follow, does not regulate paralegals. However, this Code regulates the way attorneys utilize paralegals.

Codes	
<b>Paralegal Codes</b>	Codes of ethics from paralegal associations (e.g., the National Association of Legal Assistants)
<b>Attorney Codes</b>	ABA Model Rules of Professional Conduct. <sup>13</sup>
	New York State Rules of Professional Conduct. <sup>14</sup>

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<sup>13</sup> Found at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html)

<sup>14</sup> <http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/RulesofProfessionalConductasamended070112.pdf>

<b>What All Paralegal Codes Contain<sup>15</sup></b>	
<b>Topic</b>	<b>Explanation</b>
<b>Competence and Integrity</b>	Maintaining a high level of competence and personal and professional integrity
<b>Conduct</b>	Maintaining a high standard of professional conduct;
<b>Serving the Public Interest</b>	Serving the public interest by contributing to the delivery of quality legal services and the improvement of the legal system
<b>Confidentiality</b>	Preserving all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship
<b>Disclosure</b>	Disclosing one's status and title
<b>Not being a Lawyer</b>	Avoiding the unauthorized practice of law, and
<b>Conflicts of Interest</b>	Avoiding conflicts of interest and disclosing conflicts to employers/clients and prospective employers/clients.

Ethical responsibilities of a lawyer who employs a paralegal. The lawyer is ultimately responsible for the work product and ethical conduct of a paralegal. Because paralegals are not licensed, they are not subject to professional discipline. The lawyer must give ethical guidance and direction to the paralegal.

<b>What an Attorney Must Do</b>		
<b>1</b>	<b>Develop</b>	Develop policies regarding the delegation and supervision of the work product and conduct of the paralegal
<b>2</b>	<b>Communicate</b>	Communicate the policy to the paralegal
<b>3</b>	<b>Enforce</b>	Enforce the policy; and
<b>4</b>	<b>Review</b>	Have a system of review and feedback to ensure the policy is being followed.

The lawyer-employer is responsible for the paralegal's direction and ethical guidance. The supervisory measures that the lawyer applies should take account of the fact that paralegals are not

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<sup>15</sup> The paralegal codes are based on the Rules for lawyers.



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subject to professional discipline. The lawyer is ultimately responsible for the work product and ethical conduct of the paralegal.

Paralegal being identified to others. At the beginning of all professional communications with others, the paralegal shall disclose that he or she is a paralegal. The lawyer shall instruct the paralegal to make this disclosure. If the lawyer is present, the lawyer should introduce the paralegal and identify him/her as a paralegal.

<b>Assignment</b> <b>Read the Following Ethical Codes on Line</b>	
The NALA Code of Ethics and Professional Responsibility	<a href="http://www.nala.org/code.aspx">http://www.nala.org/code.aspx</a>
Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement	<a href="http://www.paralegals.org/associations/2270/files/Model_Code_of_Ethics_09_06.pdf">http://www.paralegals.org/associations/2270/files/Model_Code_of_Ethics_09_06.pdf</a>
ABA Model Guidelines for the Utilization of Paralegal Services	<a href="http://apps.americanbar.org/legalservices/paralegals/downloads/modelguidelines.pdf">http://apps.americanbar.org/legalservices/paralegals/downloads/modelguidelines.pdf</a>

