



Is Your Paralegal a Certified Kentucky Paralegal?

Why It Matters

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Introduction

Last July the Kentucky Paralegal Association (KPA) launched the KPA Certified Paralegal Program. The KPA describes the program as follows:

The purpose of the Kentucky Paralegal Association's Certified Paralegal Program is to implement Kentucky Supreme Court Rule 3.700 for paralegals in Kentucky by establishing a procedure for paralegal certification, which will promote competence and high standards of professional responsibility, including the Kentucky Paralegal Association's Paralegal Professional Standards of Conduct. This is accomplished by setting minimum training, work experience, and education requirements for eligibility to be a designated Certified Kentucky Paralegal. The ultimate purpose of this self-regulation program is to improve the quality of legal service in Kentucky and make it more readily available to the public. Certification of qualifications and commitment to high professional and ethical standards by paralegals will lead to appropriate recognition of the substantial and essential contribution paralegals make to the provision of legal services in Kentucky.

This development is a major step forward for Kentucky paralegals and offers important benefits for Kentucky lawyers and legal service in Kentucky. The purpose of this article is to:

- Show why the KPA Certified Paralegal Program matters to Kentucky lawyers.
- Provide an overview of paralegals in Kentucky.
- Describe the KPA Certified Paralegal Program including its stringent requirements for achieving certification.

Why the KPA Certified Paralegal Program Matters to Kentucky Lawyers

In the hurly burly of today's practice of law it is easy to overlook some professional duties that are not the subject of much emphasis or do not stand out as important as they are. A prime example of this is the responsibility of lawyers to comply with Supreme Court rules on the supervision and training of paralegals working in their offices. In addition to

duties regarding paralegals in the Kentucky Rules of Professional Conduct¹, the Kentucky Supreme Court in SCR 3.700, Provisions Relating to Paralegals, provides detailed guidance for lawyers on their employment of paralegals. What follows is an overview of what these rules require of Kentucky lawyers.

The Supreme Court adopted SCR 3.700 in January 1980. It is one of the strongest policy statements by a state Supreme Court on the value of paralegals for the delivery of legal service as indicated in the following extracts from the Rule:

Preliminary Statement. The availability of legal services to the public at a price it can afford is a goal to which the Bar is committed, and one which finds support in Canons 2 and 8 of the Code of Professional Responsibility.² The employment of paralegals furnishes a means by which lawyers may expand the public's opportunity for utilization of their services at a reduced cost.

Purpose. Rapid growth in the employment of paralegals increases the desirability and necessity of establishing guidelines for the utilization of paralegals by the legal community. This Rule is not intended to stifle the proper development and expansion of paralegal services, but to provide guidance and ensure growth in accordance with the Code of Professional Responsibility,³ statutes, court rules and decisions, rules and regulations of administrative agencies, and opinions rendered by Committees on Professional Ethics and Unauthorized Practice of Law.

The key requirements of SCR 3.700 are:

- Direct supervision of a paralegal by a licensed lawyer is required.
- A lawyer must ensure that a paralegal does not engage in the unauthorized practice of law.
- It must be made clear to a client that a paralegal is not a lawyer.
- The lawyer must remain fully responsible for the representation.
- The lawyer must instruct a paralegal to preserve the confidences and secrets of a client.

The 2009 Revised Kentucky Rules of Professional Conduct buttress Rule 3.700 by providing more detailed guidance

An Overview of Paralegals in Kentucky

Vicki Howard, Kentucky Paralegal Association President

SCR 3.700 defines a Kentucky paralegal as follows:

A person under the supervision and direction of a licensed lawyer, who may apply knowledge of law and legal procedures in rendering direct assistance to lawyers engaged in legal research; design, develop or plan modifications or new procedures, techniques, services, processes or applications; prepare or interpret legal documents and write detailed procedures for practicing in certain fields of law; select compile and use technical information from such references as digests, encyclopedias or practice manuals; and analyze and follow procedural problems that involve independent decisions.

According to the Bureau of Labor Statistics, there are currently close to 300,000 paralegals employed in the U.S., with roughly 4,000 working in Kentucky. The occupation, overall, is expected to grow faster than average through the year 2018. While paralegals work in all areas of law, law firms, corporations and the federal and state governments predominantly employ them.

There are three national paralegal associations in which many Kentucky paralegals participate that offer voluntary paralegal certification, provided one has a combination of education and work experience. All certification programs require documentation of qualifications to sit for exams, and all require specific hours of continuing legal education to retain certification. They are:

- The National Federation of Paralegal Associations (NFPA) offers the “PACE” exam and grants the designation of “Registered Paralegal” (RP).
- The National Association of Legal Assistants (NALA) offers a two-day examination that gives the choice of title. One may be a “Certified Legal Assistant” (CLA) or a “Certified Paralegal” (CP).
- The American Alliance of Paralegals, Inc. also has an examination and those passing become an “American Alliance Certified Paralegal” (AACP).

There are paralegal associations in every state in the U.S. and some have several associations as Kentucky does. Currently, Kentucky has one statewide association, the Kentucky Paralegal Association (KPA), and five local associations. Below is an overview of paralegal associations in Kentucky:

- The **Kentucky Paralegal Association (KPA)** was officially incorporated in 1990 with the purpose of serving as a unified voice for Kentucky paralegals, promoting continuing paralegal education with emphasis on ethics and professionalism, and increasing paralegal use by Kentucky lawyers. These activities are carried out in cooperation with the Kentucky Bar Association and in compliance with SCR 3.700. The KPA has approximately 100 members who pay annual dues of \$50.00 for active membership.

- The **Greater Lexington Paralegal Association (GLPA)** was established in 1980 and has approximately 100 members. Though the GLPA’s mission statement is similar to that of the KPA, it requires an educational component to be an active member and cost of membership varies according to eligibility. Annual dues range from \$30.00 to \$150.00. The GLPA is affiliated with NFPA and members become NFPA members when they join. Primary and Secondary NFPA Representatives are elected to GLPA Board positions. There are several Registered Paralegals participating in the GLPA.
- The **Louisville Association of Paralegals (LAP)**, established in 1978, has a membership of close to 200 paralegals and annual cost for membership ranges from \$20.00 to \$100.00. Its mission parallels that of the KPA. The LAP is the major contributor in funding the “Certified Kentucky Paralegal” (CKP) examination. LAP members may become associate members of the Louisville Bar Association.
- **Western Kentucky Paralegals (WKP)** is affiliated with NALA. Part of the annual membership dues provides for NALA membership. WKP has two National Liaisons who attend NALA meetings around the country and encourages paralegals to take NALA’s certification exam. Annual membership in WKP costs up to \$50.00.
- The **Northern Kentucky Association of Paralegals (NKAP)** has professional standards similar to the KPA and attracts some paralegals from nearby Cincinnati, Ohio. They are not affiliated with a national association and annual dues are a maximum of \$25.00. NKAP has fewer than 50 members, attributable to its proximity to Ohio and larger associations.
- The **Greater Appalachian Paralegal Association (GAPA)** is the newest association and also has fewer than 50 members. There is a flat fee of \$25.00 for membership. GAPA is not affiliated with a national association.

The five local associations each have liaisons that are voting members of the KPA Board and all share commonalities.

- All keep members updated on pertinent legal information and trends, and provide newsletter updates.
- All offer student membership for those seeking paralegal degrees and are involved in and support accredited local paralegal educational programs.
- All offer seminars for continuing paralegal education, some on a monthly basis and at a cost.
- All participate in philanthropic endeavors in their communities and assist with local pro bono activities.
- All local associations support the Certified Kentucky Paralegal program and have members who have expressed interest in becoming CKPs.

for the ethical management of paralegals. A significant change to Comment (1) and new Comment (2) to Rule 5.3, Responsibilities Regarding Nonlawyer Assistants, make it clear that it is mandatory for firm management to take a proactive role in assuring that nonlawyer assistants comply with ethics standards:

KENTUCKY PARALEGAL ASSOCIATION PARALEGAL PROFESSIONAL STANDARDS OF CONDUCT

STANDARD 1. COMPETENCE

A paralegal shall provide competent service when assisting supervising lawyers and their clients. Competent service requires paralegal education, training, and work experience in the application of legal concepts, skills, and knowledge. A paralegal shall be knowledgeable of Supreme Court Rule 3.700 Provisions Relating to Paralegals and the Kentucky Rules of Professional Conduct. A paralegal shall maintain competence by participating in continuing paralegal education programs on substantive legal subjects, skills, and paralegal standards of conduct.

STANDARD 2. DILIGENCE

A paralegal shall work with reasonable care, industry, and punctuality when assisting supervising lawyers and their clients.

STANDARD 3. RELATIONS WITH CLIENTS

A paralegal shall communicate with and provide service to clients only under the supervision of a lawyer. The lawyer must remain fully responsible for the representation and all paralegal relations with a client must be directed by a supervising lawyer. It shall be made clear to a client that a paralegal is not a lawyer. A paralegal shall not form lawyer-client relationships for a supervising lawyer, give legal advice, or exercise independent legal judgment when communicating with a client.

STANDARD 4. CLIENT AND FIRM CONFIDENTIALITY

(a) A paralegal shall not reveal information relating to the firm's representation of clients or firm internal operations except for disclosures that are impliedly authorized to perform paralegal services for supervising lawyers and clients except:

- (1) a paralegal may reveal such information to the minimum extent necessary to establish a claim or defense in a controversy with a supervising lawyer or client, or
- (2) to comply with law or court order.

- Comment (1): Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer ~~should~~ **must** give such assistants

(b) A paralegal's duty of confidentiality to a firm and its clients is a continuing responsibility which is applicable even though a paralegal has changed employment or left paralegal practice.

STANDARD 5. CONFLICTS OF INTEREST

(a) To avoid conflicts of interest a paralegal shall inform supervising lawyers of any responsibilities the paralegal has to third persons or by the paralegal's own personal or financial interests which may conflict with the interests of firm clients. The supervising lawyer is responsible for resolving paralegal conflict issues.

(b) A paralegal shall not use information relating to a client learned in the course of employment to the disadvantage of a client unless the supervising lawyer is informed and the lawyer obtains client consent after consultation.

STANDARD 6. CLIENT AND FIRM PROPERTY

A paralegal responsible for working with and safeguarding client property shall comply with Kentucky Rule of Professional Conduct 1.15 Safeguarding Property. In working with client and firm property a paralegal will apply reasonable business practices to assure its proper use, security, and disposition.

STANDARD 7. RELATIONS WITH PERSONS OTHER THAN CLIENTS

In the course of performing paralegal services under the supervision of a lawyer a paralegal shall not:

- (a) knowingly make a false statement of material fact or law to a third person;
- (b) communicate with a person known to be represented by a lawyer without the consent of that lawyer;
- (c) when dealing with an unrepresented person state or imply the paralegal is disinterested and correct any perceived misunderstandings by such person;
- (d) communicate legal advice to an unrepresented person (a paralegal may suggest that the unrepresented person secure counsel); and
- (e) use means that only embarrass, delay, or burden a third person.

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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 nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. (*emphasis added*)

- New Comment (2) provides in part: Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct.

While it can be hoped that lawyers throughout Kentucky are complying with the spirit and requirements of SCR 3.700 and the Rules of Professional Conduct, Kentucky paralegals advise that many firms do not. As will be

described below, the KPA Certified Paralegal Program offers an ideal way for lawyers to make up for this professional responsibility shortfall and assure that employed paralegals are thoroughly versed on professional conduct rules, their role in delivering legal service, and familiarity with good risk management principles. Additionally, the Certification Program is an important aid for lawyers in hiring qualified paralegals. An individual that meets the demanding requirements for certification shows that she or he is a well-qualified paralegal as well as highly motivated. This dual benefit of the KPA Certification Program is why it matters to Kentucky lawyers.

Paralegals in Kentucky

At the time of this writing the KBA does not have a paralegal committee or any other official activities concerning paralegals. There are, however, a number of private paralegal associations in Kentucky. See the sidebar for an overview of paralegal service in Kentucky provided for this article by Vicki Howard, Kentucky Paralegal Association President.

A paralegal who receives a document relating to the representation of a supervising lawyer's client and knows or reasonably should know that the document was inadvertently sent shall refrain from reading the document and promptly inform the supervising lawyer for instructions on promptly notifying the sender, and abiding by the instructions of the sender regarding its disposition.

STANDARD 8. LAW FIRM PARALEGAL POLICIES

A paralegal shall adhere to law firm measures for paralegal compliance with the professional obligations of a lawyer. In most cases a supervising lawyer's instructions on matters of professional responsibility will be determinative of the issue and a complying paralegal will not be subject to discipline under these Standards of Conduct. However, following the instructions of a lawyer will not excuse paralegal conduct that any reasonable nonlawyer would understand as abusive, fraudulent, dishonest, deceitful, or illegal.

STANDARD 9. UNAUTHORIZED PRACTICE OF LAW

A paralegal shall not engage in the unauthorized practice of law as proscribed by Kentucky law and Supreme Court Rules.

STANDARD 10. DONATED PARALEGAL SERVICE

A paralegal should voluntarily donate paralegal service as a matter of public service. Paralegals are encouraged to donate 25 hours of service a year. Donated service must be performed under the supervision of a lawyer. Normally a paralegal should coordinate donated service with that of the

employing lawyer. This will permit best use of a paralegal's donated service and assist the supervising lawyer in meeting the Kentucky Bar Association's goal of 50 hours annually of donated lawyer service.

STANDARD 11. ADVERTISING AND SOLICITATION

A paralegal shall know the Kentucky Rules of Professional Conduct on lawyer advertising and limitations on solicitation of clients. A paralegal's name and status may be included on the letterhead of an employing lawyer and the paralegal may with the lawyer's permission include the lawyer's name on the paralegal's business card.

STANDARD 12. MISCONDUCT

It is professional misconduct for a paralegal to:

- (a) violate or attempt to violate the KPA Paralegal Professional Standards of Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in the unauthorized practice of law;
- (c) commit any felony or crime involving moral turpitude;
- (d) commit fraud or deceit in applying for Certified Kentucky Paralegal status;
- (e) disclose the contents of the Certified Kentucky Paralegal exam;
- (f) advertise paralegal services in a manner that is false or misleading to the public;
- (g) fail to pay KPA fees or other monies; and
- (h) fail to meet Continuing Paralegal Education requirements.

The KPA Certified Paralegal Program

For many years the KPA, the LAP, and other paralegal associations in Kentucky struggled to establish a Kentucky paralegal certification program. Meetings were held with national paralegal associations with the hope that a way could be found to use their certification programs for Kentucky paralegals on an affordable basis. Unfortunately, the cost of study and exam materials of those programs was prohibitive. Then the Internet came to the rescue. The administration of a certification program could be done inexpensively over the Internet on the KPA website. Just as important exam study materials could be made available at no cost on the website. To everyone's pleasant surprise there was so much support for establishing a certification program that it was developed at virtually no cost. Paralegals, paralegal educators, lawyers, and even the printing company that printed certification exams all worked pro bono to bring the KPA Certification Program into being. What follows is an overview of the program. I think you will be impressed.

Eligibility Requirements

To sit for the exam a candidate must meet at least one of the following requirements:

- Graduation from an ABA approved course of paralegal studies; or
- Graduation from a paralegal course of study which is not ABA approved, but is in substantial compliance with ABA approval guidelines; or
- Graduation from an appropriately accredited college or university with a bachelor's degree in any field plus one year of paralegal work experience verified by the supervising lawyer; or
- A minimum of five years work experience as a paralegal performing substantive legal tasks under the supervision and direction of a licensed attorney.⁴

The Certification Exam

The examination was prepared by Professor Nicholas W. Riggs, Director of Legal Studies at Sullivan University; Paralegal Dana Lee Martin, Greenebaum Doll & McDonald and past-president of the Louisville Association of Paralegals; and me in my capacity as a legal ethics and risk management consultant. Based on a question bank of 150 questions, each exam given will consist of 40 true/false or multiple-choice questions on ethics and professional responsibility. A minimum passing score of 70% is required to become a Certified Kentucky Paralegal. To pass the exam candidates must demonstrate a thorough knowledge of the Paralegal Professional Standards of Conduct. See the sidebar to this article for the Paralegal Standards of Conduct.

Study Materials

Study materials for the exam are provided at <http://www.kypa.org> at no cost. The primary source for exam preparation is the *Kentucky Paralegal Association Paralegal Professional Standards Of Conduct, Second Edition – 2010*. This 93-page book is based on the Kentucky Rules of Professional Conduct and SCR 3.700. It contains a rule-by-rule review of the 12 Paralegal Standards of Conduct in the context of the Kentucky Rules. It also includes full text KBA Ethics and Unauthorized Practice opinions covering the scope of paralegal work, client confidentiality, conflicts of interest, sharing offices, changing lawyer employers, unsupervised paralegals, suspended and disbarred lawyers working as paralegals, paralegal limitations in the courtroom, and paralegals participation in depositions. It concludes with a review of changes in the 2009 Revised Kentucky Rules of Professional Conduct of special significance for paralegals.

Other study materials cover lawyer supervision of paralegals, fees, client trust accounts, client files, and sharing offices. Please go to the KPA Web Site and review these extensive materials. As you will see this is a demanding program and earning the designation of Certified Kentucky Paralegal will not come easily.

Continuing Paralegal Legal Education Requirements

To retain certification a Certified Kentucky Paralegal must earn a minimum of eight credit hours of KPA approved continuing paralegal education annually including two credit hours on the Paralegal Professional Standards of Conduct.

Summing Up

The KPA Certified Paralegal Program is a significant contribution to the practice of law in Kentucky. It is of major assistance to lawyers in complying with their paralegal professional responsibility duties. Furthermore, by employing paralegals that are Certified Kentucky Paralegals, lawyers can be confident that they are bringing into the firm competent and highly motivated professional staff. ☺

ENDNOTES

1. SCR 3.130.
2. Now the Kentucky Rules of Professional Conduct.
3. *Ibid.*
4. Go to the KPA Web Site at <http://www.kypa.org> for the complete details for eligibility.