

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL)
16-18-34)

RULE 97-25

A hearing having been held on February 21, 1997, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-34, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-34 be and it is hereby amended to read in its entirety as follows:

16-18-34. Definition of Legal Assistant. Legal assistants (also known as paralegals) are a distinguishable group of persons who assist licensed attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system, substantive and procedural law, the ethical considerations of the legal profession, and the Rules of Professional Conduct as stated in chapter 16-18, which qualify them to do work of a legal nature under the employment and direct supervision of a licensed attorney. This rule shall apply to all unlicensed persons employed by a licensed attorney who are represented to the public or clients as possessing training or education which qualifies them to assist in the handling of legal matters or document preparation for the client.

16-18-34.1. Minimum Qualifications. Any person employed by a licensed attorney as a legal assistant must meet the minimum qualifications of:

- (1) Successful completion of the Certified Legal Assistant (CLA) examination of the National Association of Legal Assistants, Inc.; or
- (2) Graduation from an ABA approved program of study for legal assistants; or
- (3) Graduation from a course of study for legal assistants which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of sixty semester hours of classroom study; or

- (4) Graduation from a course of study for legal assistants, other than those set forth in (b) and (c) above, plus not less than six months of in-house training as a legal assistant; or
- (5) A baccalaureate degree in any field, plus not less than six months in-house training as a legal assistant; or
- (6) A minimum of three years of law-related experience under the supervision of a licensed attorney, including at least six months of in-house training as a legal assistant; or
- (7) Two years of in-house training as a legal assistant.

Provided, further, that any legal assistant hereunder shall have a high school diploma or general equivalency diploma (GED).

For purposes of these standards, "in-house training as a legal assistant" means legal education of the employee by a licensed attorney concerning legal assistant duties and these guidelines. In addition to review and analysis of assignments, the legal assistant should receive a reasonable amount of instruction directly related to the duties and obligations of the legal assistant and the Rules of Professional Responsibility as stated in chapter 16-18.

16-18-34.2. Utilization of legal assistants.

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

- (1) An attorney may permit a legal assistant to assist in all aspects of the attorney's representation of a client, provided that:
 - (a) The status of the legal assistant is disclosed at the outset of any professional relationship with a client, other attorneys, courts or administrative agencies, or members of the general public;
 - (b) The attorney establishes the attorney-client relationship, is available to the client, and maintains control of all client matters;
 - (c) The attorney reviews the legal assistant's work product and supervises performance of the duties assigned;
 - (d) The attorney remains responsible for the services performed by the legal assistant to the same extent as though such services had been furnished entirely by the attorney and such actions were those of the attorney;
 - (e) The services performed by the legal assistant supplement, merge with and become part of the attorney's work product;

- (f) The services performed by the legal assistant do not require the exercise of unsupervised legal judgment; this provision does not prohibit a legal assistant appearing and representing a client at an administrative hearing provided that the agency or board having jurisdiction does not have a rule forbidding persons other than licensed attorneys to do so and providing that the other rules pertaining to the utilization of legal assistants are met; and
- (g) The attorney instructs the legal assistant concerning standards of client confidentiality.

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

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

16-18-34.3. Ethical Considerations. The proper use of assistants who are not licensed attorneys significantly increases the ability of attorneys to provide quality professional services to the public at reasonable cost. An attorney cannot, however, delegate his or her ethical proscriptions by claiming that the violation was that of an employee. Thus, in order to secure compliance with the Rules of Professional Conduct more specifically as stated in chapter 16-18, the following ethical guidelines are applicable to the attorney's use of nonlicensed assistants:

- (1) An attorney shall ascertain the assistant's abilities, limitations, and training, and must limit the assistant's duties and responsibilities to those that can be competently performed in view of those abilities, limitations, and training.
- (2) An attorney shall educate and train assistants with respect to the ethical standards which apply to the attorney.

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

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

16-18-34.4. Certain Individuals Disqualified. The following persons shall not serve as a legal assistant in the State of South Dakota except upon application to and approval of the Supreme Court.

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

16-18-34.5. Application by disqualified persons - Requirements - Hearing - Burden of proof. The application by a person disqualified under § 16-18-34.4 must establish the applicant's good moral character, competency, education, training, or experience in the legal system, substantive and procedural law, and the Rules of Professional Conduct, and the ability to comply with the ethical considerations of §16-18-34.3.

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

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

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

16-18-34.6. Revocation of order for disqualified persons - Hearing - Burden of proof. The order granting approval for a disqualified person to act as a legal assistant may be revoked by the Supreme Court upon violation of the conditions set by the court, violation of the requirements of §§ 16-18-34 to 16-18-34.5, or the termination of employment with the supervising attorney without an approved replacement supervising attorney. The Supreme Court may act to revoke the order upon its own motion, or upon a complaint, may refer the complaint to the Disciplinary

for testimony, findings, and recommendations. The cost of such hearing will be paid as provided by § 16-19-70.1.


16-18-34.7. Recommendations in attorney disciplinary proceedings. Any recommendation for disbarment or suspension made by the Disciplinary Board under §16-19-67 or the referee under §16-19-68 shall contain a recommendation as to the restrictions or conditions of employment and supervision of the accused attorney as a legal assistant.

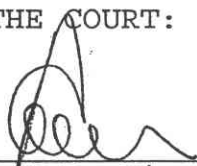
IT IS FURTHER ORDERED that this rule shall become effective July 1, 1997.

DATED at Pierre, South Dakota, this 17th day of March, 1997.

BY THE COURT:

ATTEST,


Clerk of the Supreme Court
(SEAL)


Robert A. Miller, Chief Justice

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 17 1997


Clerk