



# THE NATIONAL CODE OF CONDUCT FOR COMMUNITY PARALEGALS IN KENYA





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## Preface

**T**he role of a paralegal is now fairly well known in the society. Advocates rely on paralegals to do a number of things. Clerks in legal offices are generally regarded as paralegals, though some may have no formal qualifications. People advocating for democracy and rule of law in the community could be regarded as paralegals, as are persons who disseminate information to others to understand their rights.

Paralegals serve an important segment of the society which cannot access legal services or information because of distance or access to formal services of lawyers. Sometimes they refer more legal issues for handling by lawyers. Wherever legal issues are involved and there are no lawyers at that point, paralegals would serve as “first aid providers” and often help solve problems in society. Paralegals are, therefore, an important part of systems that enhance development wholesomely, including providing legal aid and promoting access to justice.

There are two Acts of Parliament that to a varying extent, address paralegal issues. The Legal Aid Act 2016 Cap. 16A provides that it is “*to give effect to Articles 19 (2), 48, 50 (2) (g) and (h) of the Constitution to facilitate access to justice and social justice; to establish the National Legal Aid Service; to provide for legal aid, and for the funding of legal aid and for connected purposes.*” The Act also defines the expression “paralegal” to mean “*person employed by the Service or an accredited legal aid provider who has completed a training course in the relevant field of study in an institution approved by the Council of Legal Education.*”

The Advocates Act, Chapter 16 of the Laws of Kenya, mentions paralegals, indirectly, in sections 34(1)(ii) and 72. These are persons employed by advocates as clerks and whom the law allows to an extent to draft legal documents so long as they are doing so in the course of working for an advocate.

The dynamics of the justice sector have evolved and created a cadre of persons who discharge functions beyond what was contemplated under the two Acts. There are persons who engage in advocacy for law reform, civic education, settlement of disputes out of court, providing basic legal advice, especially on rights of persons in given circumstances, etc. These categories have evolved ahead of legislative framework, and before there is legal intervention, there is need to have an agreed code of conduct to which such persons



will be subject in order to standardize the manner of handling issues, and to protect the persons they interact with in the course of service delivery.

Because the nature of paralegal service involves interaction with people in diverse circumstances, it is necessary that paralegals observe certain legal and ethical responsibilities, especially in cases where in the course of their duties, they are likely to face ethical dilemmas. There is also the need for a standardised procedural guidance in the delivery of paralegal service.

This Code is developed to bridge the gap between the existing law and the community paralegal practice in Kenya. It is the hope of the financiers, sponsors, stakeholders and all those who value order in the paralegal sector, that this code will widely be accepted as a standard code of conduct to move towards professionalisation of paralegal practice.

**Nairobi,**

**30<sup>th</sup> August, 2024**





## » Acknowledgement

This Code is as a result of collaborative work by various stakeholders. First and foremost, special thanks goes to the European Union and the UNDP - Amkeni Wakenya Civil Society Facility for providing the financial and technical support required to develop the code. The UNDP is the implementing partner to the Civil Society Democratic Governance Facility (*AMKENI Wakenya II*) Project and the development of this Code was part of this project.

The code has been developed under the Programme for Empowerment and Aid Delivery (PLEAD) and is contributing to the specific objective of strengthening Paralegalism and Self-regulation in line with the PBO Act of 2013.

We also acknowledge community paralegals from the Paralegal Society of Kenya (PSK), the National Legal Aid Service (NLAS) and other organisations who were involved in drafting and reviewing the Code, without whom the Code would not have been developed.

The code has been developed under the Programme for Empowerment and Aid Delivery (PLEAD) and is contributing to the specific objective of strengthening Paralegalism and Self-regulation in line with the PBO Act of 2013. The Kenya School of Law is a key partner in matters of paralegal practice, having pioneered in establishing formal training programme for paralegals more than two decades, and was instrumental in drafting this Code.

We acknowledge the various stakeholders who have participated in making input to the document. Amongst these are the Paralegal Society of Kenya, CrimeSiPoa, Legal Resources Foundation, MildMay, and Kituo Cha Sheria, and all other stakeholders that in one way or another contributed to the development and production of this Code.

Last but not least, we thank the many other stakeholders who, in one way or the other, facilitated the development of this Code.



## 1. Introduction

This Code provides a consolidated set of standards, guiding values and principles, as well as the expected responsibilities and duties of a paralegal. The Code also provides for conduct that is not expected of a paralegal, and enforcement of the Code.

## 2. Interpretation

In this Code, unless the context otherwise requires—

**“advocate”** means an advocate as defined under the Advocates Act;

**“alternative dispute resolution”** means settling a dispute by means other than through usual court process, and includes negotiation, mediation, arbitration, conciliation and the use of informal or traditional dispute resolution mechanisms;

**“client”** means a person who receives legal aid from a paralegal or a paralegal service provider;

**“community paralegal”** means a person who provides paralegal service to the community voluntarily and without expecting a fee, reward or gain from the client or recipient of the service, whether in cash or in kind;

**“community paralegal service”** means a service rendered or to be rendered by a community paralegal within the scope of the responsibilities set out in clause 7;

**“confidential information”** includes information or data that is designated as confidential at the time of exchange between the parties or promptly identified as confidential in writing or otherwise, and includes information, the confidential or proprietary nature of which, is or should be reasonably apparent from its nature, quality or characteristics, to be confidential;

**“conflict of interest”** refers to a situation when an individual’s personal interests, whether on account of family, friendship, financial, or social factors, could compromise their judgment, decision, or action in the performance of their duties or work;

**“corruption”** means an activity that involves misappropriation of funds through dishonesty, bribery, fraud, embezzlement, breach of trust, abuse of office, or inducing another person to do something that gives the person or another person an unfair advantage;

**“legal aid”** includes —

- (a) legal advice;
- (b) legal representation of a person in circumstances permitted under a written law;
- (c) assisting in —
  - i. resolving disputes through alternative dispute resolution method;
  - ii. drafting relevant documents;





- iii. serving documents relating to legal proceedings; and
- iv. reaching, or implementing, an out-of-court settlement;
- (d) creating awareness by providing legal information and law-related education;
- (e) An accredited legal aid provider under the Legal Aid Act 2016 Cap. 16A

**“legal aid provider”** means—

- (a) an advocate who provides legal aid under the *pro bono* programme of the Law Society of Kenya or under any other civil society or public benefit organisation;
- (b) a paralegal;
- (c) a firm of advocates;
- (d) a public benefit organisation or faith-based organisation;

An accredited legal aid provider under the Legal Aid Act 2016 Cap. 16A

**“paralegal”** means a community paralegal and—

- (a) Is qualified within the meaning of section 2 of the Legal Aid Act 2016 Cap. 16A;
- (b) has basic legal training; or
- (c) has, through relevant experience or prior learning, attained the status of a paralegal.

**“paralegal practice”** means the performance of any or all of the services specified in clause 7;

**“paralegal service”** means any of the services rendered or to be rendered by a paralegal within the context of this Code;

**“sensitive personal data”** sensitive personal data” means data revealing the natural person’s race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details including names of the person’s children, parents, spouse or spouses, sex or the sexual orientation of the data subject;

**“stakeholder”** includes a client, supervisor, legal aid provider, court, an actor in the justice sector, and the National Legal Aid Service;

**“supervisor”** means the National Legal Aid Service, an advocate, a legal aid provider to whom a paralegal is affiliated, or a professional association for paralegals.

## 3. Scope and Application

This Code—

applies to every community paralegal in Kenya who provide legal aid to a particular client, or generally in providing paralegal service;

- (a) applies to a paralegal while undertaking advocacy work and any other undertaking within the scope of this Code; and
- (b) is in addition to any other applicable professional standard or code of conduct.



## 4. Purpose

The purpose of this Code is to promote access to justice by providing a harmonised code of conduct for application by paralegals and paralegal formations, to ensure that provision of paralegal service meets the minimum acceptable standards, best practices and self-regulate to the extent necessary.

## 5. Objectives

### 5.1 General objective

The overall objective of this Code is to set standards and ethical conduct for persons who provide paralegal services to the communities in Kenya.

### 5.2 Specific objectives

The specific objectives of this Code are to—

- (a) entrench acceptable values, principles and standards in the paralegal practice;
- (b) regulate the relationship between a paralegal and a client or stakeholder;
- (c) prescribe what constitutes misconduct;
- (d) promote self-regulation in paralegal sector; and
- (e) provide for sanction for contravention of the Code.

## 6. Values and Principles

In providing paralegal service, a paralegal shall uphold and adhere to the following values and principles:

### 6.1 Integrity

A paralegal must avoid any act, omission or situation which may bring the paralegal service into disrepute.

### 6.2 Honesty

A paralegal must be honest, credible and trustworthy in engaging with a client or a stakeholder.

### 6.3 Diligence

In carrying out paralegal work or delivering paralegal service, a paralegal shall—

- (a) develop a work plan;



- (b) implement and monitor the work plan;
- (c) be prompt and efficient in assisting a client;
- (d) respond to client inquiry within a reasonable time and to regularly communicate with a supervisor; and
- (e) disclose to a client, a court or an administrative agency, at the earliest opportunity, the fact that they are a paralegal.

#### **6.4 Transparency**

In undertaking any work within the scope of this Code, a paralegal must keep accurate and complete information, and shall timely provide the information to the relevant stakeholder.

#### **6.5 Non-discrimination**

In providing a paralegal service, a paralegal must not discriminate against a client on any ground, including political inclination, ethnic origin, gender, sex, marital status, age, religion, disability or race.

#### **6.6 Respect for Human Rights, Freedoms and the Rule of Law**

A paralegal shall uphold and promote the observance of the rule of law, human rights, including the fundamental rights and freedoms enshrined in Chapter 4 of the Constitution of Kenya 2010, and shall be subject to the laws of Kenya.

#### **6.7 Affirmative action for the vulnerable**

A paralegal shall safeguard the rights of special groups in society, who include the marginalised or disadvantaged persons within the meaning of the law, as well as persons who, from the conditions in which they are, are likely to be vulnerable to abuse, oppression or otherwise prejudiced.

#### **6.8 Professionalism**

A paralegal must uphold high standards in performing their duties and responsibilities and shall adhere to any other relevant ethical or professional standards.

#### **6.9 Courtesy**

In their interaction with stakeholders or clients, a paralegal must carry out responsibilities with civility, respect and honesty.

#### **6.10 Voluntary Service**

A paralegal shall offer their time, skills or resources voluntarily for the benefit of a client or the community without expecting financial gain or reward from the client or the community.



### 6.11 Objectivity

In discharging duties and responsibilities, a paralegal shall act honestly, fairly, consistently, impartially, objectively and without fear, favour, bias or prejudice.

### 6.12 Innovativeness and sustainability

A paralegal shall be innovative in providing solution to issues they handle and shall uphold and promote teamwork and sustainability in service delivery.

## 7. Scope of Paralegal Service

The scope of paralegal service is to—

- (a) provide basic legal aid;
- (b) facilitate or resolve disputes through alternative dispute resolution methods;
- (c) assist in preparing or drafting relevant documents under the direction of a supervisor;
- (d) mobilise the community generally or in any region of Kenya to demand for their rights or freedoms in accordance with relevant laws;
- (e) undertake preliminary inquiry in a matter falling within their scope of work;
- (f) refer a matter outside their scope to a relevant stakeholder;
- (g) lobby and advocate for adherence to the rule of law, or to promote legal reform within their scope of work;
- (h) creating awareness to the community through civic education, public sensitization or other similar or related programmes;
- (i) monitor, document and report to the relevant agency, human rights violation or threat to human rights and freedoms.

## 8. Standards of Conduct

### 8.1 Disclosure of title

A paralegal shall disclose the fact that they are ‘paralegal’ to every person to whom they render paralegal service.

### 8.2 Dress code

A paralegal shall be aware of the working environment and the community in which the paralegal operates, and shall dress in a manner that is appropriate.



### **8.3 Competence**

A paralegal must diligently take steps to acquire the necessary knowledge, skills and capacity to perform their duties and responsibilities.

### **8.4 Confidentiality**

A paralegal—

- (a) shall comply with the data protection laws to the extent required by the nature of their service;
- (b) shall not reveal or disclose confidential information or sensitive personal data relating to a client except to a person who is entitled or authorised under written law to receive it; and
- (c) shall not use any such confidential information for personal gain or in a way that is, or is likely to be, prejudicial to the interests of the client.

### **8.6 Conflict of interest**

#### **8.6.1 Representation of client**

A paralegal must not act or represent a client in a matter where the paralegal acts, has acted, represented or has been a witness, for the adverse party or where the paralegal has a personal interest in the matter.

#### **8.6.2 Declaration of conflict**

Where there is, or is likely to be, a conflict of interest, a paralegal must declare the conflict of interest to the client and to the supervisor, and shall not thereafter be involved in the matter.

### **8.7 Relationship with client**

A paralegal shall—

Where practical, obtain written instruction from a client before assisting or representing the client in a matter, unless such written instruction cannot be reasonably given or the circumstances of the client does not make it feasible to seek such instructions;

- (a) where practical, obtain written instruction from a client before assisting or representing the client in a matter, unless such written instruction cannot be reasonably be given or the circumstance of the client does not make it feasible to seek such instructions;



- (b) obtain consent of a parent or guardian or any other person acting in the best interest of the person before dealing with a matter involving or concerning a minor or a person with diminished responsibility;
- (c) adhere to 'do no harm principle';
- (d) regularly inform the client on the status of their matter;
- (e) give written notice to the client of intention to withdraw from a matter, where the paralegal is representing or assisting a client, indicating the ground for such withdrawal;
- (f) upon withdrawal, and where possible, recommend to the client a suitable alternative and shall surrender to the client or supervisor the client's file and other documents;
- (g) At any time upon request by client or a legal aid provider, submit a client's file or document to the legal aid provider and/or client;
- (h) inform a client promptly of the conclusion or resolution of their matter.

## **8.8 Communication**

### **8.8.1 Engagement with the media**

A paralegal must not engage with the media in relation to a client's issue or case without prior authorization by the client or the supervisor, but a supervisor may communicate with the media, subject to any relevant law, including the law on privacy, confidentiality and intellectual property.

### **8.8.2 Social media**

Where a paralegal uses the social media on any issue relating to the service being provided by the paralegal, any statement or communication made must conform to the highest standards of integrity and should not prejudice the client.

### **8.8.3 Legal and Ethical Standards**

A paralegal shall not ask for, demand, receive or accept a gift or favour, whether in cash or otherwise, from a person who has an interest in the paralegal service rendered or to be received.



## **9. Fees and Gifts**

### **9.1 No demand for fee or gift**

A paralegal shall not ask for, demand, receive or accept a gift or favour, whether in





cash or otherwise, from a person who has an interest in the paralegal service rendered or to be rendered.

### **9.2 Declaration of gift**

A paralegal shall, where a gift is given and accepted, declare the receipt of such gift to the relevant supervisor within five working days of receipt of the gift.

### **9.3 Disclosure of charges**

A paralegal shall disclose and discuss with a client the items on which a fee or disbursement is chargeable by a charging institution, and the client shall pay the fee or disbursement directly to the institution.

## **10. Restriction on paralegal service**

### **10.1 No independent service**

A paralegal shall—

- (a) not provide service independently of the supervisor; and
- (b) regularly submit to the supervisor, reports and any other relevant information.

### **10.2 Exclusion of work reserved for advocates**

A paralegal must not perform or attempt to perform any assignment, duty, work or activity that is exclusively performed by an advocate.

### **10.3 Exclusion of work under written law**

Unless qualified or authorised by law, a paralegal shall not perform or attempt to perform any assignment, duty, work or activity which is outside their competence, or which requires additional qualification or authorisation under a written law.



#### **10.4 Holding out as advocate**

A paralegal shall not hold themselves out as being an advocate, and shall not use a name, title, or description that suggests or gives the impression that they are qualified as an advocate.

## **11. Duties and responsibilities**

#### **11.1 Respect for culture and values**

A paralegal must be conscious of the culture and values of the community in which the paralegal operates and must respect the community's culture and values, subject to the Constitution and any written law, and shall seek to develop a collaborative working relationship with the community.

#### **11.2 Property of the client**

A paralegal—

- (a) shall not retain a client's property for whatever reason unless there are special circumstances that warrant such action and shall only be done with permission of both the client and the supervisor; and
- (b) shall, in every such case, exercise due care and prudence with respect to client's property.

#### **11.3 Risk and safety**

A paralegal shall exercise sound judgement and take all reasonable steps to ensure their own safety and that of the client.

#### **11.4 Record keeping**

In providing paralegal service, a paralegal shall maintain a record of client's information, file, activity reports and any other relevant record.



## **12. Misconduct**

### **12.1 Corruption**

A paralegal shall conduct themselves in a dignified manner and shall not engage or be involved in any activity or situation that is likely to compromise their integrity, lead to corruption or to be perceived as corruption.

### **12.2 Discrimination**

A paralegal shall at all times uphold and promote the rights of a client and shall not, in providing paralegal service, discriminate against a client on any ground, including race, sex, pregnancy, marital status, health status, pregnancy status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

### **12.3 Fraud**

A paralegal shall not involve themselves in deception or extortion for personal gain or otherwise, and shall not deprive a person whose right or freedom has, or is being or likely to be violated, or cause such person to lose money or other property.

### **12.4 Sexual and other harassment**

**12.4.1** A paralegal shall not make any sexual advance or request which they know, or has reasonable ground to know, is unwelcome, and shall not request for sexual favour, or make other verbal or physical conduct of a sexual nature to a client.

**12.4.2** A paralegal shall not engage in sexual conduct, advance, or request that interferes, or is likely to interfere, with delivery of paralegal service.

**12.4.3** A paralegal shall not make any comment or take any action that is unwelcome on the part of a client or comment on any issue that is reasonably known to be unwelcome.



## » 13. Enforcement of the Code

### 13.1 Breach of the Code

A paralegal who contravenes a provision of this Code commits a misconduct and may be disciplined in accordance with relevant law or any other relevant procedure to which the paralegal, or the act or omission complained of, is subject.

### 13.2 Enforcement

**13.2.1** A supervisor is responsible for ensuring that a paralegal whom they supervise adheres to the provisions of this Code.

**13.2.2** A supervisor may institute or cause to be instituted institutional disciplinary process for a breach of any of the provisions of this Code.

## » 14. Applicable laws

This Code is subject to the laws of Kenya and, where a code or procedure has been established or adopted pursuant to any written law, such code or procedure shall take precedence over this Code where there is a conflict in the interpretation of any of the provisions.

## » 15. Review and amendment

This Code shall be reviewed at least once every five years, and may be amended at any time in consultation with stakeholders.



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