

Rule 8.5. Disciplinary Authority; Choice of Law.

1 (a) Disciplinary Authority. A licensed paralegal practitioner admitted to practice in this
2 jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the
3 licensed paralegal practitioner’s conduct occurs.

4 (b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules
5 of professional conduct to be applied shall be as follows:

6 (b)(1) for conduct in connection with a matter pending before a tribunal, the rules of the
7 jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

8 (b)(2) for any other conduct, the rules of the jurisdiction in which the licensed paralegal
9 practitioner’s conduct occurred, or, if the predominant effect of the conduct is in a different
10 jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A licensed paralegal
11 practitioner shall not be subject to discipline if the licensed paralegal practitioner’s conduct
12 conforms to the rules of a jurisdiction in which the licensed paralegal practitioner reasonably
13 believes the predominant effect of the licensed paralegal practitioner’s conduct will occur. If
14 both the jurisdiction where the licensed paralegal practitioner’s conduct occurred and the
15 jurisdiction where its predominant effect was felt lack rules of professional conduct for licensed
16 paralegal practitioners, these rules shall be applied to the conduct at issue.

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18 Comment

19 Disciplinary Authority

20 [1] The conduct of a licensed paralegal practitioner admitted to practice in this jurisdiction is
21 subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of
22 this jurisdiction to other licensed paralegal practitioners who provide or offer to provide legal
23 services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal
24 enforcement of a jurisdiction’s disciplinary findings and sanctions will further advance the
25 purposes of this Rule. See Rules 6 and 22, Licensed Paralegal Practitioner Discipline and
26 Disability.

27 Choice of Law

28 [2] A licensed paralegal practitioner may be potentially subject to more than one set of rules
29 of professional conduct that impose different obligations. The licensed paralegal practitioner may
30 be licensed to practice in more than one jurisdiction with differing rules or may be admitted to

31 practice before a particular court with rules that differ from those of the jurisdiction or
32 jurisdictions in which the licensed paralegal practitioner is licensed to practice. Additionally, the
33 licensed paralegal practitioner's conduct may involve significant contacts with more than one
34 jurisdiction.

35 [3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing
36 conflicts between rules, as well as uncertainty about which rules are applicable, is in the best
37 interest of both clients and the profession (as well as the bodies having authority to regulate the
38 profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a
39 licensed paralegal practitioner shall be subject to only one set of rules of professional conduct,
40 (ii) making the determination of which set of rules applies to particular conduct as
41 straightforward as possible, consistent with recognition of appropriate regulatory interests of
42 relevant jurisdictions, and (iii) providing protection from discipline for licensed paralegal
43 practitioners who act reasonably in the face of uncertainty.

44 [4] Paragraph (b)(1) provides that, as to a licensed paralegal practitioner's conduct relating to
45 a proceeding pending before a tribunal, the licensed paralegal practitioner shall be subject only to
46 the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its
47 choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation
48 of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a licensed
49 paralegal practitioner shall be subject to the rules of the jurisdiction in which the licensed
50 paralegal practitioner's conduct occurred, or, if the predominant effect of the conduct is in
51 another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of
52 conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant
53 effect of such conduct could be where the conduct occurred, where the tribunal sits or in another
54 jurisdiction. If the jurisdiction where the conduct occurred and the jurisdiction where the
55 predominant effects of the conduct were felt both lack rules of professional practice for licensed
56 paralegal practitioners then these rules shall apply to the conduct at issue.

57 [5] When a licensed paralegal practitioner's conduct involves significant contacts with more
58 than one jurisdiction, it may not be clear whether the predominant effect of the licensed paralegal
59 practitioner's conduct will occur in a jurisdiction other than the one in which the conduct
60 occurred. So long as the licensed paralegal practitioner's conduct conforms to the rules of a
61 jurisdiction in which the licensed paralegal practitioner reasonably believes the predominant

62 effect will occur, the licensed paralegal practitioner shall not be subject to discipline under this
63 Rule. With respect to conflicts of interest, in determining a licensed paralegal practitioner's
64 reasonable belief under paragraph (b)(2), a written agreement between the licensed paralegal
65 practitioner and client that reasonably specifies a particular jurisdiction as within the scope of
66 that paragraph may be considered if the agreement was obtained with the client's informed
67 consent confirmed in the agreement.

68 [6] If two admitting jurisdictions were to proceed against a licensed paralegal practitioner for
69 the same conduct, they should, applying this Rule, identify the same governing ethics rules. They
70 should take all appropriate steps to see that they do apply the same rule to the same conduct and
71 in all events should avoid proceeding against a licensed paralegal practitioner on the basis of two
72 inconsistent rules.

73 [7] Reserved.

Effective November 1, 2018