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A Paralegal Is Guilty of the Unauthorized Practice of Law by Preparing Documents for Litigation and Providing Legal Advice without Supervision by a Licensed New Jersey Attorney

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New Jersey court rules and statutes prohibit the unauthorized practice of law. While paralegals engage in activities that constitute the “practices of law,” they can only do so under the direct supervision of a licensed New Jersey attorney. R.P.C. 5.3. The Superior Court of New Jersey, Appellate Division, recently addressed this issue in an unreported decision dated November 21, 2019, in *Baron v. Karmin Paralegal Services*, ___ N.J. Super. ___ (2019) (slip. op.). In *Baron*, the New Jersey Superior Court, Appellate Division, affirmed the decision of the Superior Court, Law Division, Special Civil Part, which held that the defendant paralegal company, Karmin Paralegal Services, committed fraud by performing legal services on behalf of the plaintiff, John Baron. While the Appellate Division reversed that part of the trial court’s decision awarding punitive damages to the plaintiff, the Court’s guidance on what constitutes the “practice of law” and the implications under New Jersey’s Rules of Professional Conduct are important to both the legal community and New Jersey consumers of legal services.

Plaintiff Baron entered into a contract with Defendant Karmin Paralegal Services in March 2017 to provide “document preparation” services related to Baron’s child support dispute with his ex-wife. *Baron v. Karmin Paralegal Services*, ___ N.J. Super. ___ (2019) (slip. op. at 2–3). While the contract, drafted by Karmin, included language which attempted to distinguish Karmin’s services from the actual practice of law, the evidence was clear that Karmin prepared legal documents, gave legal advice, and engaged in conduct that was clearly the practice of law. *Id.* at 3–4. Karmin, who is a paralegal and not an attorney, offered to prepare on Baron’s behalf, opposition to Baron’s ex-wife’s motion, a cross-motion, discovery requests, a reply to any opposition to the cross-motion, legal research, and correspondence. Karmin actually prepared opposition to a motion filed by Baron’s ex-wife, as well as an appeal from the denial of the application, which was

unsuccessful. Karmin also prepared an application which Baron filed in the Family Part. Karmin also prepared opening and closing statements for Baron to use in Court. The Family Part judge denied Baron's application, and ruled in favor of Baron's ex-wife. Karmin prepared another appeal on Baron's behalf, which was likewise unsuccessful. Thereafter, Karmin consulted with several attorneys. He then demanded a full refund of the fees he paid to Karmin. Karmin refused. *Id.* at 3–5.

Baron lodged a complaint with the Committee on the Unauthorized Practice of Law, which determined that Karmin's actions constituted the unauthorized practice of law, and referred the matter to the Union County Prosecutor's office. Following an investigation, charges were filed against Karmin and he entered Pre-Trial Intervention, conditioned on the payment of restitution. *Id.* at 6.

Although not addressed in the Court's opinion, it is likely that Karmin did not pay restitution, because in June 2018 Baron filed a complaint against Karmin for fraud in the Special Civil Part seeking to recover the fees Baron paid to Karmin. Following a trial, the trial court found that Karmin in fact "committed fraud by engaging in the unauthorized practice of law, charging plaintiff for its services, and retaining plaintiffs' payments." *Id.* at 8–9, 12. The Appellate Division affirmed this finding, but reversed the award of punitive damages because the plaintiff Baron had not sought punitive damages in his complaint. *Id.* at 18.

It is important for the legal community and for consumers of legal services in New Jersey to be aware of what constitutes the unauthorized practice of law. As noted in the Appellate Division's opinion, the practice of law is not only the representation of a party in court, but is also that conduct engaged in "whenever and wherever legal knowledge, training, skill and ability are required." *Id.* at 13 (quoting *Stack v. P.G. Garage, Inc.*, 7 N.J. 118, 121 (1951)). The Appellate Division in *Karmin* found that Karmin prepared legal documents for plaintiff, which is clearly the practice of law. *Id.* at 13–14 (citing *Cape May Cty. Bar Ass'n v. Ludlum*, 45 N.J. 121, 124 (1965)). Karmin also provided legal advice to Baron about his child support dispute, which is likewise the practice of law. *Id.* at 14 (citing *In re Estate of Margow*, 77 N.J. 316, 328 (1978)).

Karmin's "document preparation" conduct was not limited simply to filing out legal forms, which is not prohibited activity. While a non-lawyer may assist an individual in the typing, transcribing, or translation of forms contained in "Do-It-Yourself" legal kits, the rendering of any other assistance with the preparation, review, analysis, or completion of materials included in these legal kits, constitutes the unauthorized practice of law and is prohibited. *UPL Opinion 40*, 176 N.J.L.J. 1195 (June 21, 2004). In addition, while companies with computer programs that create legal documents may sell legal forms without violating the rule against the unauthorized practice of law, no legal advice or consultation on what to say when filling out such forms is permitted

under New Jersey law. Here, Karmin did not simply fill out forms on Baron’s behalf. The evidence was clear that he prepared legal pleadings, gave legal advice and consultation, and provided other legal services in violation of the rules against the unauthorized practice of law.

Paralegals do engage in the practice of law, but under New Jersey rules, the paralegal must be supervised by an attorney. If there is no oversight or supervision by a licensed attorney, the paralegal is engaged in the unauthorized practice of law. *In re Opinion No. 24 of the Committee on Unauthorized Practice of Law*, 128 N.J. 114, 123 (1992). The New Jersey Supreme Court made clear in Opinion No. 24 that “supervision” by the lawyer over a paralegal is illusory if the attorney knows nothing about the field in which the paralegal is working. *Id.* at 127. Moreover, a paralegal may not offer his or her services to the general public; an independent paralegal must offer services to the attorney, and the attorney offers legal services to the general public. *Id.*

Although the Appellate Division in *Baron* did not cite to the Supreme Court Opinions on the unauthorized practice of law, it adhered to the principles articulated by the Supreme Court in Opinions 24 and 40 in affirming the trial court’s finding that Karmin engaged in the unauthorized practice of law. In this regard, there was no evidence that Karmin was working under the supervision of a licensed New Jersey attorney or that he offered his services through a licensed New Jersey attorney. *See New Jersey Rule of Professional Conduct 5.3.*

Therefore, licensed attorneys should familiarize themselves with the rules on the unauthorized practice of law to the extent they utilize paralegals who are not supervised, or who offer their services directly to the public. Consumers of legal services should likewise be aware that only licensed attorneys are able to engage in the practice of law.

The author of this blog post, Adrienne C. Rogove, is a partner at Blank Rome, and the Chair of the New Jersey Supreme Court Committee on the Unauthorized Practice of Law.

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