

Professional Ethics That Paralegals Can Never Break

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The Good Place



Rules of Professional Conduct

- California's Rules changed effective November 1, 2018
- Revised to more closely align with the ABA Model Rules

What can a paralegal do?

- Case planning, development, and management
- Legal research
- Interview clients and witnesses
- Gather facts and retrieve information
- Draft and analyze legal documents
- Make recommendations to the supervising attorney

What are things a paralegal cannot do?

- ❑ Provide legal advice
- ❑ Represent a client in court
- ❑ Select, explain, draft, or recommend the use of any legal document to or for any person other than the supervising attorney
- ❑ Act as a “runner” or “capper”
- ❑ Engage in the unauthorized practice of law

What are things a paralegal cannot do?

- ❑ Contract with, or be employed by, a natural person other than an attorney to perform paralegal services
- ❑ Induce a person to make an investment, purchase, or transaction in connection with providing legal services
- ❑ Establish the fees to charge a client

Unauthorized Practice of Law – Where is the line?

- ❑ Do not enter into an attorney-client relationship
- ❑ Do not negotiate fees with a client
- ❑ Do not give the impression you can provide legal representation
- ❑ Do not give legal advice
- ❑ When you are communicating with an attorney, you are on safe ground
 - ▣ Be more cautious when dealing with a non-attorney



Great lecture, by the way... so bleak.

Conflicts and Disclosures

- Rules require attorneys to make written disclosures to clients of certain relationships and interests
- Paralegals should disclose relationships and interests to their supervising attorney
 - If you currently have (or previously had) a legal, business, financial, professional or personal relationship with a party, a witness, or any person or entity that would be affected substantially by the resolution of the matter
 - If you have a legal, business, financial or professional interest in the subject matter of the representation (e.g., you have an investment in a company that could be impacted)

Relationship With Other Party's Attorney

- Another party's lawyer is:
 - ▣ your spouse,
 - ▣ your parent,
 - ▣ your child,
 - ▣ your sibling,
 - ▣ someone you live with, or
 - ▣ have an intimate personal relationship with.
- Be aware of the potential “appearance of impropriety”
- What if you are not sure?

Rules of Professional Conduct, Rule 1.7(c)



Well, being ethical, it's hard.

Confidentiality and Communication

- Establish a system for memorializing significant communications
- Duty of Confidentiality: “To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”
- The duty of confidentiality is broader than attorney-client privilege
 - ▣ Potential Clients
 - ▣ Termination of Attorney/Client Relationship
 - ▣ Survives Death
- “Basic” information can still be confidential

Business and Professions Code section 6068(e)(1)
Rules of Professional Conduct, Rule 1.6

What is the best course when you face a potential ethics or malpractice violation?



What is the best course when you face a potential ethics or malpractice violation?

- Do the Right Thing
 - ▣ Management of a mistake or accusation of wrongdoing is often more important than the mistake itself
 - ▣ Cover-ups are almost always worse than the crime – efforts to conceal errors invariably exacerbate the problem (and can serve to generate a separate cause of action that dwarfs the original problem)

“Doing the Right Thing” invariably contemplates the Duty of Loyalty

- Many commentators (and courts) identify the duty of loyalty as the fundamental quality of the attorney-client relationship – “the absolute and complete fidelity owed by the attorney to his or her client.”
- The duty of loyalty is the primary value at stake in most ethical dilemmas

Fact Pattern

- March 1: Your unreasonably demanding client insists that a document be filed **today**, even though it is not actually due for two weeks. The client is assured that the document will be filed today but more pressing matters arise and the document is not filed until several days later (March 6).

Fact Pattern

- March 10: The demanding client wants confirmation that the document was filed and asks for a copy. The document was filed on time, but not on the date that client was originally promised.
- What do you do?



What is the best course of action?

- Discuss with supervising attorney
 - ▣ Oral discussion or written?
 - ▣ Is the discussion privileged?
- State Bar Ethics Hotline: 800-238-4427
 - ▣ Not privileged, but confidential, and often excellent advice
- Hotline provided by your employer or insurer
- Pre-vetted outside ethics counsel





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Matthew C. Smith has extensive experience in all aspects of civil litigation, including trials, arbitrations, and mediations. Matt represents individuals and business clients on a wide variety of professional and business litigation matters. He has served as lead counsel or co-counsel in more than a dozen trials and arbitrations. Matt also handled several successful appeals and has argued before the Fourth District Court of Appeal.

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