

Law Office Management Chapter 5

Chapter 5

Tab Text

Paralegal Ethics and Client Relations

OBJECTIVES

After completion of this chapter, you should be able to:

- Understand how paralegal ethics have evolved.
 - Describe the disciplinary authority of paralegal associations.
 - Develop competency.
 - Prepare a goodwill letter.
 - Define legal advice and know what activities constitute legal advice.
 - Guard against conflict-of-interest violations.
 - Erect a Chinese Wall around a person with a conflict of interest on a case.
 - Understand the importance of keeping clients' matters confidential.
 - Identify the three main areas of the unauthorized practice of law.
 - Identify independent paralegals and discuss the issues surrounding them.
 - Understand what activities constitute the unauthorized practice of law.
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Key Terms

Tab Text

1. **Certificate of service:** A document appended to the end of a legal document that contains the date and place of mailing.
 2. **Chinese wall:** Prohibits a person from working on or discussing a case if that person has a conflict of interest.
 3. **Deponent:** A person whose deposition is taken.
 4. **Foreclosure:** To shut out; a termination of all rights of the mortgagor in the property covered by the mortgage.
 5. **Goodwill letter:** A letter written to create rapport and good relations.
 6. **Incarcerated:** Imprisoned; confinement to a jail or penitentiary.
 7. **Intranet:** A private collection of information that is viewed by Internet Web browser software and is accessible only to authorized members of a private network; a private Internet site.
 8. **Mitigated:** To make less severe; alleviation, reduction, abatement or diminution of a penalty or punishment imposed by law.
 9. **Post-conviction writ:** A written judicial order to perform a specified act or giving authority to have it done after a criminal conviction.
 10. **Pro bono:** Latin for "for the good"; used to describe work or services performed free of charge for indigent people.
 11. **Pro se:** For one's own behalf; appearing for oneself, in court.
 12. **Probate:** Court procedure by which a will is proved to be valid or invalid; refers to the legal process wherein the estate of a decedent is administered.
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13. **Remedial:** Affording a remedy; giving means of obtaining redress.

14. **Scrivener:** A clerk or scribe; a notary.

15. **Statute of limitations:** The time period after an offence within which a lawsuit action must be filed.

16. **Temporary restraining order:** An emergency judicial remedy of brief duration that may issue only in exceptional circumstances and only until the trial court can hear arguments or evidence on the issue.

17. **Unbundled legal services:** Breaking a legal representation into tasks that are performed by a lawyer and non-lawyer.

18. **Unlawful detainer:** A statutory procedure whereby a landlord can legally evict a tenant in default on the rent.

Internet Projects

The screenshot shows a software interface with a sidebar on the left and a main content area on the right. The sidebar contains six buttons: 'Key Terms', 'Internet Projects' (which is highlighted), 'Answers to Chapter Review Questions', 'Examples for Discussion', 'Possible Answers to Assignments', and 'Quiz'. The main content area has a title 'Internet Projects' and contains two numbered list items. The first item discusses cybersites and ethical violations. The second item discusses a legal dispute between the State of Texas and Nolo Press. Below the list items is a section titled 'ADDITIONAL ETHICS RESEARCH SOURCES' which provides a list of cases for research.

Tab Text

1. The Cybersites sidebar found on page 183 lists the Web sites of both freelance paralegals and independent paralegals.

Research and compare these Web sites. Look for any potential ethical violations.

2. The State of Texas' dispute with Nolo Press over whether Nolo's products constitute UPL is well documented on Nolo's Web site located at <<http://www.nolo.com>>

ADDITIONAL ETHICS RESEARCH SOURCES

The following cases can be assigned to research issues regarding paralegals:

1. Taylor v. Chubb, 874 P.2d 806 (Okla. 1994)-

Subjects: Duties of a paralegal and fee awards.

2. McMackin v. McMackin, 651 A.2d 778 (Del.Fam Ct 1993)-Subjects: Duties of a paralegal and fee awards.

3. Fine v. Facet Aerospace Products Co., 133 F.R.D. 439 (S.D.N.Y. 1990)-Subject: Work product.

4. Akron Bar Assn. v. Greene, 673 N.E. 2d 1307 (Ohio 1997)-Subject: UPL.

5. In re Hessinger & Associates, 192 B.R. 211 (N.D. Calif. 1996)-Subject: UPL.

6. In the Matter of Bright, 171 B. R. 799 (Bkrtcy. E.D. Mich)-Subject: UPL.

7. Louisiana State Bar Assn. v. Edwins, 540 So.2d 294 (La. 1989)-Subject: UPL.

8. In re Complex Asbestos Litigation, 232 Cal.App. 3d 572 (Calif. 1991)-Subjects: Attorney-client privilege and conflict of interest.

9. Makita Corp. v. U.S., 819 F.Supp. 1099 (CIT 1993)-Subjects: Attorney-client privilege and conflict of interest.

10. Phoenix Founders, Inc. v. Marshall, 887 S.W.2d 831 (Tex. 1994)-Subject: Conflict of interest.

11. Smart Industries v. Superior Court, 876 P.2d 1176 (Ariz.App.Div.1 1994)-Subject: Conflict of interest.

12. Matter of Martinez, 754 P.2d 842 (N.M. 1988)-Subject: Adequate supervision.

13. State v. Barrett, 483 P.2d 1106 (Jan. 1971)-Subject: Adequate supervision.

14. In re Bicoastal Corp., 121 B.R. 653 (Bktrcy. M.D.Fla. 1990)-Subject: Fee awards.

15. In re Carter, 101 B.R. 170 (Bkrtcy.D.S.D. 1989)-Subject: Fee awards.

16. Missouri v. Jenkins, 491 U.S. 274, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989) 11 U.S.C.A. 330-Subject:

Fee awards.

17. Miller v. Alamo, 983 F.2d 856 (8th Cir. 1993)-
Subject: Fee awards.

18. Stewart v. Sullivan, 810 F.Supp. 1102 (D.Hawaii
1993)-Subject: Fee awards.

19. In re Yankton College, 101 B.R. 151 (Bkrtcy. D.S.D.
1989)-Subject: fee awards.

20. Stacey v. Stroud, 845 F.Supp. 1135 (S.D.W.Va.
1993)-Subject: fee awards.

21. Louisiana State Bar Assn. v. Edwins, 540 So.2d 294
(La. 1989)-Subject: court appearances.

22. Doe v. Condon, 532 S.E 2d 879 (4th Cir. 2000)-
Subject: legal advice.

23. Ziegler v. Nickel 64 CA\$ 545; 75 CR2 312 (1998)-
Subject: Appearing in count for another person.

24. Estate of Condon 65 CA4 1138; 76 CR2 922
(1998)-Subject: Recovery of paralegal fees.

Answers to Chapter Review Questions

Tab Text

Following are answers to the Chapter Review Questions found in the text.

1. The ABA conceived of the concept of a paralegal. The profession was created to increase a lawyer's profits and efficiency and decrease costs to the client (p. 165).
 2. A paralegal's competence is increased by experience and continuing legal education (p. 169).
 3. The following eight things indicate a lack of commitment to a client's case:
 - A. Failure to begin an action;
 - B. Failure to appear at a hearing;
 - C. Failure to file pleadings;
 - D. Filing carelessly drafted pleadings;
 - E. Failure to respond to interrogatories;
 - F. Failure to respond to correspondence from opposing counsel;
 - G. Failure to correct a known defect in a case; and
 - H. Failure to notify clients of lawyer's new office address or telephone number (p. 170).
 4. Legal advice is applying your knowledge of the law to facts of a case and rendering an opinion or instituting action based thereon (p. 172).
 5. The following five activities constitute giving legal advice:
 - A. Recommending a course of conduct or action to a client;
 - B. Evaluating a case and predicting the possible outcome;
 - C. Evaluating a case and suggesting a course of action;
 - D. Explaining the client's rights or obligations to a client; and
 - E. Independently interpreting statutes, decisions, or legal documents to a client (pp. 172-173).
 6. The exceptions to giving legal advice are:
 - A. A prison inmate acting as a "jailhouse lawyer" can give legal advice.
 - B. A paralegal may give legal advice to a client he or she is representing at an administrative hearing if the administrative agency allows nonattorney representation.
 - C. Some states will allow nonattorneys to give legal advice in a pro bono program (p. 173).
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7. A paralegal may not accept a case, because it creates an attorney-client relationship for which the attorney is responsible (p. 175).

8. A paralegal has a conflict of interest if he or she works on a case for his/her current employer that she/he worked on for a previous firm (p. 175).

9. Some things a paralegal can do to keep a client's case confidential are:

A. Do not discuss the case outside of the office.

B. Do not discuss a case near the waiting area of the office.

C. When discussing a case with a coworker, make sure the surroundings are private.

D. Keep clients' files out of the view of other clients or other people not affiliated with the law firm.

E. Make sure a client has a secure service upon which to receive e-mails.

F. Do not accept telephone calls from other clients while meeting with a client. This not only jeopardizes the confidentiality of a client's matter, it conveys a message to the client you are meeting with that his or her matter is not as important as the other client's matter.

G. Never mention that a certain client visited your office.

H. Always close your door while meeting with a client.

I. Do not have a document relating to a client's case on your computer while meeting with a client. Close the file or use a screen saver (p. 177).

10. The three main activities that constitute the practice of law are subject to the case law of a state. Most states have ruled that the following activities constitute the practice of law:

A. Representing clients in court or governmental agency proceeding;

B. Preparing legal documents;

C. Giving legal advice (p. 178).

11. The unauthorized practice of law is giving legal advice and representing a client in court or governmental

agency that does not authorize nonlawyer representation. It is also preparing legal documents without the supervision of a lawyer (p. 178).

12. Case law determines the unauthorized practice of law for each state (p. 178).

13. An independent paralegal does law-related work directly for the public without a lawyer's supervision (p. 183).

14. The case of *The People v. Landlords Professional Services*, 215 Cal. App. 3d 1599; 264 Cal.Rptr.548 (1989) stated that the following actions, when clerical, are not UPL:

- A. Giving customers written instructions and legal information needed to handle their own cases, even detailed instructions containing specific advice;
- B. Providing the appropriate court forms for the customer's use;
- C. Typing the forms at the direction of the customer;
- D. Completing the papers so they will be accepted by the court; and
- E. Having the forms served as directed by the customer (p. 185).

15. Some abuses of the lack of paralegal regulation are:

- A. Uneducated, inexperienced lay people are preparing legal documents for the public;
 - B. Graduates of unqualified "fly-by-night" paralegal programs do paralegal work for the public; and
 - C. The public does not know if an independent paralegal is qualified to do legal work for them (pp. 185-186).
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Examples for Discussion

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1. Louisiana State Bar Assn. v. Edwins

A. Stacey's business is not unethical. However, her action of replacing the sign in front of her office with a sign that read "Law Office" misleads the public as to the nature of her business. A client could mistakenly think that Stacey was an attorney, especially when the secretary introduces a potential client to Stacey when they ask for an attorney. It is not clear if Stacey informs the client of her status. It is clear that Stacey accepts cases for Tim, which is a violation of paralegal ethics. She also violated paralegal ethics by preparing legal documents for Tim without his supervision or review.

B. Tim has violated the following ethical guidelines:

1. He aided in the unauthorized practice of law when he allowed Stacey to accept cases for him.
2. He aided in the unauthorized practice of law when he allowed Stacey to sign pleadings on his behalf.
3. He aided in the unauthorized practice of law when he supplied Stacey with a signature stamp and did not review the documents Stacey prepared.

C. Individual response.

D. Individual response.

E. The New York State Bar has no jurisdiction over Stacey, so they cannot prosecute her. However, they can discipline Tim for his unethical behavior.

2. In re Anderson

A. Joe engaged in UPL by the following activities:

1. Joe's advice about the bankruptcy chapters is not only incorrect, it was legal advice.
2. His response to her about losing her house and keeping her income tax refund was incorrect and was legal advice.

B. Joe gave Janis legal advice a number of times as already stated.

C. Joe's activities would not be UPL if he instructed Janis to consult an attorney about her questions regarding the consequences of bankruptcy. As a scrivener, he could not discuss the legal consequences with her. All he could do to be within the UPL boundaries is accept her questionnaire form and prepare the documents from the information on the form.

3. Independent Paralegals

Individual Student response.

4. Conflicts of Interest

Individual Student response.

5. *DeVaux v. American Home Assurance Co.*

To establish an attorney-client relationship, legal advice is sought and the attorney must give, or promise to give, the legal advice. The issue here is whether the secretary's actions created an attorney-client relationship. The secretary gave the client instructions based on her knowledge of the law and the facts of the case. The secretary's instructions to get medical advice were legal advice. The Court ruled that the secretary, albeit without authority, created an attorney-client relationship.

- A. Individual response.
 - B. The secretary's actions created the appearance of her authority to establish an attorney-client relationship.
 - C. Communication applies to this case.
 - D. The secretary gave legal advice and therefore committed UPL.
 - E. Individual response.
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F. Individual response.

G. Individual response.

H. The attorney violated the ABA Model guidelines for Legal Assistant Services numbers 1, 2, and 3.

6. UPL Too Restrictive?

Student response.

7. Clerical verses Substantive Work

Student response.

Possible Answers to Assignments

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Following are possible answers to Assignments provided in the text. The responses below are a guide to what an instructor would look for within the student's response. Some assignments are based solely on individual experience and/or opinion, and a general response for such questions is not provided.

1. Individual student response.
 2. Some of the things a paralegal can do when changing employment is to inform his/her former employer of the cases that are subject to the conflict of interest. At that time the paralegal should inform his/her former employer of the methods used to guard against the conflict. All aspects of the conversation should be in writing, signed by the former employer and the legal assistant. Then, a Chinese wall must be erected around the paralegal by his/her current employer. The file must be marked in large letters "SUBJECT TO CHINESE WALL AROUND MARY SMITH." The file must be kept in the responsible attorney's office, or in a locked cabinet, away from the central filing area. If employees are discussing the case, Mary cannot be included in the conversation, or near the conversation.
 3. Paralegals can participate in continuing legal education courses, or do independent study on their own time. An organized paralegal can handle a large workload better than a disorganized paralegal. One thing that increases thoroughness is to make "To Do" lists and prioritize the items on the list. Checklists are also handy to make sure that every step of a project is completed.
 4. Individual student response.
 5. Individual student response.
 6. There are a number of false or misleading statements in this advertisement. First of all, there is
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no recognized certifying board for Independent Paralegals. The Board certification referred to in this article is by the Professional Paralegal Bar Association, which was created by the author of the advertisement: James Jones. While he may certify his students, the certification is not recognized outside of his organization.

Secondly, the statement that he earned \$245,000 in his spare time equates to \$245.00 per hour. If we assume he worked 20 hours a week for 50 weeks, that adds up to 1,000 hours a year divided by 245,000 is \$245 per hour; an unreasonably high hourly rate for an independent paralegal. Further, the ad states that he takes "frequent" vacations to Europe and has been around the world twice. His traveling activities further increase his hourly rate. If he is booked to make \$400,000 next year, in between his frequent vacations, one must question his pricing structure.

7. Individual student response.

Quiz

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[Click here to take the Chapter Quiz.](#)
