



## § 6.1

## Legal Ethics and Court Sanctions

### *Standards and Punishment*

#### ETHICS ARE NOT ALWAYS BLACK AND WHITE

A paralegal was sent to a courthouse on a Friday morning to obtain copies of some important documents needed by the attorney. The documents were in support of a trial brief that was required to be filed later in the day, so the matter was urgent.

Upon arriving at the courthouse, the paralegal went directly to the Court File Clerk's office to request the file. Just as he was ready to begin copying the documents, the power went out in the building. There was no way to copy the file without electricity for the copier. After waiting about an hour, the paralegal, concerned about the urgency of obtaining the copies, went to the judge's office where he discussed the problem with the judge's clerk. She suggested filing a motion with the judge asking for permission to remove the file from the courthouse in order to obtain copies at a nearby print shop, which did have power.

One big problem: paralegals are not allowed to appear or represent in court on behalf of a client. If the paralegal filed a motion with the court, it would likely be a violation of legal ethics and court rules. He called his attorney, and out of desperation the attorney asked the paralegal to hand-write a "Motion to Remove Case File from Courthouse for 30 Minutes." The handwritten motion included all the required elements, including a Certificate of Mailing to notify the opposing party that the request was being made. It was signed, after his name, as "Paralegal for Plaintiff's Attorney." The paralegal was aware that his attorney was taking a risk by doing this, and that he could be sanctioned by the court. The paralegal was also aware that he could be spending the weekend in jail!

When the judge arrived in his office, he called for the paralegal to enter and sit down. As he read the motion, he just kept shaking his head. Without looking up, the judge stated, "Raise your right hand. Do you swear that you are a paralegal for the Plaintiff's attorney in this matter?" "Yes, your Honor" was the paralegal's response. "And you will mail copies of this motion and order to the Defense in this case?" "Yes," the paralegal affirmed. The judge took a pen and signed the attached handwritten order the paralegal had prepared allowing the file to be removed. As he signed it, the judge started to chuckle. "I would give anything to be a fly on the wall of Defense counsel when they see this!" All ended well. But the question was debated for a long time in the firm: was it ethical for a paralegal to file such a motion?

#### PARALGAL ETHICS

### Not Optional

#### Legal Ethics

Ethics are standards to which all members of a profession are expected to adhere. In the legal profession, attorneys are expected to not only follow the ethical rules of bar associations of which they are members, they are also expected to avoid even the appearance of ethical impropriety.

An attorney who violates ethical rules may be subject to a fine, suspension, private reprimand (which is not made public), a public reprimand (which is made public), or even disbarment. Such punishments are typically handed out by the bar association as a response to a complaint to its ethics committee.

#### Court Sanctions

A violation of ethical rules during a trial may also result in the attorney (and as a result his or her client) being punished by the court. This punishment is called a sanction. Sanctions for lawyers include fines, a limit on evidence that can be presented at trials, and even the elimination of certain witnesses that were going to be called to the standby that party.

As we will see, paralegals must also abide by these ethical standards.