

## § 6.3

**ABA Rules of Ethics***Paraphrased**1. Competence*

An attorney should be competent to handle a legal matter. This means lawyers should refrain from taking cases in areas of law with which they are unfamiliar, unless they make an effort to ensure adequate representation (such as hiring co-counsel with experience in those areas).

*2. Diligence/Unwarranted Delay*

An attorney should act with due diligence on a case. A paralegal can assist an attorney by acting promptly on assigned tasks.

*3. Fees*

The shortest of all ABA rules, the rule on fees, simply states that they should be “reasonable.” Whether a fee is reasonable varies according to the services performed, the experience of the attorney, and the standards of the community.

*4. Crime or Fraud by Attorney*

An attorney may be sanctioned if he or she engages in conduct that is criminal or fraudulent.

*5. Crime or Fraud by Client*

Although an attorney may represent someone who has committed a crime or fraud, the attorney may not counsel the client to engage in such conduct.

*6. Frivolous Legal Positions*

An attorney may not assert a frivolous claim or defense. This rule would also prevent an attorney from presenting a defense or claim that he or she knows is not true.

*7. Safekeeping Property*

An attorney holding money or property belonging to a client must keep it separate from the attorney’s holdings. Although this rule is often ignored, an attorney should not intermingle client funds.

*8. False Statements and Failure to Disclose*

An attorney may not make false statements. An attorney must disclose relevant information and authority, even if that information and authority are damaging to the client.

### 9. *Withdrawal*

An attorney must ask the court for permission if she wishes to withdraw from a case.

### 10. *Confidentiality of Information*

The following rules extend to legal staff as well as the attorney:

#### *Attorney/Client Privilege*

Communication with the client must remain confidential even after the death of a client.

#### *Attorney Work Product*

Material prepared in anticipation of litigation is not discoverable.

#### *Inadvertent Disclosure of Confidential Information*

An attorney must make reasonable efforts to ensure that confidential information is not accidentally disclosed. Even if the disclosure is accidental, the attorney may still be found culpable.

### 11. *Conflict of Interest*

- An attorney should not engage in business transactions with a client.
- An attorney should not accept gifts from a client.
- An attorney should not engage in sex with a client.
- An attorney should not take a case in which she has a personal bias.
- An attorney should not engage in multiple representation (representing both sides in a case) unless the parties are informed of the risks and agree in writing.
- An attorney should not take a case involving a former client who is a present adversary.
- When changing jobs, attorneys must ensure they have no access to information in the new firm regarding previous representation from the old firm. This is often called a "Chinese Wall."
- An attorney must check each case the firm accepts for conflicts.
- The stipulations above extend to legal staff.

### 12. *Communication with the Other Side*

An attorney may not communicate with the client from the opposing side, unless the opposing counsel agrees or the opposing party represents himself.

### 13. *Solicitation*

An attorney may not solicit work from a specific prospective client when the attorney may have a monetary motive for doing so.

### 14. *Advertising*

An attorney may advertise as long as the advertisement is not misleading.

*15. Reporting Professional Misconduct*

An attorney who knows that another attorney is engaging in professional misconduct must report such conduct to the appropriate authority.

*16. Appearance of Impropriety*

An attorney is not supposed to engage in activity that might have the appearance of being unethical or improper.

*17. Unauthorized Practice of Law*

An attorney may not assist a nonlawyer in the unauthorized practice of law.

**18. Paralegals, Secretaries, and Other Legal Staff**

An attorney may delegate virtually any task to a staff member as long as the attorney takes responsibility for the staff's conduct and work product. The only tasks that the staff may not perform are giving legal advice and/or acting in a legally representative capacity.

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## § 6.4

# Legal Advice and Legal Representation

*If you have to think twice, don't do it*

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## PARALEGALS ARE NOT ALLOWED TO GIVE LEGAL ADVICE

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If a paralegal expresses an opinion on a legal issue to a client or prospective client or attempts to apply a law to a client's legal situation, he or she is probably giving legal advice, which is unethical and likely unlawful.

A good rule of thumb is that a paralegal should never express an opinion about a legal matter to a client.

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## PARALEGALS TYPICALLY DO NOT ACT AS LEGAL REPRESENTATIVES

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A paralegal may not represent another in a court of law. Exceptions include some small claims courts and a few jurisdictions that allow paralegals to enter motions that do not anticipate opposition as well as some administrative agencies that allow paralegals to represent clients. But those are exceptions to the rule, and it is important that you know the rule.