

Preface

Approach

This book is written for paralegal students and working paralegals, and for lawyers who use the services of paralegals. It is intended for use primarily as a text but is also used by those in practice as a reference manual.

It has been almost 40 years since the advent of the paralegal profession. What started out as a modest proposal to improve the delivery of legal services has become a reality in the legal profession today. Paralegals are embedded in law practice, serving as integral members of the legal services delivery team. Lawyers in all kinds and sizes of private law firms and those in corporations, government, and the public sector rely heavily on paralegals to accomplish their work. Paralegals are highly educated and competent, engaging in evermore sophisticated work in all areas of law practice.

The paralegal occupation has been one of the fastest growing in the country for 25 years. It is estimated that there are about 200,000 paralegals employed across the country. The career is recognized by the general public, and young people learn of and aspire to it. The roles and functions of paralegals continue to expand into new and exciting areas. The prestige of the occupation has also risen.

The past 30 years have also witnessed tremendous growth and change in the legal profession generally. The forces of change have been many, including the integration of technology, the use of marketing and advertising, greater competitiveness among firms for clients, an influx of new attorneys, increased attorney mobility, the development of megafirms, the impact of a global economy, more complex laws, and legal specialization. These changes have greatly affected legal ethics, in ways that probably no one anticipated.

The role of nonlawyers in providing legal services directly to the public has been the topic of intense debate as the public and the legal profession seek ways to increase access to legal services and to control legal costs. New ethics rules continue to develop in response to this dynamic environment. Paralegals must have a clear understanding of legal ethics—the concepts and rules that guide them in their work. This grounding is essential for paralegals to function competently and with integrity, to be alert to potential ethical dilemmas that occur in their daily work lives, to develop a framework for ethical decision making, and to keep abreast of changes in ethics rules as they develop.

Organization and Coverage of the Fifth Edition

The book is comprehensive and covers all the major areas of legal ethics, placing special emphasis on how the rules affect paralegals. The book begins with a chapter on the regulation of attorneys because paralegals must understand how the legal profession is regulated generally to understand their place in it and the impact that their conduct has on the lawyers who employ them. Chapter 2 contains a brief history of the paralegal career, the ways in which the occupation is regulated, and the growth of voluntary paralegal certification. This chapter examines ethics guidelines for paralegals developed by both bar and paralegal associations. Chapter 3 covers the unauthorized practice of law, introducing the history of UPL and definitions of the practice of law, and explaining the specific functions that either are prohibited outright to nonlawyers or are on the borderline. Chapters 2 and 3 both include material on the provision of legal services directly to clients by nonlawyers. Confidentiality is covered in Chapter 4. In discussing the attorney-client privilege, the work product rule, and the ethics rules regarding confidentiality, the chapter outlines ways to avoid breaches of confidentiality and duties that paralegals have. Special emphasis is given to inadvertent disclosure and technology.

Chapter 5 covers conflicts of interest, a critical concern of paralegals given the mobility of lawyers, clients, and paralegals. This chapter includes an in-depth discussion of conflicts rules and how to avoid conflicts, including the use of screens and conflicts checks. Rules regarding legal advertising and solicitation, with a discussion of the latest cases and trends in marketing of legal services, are covered in Chapter 6. Chapter 7 is devoted to financial matters that arise in the representation of clients and between lawyers and paralegals. It offers a thorough discussion of billing, fees, statutory fee awards that include compensation for paralegal work, fee-splitting, referral fees, partnerships between

attorneys and nonlawyers, compensation of paralegals, and handling client funds. Chapter 8 on competence defines the concept of competence specifically in relation to paralegals and includes a discussion of malpractice. Special issues confronted by litigation paralegals and in communications with clients, courts, parties, and witnesses are covered in Chapter 9. Finally, Chapter 10 examines professionalism and issues facing paralegals in today's law firm environment, including titles, overtime, regulation, and pro bono work.

Key Features

Each chapter begins with an overview that describes in a few words the main topics of the chapter. The text body of each chapter is divided topically. Key terms are spelled out in italics when first introduced and are highlighted in the margins. At the end of each chapter are review questions that test each student's memory and understanding of the material. Discussion questions and hypotheticals follow the review questions. These may be assigned to students or used for in-class discussion. Research and outside assignments are also included so that students can be given work to build their knowledge and skills outside of class through legal or factual research or analysis of cases or issues. Cases at the end of the chapters demonstrate how the rules introduced in the chapters are applied specifically to paralegals. Some cases present key principles in professional responsibility with which all paralegals should be familiar. Several new cases are included in the fifth edition, reflecting the rapid changes taking place in unauthorized practice, confidentiality, conflicts of interest, fees, and other areas, as courts address the application of ethics rules to paralegals.

Recognizing that every paralegal program teaches ethics, but each in its own way, I have chosen a comprehensive approach so that professors may use the entire book in full courses on legal ethics or use only selected parts in programs that teach ethics in several courses or across the curriculum. The accompanying Teacher's Manual provides guidance for teachers who want to incorporate ethics material into their substantive courses.

Acknowledgments

I have many people to thank for their support and assistance with this edition of the book. Recognition must go first to the many entities that provided help and information, including the American Association for Paralegal Education, National Association of Legal Assistants,

National Federation of Paralegal Associations, and International Paralegal Management Association.

My heartfelt appreciation also goes to the wonderful people at Aspen, especially Carol McGeehan, Betsy Kenny, and David Herzig, whose patience, warmth, intelligence, and talents made this book possible.

I would like to thank the following copyright holders who kindly granted their permission to reprint from the following materials.

National Association of Legal Assistants, Code of Ethics and Professional Responsibility. Copyright © 1975, Revised 1979, 1988, 1995. Reprinted by permission of the National Association of Legal Assistants, 1516 S. Boston #200, Tulsa, OK 74119.

National Federation of Paralegal Associations, Model Code of Ethics and Professional Responsibility. Copyright © 1993. Revised 1997. Reprinted by permission of the National Federation of Paralegal Associations, Inc.