Welcome to the first edition of a periodic series of articles about Paralegal Ethics, drafted by members of the ABA Standing Committee on Paralegals (“ABA Standing Committee”). Throughout 2013, this column will explore various topics related to the ethical concerns affecting paralegals. We hope this information will be insightful and useful to paralegals, paralegal students and paralegal instructors.

In each article in this series, we will explore a different aspect of professional ethics, as they apply to paralegals. Topics may include: confidentiality, conflicts of interest, supervision of paralegals, and the unauthorized practice of law. We hope that these, and other, topics help engender thought and foster discussion in the classroom and in the workplace.

To begin with, we thought it appropriate to discuss the ABA Model Guidelines for the Utilization of Paralegals (“ABA Model Guidelines”). The original ABA Model Guidelines for the Utilization of Legal Assistant Services was drafted by the ABA Standing Committee, and approved by the ABA House of Delegates in 1991. Over the intervening 20+ years, periodic revisions have been made to the ABA Model Guidelines, resulting in the current version, published in August, 2012. A link to purchase the most recent ABA Model Guidelines can be found by clicking here.

Although the ABA Model Guidelines are designed for use by lawyers in utilizing paralegals, the ABA Model Guidelines are equally useful for paralegals when attempting to understand what is to be expected of and from the paralegal. In a world where the delivery of legal services has become more complicated, more expensive and, frequently, more difficult, the proper utilization of paralegals can provide for more efficient and more effective legal services. The ABA Model Guidelines provide direction and insight into what is to be expected of paralegals and the role of paralegals in the law office or corporate setting.

The ABA Model Guidelines have been extensively revised over the years. For 2012, significant updates to the ABA Model Guidelines were made. For instance, a table of contents and, importantly, a table of authorities were added. The ABA Model Guidelines are quite short; just 10 one to two sentence statements (see below) form the basis of the ABA Model Guidelines. However, the Comments provide tremendous insight and explanation of each Guideline. For 2012, the Commentary has been extensively edited and the comments for each Guideline have been broken down into multiple subsections, each addressing a single aspect of each Guideline. The preface of the ABA Model Guidelines state that the “commentary is now phrased in a ‘reader-friendly’ style”.

The Commentary really forms the bulk of the ABA Model Guidelines. The Commentary includes explanations of the various ABA Model Guidelines, references to the relevant sections of the ABA Model Rules and links to particularly important case law related to the topics covered by the ABA Model Guidelines. The Commentary is a terrific research tool and resource when conducting research on legal ethics as they apply to the paralegals and really are not separate from ABA Model Guidelines, but are part of the overall ABA Model Guidelines.

While not exhaustive, the ABA Model Guidelines provide a point of reference for attorneys and paralegals when attempting to determine a course of action. The ABA Model Guidelines can assist paralegals, and paralegal instructors, to frame the discussion of the professional and ethical responsibilities of paralegals. We hope that the articles in this column further the discussion of legal ethics as they apply to paralegals in the classroom and in practice.
Guideline 1: A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer’s direction. The lawyer should take reasonable measures to ensure that the paralegal’s conduct is consistent with the lawyer’s obligations under the rules of professional conduct of the jurisdiction in which the lawyer practices.

Guideline 2: Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer except those tasks proscribed to a nonlawyer by statute, court rule, administrative rule or regulation, controlling authority, the applicable rule of professional conduct of the jurisdiction in which the lawyer practices, or these Guidelines.

Guideline 3: A lawyer may not delegate to a paralegal:
(a) Responsibility for establishing an attorney-client relationship.
(b) Responsibility for establishing the amount of a fee to be charged for a legal service.
(c) Responsibility for a legal opinion rendered to a client.

Guideline 4: A lawyer is responsible for taking reasonable measures to ensure that clients, courts, and other lawyers are aware that a paralegal, whose services are utilized by the lawyer in performing legal services, is not licensed to practice law.

Guideline 5: A lawyer may identify paralegals by name and title on the lawyer’s letterhead and on business cards identifying the lawyer’s firm.

Guideline 6: A lawyer is responsible for taking reasonable measures to ensure that all client confidences are preserved by a paralegal.

Guideline 7: A lawyer should take reasonable measures to prevent conflicts of interest resulting from a paralegal’s other employment or interests.

Guideline 8: A lawyer may include a charge for the work performed by a paralegal in setting a charge and/or billing for legal services.

Guideline 9: A lawyer may not split legal fees with a paralegal nor pay a paralegal for the referral of legal business. A lawyer may compensate a paralegal based on the quantity and quality of the paralegal’s work and the value of that work to a law practice, but the paralegal’s compensation may not be contingent, by advance agreement, upon the outcome of a particular case or class of cases.

Guideline 10: A lawyer who employs a paralegal should facilitate the paralegal’s participation in appropriate continuing education and pro bono publico activities.