

ABA MODEL GUIDELINES FOR THE UTILIZATION OF PARALEGALS

ETHICAL COMMENTS ON GUIDELINE 1.

The first Guideline in the ABA Model Guidelines for the Utilization of Paralegals (“Model Guidelines”) reads: “A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer’s direction and 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.”

As the Model Guidelines state, the principle provided in Guideline 1 is carried throughout the Model Guidelines. All lawyers recognize their legal and ethical obligations to their clients and to the profession. The extent of those obligations is governed by the rules of professional conduct, and more importantly, by the moral compass that each lawyer should possess. It is the obligation of the lawyer to impart to his or her entire staff the importance of the concepts of the fiduciary relationship that is formed between the client and the firm, and the importance of client confidentiality and privilege. Additionally, staff should be equally aware of the obligations they, and their supervising attorney, have to the legal profession as a whole.

The importance of delegating some of the substantive legal work that the economies of current day practice require may, without proper understanding of the role of office staff and most particularly paralegals, lead to professional and ethical violations with dire consequences. It is far too easy for the busy lawyer to delegate duties, and then to lose track of their performance until it is too late. After all, wasn’t the very purpose of hiring a paralegal to avoid doing certain tasks (often burdensome and time consuming) yourself?

All states have rules of professional conduct for lawyers. A majority of states (46) have adopted the ABA Rules of Professional Conduct. Model Rule 5.3 provides a two-tier responsibility for the conduct of non-lawyer staff. While the requirements under Rule 5.3 apply to all staff, they are particularly important with respect to paralegals as the opportunity for possible violation of the Rule is more likely in this area.

The Rule requires that a lawyer with management authority (a partner or managing member) assure that a method of imparting the requirements of the Rules of Professional Conduct is in place. Further the Rule requires that there be a method of assessing the firm’s compliance with the Rules. Perhaps the best method for compliance with the Rule is an educational presentation for each new hire, or alternatively, a continuing program of education (within the firm or through outside sources). There should be one managing

member who is in charge of this program so that questions of compliance are centralized. That lawyer should be intimately familiar with the ABA Model Guidelines for the Utilization of Paralegals. It should be noted that the requirements of Rule 5.3 apply equally to “in-house” staff and to temporary personnel, or independent contractors, who may be brought in to complete extremely time consuming tasks.

The hiring of paralegals with an ABA approved education lessens the possibility that professional or ethical violations will occur as these graduates have been exposed to legal ethics across their broad spectrum curriculum. Additionally, the National Association of Legal Assistant’s membership and the members of the National Federation of Paralegal Associations are governed by rules of professional conduct which their members understand are in addition to, and not in derogation of, the rules governing the conduct of lawyers. The two associations (NALA and NFPA) provide continuing legal education opportunities in the area of ethics. These sources, as well as schooling in the ABA Guidelines for the Utilization of Paralegals should adequately meet the first tier requirement of Model Rule 5.3

Questions of compliance with the second tier of responsibility under Rule 5.3 is, and will remain, the province of the lawyer for whom a non-lawyer staff member is performing delegated work. This is generally a paralegal. Again, the proper education and training of paralegals will assist the supervising lawyer in this task. Not only must the lawyer scrutinize the substantive work to see that it is correct, he or she must take the time to insure that the paralegals understand their obligations to clients and the profession. Paralegals should be instructed by their supervising attorney to maintain confidentiality and privilege, and to avoid even the appearance of giving legal advice. As to the latter admonition, paralegals must understand that even an innocent comment on the outcome of a particular case may be construed as legal advice.

Ethical considerations also require that the paralegal provide his supervising attorney with an honest assessment of information that may be uncovered in the conduct of a case. Paralegals are increasingly involved in the area of legal research. Paralegals should understand that harmful precedent uncovered in the research of a case must be disclosed. They should know that the zealous advocacy of a client’s position must be secondary to their obligation (again the same as that of their attorney) to protect the sanctity of the profession. Paralegals should not try to just please the boss, they should be prepared to provide the honest state of the case upon which they are working, reaching this goal is again met through proper education and training.

Lawyers should be encouraged to provide continuing education and training to paralegals. The cost of such training and education is far outweighed by the consequences that may occur if it is absent.