Webinar: Ethics for the Legal Professional

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Agenda

- Rules: Ethics for paralegals that we use as guidance for all staff
- Confidential Information guidance for all legal professionals
The law governing paralegals (and guidance for all staff)

- Every attorney and paralegal must comply with B&P §§6450-6456
  - Role of paralegal
  - Attorneys must comply with the rules about the role and duties of paralegal
  - Rules for qualifications to be a “Paralegal” in CA
  - Continuing legal education requirements in CA
No “Bar” for Paralegals

- There is no governing body / “bar” for paralegals charged with enforcing the rules.
- Responsible attorneys are charged with supervision
- Violations of B&P §§6451 and 6452 are crimes enforceable by courts AND consumers may bring claims
- Supervising (or not) attorneys may be vicariously liable for any harm caused as the result of paralegal negligence, misconduct, or violation of B&P §6450, etc.
Qualifications of a Paralegal

“Paralegal” is a person who

- is qualified by education, training, and/or work experience,
- who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and
- performs substantial legal work under the direction and supervision of an attorney. (B&P §6450).
Qualifications of a Paralegal

• A paralegal is required to have minimum qualifications to perform paralegal services, and to utilize the title “paralegal.”
Qualifications of a Paralegal

To provide legal support services to a CA attorney, paralegal must possess one of the following:

- Certificate of completion of ABA-approved paralegal program
- Certificate of completion of a paralegal program at, or a degree from, postsecondary institution that requires successful completion of at least 24 semester units in law-related courses + accreditation
Qualifications of a Paralegal

• Baccalaureate degree or an advanced degree in any subject, and a minimum of one year of law related experience under the supervision of an attorney

• High school diploma or GED with a minimum of 3 years of law-related experience under the supervision of an attorney prior to 2003.
  • When a “combo” of school + experience, must have a written declaration of supervising attorney.
Duties

• ~ any task properly delegated and supervised by an attorney, so long as the attorney is ultimately responsible to the client and assumes complete professional responsibility for the work product.
Duties

Paralegals may perform services for an attorney so long as:

• Services not require exercise of independent professional legal judgment
• Attorney maintains a direct relationship with the client and maintains control of all client matters
• Attorney remains professionally responsible for all work on behalf of client, including any actions taken or not taken by the paralegal
• Services supplement, merge with, and become the attorney’s work product
Duties Cannot Perform

• Provide legal advice
• Represent a client in court (exceptions for certain administrative agencies)
• Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal
• Engage in conduct that constitutes the unlawful practice of law
Duties Cannot Perform

- Contract with or be employed by a person other than an attorney to perform paralegal services
- Induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit may be derived
- Establish the fees to charge a client for services
Settlement Negotiations

- Paralegal may assist in settlement negotiations
- **Cannot:**
  - Enter into settlement agreement
  - Negotiate settlement on behalf of client
  - Make a recommendation to client as to merits of offer
*Confidential Information*

- All legal staff must avoid revealing confidential information.
- Case information should be shared only with those who have a “need to know.”
*Confidential Information*

Be mindful of:

- Auto-fill on emails
- “Reply All”
- Fax numbers
- Attachments – attach, open, confirm, close, send!
- Including privileged documents in production
- Leaving confidential information in a conference room
- Social Media! (more in a moment)
*Confidential Information*

Be mindful of:

- Leaving confidential information in common areas, on counters, and photocopy glass
- Having conversations in elevator, restroom, open area
- Leaving USB drives in computers, not putting passwords on cloud folders
In California, the attorney-client privilege is waived if
• The client discloses a significant part of the communication,
• Anyone has consented to the disclosure, or
• The client places in issue the contents of the communication with its attorney.

Legal Support Staff are CRITICAL to avoiding a waiver of the privilege by protecting confidential information.
Caution-the classic (new) waiver

• One of the easiest and most common ways the privilege is waived is by emailing someone at their work/company email address.
• **Email is the property of the company!**
• Text and other messages (Slack, HipChat) to company owned and/or paid for handhelds, phones also a concern.
• Also open to subpoena from 3rd party
Social Media

• Never connect on any social media with a client, opposing party, or witness
  • Pretext connection
  • Even if truthful, danger to paralegal and counsel
• Never post case-related facts on any social media website (even if scrubbed for identifying information)
• Don’t post comments (good or bad) on your own attorneys’ or opposing counsel websites, or rating websites (yelp, etc.)
Social Media

• Policy for lawyers: Don’t allow legal staff to download or upload photos or other visual materials relating to a client or attorney that attorney has not approved.
  • Exposure to offensive material?
  • Expose client information to public?
Thank you!
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