

# 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)

- Cal. Business & Professions Code §6450.
- 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



# Attorney-client privilege

- 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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