

NFPA Informal Ethics and Disciplinary Opinion No. 95-5

The following ethics and disciplinary opinion of the National Federation of Paralegal Associations (NFPA) is offered based upon its positions and research in the area of paralegal ethics. It should not be construed as binding and must be interpreted in conjunction with the applicable state's Supreme Court rules and opinions governing the professional conduct of members of the legal profession. This opinion may be used for guidance and, by the appropriate entity, as a persuasive argument in favor of the findings of NFPA.

Question: *Are contract paralegals retained by attorneys in law firms, corporations and other legal entities, required to comply with the same ethical obligations as employed or traditional paralegals?*

Facts: The individual performs paralegal work on a contract basis for attorneys in law firms and corporations, but is not employed by the law firms and corporations. He is retained by attorneys in law firms, corporations and other legal entities and uses the title "contract paralegal. (See Endnotes 1 and 2.) He is qualified as a paralegal through formal paralegal education followed by several years of experience as a traditional paralegal employed by a law firm. He performs substantive legal work with supervision by, or with accountability to an attorney. He believes he is required to comply with the same ethical obligations as employed paralegals, such as the [NFPA Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement](#), and wants to know if he is correct.

Opinion: Paralegals who are retained by an attorney, law firm or other attorney employer, referred to as "contract paralegals," "freelance paralegals" and/or "independent contractors" (hereafter, contract paralegals), who perform paralegal work with supervision by or accountability to an attorney, must adhere to and should aspire to the same principles for ethics and conduct of those set forth for traditionally-employed paralegals. Specific attention should be given to ensure that the attorney supervision is proper and not illusory; that the paralegal does not engage in the unauthorized practice of law; and that comprehensive procedures are utilized to prevent working on legal matters with which the paralegal has a conflict of interest which likelihood may increase as a contract paralegal.

Discussion: The economic advantages derived from employing paralegals are widely known within the legal and business communities. At a time when clients are concerned about the delivery of cost-effective legal services, attorneys are able to provide clients with a higher caliber work product at a lower cost through the use of paralegals. It is a well-recognized fact that paralegal services may be obtained by attorneys through both traditional employment relationships as well as through a contractual relationship with paralegals. The latter type of working relationship has been referred to as freelance paralegal, contract paralegal and independent contractor (hereafter, contract paralegal), terms which are synonymous and used interchangeably.

The National Federation of Paralegal Associations, Inc.'s definition of a paralegal (at endnote 1) includes the term "retained by an attorney" to recognize those paralegals who properly work with the supervision by or accountability by attorneys, but who are not "employed full-time or part-time by an attorney." This type of working relationship with a contract paralegal may involve the paralegal performing work in a different location than the attorney, but the paralegal is still supervised by or accountable to the attorney and the attorney is still responsible for the work product of the paralegal. (See Endnote 3.)

Likewise, the American Bar Association (ABA) definition of a paralegal (1985) and its Model Guidelines for the Utilization of Legal Assistant Services (1991) allow for employing or retaining paralegals. [emphasis, not in original.] Additionally, the ABA has further stated, in Formal Opinion 316, that "we do not limit the kind of assistance that a lawyer can acquire in any way to persons who are admitted to the Bar, so long as the non-lawyers do not do things that lawyers may not do or do the things that [only] lawyers may do." [emphasis, not in original.] Further, albeit not yet adopted by the ABA House of Delegates, the ABA Commission on Non Lawyer Practice's Nonlawyer Activity in Law-Related Situations -- A Report with Recommendations (1995) encourages the use of contract paralegals as one of the opportunities available to attorneys to enhance productivity, efficiency and quality in all law practice settings and provide the public with affordable legal services. (See Endnote 4.)

To date, only one court in the nation has addressed this matter holding that contract paralegals are not engaged in the unauthorized practice of law under the circumstances of the attorney supervising the work and being responsible for the work product of the paralegal. (See Endnote 5.) As opined by the Supreme Court of New Jersey, most contract paralegals "are employed by sole practitioners or smaller firms who cannot afford the services of a full time paralegal ... [and, to] requir[e] paralegals to be full time employees of law firms would thus deny attorneys not associated with large law firms the very valuable services of paralegals." (See Endnote 5.)

Contract paralegals must adhere to and should aspire to the same principles for ethics and conduct of those set forth for traditionally-employed paralegals. The NFPA Model Code of Ethics and Professional Responsibility (Model Code) addresses those obligations and is incorporated herein as though set forth at length. Specific attention should be given to ensure that the attorney supervision, albeit off-site, is proper and not illusory; that the paralegal does not engage in the unauthorized practice of law; and that comprehensive procedures are utilized to prevent working on legal matters with which the paralegal has a conflict of interest which likelihood may increase as a contract paralegal. (See Endnote 7.)

Contract paralegals need to make sure that their attorney clients are familiar with both the responsibility of the attorney to supervise the paralegal's work as well as any applicable jurisdictional requirements concerning independent contractors. (See Endnote 8.) Regardless of whether the paralegal is employed or retained by an attorney, the attorney is still held to the same ethical obligations and professional responsibilities concerning

contract paralegals as with traditional paralegals. Attorneys, as well as paralegals, and may look to the ABA Model Code of Professional Responsibility, ABA Model Rules of Professional Conduct and Model Guidelines for the Utilization of Legal Assistant Services for guidance in these matters.

NFPA's Model Code of Ethics and Professional Responsibility and positions on issues affecting the paralegal profession have been designed to provide paralegals with information and direction concerning various ethical issues which arise in their careers. It is important that paralegals realize and understand their obligations to the attorney and the attorney's client so that the client receives both high caliber and cost efficient legal services.

Endnote 1: "NFPA defines a paralegal as, "a person qualified through education, training or work experience, to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency, or other entity or may be authorized by administrative, statutory or court authority to perform this work." NFPA agrees with the American Bar Association that the terms "paralegal" and "legal assistant" are synonymous and used interchangeably.

Endnote 2: Contract paralegals also are known as freelance paralegals and independent contractors. NFPA defines a freelance paralegal as "a paralegal who works as an independent contractor with supervision by and/or accountability to a lawyer." Contract paralegals also are qualified through education, work and/or experience to perform legally substantive tasks that, in the absence of the paralegal, would be performed by the attorney.

Endnote 3: Nothing in this opinion should be interpreted as promoting the use of paralegals, contract or traditional, to solicit clients for the attorney or that the paralegal should operate outside of the parameters of the applicable legal authority governing the unauthorized practice of law.

Endnote 4: Citation omitted until report issues in its adopted form.

Endnote 5: In re Opinion 24, 128 N.J. 114, 607 A.2d 962 (Sup. Ct. 1992) held that independent paralegals (referring to contract and freelance paralegals) are not engaged in the unauthorized practice of law so long as the attorney supervises and is responsible for the work.

Endnote 6: Ibid, at 967.

Endnote 7: See, NFPA Model Code of Ethics and Professional Responsibility, Canons 7 and 8, NFPA's research paper entitled, "Unauthorized Practice of Law" (1995) and NFPA's brochure entitled, "Paralegals and Conflict of Interest" (1995). NFPA is currently conducting research on and studying the issue of illusory supervision to define and provide methods to deal with illusory supervision.

Endnote 8: In the instance of contract paralegal work, the attorney is the client of the contract paralegal; hence, the use of the term, attorney client.

Indemnification of NFPA: By making a request to the National Federation of Paralegal Associations for an opinion and/or recommendation concerning proper conduct for a member of the legal profession as it pertains to ethical conduct, obligations, utilization and/or discipline of paralegals, the inquirer and his/her employers, employees, agents, and representatives agree to indemnify, hold harmless, and defend the NFPA, its Officers, Directors, Coordinators, Ethics Board and Managing Director from any claims arising from any act or omission of NFPA except those occasioned by NFPA's willful or deliberate acts.

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