

**Ethics Board Opinion
06-03**

CAVEAT: THE FOLLOWING OPINION OF THE ETHICS BOARD OF THE NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC. (NFPA) IS ADVISORY ONLY AND SHOULD NOT BE CONSTRUED AS BINDING ON ANY REVIEWING AUTHORITY 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 COMMUNITY. IT CARRIES ONLY SUCH WEIGHT AS AN APPROPRIATE REVIEWING AUTHORITY MAY CHOSE TO GIVE IT.

QUESTION: Can a paralegal continue to work in a law office during the thirty (30) days his/her attorney supervisor has been suspended from the practice of law?

FACTS: A paralegal works for a sole practitioner who was suspended from the practice of law for 30 days. The paralegal is unsure of his/her status during the time of the suspension since there is no other attorney within the office to supervise the paralegal.

OPINION: This is a difficult question to respond to as there is no clear answer found in either the ABA Model Rules, NFPA's rules or in state rules.

The ABA model rules Rule 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:...

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer order or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Under Pennsylvania's Rules of Professional Conduct (Section 81.4 of the Pennsylvania Code, specifically, Rules 5.3 and 5.5), an attorney who is suspended from the practice of law shall not engage in activities which would constitute the practice of law.

In an informal opinion issued by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility (93-92B) the attorney seeking the opinion was reminded that a suspended lawyer "has no greater status than that of a paralegal." The

opinion cited Rule 5.3 which covers the supervision of non-lawyers and can be found at the following link: <http://www.pacode.com/secure/data/204/chapter81/s5.3.html>. Also cited in the opinion is Rule 5.5 which covers the unauthorized practice of law and can be found at <http://www.pacode.com/secure/data/204/chapter81/s5.5.html>

See also § 91(e) (2) of the Pennsylvania Code, which cites Enforcement Rule (j) (4), stating that a formerly admitted attorney may not perform "any law-related services from an office that is not staffed, on a full time basis, by a supervising attorney.

In some states, the regulatory scheme for the practice of law contains provisions setting out certain responsibilities a suspended or disbarred attorney has to current clients while the attorney is prohibited from practicing law. Typically they provide that the attorney will take all reasonable steps to avoid any foreseeable prejudice to current clients, and allow the attorney to provide information to any lawyer taking over the legal matters of his/her clients. If such is the case in the state in question, the paralegal may be allowed to assist the attorney in satisfying these obligations.

There is a fine line with regards to a paralegal doing substantive paralegal work vs. clerical tasks. As such it may not be practical for a paralegal to work in an office for the length of the suspension unless the suspended attorney has designated another attorney to oversee his office operations. We believe the options for the paralegal are limited in that it is difficult for the paralegal to continue to perform their job functions without the supervision of an attorney but because of the circumstances and the length of the suspension it may not be feasible for them to move to another firm. The obligation, we believe, falls upon the suspended attorney to try to make arrangement to allow the paralegal to keep their position without violating the professional conduct rules prohibiting the paralegal from working unsupervised.

By making a request to the National Federation of Paralegal Associations (NFPA) 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 stipulate that they have read the caveat above, and 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.