

**Ethics Board Opinion**  
**06-02**

**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:** What steps should a law firm take to preserve client confidentiality when it hires or otherwise uses outside persons or businesses (referred to as "outsiders" in this opinion) during its representation of a client?

**SUMMARY OF OPINION:** Attorneys and their staffs must abide by confidentiality at all times. When outsiders are used by the firm, the firm must take steps to assure that they abide by the same confidentiality requirement. Among the ways to accomplish this is to secure a contract commitment from the outsiders to preserve the confidentiality of all client-related information.

**DISCUSSION:** Rule 1.6 of the Model Rules of Professional Conduct of the American Bar Association covers confidentiality of information. The rule provides as follows: "(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b)." [Paragraph (b) specifies the limited circumstances in which a lawyer may disclose confidential information without client's consent]

To help assure compliance with Rule 1.6, the law firm should take the following steps:

- (1) Before hiring the outsider, inquire into the steps the outsider normally takes to preserve the confidentiality of information to which it has access
- (2) Determine whether the outsider is already under an obligation of confidentiality under the code of conduct of the outsider's business or profession
- (3) Restrict the outsider's access to client-related information that is essential to perform the task or tasks the outsider is asked to perform for the firm.
- (4) Obtain a contract commitment from the outsider not to reveal any client-related information.
- (5) Take any other reasonable steps calculated to assure the preservation of client confidentiality by the outsiders.

The ethical codes of some states specifically refer to the use of outside entities having access to confidential information.

Ohio:

The Ohio Code of Professional Responsibility, for example, provides the following ethical consideration (EC) and disciplinary rule (DR):

**EC 4-3** Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

**DR 4-101(D).** A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client....

Oregon:

Oregon has a rule similar to the ABA's rule 1.6 and reads as follows:

Rule 1.6 Confidentiality of Information

“a) a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”

The exceptions in b) are, in part, when a client intends to commit a crime, or to prevent reasonably certain death or bodily harm, and when there is a controversy between lawyer and client re lawyer's services. There is also an allowance for an attorney selling his practice to provide certain confidential information to the buyer, while charging the potential buyer with a responsibility to maintain the confidentiality of information they receive.

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.