

NFPA Informal Ethics and Disciplinary Opinion No. 95-1

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: *May an individual employed by a corporation use the title "paralegal" when the corporation does not employ in-house counsel to supervise or be accountable for the individual's work?*

Facts: The individual is currently employed by a corporation in Kentucky performing real estate paralegal work and using the title "Contract Administrator." She received in-house paralegal training and promotion (from legal secretary to paralegal) during her previous employment with a law firm. She has been employed by the corporation and working in the real estate area performing substantive legal work for two years while attending a formal paralegal education program. She will soon graduate from that educational program.

The corporation does not employ in-house counsel. Outside counsel are retained by officers of the corporation on a case-by-case basis. The individual works directly with outside counsel preparing documentation, assimilating information and performing other substantive work as necessary and appropriate to effectuate real estate transactions. Documents prepared by the individual are reviewed and finalized by outside counsel.

Opinion: An individual employed by a Kentucky corporation who is qualified through education, training or work experience to provide substantive assistance to attorneys retained by the corporation and who provides such assistance can use the title "paralegal."

Discussion: More corporations are employing paralegals to assist outside counsel in performing substantive legal tasks. This activity has allowed corporations to obtain more economical legal services by retaining attorneys in small firms who bill attorney time at a lower rate. The corporation provides small firms, who may not have the financial means to employ full-time paralegals, with substantive assistance through paralegals employed by the corporation. Although the work performed by these paralegals is not directly supervised by in-house attorneys employed by the corporation, the work is directed and reviewed by attorneys retained by the corporation on a case-by-case basis. The unique relationship between the paralegal employed by the corporation and outside counsel is at issue.

Most state guidelines regarding the utilization of paralegals address the relationship of paralegals who are either directly employed by attorneys or working directly under the supervision of attorneys in the same office. For guidance, see also, In re Opinion 24, 128

N.J. 114, 607 A.2d 962 (Sup. Ct. 1992) which held that there is no distinction between on-site or off-site attorney supervision so long as the attorney supervises and is responsible for the work. The question before NFPA is unique because it deals with an individual who works with supervision by attorneys, but is employed by a corporation, not attorneys.

Several states have addressed the issue of the lawyer's ultimate responsibility for work performed by non-lawyers. Kentucky Supreme Court Rule 3.700, Sub-Rule 2.c provides: "The lawyer remains responsible for the actions of the [paralegal] to the same extent as if such representation had been furnished entirely by the lawyer and such actions were those of the lawyer." While this rule is apparently directed to paralegals working in the traditional setting and directly employed by attorneys, the issue of ultimate responsibility for the work product in this case clearly rests with counsel retained by the corporation.

Many tasks normally performed by lawyers may be delegated to paralegals. In this case, attorneys retained by the corporation to prepare and conduct real estate transactions are delegating substantive tasks to the paralegal employed by the corporation. NFPA believes that this activity should be encouraged as long as the corporation, its paralegal employee, and outside counsel are each aware of their ethical obligations in this situation.

While appropriate delegation of tasks to paralegals is encouraged in most states, the attorney may not permit the paralegal to engage in the practice of law. Attorneys retained by the corporation must be clear on their obligation to the client corporation and their obligations under their own Code of Ethics and Disciplinary Rules. Although many states do not define the practice of law, generally it has been recognized to include: (1) accepting cases for a client; (2) setting fees; (3) giving legal advice, thereby rendering independent legal judgment on behalf of a client; (4) preparing legal documents which affect the rights and obligations of a client; and (5) appearing in a representative capacity before a court or other adjudicatory body.

It is reasonable to expect that the paralegal will be able to use professional judgment in distinguishing between situations in which retained knowledge can be applied and situations that require attorney guidance. The important principles to understand are (1) for attorneys and paralegals to be continually aware of the grey area existing between authorized and unauthorized practice of law, and (2) for both the attorney and the paralegal to make certain that a line is established and then avoid the paralegal crossing it. Attorneys retained by the corporation must abide by the ethical obligations governing their conduct imposed by the respective State Supreme Court. The paralegal employed by the corporation must be aware of her ethical obligations as well as the attorneys' ethical obligations. As a practical matter, there are some basic principles the paralegal should implement:

1. The paralegal should make certain that those with whom she communicates, including her corporate employer, realize that paralegals are not attorneys and cannot give legal advice. This can be done simply by making clear statements to

- that effect when talking with her employer, counsel or any other parties involved in a real estate transaction.
2. When conveying information which may be construed as legal advice, the paralegal should clearly identify the source of the advice as the attorney, e.g., "I questioned Attorney Smith on the point that you raised, and the attorney's opinion is that ..."
 3. While the paralegal may be asked to draft such items as legal documents and correspondence with may contain opinions which could be construed as legal opinion, such items should be subject to careful scrutiny by the attorney and always should be signed by the attorney.
 4. All paralegal work should be supervised by an attorney who remains responsible for the work.

NFPA recommends that the paralegal notify all counsel retained by the corporation of the unique situation and the type of assistance that will be provided by the paralegal. NFPA suggests that the paralegal review Kentucky Supreme Court Rule 3.700 (provisions relating to paralegals), the [NFPA Model Code of Ethics and Professional Responsibility](#), any Code of Ethics adopted by the local paralegal association, the ABA Model Guidelines for the Utilization of Legal Assistant Services, and the Code of Ethics for attorneys adopted in her particular jurisdiction. Except for the attorney's Code of Ethics, copies of the foregoing documents should be provided to all counsel retained by the corporation.

By identifying clear guidelines at the beginning of the relationship, the paralegal and retained counsel will be better able to serve the corporation and ensure that each abides by their ethical obligations.

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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