

NFPA Informal Ethics and Disciplinary Opinion No. 95-2

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: *Is it ethical for a legal assistant to have her/his name appear on the law firm letterhead provided that the legal assistant's designation is clearly indicated?*

Facts: The individual is employed by a law firm in Georgia and performs paralegal work, using the title "legal assistant." (See Endnote 1.) She possesses a four-year bachelor's degree in paralegal studies and performs substantive legal work with supervision by, or with accountability to, an attorney in the firm. She signs correspondence on her employer's letterhead designating herself as "legal assistant."

Opinion: A paralegal employed by a law firm in the State of Georgia may not be identified on the letterhead of the law firm by which she is employed. This opinion is issued solely on the basis of a pre-existing opinion which prohibits paralegal identification on law firm letterhead in the State of Georgia. (See Endnote 2.)

However, in the absence of a legally binding opinion issued by an ethics entity in the applicable state, NFPA believes that the name of an individual employed or retained by a law firm who is qualified through education, training or work experience to provide substantive legal assistance to attorneys in a law firm may be listed on the law firm's letterhead provided that the individual's name is followed by the designation of "paralegal" or "legal assistant."

Accordingly, NFPA strongly urges the inquirer to encourage the attorneys by whom she is employed to make a formal request for a modified opinion to the Georgia State Bar Attorney Disciplinary Board or other appropriate Georgia ethics entity. (See Endnote 3.)

Discussion: NFPA may not render an ethics and disciplinary opinion which is in conflict with the applicable state supreme court rules and opinions governing the professional conduct of members of that state's legal profession. The Georgia State Bar Attorney Disciplinary Board issued Advisory Opinion No. 21 prohibiting paralegals' names from appearing on letterhead. (See Endnote 4.) Consequently, NFPA is obligated to respond to this inquiry in the negative. In support of NFPA's recommendation to request a modified opinion from the

appropriate Georgia ethics entity, NFPA offers the following information which may be used as guidance and/or a persuasive argument in favor of its findings.

Canon 6 of the [NFPA Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement](#) (Model Code) is directly on point with this issue. It states, "[A] paralegal's title shall be fully disclosed." EC-6.1 and EC-6.2 (Ethical Considerations) further state, "[A] paralegal's title shall clearly indicate the individual's status and shall be disclosed in all business and professional communications to avoid misunderstandings and misconceptions about the paralegal's role and responsibilities. A paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures, directories and advertisements."

The American Bar Association (ABA) issued Informal Opinion 1527 (1989) stating that non-lawyer support personnel, including paralegals, may be listed on a law firm's letterhead. (See Endnote 5.) Thereafter, the ABA adopted Model Guidelines for the Utilization of Legal Assistant Services which, in pertinent part, provide that "a lawyer may identify legal assistants by name and title on the lawyers letterhead." (See Endnote 6.) Significantly, in the Comment to this Guideline, the ABA Standing Committee on Legal Assistants suggested that, in light of *Peel v. Illinois Reg. and Disciplinary Commn.* 496 U.S. 91, 110 S.Ct. 2281, 1190 L.Ed.2d 93 (1990), it may be that a restriction on letterhead identification of legal assistants that is not deceptive and clearly identifies the legal assistant's status violates the First Amendment rights of the lawyer.

The issue presented by this inquiry has arisen on the state level many times since the emergence of the paralegal profession in the late 1960s. A review of the opinions rendered by numerous state and local ethics entities and bar associations reveals that an overwhelming majority of states have determined that it is proper for a law firm to list the name of a paralegal on its firm letterhead, as well as other firm stationery, e.g., business cards, advertisements and brochures. States which permit attorneys to list the names of paralegals on their letterhead, if the listing is not deceptive and the paralegal's status is clearly identified, include Connecticut, Florida, Hawaii, Illinois, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, Texas, Virginia and Wisconsin. (See Endnote 7.)

Additionally, even those states which previously opined that it was improper to list a paralegal's name on letterhead later modified their opinions to permit such activity in most instances. (See Endnote 8.) For example, New Jersey Supreme Court Advisory Opinion 16 (1994) states, "that the inclusion of the paralegal's name and title on the letterhead will only serve to eliminate any possible confusion by defining and reinforcing the author's position with the firm," superseding its Advisory Opinion 296 (1975) which prohibited such activity. Significantly, New Jersey Opinion 16 (citing its own Opinion 647 (1990) which dealt with paralegal identification on business cards) states,

"[I]t cannot be gainsaid that the utilization of paralegals has become, over the last 10 years, accepted, acceptable, important and indeed, necessary to the practice of law. Lawyers, law firms and, more importantly, clients benefit greatly by their work. Those people who perform paraprofessionally are educated to do so. They are trained and truly professional. They are diligent and carry on their functions in a dignified, proper, professional manner. They understand ethical inhibitions and prohibitions. Lawyers assign them work expecting them to respect confidences which they obtain and to comport themselves in the best traditions of those who serve in the legal arena."

Protection of consumers of legal services has always been foremost in the minds of those rendering legal ethics opinions. Accordingly, one of the most persuasive arguments in favor of listing of paralegals on the attorney's letterhead in the above referenced opinions is that listing paralegals on the letterhead assists to eliminate client confusion about the status of paralegal employees with whom they speak or correspond. Other major issues which have been dealt with in the opinions include ensuring that the paralegals' non-lawyer status is clearly disclosed; the paralegal's title is listed next to the name; the listing not be false, fraudulent, misleading or deceptive; the individual is qualified to be designated as a paralegal, i.e., through specialized training, work experience and/or education; and paralegals are listed separately from lawyers.

It should be noted that no state prohibits paralegal identification and use of business cards. Also, while not nearly as authoritative, but for additional reference, Martindale-Hubbell Listings began to include paralegals' names under firm listings in 1991 in recognition of the marketing value of listing the professional expertise of paralegals.

Unfortunately for the inquirer, the Georgia State Attorney Disciplinary Board rendered Advisory Opinion 21 prohibiting paralegal identification on letterhead. Perhaps the appropriate Georgia ethics entity will be persuaded by the above information or will expand the permission granted in Opinion 21 for paralegals to have business cards containing the name of the firm by which they are employed.

Should Georgia's ethics entity be so convinced, NFPA suggests that paralegals should be cautioned to avoid engaging in the unauthorized practice of law when using law firm letterhead on which they are identified by name and title. They should make certain that those with whom they communicate realize that paralegals are not attorneys and cannot give legal advice. Paralegals should clearly identify the attorney as the source of any information which may be construed as legal advice. Lastly, paralegals should make sure that their work is supervised by the attorneys who remain responsible for the work. (See Endnote 9.)

In conclusion, NFPA believes that the paralegal profession has grown and progressed to a level of understanding and acceptance that warrants a reconsideration of the Georgia's initial opinion. Paralegals play a vital role in the cost efficient delivery of quality legal services in law firms as well as other environments. It is important to let clients know that paralegals increase the attorneys' and law firms ability to provide cost effective legal services. By listing paralegals' names and titles on the law firm letterhead, attorneys send a clear message to their clients that paralegals are important members of the legal team.

Endnote 1: NFPA agrees with the American Bar Association that the terms "paralegal" and "legal assistant" are synonymous and used interchangeably. 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." Endnote 2: Georgia State Attorney Disciplinary Board Advisory Opinion No. 21 (undated, but prior to 1989). Endnote 3: NFPA recommends that the request originate with an attorney licensed to practice law in Georgia since most entities which address attorney ethics issues will not accept inquiries from non-lawyers. Endnote 4: However, the Georgia Opinion permits paralegals to have business cards containing the name of the firm by which he or she is employed and requires that the business card contain the word "paralegal" to clearly convey that the paralegal is not a lawyer. Endnote 5: Opinion 1527 withdrew prior Opinion 62-619 (which prohibited listing non-lawyer personnel on law firm letterhead as it applied to legal secretaries and which was issued prior to the ABA's recognition of paralegals as integral partners in the cost effective delivery of legal services in 1968). Opinion 1527 also withdrew Opinions 65-845, and 77-1000 and reiterated the ABA's previous opinions which had approved of paralegal identification on business cards, e.g., ABA Opinion 1185 (1971) which stated that the listing must not be false or misleading and must make clear the support personnel are not lawyers. Endnote 6: Canon 5 (May 1991). Endnote 7: Connecticut Recommendation 12 and Opinion 85-17 (1985); Florida, Professional Ethics Committee Advisory Opinion 86-4 (1986); Hawaii, Formal Opinion 78-8-19 (1984); Illinois State Bar Association Advisory Opinion 81-4 (1981) and Advisory Opinion 87-1 (1987); Kentucky Supreme Court Rule 3.7000; Minnesota Amended Ethics Opinion 8 (1980); Minnesota Opinion 93 (1984); Mississippi, Ethics Opinion 93 (1984); Missouri Ethics Opinion [number and year unavailable]; Nebraska Ethics Opinion 88-2 (undated); Texas Ethics Opinion 436 (1978 [or] 1986); Virginia Ethics Opinion 970 (1987) and Opinion 1288 (1989); and Wisconsin Ethics Opinion E-85-6 (1985). See also, Chicago Bar Association Opinion 81-4; and Columbus (Ohio) Bar Association Ethics Opinion 6 (undated). Endnote 8: See, Colorado Formal Opinion 84 (1990) modifying a 1974 informal opinion of the Colorado Bar Association; Illinois Opinion 87-1 modifying Opinion 350 of the Illinois Bar Association; Indiana Code of Professional

Responsibility Rule 91 (1994) modifying Ethics Opinion 82-5 (1982); New York Ethics Opinion 500 (1978) modifying prior Opinion 261 (1972); New York County (New York) Opinion 673 (1989) and Nassau County (New York) Opinion 14-87 (1987); Cleveland (Ohio) Bar Association Board Of Trustees Opinion 89-1 (1989), despite Ohio Supreme Court Opinion 89-16; Pennsylvania Ethics Opinion 85-145 (1985) modifying prior Opinion 75-1 (1975); Philadelphia Bar Association Ethics Opinion 87-17 (1987) modifying prior Opinion 80-110 (1980); and Wisconsin Ethics Opinion E-85-6 (1985) modifying prior Opinion E-75-22 (1975). NFPA is aware of only a few states which have not yet modified their opinions to permit paralegal listing on letterhead. Endnote 9: ABA Code of Professional Responsibility (1969) and Model Rules of Professional Responsibility (1983), as well as many court decisions, make the attorney responsible for the work product of the paralegal and disallow an attorney from aiding paralegals to engage in the unauthorized practice of law. See also, NFPA Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement. 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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