

**National Federation of Paralegal Associations
Informal Ethics Opinion No. 18-1.**

The following Opinion of the National Federation of Paralegal Associations (NFPA) is offered based upon its positions and research in 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(S)

1. *Is the NFPA Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement 1.3(f) in conflict with ABA Model Rule 1.6 and other state level Rules of Professional Conduct?*
2. *Under what circumstances is a paralegal expected to report knowledge of future criminal activity to the appropriate authorities?*

FACTS:

The paralegal requesting this Opinion has observed that a potential conflict exists between the NFPA Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement 1.3(f) ("NFPA Model Code") and the ABA Model Rules Professional Conduct 1.6 ("ABA Model Rules") and other state-level Rules of Professional Conduct. The paralegal would like to determine the extent to which any conflict may exist between the NFPA Model Code and the ABA Model Rules, specifically as to NFPA Model Code 1.3(f). If a conflict does exist, how is it to be resolved?

OPINION:

In continuance of NFPA's commitment to identify and address ethical dilemmas faced by paralegals in the performance of their professional duties, this Opinion addresses potential conflicts between the rules and canons established by NFPA and the ABA and other recognized governing entities. Since paralegals are held to the same standards as attorneys,¹ it is reasonable to state that paralegals are bound by the same rules and canons, and should, therefore, conduct themselves in accordance with the ABA Model Rules and the corresponding rules for the jurisdictions in which they work.

The Ethics Board has considered the questions and determined that no conflict exists, but rather that the expression "appropriate authorities" in NFPA Model Code 1.3(f) is imprecise when read in context with ABA Model Rule 1.6. and makes the following recommendations and observations:

1. ABA Model Rule 1.6 does not negate or otherwise conflict with a paralegal's positive duty to report potential criminal activity under NFPA Model Code 1.3(f).
2. The expression "appropriate authorities" should be amended to define a potential chain of authorities based on the paralegal's circumstances.

¹ ABA's Model Guidelines for the Utilization of Paralegal Services, Guideline 1 clearly states "... the paralegal's conduct is consistent with the lawyer's obligations under the Rules of Professional conduct of the jurisdiction in which the lawyer practices".

- a. Paralegals should report to their supervising attorney, senior partner, or office manager, as appropriate, of any disclosures/discoveries made within the parameters of the attorney-client relationship.
 - b. Disclosures made outside the scope of an attorney-client relationship should be reported to the appropriate legal authorities.
3. Paralegals should utilize the NFPA Model Code as a resource tool setting forth the enforceable obligations of all paralegals and offers a framework for professional discipline.
 4. Furthermore, the Ethics Board *recommends* the NFPA Model Code be treated as a dynamic document subject to revision relative to the ABA Model Rules and the changing face of the paralegal profession.

DISCUSSION:

NFPA Model Code of Ethics 1.3(f) states: “If a paralegal possesses knowledge of future criminal activity, that knowledge must be reported to the appropriate authorities.”

ABA Model Rule 1.6: Confidentiality of Information at 1.6(b)(2) states: “A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services;”

The ABA Model Rules, with its origins dating back to 1887, are a set of rules that prescribe baseline standards of legal ethics and professional responsibility for lawyers in the United States. ABA Model Rule 5.3 addresses the responsibilities of lawyers regarding nonlawyer assistance, which includes paralegals. Partners and attorneys with managerial authority in a law firm, legal department, or other entity organized for the practice of law, must make reasonable efforts to ensure measures are in place to give reasonable assurance that a nonlawyer’s conduct is compatible with the professional obligations, and not in violation of the ABA Model Rules, as if it were engaged in by a lawyer.

ABA Model Rule 1.6(c) states “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” This confidentiality extends not only to the lawyer, but also flows down to the nonlawyer assistants. The non-disclosure allows for certain exceptions as stated in ABA Model Rule 1.6(b)(2), and it is here that questions the scope allowed by the NFPA Model Code 1.3(f).

NFPA Model Code 1.3(f) uses the language that a paralegal must report “to the appropriate authority”. Initially, “appropriate authority” may appear to be the local police, sheriff, judge, head of a governmental or regulatory office or even the FBI. However, under ABA Model Rule 5.3(c), a lawyer is responsible for the conduct of, and the supervisory authority over the nonlawyer assistant. A paralegal who has a concern is required to bring that concern to the attention of the supervising attorney, and/or to a partner(s) as would seem proper under the situation. A paralegal does not have a higher level of responsibility than that of the lawyer. Although paralegals manage cases on behalf of their supervising attorneys, they may lack full access to all pertinent information related to the case, the client, or the other parties involved – including privileged and confidential information. Disclosure of potential criminal activity, which proves inaccurate, may jeopardize the parties, the lawyers, the paralegal(s), and likely constitutes a jurisdictional ethics violation.

CONCLUSION, OBSERVATIONS AND RECOMMENDATIONS:

Paralegals have positive duty to report potential criminal activity, generally, and under NFPA Model Code 1.3(f), specifically. NFPA Model Code 1.3(f) requires that a paralegal who possesses knowledge of future criminal activity, report it to the “appropriate authorities.” The phrase “appropriate authorities” as originally written appears to be overly broad, however further evaluation only requires the paralegal to report to the supervising lawyer or partner. It would be an unusual circumstance that would indicate a paralegal be required to report criminal activity to “appropriate authorities” outside of the firm, corporation, or other working environment.

The Ethics Board also makes the following observations and recommendations to NFPA:

1. The NFPA Model Code should be treated as a dynamic document subject to revision relative to the Model Rules and the changing face of the paralegal profession.
2. The NFPA Model Code should be reviewed by the Ethics Board (or committee designated by NFPA’s National Board) on a regular basis for compliance with ABA Model Rules and Opinions, state bar opinions, and the state of the paralegal profession.
 - a. A schedule should be set for timely review and recommendations.
 - b. Revisions, commentary, and/or addenda are to be made in accordance with the Restated Bylaws of National Federation of Paralegal Associations, Inc.
 - c. These Revisions, commentary, and/or addenda shall serve as a supplement to the NFPA Model Code regarding paralegal ethics.
 - d. Additional revisions, commentary, and/or addenda may be recommended as deemed necessary by the Ethics Board and NFPA National Board.

A paralegal’s failure to comply with the governing rules or canons may cause an attorney being disciplined, suspended or disbarred; the paralegal being stripped of any earned certified or professional designation; and possibly criminal prosecution.

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, and/or utilization 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.