

Ethics Board Opinion  
12-01

The following 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 finds of NFPA.

**QUESTION:** What are a freelance paralegal's duties regarding maintenance of file materials after their assignment by a supervising attorney has been completed?

**FACTS:** The paralegal requesting this Opinion is a freelance paralegal (hereinafter referred to as "paralegal"), retained by attorneys to perform paralegal work with supervision by or accountability to attorneys. The paralegal would like to know if she is required to turn over her working file to the supervising attorney at the conclusion of the assignment. The paralegal does not have a written retainer, service, or non-disclosure agreement that would specify her duties in this respect.

**OPINION:** Even though no direct violation of ethic standards were uncovered with respect the inquirer's question, it is clear that the paralegal has a duty to ensure that the client's confidential information is fully secured.

A clear way to ensure that the confidential information is handled properly is to return all file documents, directly related to the client's case, to the supervising attorney who has a contractual obligation to the client.

Further, in order for a successful relationship between a freelance paralegal and a supervising attorney to exist, certain guidelines should be in place to ensure that each party understands the full working relationship as it relates to the service as well as all documents that are generated thereof. One way to ensure that all compliance and ethical issues are well addressed before the start of an assignment is by executing a formal, written agreement between the attorney and the independent paralegal.

**DISCUSSION:** An attorney's retention of a freelance paralegal (also known as a contract paralegal) is becoming more prevalent within the legal community. Both the paralegal and the attorney, to whom they report, derive great benefit from such a working relationship. This arrangement may be a viable solution for an attorney who is unwilling or unable to employ full-time legal staff or only requires assistance for a short-term project. The paralegal, on the other hand, may enjoy the freedom and variety that can be gained from working independent of an office setting and with a variety of attorneys.

The American Bar Association ("ABA") has Model Guidelines for Utilization of Paralegal Services (hereinafter ABA Guidelines). With regard to the question at hand, the ABA Guidelines state:

"Under principles of agency law and the rules of professional conduct, lawyers are responsible for the actions and the work product of the nonlawyers they employ... To conform to Guideline 1, a lawyer must give appropriate instruction to paralegals supervised by the lawyer about the rules governing the lawyer's professional conduct, and require paralegals to act in accordance with those rules."

NFPA previously addressed the ethical obligations of freelance paralegals in Opinion No. 95-5. In summary, this opinion stated that contract paralegals (i.e., freelance paralegals) must adhere to and should aspire to the same principles for ethics and conduct of those set forth for traditionally-employed paralegals.

The American Bar Association Model Rules may require lawyers to turn over a client's files to the client, see below reference, even if lawyers have not been fully paid. By the very nature of the role, paralegals have the same responsibility in creating and maintaining client files. Reasonable care should be taken by the paralegal to ensure the supervising attorney's compliance.

ABA Model Rule 1.16(d). "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

NFPA addresses the issue of confidential information in the following Ethical Considerations on point with this discussion:

EC-1.5(a). “A paralegal shall be aware of and abide by all legal authority governing confidential information in the jurisdiction in which the paralegal practices.”

EC-1.5(c). “A paralegal shall not use confidential information to the advantage of the paralegal or of a third person.”

EC-1.5(e). “A paralegal shall keep those individuals responsible for the legal representation of a client fully informed of any confidential information the paralegal may have pertaining to that client.”

*The Merriam-Webster’s Dictionary of Law* © 1996, defines “confidential” as “containing information whose unauthorized disclosure could be prejudicial to the national interest.” It further defines “work product” as:

“the set of materials (as notes), mental impressions, conclusions, opinions, or legal theories developed by or *for* [emphasis added] an attorney in anticipation of litigation or for trial”.

The inquirer defines her working file as being “developed over the life of the case” and containing “pleadings, discovery (outgoing and incoming) and correspondence”. Each document would need to be examined on its own merits to determine if it fits the definition of work product and would therefore, receive protection as such; however, by description of the material alone, there is a high probability that the working file may contain confidential information. In this regard, the paralegal has a duty to ensure compliance with the above NFPA Ethical Considerations.

Many state jurisdictions have developed standards for individuals working as paralegals.

The inquirer provides paralegal services in the state of Texas. It is unknown if she is a member of the Texas’ paralegal division; however, the Division requires, in Canon 4, that paralegals “preserve and protect the confidences and secrets of a client.”

#### CONCLUSION:

The independent/freelance paralegal should return all confidential work product created by the paralegal to the retaining attorney. The paralegal holds no ownership interest in the confidential work product. However, the paralegal may retain templates or form discovery for future reference provided it contains no confidential client information.

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.