

Chapter 6: Law Office Ethics & Etiquette

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§ 6.1 WHAT ARE LEGAL ETHICS & COURT SANCTIONS?

Legal Ethics

Ethics are standards to which all members of a profession are expected to adhere. In the legal profession, attorneys are expected to not only follow the ethical rules of bar associations of which they are members, they are also expected to avoid even the appearance of ethical impropriety.

An attorney who violates ethical rules may be subject to a fine, suspension, private reprimand (which is not made public), a public reprimand (which is made public), or even disbarment. Such punishments are typically handed out by the bar association as a response to a complaint to its ethics committee.

Court Sanctions

A violation of ethical rules during a trial may also result in the attorney (and as a result his or her client) being punished by the court. This punishment is called a sanction. Sanctions for lawyers include fines, a limit on evidence that can be presented at trials, and even the elimination of certain witnesses that were going to be called to the stand by that party.

§ 6.2 HOW DO THE ABA RULES APPLY TO PARALEGALS?

The ABA Rules of Ethics apply only to attorneys. The ABA is a private organization and can only sanction members, although most states have adopted versions of the rules to cover attorneys within their jurisdictions. Although paralegals may not be punished directly for a violation of the rules, the attorney supervising the paralegal may be punished as if he had committed the act himself. All staff under the supervision of an attorney must adhere to the rules outlined below.

§ 6.3 THE ABA RULES OF ETHICS (Paraphrased)

1. *Competence*

An attorney should be competent to handle a legal matter. This means lawyers should refrain from taking cases in areas of law with which they are unfamiliar, unless they make an effort to ensure adequate representation (such as hiring co-counsel with experience in those areas).

2. *Diligence/Unwarranted Delay*

An attorney should act with due diligence on a case. A paralegal can assist an attorney by acting promptly on assigned tasks.

3. *Fees*

The shortest of all ABA rules, the rule on fees, simply states that they should be "reasonable." Whether a fee is reasonable varies according to the services performed, the experience of the attorney, and the standards of the community.

4. *Crime or Fraud by Attorney*

An attorney may be sanctioned if he or she engages in conduct that is criminal or fraudulent.

5. *Crime or Fraud by Client*

Although an attorney may represent someone who has committed a crime or fraud, the attorney may not counsel the client to engage in such conduct.

6. *Frivolous Legal Positions*

An attorney may not assert a frivolous claim or defense. This rule would also prevent an attorney from presenting a defense or claim that he or she knows is not true.

7. *Safekeeping Property*

An attorney holding money or property belonging to a client must keep it separate from the attorney's holdings. Although this rule is often ignored, an attorney should not intermingle client funds.

8. *False Statements and Failure to Disclose*

An attorney may not make false statements. An attorney must disclose relevant information and authority, even if that information and authority are damaging to the client.

9. *Withdrawal*

An attorney must ask the court for permission if she wishes to withdraw from a case.

10. *Confidentiality of Information*

The following rules extend to legal staff as well as the attorney:

Attorney/Client Privilege

Communication with the client must remain confidential even after the death of a client.

Attorney Work Product

Material prepared in anticipation of litigation is not discoverable.

Inadvertent Disclosure of Confidential Information

An attorney must make reasonable efforts to ensure that confidential information is not accidentally disclosed. Even if the disclosure is accidental, the attorney may still be found culpable.

11. *Conflict of Interest*

- An attorney should not engage in business transactions with a client.
- An attorney should not accept gifts from a client.
- An attorney should not engage in sex with a client.
- An attorney should not take a case in which she has a personal bias.
- An attorney should not engage in multiple representation (representing both sides in a case) unless the parties are informed of the risks and agree in writing.
- An attorney should not take a case involving a former client who is a present adversary.
- When changing jobs, attorneys must ensure they have no access to information in the new firm regarding previous representation from the old firm. This is often called a "Chinese Wall."
- An attorney must check each case the firm accepts for conflicts.
- The stipulations above extend to legal staff.

12. Communication with the Other Side

An attorney may not communicate with the client from the opposing side, unless the opposing counsel agrees or the opposing party represents himself.

13. Solicitation

An attorney may not solicit work from a specific prospective client when the attorney may have a monetary motive for doing so.

14. Advertising

An attorney may advertise as long as the advertisement is not misleading.

15. Reporting Professional Misconduct

An attorney who knows that another attorney is engaging in professional misconduct must report such conduct to the appropriate authority.

16. Appearance of Impropriety

An attorney is not supposed to engage in activity that might have the appearance of being unethical or improper.

17. Unauthorized Practice of Law

An attorney may not assist a nonlawyer in the unauthorized practice of law.

18. Paralegals, Secretaries, and Other Legal Staff

An attorney may delegate virtually any task to a staff member, as long as the attorney takes responsibility for the staff's conduct and work product. The only tasks that the staff may not perform are giving legal advice and/or acting in a legally representative capacity.

§ 6.4 LEGAL ADVICE

If a paralegal expresses an opinion on a legal issue to a client or prospective client, or attempts to apply a law to a client's legal situation, he or she is probably giving legal advice. A good rule of thumb is that a paralegal should never express an opinion about a legal matter to a client.

§ 6.5 LEGAL REPRESENTATION

A paralegal may not represent another in a court of law. Exceptions include some small claims courts and a few jurisdictions that allow paralegals to enter motions that do not anticipate opposition. Also, some administrative agencies allow paralegals to represent clients.

§ 6.6 THE LISTS

Your first year as a paralegal can define your career. Good habits, as well as bad, are established. First impressions are made that are very hard to change. The first year of your paralegal career is a sort of rebirth; everything is fresh.

The following are provided as discussion points. Can you think of additional keys to succeeding as a paralegal?

The Five Essential Keys to Succeeding in Your First Year as a Paralegal

1. *1. Be the first person in the office every day.*

Whether you drink a cup of coffee, read a newspaper, or get a head start on the day, being the first person in the office can be a great career starter. It may not seem important, but it is noticed when a paralegal is there when the attorneys arrive for work.

2. *Constantly ask yourself, "Is what I am doing now billable?"*

If you work for a private firm, your time will most likely be billed to a client. Every hour you work for a client makes money for the firm. The more billable hours you report, the more valuable you are to the firm. Be aware that time is money for you and your attorney. When it is time to negotiate your salary at your review, your billable hours are the most concrete evidence of your value to the firm.

3. *Look for work around the office if workload is slow.*

Don't sit and twiddle your thumbs if you have completed your assigned tasks. If your attorney doesn't have more work, ask other attorneys and paralegals if they need assistance. This impresses lawyers and co-workers and may give you experience in areas of law to which you may not otherwise be exposed.

4. *Be willing to work late and skip breaks.*

Your situation may dictate whether you can follow this advice, but if you are able to work extra hours, stay late, or come in on a weekend before a big trial, the attorney will remember it. A professional does not work by the clock, but instead works until the task is finished. With this attitude you will probably eventually be able to come in late or leave early without being docked. As long as the privilege is not abused, the attorney will be much more concerned with your completion of assigned tasks than whether and when you punched the clock.

5. *Take responsibility for and learn from your mistakes.*

Making mistakes is human. It is very rare that a paralegal is dismissed for making a mistake. However, repeated mistakes put a paralegal's employment at risk. If you make a mistake, admit it. Set a plan to correct it, if possible. Ask yourself why you made the error and what you could have done to anticipate the problem. Assure the attorney that you will try not to make the same mistake twice, and then move on.

The Five Essential Keys to Paralegal Ethics

1. *Do not discuss client matters with anyone. This means anyone.*

Confidentiality is paramount in legal representation. A client must be able to trust completely that any information provided to an attorney or an attorney's staff remains confidential. This is the attorney/client privilege, which extends to the paralegal as an employee of the attorney. As we will discuss later, a breach of confidentiality may result in a lawsuit against the attorney, since he or she is responsible for the paralegal's conduct under the doctrine of *respondeat superior*.

The general rule is that if information is in the news, it may be discussed. Information that is public knowledge is not privileged. Theoretically, a paralegal may discuss publicly-known information about a client, as long as confidential information is not included in the conversation. However, the best policy is not to discuss any aspect of any case with anyone outside the law firm.

2. *Don't pad your time sheets.*

"Padding" time sheets is to increase the number of hours a paralegal or attorney claims to have worked on a matter billed to the client. It is a very serious and real problem for attorneys, paralegals, and for the clients of those who engage in this practice. Padding is a corrosive tactic that causes hostility toward the legal profession and corrupts the ethics of the person who pads.

Padding is a slippery slope. It may not seem like much to add a few minutes here and there. However, the minutes eventually become hours and entire blocks of time may be fabricated. Once the ethical higher ground has been lost, it is very difficult to regain.

3. *Don't cover up your mistakes.*

As mentioned above, everyone makes mistakes. Trying to cover up a mistake can turn a bad situation into a horrible situation. The best advice is to take responsibility for your shortcomings. Trying to hide your errors or to deflect the blame to someone else can come back to haunt you. Taking responsibility is a sign of professionalism and maturity. Blaming others for your mistakes is not only unethical, it will affect the way the attorney and other staff in the law firm view you. A paralegal who admits to a mistake may gain more long-term respect.

4. *Never perform an unethical order.*

If your attorney or another paralegal asks you to engage in unethical conduct, just say no! While most attorneys and paralegals attempt to maintain a high ethical standard, some succumb to the temptations of ethical shortcuts. To engage in an unethical act may have many potentially negative repercussions. The firm could fire you. If the act is not only unethical but illegal, there could be criminal implications. Most importantly, you would be compromising your own values and ethics.

A paralegal asked to perform an unethical task should first talk to the attorney who made the request. It is possible that you misunderstood the task, or that the request was not unethical. In such cases, the attorney will explain the situation to help you feel more comfortable. If this does not solve the problem, talk to a partner in the firm about your concerns. Do not accuse the attorney; simply state your discomfort. If the partner agrees that the request is ethically questionable, he or she should deal with the attorney directly. If the conduct becomes part of a pattern, you may need to contact the local Bar Association's Ethics Committee. It's a big step, but one that will make you proud.

5. *Live up to your own standards.*

Ultimately, you are the one who has to decide what standards to set for yourself. Don't let those around you dictate your principles and values. If anything, rise above the mediocrity of those whose ethical standards are not what they should be.

The Five Essential Traits a Paralegal Should Possess

1. *Be enthusiastic, polite and considerate.*

The attitude of a single employee can affect an entire working environment, positively or negatively. Be courteous. Be enthusiastic. As mentioned earlier, the attorney will have to spend more waking hours with you than with his or her family. Make it a point to be pleasant.

2. *Have the attitude of an advocate.*

Advocacy is the process of representing a client's interests. A paralegal's attitude can further the firm's advocacy of the client. When attempting to obtain information your client has a right to, your attitude should be one of an advocate. Be zealous in pursuit of your client's rights to access critical information. Don't let obstacles stop you. Find other ways to legally and ethically obtain the information.

3. *Be persistent, patient and flexible.*

Whether you are trying to identify a witness, locate a document, or find a case in the law library, don't give up if you don't initially succeed. Work on "thinking outside the box." In other words, don't limit yourself to typical and expected sources or methods. Find other avenues. Be imaginative. Most of all, stay with it. At the end of the day, successful or not, you will at least be able to list to your supervisor all the sources or techniques you used to try to obtain the information.

4. *Be confident and dependable.*

Respond to requests from an attorney, client, or co-worker in a positive and supportive manner, demonstrating polite self-confidence and thorough professionalism. Attorneys and co-workers will begin to rely upon you, and your value to the firm will increase dramatically.

5. *Be communicative with attorneys and staff.*

Don't make a habit of complaining. If there is a problem situation in the firm or with a co-worker, attempt to resolve the problem directly. Start by approaching the source of the perceived problem in a positive and constructive manner. Remember that the person may be defensive at first, so be sensitive. Innocent comments, even if constructive, can be viewed as criticism, and no one likes to be criticized. Be prepared for and accept any initial defensive response and avoid reacting in a negative fashion. Attempt to soothe any sensitivities with a positive plan of action that involves not just the target of the concern, but all involved.

The Five Essential Skills a Paralegal Should Possess

1. *The skill of organization.*

This important skill can be honed with effort and the right tools. You must make a conscious effort to improve your skills and dedicate yourself to concrete, attainable goals. Commit to taking 15 minutes in the morning to make a list, organizing the tasks you hope to accomplish that day. Commit to a similar 15-minute period at the end of the day. During those few minutes, make sure documents are where they are supposed to be, necessary messages and calls have been handled, and everything is ready to be picked up the next day at the point where you left off. Adhering to those 15-minute organizational breaks can improve self-discipline.

Make a habit of looking at your desk just before you leave for the day. Think for a minute about the projects you have been working on. Then ask yourself a simple question: "If I get food poisoning tonight and have to call in sick tomorrow, could I relay information about all my projects to someone else? Would someone be able to easily access this information?"

2. *The ability to manipulate forms.*

Ask for a form or template. Someone has probably already created a document similar to the one on which you are working. Perhaps your firm uses boilerplate, fill-in-the-blank forms or templates. You do not need to reinvent the wheel. If the firm does not have an in-house form you need, utilize the form book skills you will learn later in these manuals. If you find a form or template on the firm's computer system, master the following two techniques: "*Cut and Paste*" and "*Find and Replace*."

One danger in form manipulation is leaving previous unrelated or irrelevant information in the new document. To avoid such embarrassing mistakes, review your document out loud. Close your office door; clear your throat; then read the document out loud to yourself. You are much more likely to rush over a mistake if you read it silently to yourself. Reading it out loud forces you to read more slowly and catch mistakes.

3. *Legal research.*

A keen ability to conduct legal research is the difference between a good paralegal and a great one. A paralegal with strong research skills has great learning potential, which increases the individual's value exponentially.

Learn the system of legal research. Don't simply try to understand the techniques and differences presented by various law books. Find the common ground all research books possess. Work to understand the methods more than the materials.

4. *Be a self-starter.*

Take initiative. Don't wait to be told every task to perform. Don't just strike out on your own without direction, but ask the attorney whether you should check out a witness' background, or if he or she needs help with the complaint for a new client.

If you are attempting a task for the first time, it is tempting to ask the attorney to walk you through it. This is certainly understandable, but it is usually a mistake. After being assigned the task, ask any questions you want. Once you start the task, go to the supervisor only if you are totally stuck or if you are at a point where choosing the wrong direction would result in a total waste of time.

A reasonable attorney will understand that the first time you perform a task, you are likely to make mistakes or not understand all aspects of the work. If you present a final product that demonstrates a good-faith effort, and if you produced that product independently, you have most likely succeeded. The attorney will certainly make suggestions and corrections. Learn from your mistakes, and accept the attorney's observations appreciatively. Consider keeping any drafts that the attorney has marked up for future reference.

5. *Analytical skills.*

These manuals will teach you the system of legal analysis. Once you understand that system and begin using it, your mindset changes. You will find yourself reading a newspaper differently. You may find yourself upset because the television news reporter missed the point of the story just covered. Television crime-dramas will never be quite the same again. Analytical skills help the paralegal in many aspects of work, such as anticipating questions during a witness interview, preparing an answer to a complaint, conducting efficient legal research, and more.

The Five Essential Keys to Getting Along With Your Attorney

1. *Don't assume that your attorney knows everything.*

Lawyers suffer from an interesting paradox: We put them on pedestals expecting them to know all, but we also love to tell lawyer jokes. Foster realistic expectations of the attorney for whom you work. Your attorney's endless reservoir of knowledge about the law was acquired by hard work and ongoing effort. Every attorney makes mistakes. Every attorney loses cases. And yes, every attorney will now and then have a bad day.

Don't be intimidated by attorneys. Some will amaze you with their skill, knowledge, and wonderful attitudes. Some will disappoint with their laziness, bad work ethic, and rudeness. This is true of all professions. There are good lawyers and bad lawyers, just as there are good paralegals and bad paralegals. Most attorneys, though, are hard-working individuals and good bosses. Your job is to try to be one of the good paralegals.

2. Most attorneys are ethical.

Lawyers are easy targets. It is easy to paint the profession as being generally unethical and sleazy. This is unfair to lawyers and to the public. Most attorneys strive to maintain a high ethical standard. There are examples in this manual of attorneys who lack ethics. These exceptions are provided to demonstrate a point and are not intended to demean the profession.

3. Provide suggestions, not advice.

Some attorneys do not feel comfortable communicating with paralegals as equals. Equals can give advice to one another. The same information, when offered as a suggestion instead of advice, will probably be better received. It's a bit petty and shouldn't be necessary, but being aware of this may help your communication. Once paralegals prove their worth, this style of communicating may no longer be necessary.

4. Write down and repeat assignments.

This is one of the best habits any paralegal can develop. When an attorney or supervisor gives you an assignment, take notes. Before leaving the room, write down the assignment in a single sentence or paragraph. Then read it back to the attorney and ask whether it is correct. Keep the notes in the file, or some other easily accessible place, so it can be used to settle any future misunderstanding about what you were asked to do.

5. Ask the attorney to prioritize tasks.

You will never be congratulated for a "great job of prioritizing." You may, however, be criticized for not prioritizing correctly. In other words, there is no upside to prioritizing for yourself. Create a list of your current work projects and ask the attorney to set the priorities. This also serves the function of informing the lawyer of your current workload and case status.

Many paralegals work under several attorneys. It is not uncommon for each attorney to view his or her work as your number one priority. It may be necessary to get the lawyers together to set your priorities on various projects. If all the projects from all the attorneys are indeed priorities, it may be necessary to bring in another paralegal, at least temporarily.

Five Ways to Fail in Your First Year as a Paralegal

1. *Get involved in office politics and use social media.*

Nothing will limit your career more quickly than getting involved in the petty, vindictive world of office politics. Getting the latest about which lawyer is dating which client or what paralegal was hung-over may seem like a fun distraction, but it is always negative, and is usually destructive. Stay away from office gossip. Social media, whether it be Twitter, Facebook, Instagram, or other services, simply magnifies issues. If you are on social media, build a cement wall between your personal and work lives. Do not "friend", "tweet", or "share" social media with coworkers. Nothing positive can come of it. If you are pressed to share with a superior on social media and can't get out of it, consider creating a new (and limited) profile just for that purpose.

2. *Be obsessed with money.*

Make a commitment not to ask for more money until after your first year. If the firm offers it, great. If not, do your work and have a great attitude about it. The money will come, either at that firm or the next.

3. *Be constantly late to work.*

Don't fool yourself thinking that if the attorney is out for the morning it won't matter if you are late. It will be noticed.

4. *Refuse to be a team player.*

When a co-worker, whether a paralegal, secretary, or attorney who is not your supervisor asks you for help, you will have three choices. You can choose not to help out, since it's not your job. This does nothing for your career. You can help, but with a bad attitude. This may ensure that you receive no future requests, but again, it will reflect negatively on you. Or, you can help with a positive attitude. This makes you more valuable to the firm and makes it likely that you will get help in the future if you need it.

5. *Be a "professional coward."*

Be positive and adventurous about your career. Don't be negative, constantly reminding yourself of what you don't know. Realize that everyone has to start somewhere. The firm, if it is well-managed, is more interested in your potential than your initial abilities. Take chances. Be willing to take work from attorneys in areas with which you are unfamiliar.

One related piece of advice: As a rule, a paralegal entering the profession should take the first job offered. This sounds like unusual advice, but it is much easier to move within the profession once that first job is obtained.

§ 6.7 ETHICAL ISSUES FOR DISCUSSION

Consider the following situations. Are there ethical issues? How could they be resolved?

1. When Bob hired an attorney, he had already been charged with murder. During the first meeting, Bob told his attorney that he had, indeed, committed the murder. Bob still wants the attorney to represent him. Can the attorney represent Bob, having knowledge that Bob committed the crime? Explain.
2. Carol worked for the law firm of *Smith and Jones* for several years. She is newly engaged and her fiancé works as an attorney for a firm that represents a party against whom *Smith and Jones* has an active lawsuit. What ethical concerns do you see, if any? Can you identify any possible solutions to the dilemma?
3. Helen, a paralegal, is walking across the street to lunch one day when she witnesses an accident. As the injured party is lying on the pavement looking up, he asks whether Helen knows a good lawyer. Can she give her attorney's card to the injured person?
4. Sue works for a divorce lawyer. She finds out that a client, Sam Slime, is hiding assets from his wife in the divorce. She calls and leaves an anonymous message for Sam's estranged wife, informing her of the hidden assets. Discuss the ethical aspects of the situation.
5. Sally, your firm's client with an ongoing case, is in trouble. Her rent is late and she has no money to buy food for her daughter. She asks her attorney for a loan. Would it be ethical for the attorney to assist her monetarily?
6. A man hired an attorney to represent him in a divorce. The property settlement negotiations were very contentious. In the man's estimation, the woman was being unreasonable. One day, the man went to a restaurant for lunch, and saw his soon-to-be ex-wife having lunch with his attorney! He confronted the attorney that afternoon at the law firm. The lawyer's explanation was that he was attempting to soften the woman's stand in the negotiations. In fact, the lawyer said, he thought a breakthrough was imminent. Discuss the ethical implications of the lawyer's actions.

7. An attorney tells his paralegal to alter, possibly even forge, some information on documents involved in a lawsuit. He says that if she doesn't do as instructed, she will be fired and never work in a law office again. What should the paralegal do? What ethical problems in this situation can you identify?
8. An attorney is a trustee for the bankruptcy court. He has access to an estate with \$300,000 in one bank account. He borrows \$200,000 and goes to the Kentucky Derby. He wins and pays back the money, but does not pay interest. (The funds were gone for about a week.) Discuss any ethical problems.
9. An attorney asks his legal secretary to go to dinner. She accepts, but is uncomfortable and tells him she has changed her mind. He convinces her to go. After dinner, the attorney drives her home. When the attorney tries to kiss her, she pushes him away and tells him she is very upset. The attorney apologizes and leaves. The secretary does not feel she can go back to work and quits. Do you believe that she has a valid sexual harassment suit? Discuss.
10. An attorney runs an advertisement on television that states, "Hire us, we'll get the results you deserve." Can you see any ethical concerns with the statement?

CHAPTER 6 WRAP-UP

WHAT YOU SHOULD KNOW...

After reading this chapter you should know the following:

- Who the ABA Rules of Ethics apply to and how
- Tasks a paralegal is and is not able to ethically perform
- Skills, traits, and attitudes helpful to a beginning paralegal

ASSIGNMENTS

There are no assignments for this chapter.