

Ethical Guidelines for Non-Lawyer Staff, Paralegals and Secretaries

To the staff and members of our firm:

The Professional Rules of Responsibility for our state hold attorneys responsible for ethical problems and violations that are committed by staff, such as paralegals, secretaries, receptionists, and other personnel. We ask that you read the following rules very carefully, along with the examples, and sign a photocopy of these rules certifying that you have read them and understand them. If you do not understand any of these rules, please see one of the members of our firm. If you believe that a violation of any of these rules has occurred, please contact a member of the law firm.

1. **Confidentiality** – Perhaps the easiest rule to forget and yet perhaps the most important is confidentiality. Do not, under any circumstances, discuss cases that you are working on with family members, friends, or any other person other than a member of our law firm. In fact, you are not even allowed to say that our law firm represents a certain client or individual. Even a psychologist or psychiatrist cannot disclose that they are treating a certain individual. **EXAMPLE:** You are having lunch with a friend or relative in a restaurant and are overheard talking about a case that you are working on. You mention that you expect our client may receive a large verdict for an injury that occurred in an auto accident. Someone overhears the conversation and reports it to the client. If the firm is brought before the state Board of Bar Overseers, who is responsible? We are. This firm could not only lose the client, but it also could be reprimanded or receive even harsher penalties. Even if someone asks if you are working on a certain case that they have read about in the paper, you must decline to give that information.
2. **Unauthorized Practice.** As a paralegal or a secretary, you are in a difficult position sometimes because you certainly have knowledge of the law. However, you are not allowed to actually practice law or give what is known as “legal advice.” This is called the unauthorized practice of law. Clients have a tendency to remember virtually everything that you tell them, especially if it relates specifically to their case. Therefore, you must avoid the problem of giving legal advice. The following are just a few examples of how this can occur:
 - A. You cannot state your opinion on the value of a certain case. Example: “An injury like this is easily worth \$20,000 or more.”
 - B. Do not predict the outcome of a case. Example: “Your case is an absolute winner because liability is clear.”
 - C. Do not cite legal authority. Example: “This case clearly falls under the *res ipsa* doctrine” or, “*Jones v. Smith* clearly has ruled that the defendant admitted liability when he called you with an apology.”

- D. Do not tell clients how they should testify or answer questions while giving a statement or answering an interrogatory. Example: "Do not admit that you had one drink that evening because it could be used against you."
 - E. Always have an attorney read any communication that you draft. Any letter that is sent to a client must be reviewed by an attorney in this firm. Never send a letter to a client that has not been read by an attorney in this law firm.
 - F. Do not try to interpret language in a document such as a release or contract. Example: "This release doesn't relate to future claims that you may have for medical bills."
3. When in doubt about the unauthorized practice, simply tell a client that you cannot answer a certain question because it requires the expertise of an attorney, even if you know the answer.
4. **Conflict of interest.** This rule of professional responsibility is perhaps the most reported violation and is considered as important as the rule on confidentiality. It is crystal clear that our law firm cannot represent interests or parties which are adverse to each other. Despite our efforts to avoid conflicts, they sometimes occur. If and when you believe a conflict situation exists in this office, you must report it immediately to a member of our firm. Do not hesitate. It is far better to suspect and report a conflict rather than to remain silent. There are several possible examples regarding conflict which you should understand. Here are just a few:
- A. We are currently representing a person who was injured in an auto accident when you suddenly realize or find out that we once represented the potential defendant in a divorce or criminal case. This is a perfect example of a potential conflict.
 - B. During an interview with a client, you learn that one of the physicians who treated the client was once sued by our office for malpractice.
 - C. You learn that a witness in one of our cases was once a person we sued or was represented by our firm in another case.
 - D. Our client discloses to you that he does not want his wife to know that he was drinking on the night he was involved in an auto collision which is being handled in our office. You learn that his wife had her Will done in our office.
5. **Financial Conflict of Interest.** We are not allowed to have a financial interest in any client's case other than for our fee and our costs. Therefore, it is improper for us to loan money or give money to a client in exchange for representation. Under no circumstances should you ever consider loaning or giving money to a client other than for a related expense. Example: A client tells you that he needs

money for his family because he has been out of work due to an accident for which we are representing him. He makes you feel sorry for him and you loan him \$100 of your own money.

6. **Dishonesty.** It is often tempting to be dishonest with little white lies to clients or to other parties including attorneys, other legal secretaries, or the court. However, despite such temptations, there is a requirement of honesty in the Bar Rules. You must not tell a prospective or existing client lies about his/her case, lies about the status of work in progress, or engage in other dishonest conduct. With respect to other attorneys or the court, it is against the Bar Rules to provide false information to the court or to engage in fraudulent conduct. If you believe that dishonesty is, in fact, taking place in your office, report it to your supervisor or an attorney.

7. **Mingling client funds with personal or business accounts.** We are not allowed to mix or mingle client funds with our own personal or business accounts. This is the reason why we have special client trust accounts. If you believe that client's funds have been mingled with either personal or business accounts of an attorney or other representative of our firm, notify a supervisor or attorney at once. Example: A settlement check comes into our office, but the attorney you are working for needs funds for either a business expense or a serious personal reason. You place the settlement check in the attorney's personal or business account with the expectation of "paying it back" at a later date.

8. **Threatening prosecution.** We are not allowed to threaten people with criminal prosecution or disciplinary charges in order to gain an advantage in a civil matter. Example: You write a letter to someone who has struck our client while possibly being under the influence of intoxicating liquor. You say in the letter, "If we do not hear from you or your attorney with respect to this incident, we may notify the District Attorney for prosecution of operating under the influence."

9. **Due diligence and competence.** Our firm must represent clients to the best of our ability with due diligence and competence. We cannot allow matters to go stale or to sit for weeks or months without trying to move them to some resolution. Furthermore, we must represent our clients to the best of our ability and should not be practicing law in areas in which we have no expertise. Example regarding due diligence: A file sits on an attorney's desk for several months as the statute of limitations runs close. Because the attorney forgets to file a complaint on time, the case is dismissed because of the expiration of the statute of limitations. Example regarding competence: You decide to assist a client with a Last Will and Testament even though you have no experience in the area of probate or estate law. You take a form from the Internet in order to save the client the expense of hiring an estate attorney. The form turns out to be invalid in our state.

10. **Fee agreements.** Fee agreements are extremely important. In virtually every single matter in which our office represents a client, it is important to have either a fee agreement or a letter explaining fees. If a grievance takes place regarding fees, and there is no fee agreement, the Board of Bar Overseers will often find for the complaining client. Therefore, it is imperative that you note whether or

not fee agreements exist in virtually every case in which we represent a client. This is especially true for personal injury cases.

11. **Disclosure of fraud.** It is improper for an attorney to allow a client to either lie or state a falsehood under oath. It is also improper for an attorney to represent a client who is perpetrating a fraud upon any person or tribunal. If you are aware that one of our clients has committed fraud, is lying, or is dishonest in his or her answers to interrogatories or deposition questions, report this immediately to your supervisor or an attorney.

12. **Improper concealment, statement, or evidence.** It is improper for attorneys or legal assistants to knowingly make a false statement, conceal information legally required to be revealed, or to participate in the creation or preservation of false evidence. Example: In the interest of making someone's personal injury case better, you change a sentence in a medical report and provide a false copy to the other attorney.

13. **Improper contact with witnesses.** It is improper for attorneys or legal assistants to suppress evidence that the lawyer or client has a legal obligation to reveal or produce. Example: A medical report comes in that is adverse to your client's interests. You take the report and either throw it away or hide it somewhere without revealing it to the other side. It is also improper to directly or indirectly pay a witness for testimony which is contingent upon content of the testimony or the outcome of the case. It is proper to advance payment of expenses reasonably incurred by a witness for loss of time or for other reasonable expenses but not in payment for testifying a certain way at a trial or proceeding.

14. **Communicating with an adverse party.** It is improper for an attorney or his or her legal assistant to communicate directly with a party which the lawyer or legal assistant knows is represented by another attorney in the matter. Example: You are having difficulty contacting the attorney in an adversarial matter and decide to contact his client directly to inform the attorney's client of a certain piece of correspondence or communication that you are trying to deliver.

The above rules are just a few of the rules of professional responsibility which you must be aware of. It is our request that if you ever have any question whatsoever regarding ethical conduct that you ask your supervising attorney, office manager, or any other attorney in our firm.

I have read the above rules and have an understanding as to the professional responsibility of a legal assistant.

Dated: _____

Signed: