

NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.

MODEL CODE OF ETHICS AND PROFESSIONAL
RESPONSIBILITY
AND GUIDELINES FOR ENFORCEMENT

PREAMBLE

The National Federation of Paralegal Associations, Inc. ("NFPA") is a professional organization comprised of paralegal associations and individual paralegals throughout the United States and Canada. Members of NFPA have varying backgrounds, experiences, education and job responsibilities that reflect the diversity of the paralegal profession. NFPA promotes the growth, development and recognition of the paralegal profession as an integral partner in the delivery of legal services.

In May 1993 NFPA adopted its Model Code of Ethics and Professional Responsibility ("Model Code") to delineate the principles for ethics and conduct to which every paralegal should aspire.

Many paralegal associations throughout the United States have endorsed the concept and content of NFPA's Model Code through the adoption of their own ethical codes. In doing so, paralegals have confirmed the profession's commitment to increase the quality and efficiency of legal services, as well as recognized its responsibilities to the public, the legal community, and colleagues.

Paralegals have recognized, and will continue to recognize, that the profession must continue to evolve to enhance their roles in the delivery of legal services. With increased levels of responsibility comes the need to define and enforce mandatory rules of professional conduct. Enforcement of codes of paralegal conduct is a logical and necessary step to enhance and ensure the confidence of the legal community and the public in the integrity and professional responsibility of paralegals.

In April 1997 NFPA adopted the Model Disciplinary Rules ("Model Rules") to make possible the enforcement of the Canons and Ethical Considerations contained in the NFPA Model Code. A concurrent determination was made that the Model Code of Ethics and Professional Responsibility, formerly aspirational in nature, should be recognized as setting forth the enforceable obligations of all paralegals.

The Model Code and Model Rules offer a framework for professional discipline, either voluntarily or through formal regulatory programs.

§1. NFPA MODEL DISCIPLINARY RULES AND ETHICAL CONSIDERATIONS

1.1 A PARALEGAL SHALL ACHIEVE AND MAINTAIN A HIGH LEVEL OF COMPETENCE.

Ethical Considerations

- EC-1.1 A paralegal shall achieve competency through education, training, and work experience.
- (a)
- EC-1.1 A paralegal shall aspire to participate in a minimum of twelve (12) hours of continuing legal education, to include at least one (1) hour of ethics education, every two (2) years in order to remain current on developments in the law.
- (b)
- EC-1.1 A paralegal shall perform all assignments promptly and efficiently.
- (c)

1.2 A PARALEGAL SHALL MAINTAIN A HIGH LEVEL OF PERSONAL AND PROFESSIONAL INTEGRITY.

Ethical Considerations

- EC-1.2 A paralegal shall not engage in any ex parte communications involving the courts or any other adjudicatory body in an attempt to exert undue influence or to obtain advantage or the benefit of only one party.
- (a)
- EC-1.2 A paralegal shall not communicate, or cause another to communicate, with a party the paralegal knows to be represented by a lawyer in a pending matter without the prior consent of the lawyer representing such other party.
- (b)
- EC-1.2 A paralegal shall ensure that all timekeeping and billing records prepared by the paralegal are thorough, accurate, honest, and complete.
- (c)
- EC-1.2 A paralegal shall not knowingly engage in fraudulent billing practices. Such practices may include, but are not limited to: inflation of hours billed to a client or employer; misrepresentation of the nature of tasks performed; and/or submission of fraudulent expense and disbursement documentation.
- (d)
- EC-1.2 A paralegal shall be scrupulous, thorough and honest in the identification and maintenance of all funds, securities, and other assets of a client and shall provide accurate accounting as appropriate.
- (e)
- EC-1.2 A paralegal shall advise the proper authority of non-confidential knowledge of any dishonest or fraudulent acts by any person pertaining to the handling of the funds, securities or other assets of a client. The authority to whom the report is made shall depend on the nature and circumstances of the possible misconduct, (e.g., ethics committees of law firms, corporations and/or paralegal associations, local or state bar associations, local prosecutors, administrative agencies, etc.). Failure to report such knowledge is in itself misconduct and shall be treated as such under these rules.
- (f)

1.3 A PARALEGAL SHALL MAINTAIN A HIGH STANDARD OF PROFESSIONAL CONDUCT.

Ethical Considerations

- EC-1.3 (a) A paralegal shall refrain from engaging in any conduct that offends the dignity and decorum of proceedings before a court or other adjudicatory body and shall be respectful of all rules and procedures.
- EC-1.3 (b) A paralegal shall avoid impropriety and the appearance of impropriety and shall not engage in any conduct that would adversely affect his/her fitness to practice. Such conduct may include, but is not limited to: violence, dishonesty, interference with the administration of justice, and/or abuse of a professional position or public office.
- EC-1.3 (c) Should a paralegal's fitness to practice be compromised by physical or mental illness, causing that paralegal to commit an act that is in direct violation of the Model Code/Model Rules and/or the rules and/or laws governing the jurisdiction in which the paralegal practices, that paralegal may be protected from sanction upon review of the nature and circumstances of that illness.
- EC-1.3 (d) A paralegal shall advise the proper authority of non-confidential knowledge of any action of another legal professional that clearly demonstrates fraud, deceit, dishonesty, or misrepresentation. The authority to whom the report is made shall depend on the nature and circumstances of the possible misconduct, (e.g., ethics committees of law firms, corporations and/or paralegal associations, local or state bar associations, local prosecutors, administrative agencies, etc.). Failure to report such knowledge is in itself misconduct and shall be treated as such under these rules.
- EC-1.3 (e) A paralegal shall not knowingly assist any individual with the commission of an act that is in direct violation of the Model Code/Model Rules and/or the rules and/or laws governing the jurisdiction in which the paralegal practices.
- EC-1.3 (f) If a paralegal possesses knowledge of future criminal activity, that knowledge must be reported to the appropriate authority immediately.

1.4 A PARALEGAL SHALL SERVE THE PUBLIC INTEREST BY CONTRIBUTING TO THE IMPROVEMENT OF THE LEGAL SYSTEM AND DELIVERY OF QUALITY LEGAL SERVICES, INCLUDING PRO BONO PUBLICO SERVICES AND COMMUNITY SERVICE.

Ethical Considerations

- EC-1.4 (a) A paralegal shall be sensitive to the legal needs of the public and shall promote the development and implementation of programs that address those needs.
- EC-1.4 (b) A paralegal shall support efforts to improve the legal system and access thereto and shall assist in making changes.
- EC-1.4 A paralegal shall support and participate in the delivery of Pro Bono Publico

(c) services directed toward implementing and improving access to justice, the law, the legal system or the paralegal and legal professions.

EC-1.4 A paralegal should aspire annually to contribute twenty-four (24) hours of Pro Bono Publico services under the supervision of an attorney or as authorized by administrative, statutory or court authority to:

1. persons of limited means; or
2. charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the legal needs of persons with limited means; or
3. individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

The twenty-four (24) hours of Pro Bono Publico services contributed annually by a paralegal may consist of such services as detailed in this EC-1.4(d), and/or administrative matters designed to develop and implement the attainment of this aspiration as detailed above in EC-1.4(a)(b)(c), or any combination of the two.

EC-1.4 A paralegal should aspire to contribute twenty-four (24) hours of Community Service on an annual basis. For purposes of this EC, "Community Service" shall be defined as: volunteer activities that have the effect of providing a valuable service or benefit to a local community, as distinguished from those services which fall within the traditional definition of *pro bono publico*. By way of example and not limitation, several examples of Community Service may include: working with Habitat for Humanity, volunteering with local women's shelters, volunteering for hurricane relief, serving meals at local soup kitchens or local homeless shelters.

1.5 A PARALEGAL SHALL PRESERVE ALL CONFIDENTIAL INFORMATION PROVIDED BY THE CLIENT OR ACQUIRED FROM OTHER SOURCES BEFORE, DURING, AND AFTER THE COURSE OF THE PROFESSIONAL RELATIONSHIP.

Ethical Considerations

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

EC-1.5 A paralegal shall not use confidential information to the disadvantage of the (b) client.

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

EC-1.5 A paralegal may reveal confidential information only after full disclosure and (d) with the client's written consent; or, when required by law or court order; or, when necessary to prevent the client from committing an act that could result in death or serious bodily harm.

- EC-1.5 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.
- (e)
- EC-1.5 A paralegal shall not engage in any indiscreet communications concerning clients.
- (f)

1.6 A PARALEGAL SHALL AVOID CONFLICTS OF INTEREST AND SHALL DISCLOSE ANY POSSIBLE CONFLICT TO THE EMPLOYER OR CLIENT, AS WELL AS TO THE PROSPECTIVE EMPLOYERS OR CLIENTS.

Ethical Considerations

- EC-1.6 A paralegal shall act within the bounds of the law, solely for the benefit of the client, and shall be free of compromising influences and loyalties. Neither the paralegal's personal or business interest, nor those of other clients or third persons, should compromise the paralegal's professional judgment and loyalty to the client.
- (a)
- EC-1.6 A paralegal shall avoid conflicts of interest that may arise from previous assignments, whether for a present or past employer or client.
- (b)
- EC-1.6 A paralegal shall avoid conflicts of interest that may arise from family relationships and from personal and business interests.
- (c)
- EC-1.6 In order to be able to determine whether an actual or potential conflict of interest exists a paralegal shall create and maintain an effective recordkeeping system that identifies clients, matters, and parties with which the paralegal has worked.
- (d)
- EC-1.6 A paralegal shall reveal sufficient non-confidential information about a client or former client to reasonably ascertain if an actual or potential conflict of interest exists.
- (e)
- EC-1.6 A paralegal shall not participate in or conduct work on any matter where a conflict of interest has been identified.
- (f)
- EC-1.6 In matters where a conflict of interest has been identified and the client consents to continued representation, a paralegal shall comply fully with the implementation and maintenance of an Ethical Wall.
- (g)

1.7 A PARALEGAL'S TITLE SHALL BE FULLY DISCLOSED.

Ethical Considerations

- EC-1.7 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)
- EC-1.7 A paralegal's title shall be included if the paralegal's name appears on business

- (b) cards, letterhead, brochures, directories, and advertisements.
- EC-1.7 A paralegal shall not use letterhead, business cards or other promotional materials to create a fraudulent impression of his/her status or ability to practice in the jurisdiction in which the paralegal practices.
- (c)
- EC-1.7 A paralegal shall not practice under color of any record, diploma, or certificate that has been illegally or fraudulently obtained or issued or which is misrepresentative in any way.
- (d)
- EC1.7 A paralegal shall not participate in the creation, issuance, or dissemination of fraudulent records, diplomas, or certificates.
- (e)

1.8 A PARALEGAL SHALL NOT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW.

Ethical Considerations

- EC-1.8 A paralegal shall comply with the applicable legal authority governing the unauthorized practice of law in the jurisdiction in which the paralegal practices.
- (a)

§2. NFPA GUIDELINES FOR THE ENFORCEMENT OF THE MODEL CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY

2.1 BASIS FOR DISCIPLINE

- 2.1(a) Disciplinary investigations and proceedings brought under authority of the Rules shall be conducted in accord with obligations imposed on the paralegal professional by the Model Code of Ethics and Professional Responsibility.

2.2 STRUCTURE OF DISCIPLINARY COMMITTEE

- 2.2(a) The Disciplinary Committee ("Committee") shall be made up of nine (9) members including the Chair.
- 2.2(b) Each member of the Committee, including any temporary replacement members, shall have demonstrated working knowledge of ethics/professional responsibility-related issues and activities.
- 2.2(c) The Committee shall represent a cross-section of practice areas and work experience. The following recommendations are made regarding the members of the Committee.
 - 1) At least one paralegal with one to three years of law-related work experience.
 - 2) At least one paralegal with five to seven years of law related work

experience.

3) At least one paralegal with over ten years of law related work experience.

4) One paralegal educator with five to seven years of work experience; preferably in the area of ethics/professional responsibility.

5) One paralegal manager.

6) One lawyer with five to seven years of law-related work experience.

7) One lay member.

- 2.2(d) The Chair of the Committee shall be appointed within thirty (30) days of its members' induction. The Chair shall have no fewer than ten (10) years of law-related work experience.
- 2.2(e) The terms of all members of the Committee shall be staggered. Of those members initially appointed, a simple majority plus one shall be appointed to a term of one year, and the remaining members shall be appointed to a term of two years. Thereafter, all members of the Committee shall be appointed to terms of two years.
- 2.2(f) If for any reason the terms of a majority of the Committee will expire at the same time, members may be appointed to terms of one year to maintain continuity of the Committee.
- 2.2(g) The Committee shall organize from its members a three-tiered structure to investigate, prosecute and/or adjudicate charges of misconduct. The members shall be rotated among the tiers.

2.3 OPERATION OF COMMITTEE

- 2.3(a) The Committee shall meet on an as-needed basis to discuss, investigate, and/or adjudicate alleged violations of the Model Code/Model Rules.
- 2.3(b) A majority of the members of the Committee present at a meeting shall constitute a quorum.
- 2.3(c) A Recording Secretary shall be designated to maintain complete and accurate minutes of all Committee meetings. All such minutes shall be kept confidential until a decision has been made that the matter will be set for hearing as set forth in Section 6.1 below.
- 2.3(d) If any member of the Committee has a conflict of interest with the Charging Party, the Responding Party, or the allegations of misconduct, that member shall not take part in any hearing or deliberations concerning those allegations. If the absence of that member creates a lack of a quorum for the Committee, then a temporary replacement for the member shall be appointed.
- 2.3(e) Either the Charging Party or the Responding Party may request that, for good cause shown, any member of the Committee not participate in a hearing or deliberation. All such requests shall be honored. If the absence of a Committee member under those circumstances creates a lack of a quorum for the Committee, then a temporary replacement for that member shall be appointed.
- 2.3(f) All discussions and correspondence of the Committee shall be kept confidential

until a decision has been made that the matter will be set for hearing as set forth in Section 6.1 below.

- 2.3(g) All correspondence from the Committee to the Responding Party regarding any charge of misconduct and any decisions made regarding the charge shall be mailed certified mail, return receipt requested, to the Responding Party's last known address and shall be clearly marked with a "Confidential" designation.

2.4 PROCEDURE FOR THE REPORTING OF ALLEGED VIOLATIONS OF THE MODEL CODE/DISCIPLINARY RULES

- 2.4(a) An individual or entity in possession of non-confidential knowledge or information concerning possible instances of misconduct shall make a confidential written report to the Committee within thirty (30) days of obtaining same. This report shall include all details of the alleged misconduct.
- 2.4(b) The Committee so notified shall inform the Responding Party of the allegation(s) of misconduct no later than ten (10) business days after receiving the confidential written report from the Charging Party.
- 2.4(c) Notification to the Responding Party shall include the identity of the Charging Party, unless, for good cause shown, the Charging Party requests anonymity.
- 2.4(d) The Responding Party shall reply to the allegations within ten (10) business days of notification.

2.5 PROCEDURE FOR THE INVESTIGATION OF A CHARGE OF MISCONDUCT

- 2.5(a) Upon receipt of a Charge of Misconduct ("Charge"), or on its own initiative, the Committee shall initiate an investigation.
- 2.5(b) If, upon initial or preliminary review, the Committee makes a determination that the charges are either without basis in fact or, if proven, would not constitute professional misconduct, the Committee shall dismiss the allegations of misconduct. If such determination of dismissal cannot be made, a formal investigation shall be initiated.
- 2.5(c) Upon the decision to conduct a formal investigation, the Committee shall:
- 1) mail to the Charging and Responding Parties within three (3) business days of that decision notice of the commencement of a formal investigation. That notification shall be in writing and shall contain a complete explanation of all Charge(s), as well as the reasons for a formal investigation and shall cite the applicable codes and rules;
 - 2) allow the Responding Party thirty (30) days to prepare and submit a confidential response to the Committee, which response shall address each charge specifically and shall be in writing; and
 - 3) upon receipt of the response to the notification, have thirty (30) days

to investigate the Charge(s). If an extension of time is deemed necessary, that extension shall not exceed ninety (90) days.

- 2.5(d) Upon conclusion of the investigation, the Committee may:
- 1) dismiss the Charge upon the finding that it has no basis in fact;
 - 2) dismiss the Charge upon the finding that, if proven, the Charge would not constitute Misconduct;
 - 3) refer the matter for hearing by the Tribunal; or
 - 4) in the case of criminal activity, refer the Charge(s) and all investigation results to the appropriate authority.

2.6 PROCEDURE FOR A MISCONDUCT HEARING BEFORE A TRIBUNAL

- 2.6(a) Upon the decision by the Committee that a matter should be heard, all parties shall be notified and a hearing date shall be set. The hearing shall take place no more than thirty (30) days from the conclusion of the formal investigation.
- 2.6(b) The Responding Party shall have the right to counsel. The parties and the Tribunal shall have the right to call any witnesses and introduce any documentation that they believe will lead to the fair and reasonable resolution of the matter.
- 2.6(c) Upon completion of the hearing, the Tribunal shall deliberate and present a written decision to the parties in accordance with procedures as set forth by the Tribunal.
- 2.6(d) Notice of the decision of the Tribunal shall be appropriately published.

2.7 SANCTIONS

- 2.7(a) Upon a finding of the Tribunal that misconduct has occurred, any of the following sanctions, or others as may be deemed appropriate, may be imposed upon the Responding Party, either singularly or in combination:
- 1) letter of reprimand to the Responding Party; counseling;
 - 2) attendance at an ethics course approved by the Tribunal; probation;
 - 3) suspension of license/authority to practice; revocation of license/authority to practice;
 - 4) imposition of a fine; assessment of costs; or
 - 5) in the instance of criminal activity, referral to the appropriate authority.
- 2.7(b) Upon the expiration of any period of probation, suspension, or revocation, the Responding Party may make application for reinstatement. With the application for reinstatement, the Responding Party must show proof of having complied with all aspects of the sanctions imposed by the Tribunal.

2.8 APPELLATE PROCEDURES

- 2.8(a) The parties shall have the right to appeal the decision of the Tribunal in accordance with the procedure as set forth by the Tribunal.

DEFINITIONS

"Appellate Body" means a body established to adjudicate an appeal to any decision made by a Tribunal or other decision-making body with respect to formally-heard Charges of Misconduct.

"Charge of Misconduct" means a written submission by any individual or entity to an ethics committee, paralegal association, bar association, law enforcement agency, judicial body, government agency, or other appropriate body or entity, that sets forth non-confidential information regarding any instance of alleged misconduct by an individual paralegal or paralegal entity.

"Charging Party" means any individual or entity who submits a Charge of Misconduct against an individual paralegal or paralegal entity.

"Competency" means the demonstration of: diligence, education, skill, and mental, emotional, and physical fitness reasonably necessary for the performance of paralegal services.

"Confidential Information" means information relating to a client, whatever its source, that is not public knowledge nor available to the public. ("Non-Confidential Information" would generally include the name of the client and the identity of the matter for which the paralegal provided services.)

"Disciplinary Hearing" means the confidential proceeding conducted by a committee or other designated body or entity concerning any instance of alleged misconduct by an individual paralegal or paralegal entity.

"Disciplinary Committee" means any committee that has been established by an entity such as a paralegal association, bar association, judicial body, or government agency to: (a) identify, define and investigate general ethical considerations and concerns with respect to paralegal practice; (b) administer and enforce the Model Code and Model Rules and; (c) discipline any individual paralegal or paralegal entity found to be in violation of same.

"Disclose" means communication of information reasonably sufficient to permit identification of the significance of the matter in question.

"Ethical Wall" means the screening method implemented in order to protect a client from a conflict of interest. An Ethical Wall generally includes, but is not limited to, the following elements: (1) prohibit the paralegal from having any connection with the

matter; (2) ban discussions with or the transfer of documents to or from the paralegal; (3) restrict access to files; and (4) educate all members of the firm, corporation, or entity as to the separation of the paralegal (both organizationally and physically) from the pending matter. For more information regarding the Ethical Wall, see the NFPA publication entitled "The Ethical Wall - Its Application to Paralegals."

"Ex parte" means actions or communications conducted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

"Investigation" means the investigation of any charge(s) of misconduct filed against an individual paralegal or paralegal entity by a Committee.

"Letter of Reprimand" means a written notice of formal censure or severe reproof administered to an individual paralegal or paralegal entity for unethical or improper conduct.

"Misconduct" means the knowing or unknowing commission of an act that is in direct violation of those Canons and Ethical Considerations of any and all applicable codes and/or rules of conduct.

"Paralegal" is synonymous with "Legal Assistant" and is defined 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.

"Pro Bono Publico" means providing or assisting to provide quality legal services in order to enhance access to justice for persons of limited means; charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the legal needs of persons with limited means; or individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

"Proper Authority" means the local paralegal association, the local or state bar association, Committee(s) of the local paralegal or bar association(s), local prosecutor, administrative agency, or other tribunal empowered to investigate or act upon an instance of alleged misconduct.

"Responding Party" means an individual paralegal or paralegal entity against whom a Charge of Misconduct has been submitted.

"Revocation" means the rescission of the license, certificate or other authority to practice of an individual paralegal or paralegal entity found in violation of those Canons and Ethical Considerations of any and all applicable codes and/or rules of conduct.

"Suspension" means the suspension of the license, certificate or other authority to practice of an individual paralegal or paralegal entity found in violation of those Canons and Ethical Considerations of any and all applicable codes and/or rules of conduct.

"Tribunal" means the body designated to adjudicate allegations of misconduct.