

## **NORTH CAROLINA PARALEGAL CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY**

### **Preamble: A Paralegal's Responsibility**

As an integral partner in the delivery of legal services, the paralegal has a special responsibility for the quality of justice provided. The paralegal through his/her work with the supervising attorney seeks a result that is advantageous to the client but consistent with the requirements of honest dealings with others. In all professional functions a paralegal should be competent, prompt and diligent. A paralegal should, in accordance with the Rules of Professional Conduct, these Rules of Ethics, and other law, assist in the communication with a client concerning the representation. A paralegal should keep in confidence information relating to representation of a client except as far as disclosure is required or permitted by the Rules of Professional Conduct, these Rules of Ethics, or other law.

A paralegal's conduct should conform to the requirements of the law, both in professional service to clients and in the paralegal's employment and personal affairs. A paralegal should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A paralegal should demonstrate respect for the legal system and for those who serve it, including attorneys, judges and public officials. While it is a paralegal's duty, as a private citizen, when necessary to challenge the rectitude of official action, it is also the paralegal's duty to uphold the legal process.

As a public citizen, a paralegal should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a regulated profession, a paralegal should cultivate knowledge in reform of the law and work to strengthen legal education. A paralegal should possess integrity, professional skill and dedication to the improvement of the legal system and should strive to enhance the paralegal role in the delivery of legal services. A paralegal should be mindful of deficiencies in the administration of justice and of the fact that some people cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A paralegal should aid the legal profession in pursuing these objectives.

Many of the paralegal's professional responsibilities are prescribed in the Rules of Professional Conduct, these Rules of Ethics, or other law. However, a paralegal is also guided by personal conscience and the approbation of professional peers. A paralegal should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

In the nature of law practice, however, conflicting responsibilities are encountered. A paralegal shall act in accordance with the Rules of Professional Conduct, these Rules of Ethics, and other 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. The Rules of Professional Conduct, these Rules of Ethics, and other law prescribe terms for resolving such conflicts. Within the framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.

### **Scope**

The Rules of Professional Conduct and these Rules of Ethics are rules of reason. They should be interpreted with reference to the purposes of assisting attorneys in legal representation. Some of the rules are imperatives, cast in the terms of "shall" or "shall not". These define proper conduct for the paralegal profession. Others, generally cast in the term "may", are permissive and define areas under the rules in which the paralegal has professional discretion. No disciplinary action should be taken when the paralegal chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the paralegal and others. These rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a paralegal's professional role.

Furthermore, for purposes of determining the paralegal's role in relationship to an attorney's authority and responsibility, principles of substantive law external to these rules determine whether a client-attorney-paralegal relationship exists.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a paralegal's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a paralegal often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed by a violation, and the severity of a sanction, depend on the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. These rules are designed to provide guidance to paralegals and attorneys and to provide a structure for regulating conduct through a disciplinary entity. They are not designed to be a basis for civil liability.

### **Definitions**

"Assistance" or "Assist" as used in these Rules means to perform various tasks relating to the practice of law under the supervision of an attorney.

"Attorney" as used in these Rules means an attorney licensed or otherwise authorized to practice law in the State of North Carolina.

“Belief” or “Believes” means that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from the surrounding circumstances.

“Consult” or “Consultation” as used in these Rules means an attorney or attorneys in a private firm, attorneys employed in the legal department of a corporation or other organization, attorneys employed in a legal services organization, and attorneys employed in a governmental agency.

“Entity” or “Tribunal” as used in these Rules includes all courts and other adjudicatory bodies.

“Ethical Wall” as used in these Rules 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.

“Firm” or “Law Firm” as used in these Rules means an attorney or attorneys in a private firm, attorneys employed in the legal department of a corporation or other organization and attorneys employed in a legal services organization, and attorneys employed in a governmental agency.

“Fraud” or “Fraudulent” means conduct with a purpose of deceiving someone and does not mean merely negligent misrepresentation or failure to inform another of relevant information.

“Freelance paralegal” means an individual regulated under Chapter 00A of the North Carolina General Statutes who is retained by a licensed attorney, law office, governmental agency, or other entity who performs substantive legal work for which a licensed attorney is responsible that, absent the paralegal, the licensed attorney would perform the work.

“Knowingly”, “Known”, or “Knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from the surrounding circumstances.

“Public officer” means serving in an elected, appointed, or employed position, whether as a volunteer or otherwise, for a governmental entity.

“Reasonable” or “Reasonably” when used in relation to conduct by a paralegal relates to the conduct of a reasonably prudent and competent paralegal.

“Reasonable belief” or “Reasonably believes” when used in reference to a paralegal means that a paralegal of reasonable prudence and competence could believe the fact in question.

“Reasonably should know” when used in reference to a paralegal means that a paralegal of reasonable prudence and competence should know the fact in question.

“Regulated” or “Regulation” when used in reference to a paralegal means any type of regulation (i.e., licensure, registration, statutory definition, court rules, or certification).

“Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

## I. CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY

### **Canon 1: A PARALEGAL SHALL ACHIEVE AND MAINTAIN A HIGH LEVEL OF COMPETENCE.**

#### Rules of Ethics

RE 1.1: A paralegal shall achieve competency through education, training, and work experience.

RE 1.2: A paralegal shall participate in continuing education in order to keep informed of current legal, technical and general developments.

RE 1.3: A paralegal shall perform all assignments promptly and efficiently.

### **Canon 2: A PARALEGAL SHALL MAINTAIN A HIGH LEVEL OF PERSONAL AND PROFESSIONAL INTEGRITY.**

#### Rules of Ethics

RE 2.1: A paralegal shall make reasonable efforts to assist an attorney in expediting matters consistent with the interests of the client.

RE 2.2: 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 for the benefit of only one party.

RE 2.3: 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.

RE 2.4: In communicating with a person who is not represented by counsel, a paralegal shall state the paralegal’s adverse role. When the paralegal knows or reasonably should know that the unrepresented person misunderstands the paralegal’s role in the matter, the paralegal shall make reasonable efforts to correct the misunderstanding.

- RE 2.5: A paralegal shall ensure that all timekeeping and billing records prepared by the paralegal are thorough, accurate, honest, and complete.
- RE 2.6: 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.
- RE 2.7: 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.
- RE 2.8: 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 which 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.
- RE 2.9: A paralegal shall assist the attorney in keeping a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- RE 2.10: When explaining a matter to a client, a paralegal shall assist the attorney in accordance with the Rules of Professional Conduct, these Rules of Ethics, and other law.
- Canon 3: A PARALEGAL SHALL MAINTAIN A HIGH STANDARD OF PROFESSIONAL CONDUCT.**

#### Rules of Ethics

- RE 3.1: A paralegal shall refrain from engaging in any conduct that offends the dignity and decorum of proceedings before a court or other adjudicatory body, shall be respectful of all rules and procedures, and shall show civility to other members of the legal community and the general public.
- RE 3.2: 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.

RE 3.3: 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.

RE 3.4: 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 which 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.

RE 3.5: A paralegal shall not knowingly assist any individual with the commission of an act that is in direct violation of the Rules of Professional Conduct, these Rules of Ethics, and other law and/or the rules and/or laws governing the jurisdiction in which the paralegal practices.

RE 3.6: If a paralegal possesses knowledge of future criminal activity, that knowledge must be reported to the appropriate authority immediately.

**Canon 4: A PARALEGAL SHALL NOT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW.**

Rules of Ethics

RE 4.1: A paralegal shall comply with the applicable legal authority governing the unauthorized practice of law in the jurisdiction in which the paralegal practices.

**Canon 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.**

Rules of Ethics

RE 5.1: A paralegal shall be aware of and abide by all legal authority governing confidential information in the jurisdiction in which the paralegal practices.

- RE 5.2: A paralegal shall not use confidential information to the disadvantage of the client.
- RE 5.3: A paralegal shall not use confidential information to the advantage of the paralegal or of a third person.
- RE 5.4: A paralegal may reveal or use confidential information only after consultation with the attorney, after full disclosure and 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.
- RE 5.5: 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.
- RE 5.6: A paralegal shall not engage in any indiscreet communications concerning clients.
- RE 5.7: After consultation with the paralegal's supervising attorney, a paralegal may reveal such information to the extent the paralegal reasonably believes necessary to establish a claim or defense on behalf of the paralegal in a controversy between the paralegal and a client of the paralegal's employer, to establish a defense to a criminal charge or civil claim against the paralegal based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the paralegal's assistance in the representation of the client.

**CANON 6: A PARALEGAL SHALL AVOID CONFLICTS OF INTEREST AND SHALL DISCLOSE ANY POSSIBLE CONFLICT TO THE EMPLOYER OR CLIENT, AS WELL AS TO PROSPECTIVE EMPLOYERS OR CLIENTS.**

#### Rules of Ethics

- RE 6.1: 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.
- RE 6.2: A paralegal shall avoid conflicts of interest that may arise from previous assignments or appointments, whether for a present or past employer or client, or as a public officer or employee.

RE 6.3: A paralegal shall avoid conflicts of interest that may arise from family relationships and from personal interests. A paralegal shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless, with the attorney's knowledge and consent:

- (a) the transaction and terms on which the paralegal acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (b) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (c) the client consents in writing thereto.

RE 6.4: In order to be able to determine whether an actual or potential conflict of interest exists a paralegal shall create and maintain an effective record-keeping system that identifies clients, matters, and parties with which the paralegal has worked.

RE 6.5: 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.

RE 6.6: A paralegal shall not participate in or conduct work on any matter where a conflict of interest has been identified.

RE 6.7: When a paralegal is employed or retained by a firm, the firm may not knowingly represent a person in the same or a substantially related matter

- (a) in which that paralegal has previously assisted in the representation of a client

or

- (b) in which a firm with which the paralegal was previously employed or retained by represented the client,

whose interests are materially adverse to that person and about whom the paralegal has acquired confidential information that is material to the matter, except as otherwise provided in RE 6.8.

RE 6.8: 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.

RE 6.9: Prior to the time the attorney concludes his or her representation of a client, a paralegal shall not make or negotiate an agreement giving the paralegal literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**CANON 7: A PARALEGAL'S TITLE SHALL BE FULLY DISCLOSED.**

Rules of Ethics

RE 7.1: A paralegal authorized by local, state, or federal administrative, statutory, or court authority representing a client in a proceeding shall disclose that the paralegal's appearance is in a representative capacity and shall conform to the provisions of the Rules of Professional Conduct, these Rules of Ethics, and other law.

RE 7.2: 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.

RE 7.3: A paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures, directories, and advertisements.

RE 7.4: 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.

RE 7.5: 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.

RE 7.6: A paralegal shall not participate in the creation, issuance, or dissemination of fraudulent records, diplomas, or certificates.

**CANON 8: A PARALEGAL SHALL CLEARLY AND ACCURATELY COMMUNICATE INFORMATION ABOUT SERVICES.**

Rules of Ethics

RE 8.1: A paralegal may advertise in accordance with these rules:

- (a) Subject to the requirements of Rule 8.3 and except as provided by Rule 7.2(b), a freelance paralegal may advertise services to assist attorneys in private law firms, corporate legal departments, legal services organizations, or governmental agencies through media, such as a telephone directory, legal directory, or other legal publications, or through direct-mail advertising distributed to or directed primarily to attorneys in private law firms, corporate legal departments, legal services organizations, or governmental agencies.
- (b) Subject to the requirements of Rule 8.3, a paralegal authorized to practice by administrative, statutory, or court authority, may advertise services through media, such as a telephone directory, legal directory, legal newspaper or periodical, outdoor, radio, or television, or through direct-mail advertising.
- (c) A paralegal shall not give anything of substantive value to a person for recommending the paralegal's services, except that a paralegal may pay the reasonable cost of advertising or written communication permitted by this rule.

RE 8.2: A paralegal may communicate to attorneys that the paralegal specializes in a particular field of law based on education, designation, and/or experience.

RE 8.3: A paralegal shall not make a false or misleading communication about the paralegal's services. A communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) is likely to create an unjustified expectation about the workload the paralegal can complete or implies that a paralegal is competent to assist in a particular area of law in which the paralegal is not competent to assist;
- (c) compares the paralegal's services with other paralegal's services, unless the comparison can be factually substantiated; or
- (d) contains any paid testimonial about or paid endorsement of, the paralegal without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.

RE 8.4: A paralegal:

- (a) shall not use a firm name, letterhead or other professional designation that violates Rules 7.2, 7.4, or 8.3. A trade name may be used by a paralegal in a freelance practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rules 7.2, 7.4, or 8.3.
- (b) shall not use the name of a paralegal holding a public office in the name of a paralegal firm, or in communications on its behalf, during any substantial period in which the paralegal is not actively and regularly practicing with the firm.
- (c) may state or imply that services are provided through a partnership, corporation, or other organization only when that is the fact.

**CANON 9: A PARALEGAL IS ENCOURAGED TO SERVE THE PUBLIC INTEREST BY CONTRIBUTING TO THE IMPROVEMENT OF THE LEGAL SYSTEM AND DELIVERY OF QUALITY LEGAL SERVICES, INCLUDING PRO BONO PUBLICO SERVICES.**

Rules of Ethics

- RE 9.1: A paralegal is encouraged to be sensitive to the legal needs of the public and promote the development and implementation of programs that address those needs.
- RE 9.2: A paralegal is encouraged to support efforts to improve the legal system and access thereto and assist in making changes.
- RE 9.3: A paralegal is encouraged to support and participate in the delivery of Pro Bono Publico services directed toward implementing and improving access to justice, the law, the legal system or the paralegal and legal professions.
- RE 9.4: A paralegal is encouraged to 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:
- (a) persons of limited means; or
  - (b) 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
  - (c) individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights.

**CANON 10: A PARALEGAL SHALL ASSIST IN THE ENFORCEMENT OF THESE RULES OF ETHICS.**

Rules of Ethics

RE 10.1: A paralegal in connection with a disciplinary matter shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misconception known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from the disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Canon 5.

RE 10.2: A paralegal having knowledge that another paralegal may have committed a violation of the Rules of Professional Conduct, these Rules of Ethics, and other law, shall inform the (Paralegal Disciplinary) Board.

RE 10.3: It is professional misconduct for a paralegal to:

- (a) violate or attempt to violate the Rules of Professional Conduct, these Rules of Ethics, and other law, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the paralegal's honesty, trustworthiness or fitness as a paralegal;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) state or imply an ability to influence improperly a government agency or official;
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (f) violate a statute, Supreme Court rule, Supreme Court order or Supreme Court decision regulating the conduct of paralegals.

## COMMENTARY

The Alliance for Paralegal Professional Standards (“APPS”) determined that ethical guidelines similar to those imposed on attorneys, were critical components of paralegal regulation. In formulating this Paralegal Code of Ethics and Professional Responsibility (“Code”), the Ethics Committee (“Committee”) reviewed many paralegal and attorney ethical codes adopted by North Carolina organizations along with various national organizations. The Committee found many similarities between the different ethical codes.

Even though there has never been formal paralegal regulation in North Carolina many paralegals, through membership in their local, state, and national paralegal associations, have voluntarily pledged to follow at least one of the codes reviewed by the Committee.

APPS drafted a Code that brings together the best of all of the codes reviewed and adapts them specifically to the paralegal profession in North Carolina, while keeping in the forefront serving the attorney and the client ethically, responsibly, and competently.

To make implementing the Rules of Ethics (“Rules”) in this Code simpler, the Rules begin with definitions and then are organized under ten canons. Each canon covers a broad ethical area and the specific Rules related to each canon help the paralegal to achieve the highest ethical standards.