



Ethics 101: Ethics for the Paralegal

I. Rules related to Paralegals

A. Subchapter G of the Rules of the North Carolina State Bar

a. Purpose:

The purpose of this plan for certification of paralegals (plan) is to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer, and including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public; and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification.

b. Board of Paralegal Certification

- i. Has jurisdiction of certification of paralegals in North Carolina
- ii. Authority comes from the Council of the NC State Bar and the Supreme Court of North Carolina

c. Limitations

- i. Plan relates to Certification Solely
- ii. Section 0117 specifics that:

1. No rule shall be adopted which limits a lawyers ability to delegate tasks to a non-lawyer
2. No person who works for a lawyer shall be required to be certified
3. Requirements for certification are personal to the paralegal and cannot be fulfilled by the paralegal's employer

iii. "Hi, I am a NCCP!"

iv. Standards for Certification

1. Education or Qualification Period
2. Examination
3. Disqualifiers

v. Annual Certification

vi. Suspension or Revocation

1. Improper Certification
2. False representations to the Board
3. Failure to abide by rules and regulations promulgated by the Board
4. Failure to Pay Fees
5. Failure to Meet Standards Established by Board
6. Violation of Confidentiality Agreement relative to questions on the certification Exam

B. Rules of Professional Conduct

“A professional responsibility course or segment of a course shall be devoted to (1) the substance, the underlying rationale, and the practical application of the Rules of Professional Conduct; (2) the professional obligations of the lawyer to the client, the court, the public, and other lawyers, and the paralegal's role in assisting the lawyer fulfill those obligations; or (3) the effects of substance abuse and chemical dependency, or debilitating mental condition on a lawyer's or paralegal's professional responsibilities.”

1. Rule 5.3 - Responsibilities Regarding Non-lawyer Assistants

- a. Non-lawyer's conduct must be “compatible with the professional obligations of the lawyer.”

- b. “A Lawyer shall be responsible for conduct of such non-lawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer”
 - i. If the lawyer order or ratifies the conduct
 - ii. Knows of the conduct when its consequences could have been avoided or mitigated and fails to take reasonable remedial consequences to avoid the consequences
- c. “A lawyer must give such assistance appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product.”

Point: Paralegals are held to the same standards as their Attorneys. While it is the attorney’s responsibility to act ethically, the attorney relies on the paralegal to act accordingly and to help him or her from breaching the rules.

- 1. Rule 1.6 of the Rules of Professional Conduct – Confidentiality
 - i. Most fundamental ethical rules for attorneys
 - ii. Founded on the necessity for clients to communicate honestly with their lawyers
 - iii. Extremely important that paralegal maintain that confidentiality

Scenarios:

Scenario#1 Who’s that Girl?: You are asked to perform a title search. As part of that search, you discover that Crosland is under contract to buy property in the Charlotte area. A friend is asking you about good buys in the real estate market. **Can you tell him what you learned about Crosland?**

Scenario #2 She Makes How Much \$\$\$???!?: You are handling a refinance closing for one of your neighbors. Out of curiosity you look at the neighbor’s loan application. You are stunned to find out how much money

she makes. You know that this same neighbor owes a friend of yours some money. **Can you tell your friend?**

Scenario #3 Pssst. . .Don't Tell Anybody, but. . .: A good customer of yours asks you to help him with 20 purchases. You are delighted because it means good business into the near future. You find out that the buyer intends to commit mortgage fraud. **Can you tell anyone about it?**

Scenario #4 Having Six Fingers is TOTALLY Normal: The Seller at a closing tells you that he has recently and inadvertently spilled toxic materials in the well that services a piece of property. The well water is used as drinking water for the property and the spill may have contaminated the water table. **Should you tell anyone? Can you?**

2. Rule 1.7 of the Rules of Professional Conduct – Conflicts of Interest

- i. Loyalty and independent judgment are essential to the attorney-client relationship
- ii. Problems arise when something prevents the lawyer from providing the best advisable possible
- iii. Cure = withdrawal or;
- iv. Consent by Waiver

Scenarios:

Scenario #1 I Thought You Represented Me?: Attorney is asked by Buyer to represent him at a closing. The Seller asks the attorney to draw the Deed for him. **Can the attorney do so? What if there is disagreement regarding repairs?**

Scenario #2 Cha Ching!!!: XYZ Title Insurance Company offers to pay you \$50.00 for every time you can convince your attorney to send an order to them. If you convince an attorney to use XYZ, you discount your fee by \$25.00. For one of your files, there is a significant title defect and XYZ will not insure over it, but ABC Title Insurance Company will. **Both you and the attorney want to use XYZ anyway? Can you?**

Scenario #3 There Goes the Neighborhood: You are representing a Buyer in the purchase of property. The property is in your neighborhood and the Buyer is

paying way more than you ever thought a house could sell for in your neighborhood. You are delighted because you know that this purchase will raise property values in your neighborhood. The Buyer's real estate agent and calls says that the parties are fighting over a repair issue and the Buyer wants out of the contract. **Can you advise the Buyer?**

Scenario #4 He Who Has the Gold Makes the Rules: Attorney used to represent ABC Bank for years, but no longer does so. Attorney has a current client called XYZ Builder. Attorney has been asked by Builder to negotiate terms for a construction loan with ABC Bank. **Can she?**

C. Unauthorized Practice of Law

3. North Carolina General Statutes – Chapter 84

- i. Practice of Law is defined to include “abstracting or passing upon titles”.
- ii. Supervision by NC-licensed Attorney is Critical
- iii. Violations are of a Class 1 Misdemeanor

POINT: Your work must be supervised by an Attorney. You may be committing a UPL if you abstract title directly for a non-lawyer!

4. Rule 5.5 of the Rules of Professional Conduct

- i. Applies to Lawyers licensed in other states
- ii. Supervision by NC-licensed Attorney is Critical

POINT: Your work must be supervised by a North Carolina licensed Attorney. You may be committing a UPL if you abstract title directly for a Lawyer licensed in another State!

D. Ethics Opinions

1. RPC 29 – An Attorney May not Rely upon Title Information from an Abstract Firm Unless He Supervised the Non-lawyer Who Did the Work.

2. RPC 216 – A Lawyer may use the Services of a Non-lawyer Independent Contractor to Search Title Provided the Non-lawyer is Properly Supervised by the Lawyer.
3. 99FEO6 – Supervision of an Independent Paralegal.
4. 2002 FEO 9 – Supervision of Non-lawyers who Conduct Closings and Handle Disbursements.