

Preface

New to the Ninth Edition

This book was written and first published 30 years ago. This year, the book was primarily authored by Sybil Taylor Aytch with Teri Cannon remaining as a valuable contributor.

Approach

This book is written for paralegal students, working paralegals, and lawyers who use their services. It is intended for use primarily as a text but also as a reference for practicing lawyers and paralegals.

It has been over 50 years since the advent of the paralegal profession. What started as a modest proposal to improve the delivery of legal services has become a reality in the profession. Paralegals are embedded in law practices, serving as integral members of the legal services delivery team. Lawyers in all kinds and sizes of private law firms and those in corporations, government, and the public sector rely heavily on paralegals to accomplish their work. Paralegals are highly educated and competent, engaging in sophisticated work in all areas of law practice.

The paralegal occupation has been one of the fastest growing in the country for over 40 years. It is estimated that there are more than 250,000 paralegals employed across the country. The career is well recognized by the general public, and young people learn of and aspire to it. The roles and functions of paralegals continue to expand into new and exciting areas. The prestige of the occupation has also risen.

We have also witnessed tremendous growth and change in the legal profession generally. The many forces of change include the integration of technology, the use of marketing and advertising, greater competitiveness among firms, increased attorney mobility, the development of mega-firms, the impact of a global economy, more complex laws, legal specialization, and virtual work environments. In the past five years, we have seen a dramatic increase in the number of new lawyers entering the profession and a major re-thinking of law practice, including partnership aspirations and less physical time in the office. These changes have affected legal ethics in ways that probably no one anticipated and have the potential for significant changes in the delivery of legal services and the role of paralegals.

The role of nonlawyers in providing legal services directly to the public continues to be a topic of intense debate as the public and the profession seek ways to increase access to services and control costs. In the past five years, a number of jurisdictions have taken steps to formalize the emerging legal paraprofessional role, which is changing the traditional rules governing the practice of law. New ethics opinions and revisions to rules continue to develop in response to this dynamic environment. Paralegals must have a clear understanding of legal ethics—the concepts and rules that guide them in their work. This grounding is essential for paralegals to function competently and with integrity, to be alert to potential ethical dilemmas in their work, to develop a framework for ethical decision making, and to keep abreast of changes in rules as they develop.

Organization and Coverage of the Ninth Edition

The book is comprehensive and covers all the major areas of legal ethics, placing special emphasis on how the rules affect paralegals. The book begins with a chapter on lawyer regulation because paralegals must understand how the profession is regulated to understand their place in it and the impact of their conduct on the lawyers who employ them. Chapter 2 contains a brief history of the paralegal career, the ways the occupation is regulated, and the growth of voluntary paralegal certification and other moves toward licensing. This chapter examines ethics guidelines for paralegals developed by courts, legislatures, and bar and paralegal associations. Chapter 3 covers the unauthorized practice of law, introducing the history of UPL and definitions of the practice of law, explaining functions that either are prohibited to nonlawyers or are on the borderline. Chapters 2 and 3 both include material on the provision of legal services directly to clients by nonlawyers and updated information on ways to increase access to legal services through other licensed

professionals. Chapter 4 covers confidentiality. In discussing the attorney–client privilege, the work product rule, and ethics rules regarding confidentiality, the chapter outlines the duties of paralegals and ways to avoid breaches of confidentiality. Special emphasis is given to inadvertent disclosure and the impact of technology on protected communications.

Chapter 5 covers conflicts of interest, a critical concern given the mobility of lawyers, clients, and paralegals. The chapter includes an in-depth discussion of conflicts rules and how to avoid conflicts, including the use of screens and conflicts checks. Chapter 6 covers rules regarding legal advertising and solicitation, with a discussion of trends in marketing legal services, including the use of social media. Chapter 7 is devoted to financial matters that arise in the representation of clients and between lawyers and paralegals. It discusses billing, fees, statutory fee awards that include compensation for paralegal work, fee splitting, referral fees, partnerships between attorneys and nonlawyers, compensation of paralegals, and handling client funds. Chapter 8 defines the concept of competence specifically in relation to paralegals and includes a discussion of malpractice. Special issues facing litigation paralegals, including communications with clients, courts, parties, and witnesses are covered in Chapter 9. This chapter has been expanded to include technology-related issues, including generative artificial intelligence. Finally, Chapter 10 examines professionalism and issues facing paralegals in today’s law firm environment, including titles, overtime, regulation and changing roles, diversity, and *pro bono* work.

Key Features

Each chapter begins with an overview that describes in a few words the main topics of the chapter. The text body of each chapter is divided topically. Key terms are spelled out in italics when first introduced and are highlighted in the margins and included in the glossary. Review questions at the end of each chapter test each student’s memory and understanding of the material. Discussion questions and hypotheticals follow the review questions. These may be assigned to students or used for in-class discussion. Research and outside assignments are also included so students apply their knowledge and skills outside of class through legal or factual research or analysis of cases or issues. Cases at the end of the chapters demonstrate how the rules introduced in the chapters are applied specifically to paralegals. Some cases present key principles with which all paralegals should be familiar. Others are landmark cases that involve paralegals. A few new cases in the ninth edition reflect the changes taking place as courts address the application of ethics rules to paralegals.

Recognizing that every paralegal program teaches ethics, but each in its own way, we have chosen a comprehensive approach so that professors may use the entire book in full courses on legal ethics or use only

selected parts in programs that teach ethics in several courses or across the curriculum. The accompanying Instructor's Manual provides guidance for instructors who want to incorporate ethics material into their substantive courses.

Acknowledgments

We have many people to thank for their support and assistance with this edition of the book. Recognition must go first to the many entities that are in the forefront of the paralegal profession, including the American Association for Paralegal Education, National Association of Legal Assistants, National Federation of Paralegal Associations, and International Practice Management Association.

Our heartfelt appreciation also goes to the wonderful people at Aspen, especially Denise Clinton, Betsy Kenny, and Sharon Ray. Their patience, warmth, intelligence, and talents made this book possible.

We wish to thank those who have given permission for the use of excerpts from the following:

Ethical Considerations of the American Bar Association, Code of Professional Responsibility and Canons of Judicial Ethics (1970); ABA Informal Opinions (1971; 1976; 1988; 1989); ABA Formal Ethics Opinion 09-455 (2009); ABA Model Rules of Professional Conduct (2022); and material from ABA Standing Committee on Paralegals (2023), copyright © by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.