

Contents

Preface

xix

1.	Regulation of Lawyers and Paralegals	1
A.	Regulation of Lawyers	2
1.	State Courts and Bar Associations	2
2.	American Bar Association	2
3.	State Statutes, Ethics Opinions, and Case Law	3
4.	Sanctions and Remedies for Lawyer Misconduct	4
B.	Regulation of Paralegals	5
1.	A Brief History of the Paralegal Profession	5
2.	Direct Regulation of Paralegals: Certification and Licensing	7
	Definitions of Terms	7
	Regulation of Supervised Paralegals	8
	The Regulation Debate	9
	Nonlawyer Legal Service Providers	10
3.	State Guidelines for the Utilization of Paralegal Services	11
4.	Paralegal Association Codes of Ethics and Guidelines	11
5.	Responsibility of Lawyers for Paralegal Conduct	12
	Review Questions	13
	Hypotheticals	14
	Discussion Questions and Projects	14

Selected Cases	15
Selected References	16

2. Unauthorized Practice of Law **17**

A. Brief History of the Unauthorized Practice of Law	18
B. Trends in the Unauthorized Practice of Law	19
1. Nonlawyer Legal Service Providers and Related Trends	19
2. Multijurisdictional Practice Issues	21
C. The Practice of Law Defined	21
D. The Attorney's Responsibility to Prevent the Unauthorized Practice of Law	22
E. What Constitutes the Unauthorized Practice of Law	24
1. Making Court Appearances	24
Depositions	24
Pleadings	25
Exceptions	25
Administrative Agencies	26
2. Establishing the Attorney-Client Relationship	28
3. Giving Legal Advice	29
A Few Examples	30
Exceptions	31
Nonlawyer Legal Service Providers and Related Trends	32
F. Disclosure of Status as Paralegal and Job Titles	33
G. A Word about Paralegals as Independent Contractors	35
Review Questions	36
Hypotheticals	37
Discussion Questions and Projects	39
Selected Cases	41
Selected References	42

3. Confidentiality **45**

A. The Principle of Confidentiality	46
B. Attorney-Client Privilege	46
1. Defined Generally	46
2. Disclosure of Privileged Information	47
3. Matters Not Covered by the Privilege	47

4.	Inadvertent Disclosure of Privileged Material	48
5.	Exceptions to and Waivers of the Privilege	50
6.	The Privilege in the Corporate Setting	51
7.	Court-Ordered Disclosure	52
C.	The Work Product Rule	52
D.	Ethics Rules of Confidentiality	53
E.	Confidentiality and the Paralegal	54
1.	Application of the Rule to Paralegals	54
2.	Protecting Confidentiality in Daily Practice	55
3.	Special Issues Relating to Technology	57
	Review Questions	60
	Hypotheticals	61
	Discussion Questions and Projects	63
	Selected Cases	64
	Selected References	65

4. Conflicts of Interest 67

A.	Introduction	68
B.	Conflicts Involving Representation of Clients	69
1.	Concurrent Representation	69
	General Rules	69
	Consents	70
	Withdrawal to Avoid Conflicts	71
	Imputed Disqualification in Concurrent Conflicts	71
	Issue Conflicts and Other Indirect Concurrent Conflicts	71
	Lawyer's Professional Conflicts	72
	Examples of Conflicts in Litigated Matters	72
	Examples of Conflicts in Nonlitigated Matters	73
2.	Successive Representation	74
	General Rules	74
	Defining "Substantial Relationship"	75
C.	Other Conflicts Rules	76
1.	Business Transactions with Clients	76
2.	Publication, Literary, and Media Rights	77
3.	Financial Assistance to Clients	77
4.	A Lawyer's Interest in Litigation	78
5.	Gifts from Clients	78
6.	Agreements with Clients Limiting Malpractice Liability	79
7.	Payment of Attorney's Fees by a Third Party	80

8. Relatives of Lawyers	81
9. Sexual Relations with Clients	81
D. Imputed Conflicts and Disqualification	82
1. General Rules	82
2. Use of Screens	84
E. Conflicts Checks	86
Review Questions	88
Hypotheticals	89
Discussion Questions and Projects	91
Selected Cases	93
Selected References	93

5. Advertising and Solicitation **95**

A. Advertising	96
1. The Advent and Evolution of Lawyer Advertising	96
2. The Current Ethics Rules	98
3. Current Issues and Trends in Lawyer Advertising	100
B. Solicitation	104
Review Questions	106
Hypotheticals	107
Discussion Questions and Projects	108
Selected Cases	110
Selected References	110

6. Fees and Client Funds **111**

A. Fee Arrangements with Clients	112
1. Fixed Fees	112
2. Contingency Fees	112
3. Hourly Fees	113
B. Ethics Rules about Fees	115
C. Fee Arrangements	118
D. Court-Awarded Fees	121
E. Fee-Splitting and Referral Fees	123
F. Partnerships between Lawyers and Nonlawyers	125

G. Client Funds and Property	126
1. Client Trust Accounts	126
Interest on Lawyers' Trust Accounts and Client Security Funds	127
2. Client Property and Files	128
Review Questions	129
Hypotheticals	131
Discussion Questions and Projects	133
Selected Cases	136
Selected References	137

7. Competence **139**

A. Introduction	140
B. Legal Education	140
C. Paralegal Education	141
D. A Definition of Competence	143
1. Knowledge	143
2. Professional Skills	144
3. Thoroughness and Preparation	145
4. Diligence and Promptness	145
5. Communication with Clients	146
E. Sanctions for Incompetence	146
F. Trends in Legal Malpractice	147
G. Factors Affecting Paralegal Competence	151
Review Questions	153
Hypotheticals	154
Discussion Questions and Projects	156
Selected Cases	158
Selected References	158

8. Special Issues in Advocacy **159**

A. Introduction	160
B. Unmeritorious Claims, Delay, and Discovery Abuse	161
C. Disruption in the Courtroom and Disobeying Court Orders	164
D. Candor and Honesty	165
E. Relationships and Communications with Judges	168

F.	Contact with Jurors	168
G.	Contact with Parties and Represented Persons	170
H.	Contact with Unrepresented Persons	170
I.	Contact with Witnesses	171
J.	Trial Publicity	173
K.	Special Rules for Prosecutors	174
	Review Questions	175
	Hypotheticals	177
	Discussion Questions and Projects	179
	Selected Cases	181
	Selected References	182

9. Professionalism and Special Issues for Paralegals **183**

A.	The State of Professionalism in the Legal Field	184
B.	Professionalization of the Paralegal Occupation	188
	1. Commitment to Public Service	190
	2. Commitment to Education	191
	3. Commitment to the Highest Standards of Ethical Conduct	191
	4. Commitment to Excellence	191
	5. Commitment to the Paralegal Profession	191
	6. Commitment to a Strong Work Ethic	191
	7. Commitment to Acting with Integrity and Honor	192
	8. Commitment to the Development of the Whole Person	192
	9. Commitment to Exercising Good Judgment, Common Sense, and Communication Skills	192
C.	Current Issues in Professionalism	192
	1. Regulation	192
	2. Education	193
	3. Utilization and Treatment	194
	4. Exempt Status	194
	5. Gender and Diversity	195
D.	Pro Bono Work	196
	Review Questions	198
	Hypotheticals	198
	Discussion Questions	199
	Selected References	201

Appendices

A. NALA Code of Ethics and Professional Responsibility	203
B. NFPA Model Code of Ethics and Professional Responsibility	207

Glossary	213
Index	219