Summary of Contents

Contents	
Preface	
1. Regulation of Lawyers	1
2. Regulation of Paralegals and Ethics Guidelines for Paralegals	19
3. Unauthorized Practice of Law	57
4. Confidentiality	127
5. Conflicts of Interest	197
6. Advertising and Solicitation	265
7. Fees and Client Funds	315
8. Competence	387
9. Special Issues in Advocacy	453
10. Professionalism	505
Glossary	527
Table of Cases	
Index	

Contents

Preface		xxi
1	Regulation of Lawyers	1
A.	State Courts and Bar Associations	2
В.	American Bar Association	3
C.	Statutes and Other Forms of Regulation	5
D.	Sanctions for Lawyer Misconduct	5
E.	Other Actions for Lawyer Misconduct	6
	Review Questions	7
	Discussion Questions and Hypotheticals	7
	Research Projects and Assignments	8
	Cases for Analysis	8
	Unauthorized Practice of Law Committee v. State	
	Department of Workers' Compensation	8
	Questions about the Case	11
	State Bar of Arizona v. Lang	11
	Questions about the Case	14
	In re: Klitsch, et al.	14
	Questions about the Case	18

2. Regulation of Paralegals and Ethics Guidelines for Paralegals

19

A.	A Brief History of the Paralegal Profession	20
	1. The Beginnings	20
	2. Growth Through the 1970s	20
	3. New Directions in the 1980s and 1990s	21
	4. The Twenty-First Century	21
В.	Regulation of Paralegals: Certification and Licensing	23
	1. Definitions of Terms	23
	2. State Regulation of Lawyer-Supervised Paralegals	24
	3. Voluntary Certification of Paralegals	26
	4. The Arguments about Regulation of Lawyer-Supervised	
	Paralegals	27
	5. Nonlawyer Legal Service Providers	29
	6. Other Legal Professionals	31
	Utah	31
	Arizona	32
	Minnesota	32
	Oregon	33
	Colorado	33
C.	State Guidelines for the Utilization of Paralegal Services	34
D.	Paralegal Association Codes of Ethics and Guidelines	35
E.	Liability of Paralegals as Agents of Lawyers	35
	Review Questions	37
	Discussion Questions and Hypotheticals	38
	Research Projects and Assignments	39
	Cases for Analysis	40
	Musselman v. Willoughby Corp.	41
	Questions about the Case	43
	Supreme Court of Arizona v. Struthers	44
	Questions about the Case	45
	In re Phillips	46
	Questions about the Case	50
	The Florida Bar v. Abrams	50
	Questions about the Case	52
	In re Estate of Divine	52
	Questions about the Case	56

3	Unauthorized Practice of Law	57
A.	A Brief History of Unauthorized Practice of Law 1. The Early Years 2. Recent UPL History: Nonlawyer Legal Service	58 58
	Providers and Access to Legal Services	59
	3. Other Recent UPL Activity	63
В.	Practice of Law Defined	64
C.	The Lawyer's Responsibility to Prevent the Unauthorized	
_	Practice of Law	67
D.	What Constitutes the Practice of Law	68
	1. Court Appearances	68
	2. Giving Legal Advice	71
	3. Establishing the Lawyer-Client Relationship and Setting Fees	74
E.	Paralegal Tasks That May Constitute the Unauthorized Practice	
٠.	of Law	75
	Common Paralegal Functions	75
	2. Will Executions	75
	3. Real Estate Closings and Related Matters	76
	4. Negotiating Settlements	77
	Review Questions	78
	Discussion Questions and Hypotheticals	79
	Research Projects and Assignments	83
F.	Practice Before Administrative Agencies	86
G.	Disclosure of Paralegal Status and Job Titles	88
Н.	Paralegals Working as Independent Contractors	92
	Review Questions	93
	Discussion Questions and Hypotheticals	93
	Research Projects and Assignments	94
	Cases for Analysis	95
	State v. Foster	95
	Questions about the Case	97
	Board of Commissioners of the Utah State Bar v. Petersen Questions about the Case	98 100
	In re Finch	100
	Questions about the Case	100
	In re Reynoso	109
	Questions about the Case	111
	People v. Landlords Professional Services	112
	Questions about the Case	115
	Brockey v. Moore	115

	Questions about the Case In re Morin Questions about the Case Cincinnati Bar Ass'n v. Mullaney Questions about the Case	117 118 121 121 125
4	Confidentiality	127
A.	The Principle of Confidentiality	128
В.	Attorney-Client Privilege	128
	1. Defined Generally	128
	2. How the Privilege Applies to Paralegals	129
	3. How the Protection of the Privilege Can Be Lost	130
	4. Matters Not Covered by the Privilege	131
	5. Inadvertent Disclosure of Privileged Information	132
	6. Exceptions to the Privilege/Permissive Disclosure	134
	7. The Privilege in the Corporate Setting	135
\sim	8. Asserting the Privilege and Court-Ordered Disclosure	136
C.		137
	Review Questions	138 139
	Discussion Questions and Hypotheticals	139
D.	Research Projects and Assignments Ethics Rules of Confidentiality	140
D. Е.	Paralegals and the Rules on Confidentiality	143
Ŀ.	1. Application of the Rule to Paralegals	143
	2. Protecting Confidentiality in Daily Practice	144
	3. Special Issues Relating to Technology	147
	4. More on Inadvertent Disclosure	152
	Review Questions	155
	Discussion Questions and Hypotheticals	156
	Research Projects and Assignments	157
	Cases for Analysis	159
	HPD Laboratories, Inc. v. Clorox Co.	159
	Questions about the Case	161
	Genovese v. Provident Life Ins. Co.	162
	Questions about the Case	164
	Victor Stanley, Inc. v. Creative Pipe, Inc.	165
	Questions about the Case	171
	Merits Incentives, LLC v. Eighth Judicial District	
	Court of the State of Nevada	171
	Questions about the Case	174
	Rico v. Mitsubishi Motors Corp.	174

	Questions about the Case State v. Lenarz Questions about the Case McDermott Will & Emery LLP v. Superior Court Questions about the Case Guo Wengui v. Clark Hill, PLC Questions about the Case	180 181 185 185 191 191
5	Conflicts of Interest	197
Α.	Introduction	198
В.		199
	Simultaneous or Concurrent Representation Successive Representation	205
D.		207
D.	Paralegal as Witness	207
	Review Questions	208
	Discussion Questions and Hypotheticals	209
	Research Projects and Assignments	210
E.	Other Conflicts in Relationships with Clients	211
	1. Business Transactions with Clients	211
	Business Transaction Conflicts Involving Paralegals	212
	2. Publication, Literary, and Media Rights	212
	3. Financial Assistance to Clients	213
	4. Lawyer's Interest in Litigation	213
	5. Gifts from Clients	214
	Gifts from Clients to Paralegals	214
	6. Agreements with Clients Limiting the Attorney's	
	Malpractice Liability	215
	7. Payment of Attorneys' Fees by a Third Party	215
	8. Relatives and Close Friends	216
	Relatives of Paralegals	217
F.	Imputed Disqualification	218
	1. Introduction	218
	2. ABA and State Rules on Imputation of	
	Conflicts and Screening	218
	3. Court Rulings on Imputed Disqualification	219
	4. Use of Screens to Avoid Disqualification	220
	Screening Paralegals and Other Nonlawyer Employees	222
G.	Conflicts Checks	226
	Review Questions	228
	Discussion Questions and Hypotheticals	229
	Research Projects and Assignments	232

	Cases for Analysis	233
	Phoenix Founders, Inc. v. Marshall	233
	Questions about the Case	236
	Lamb v. Pralex Corp.	236
	Questions about the Case	240
	Hayes v. Central States Orthopedic Specialists, Inc.	240
	Questions about the Case	242
	Leibowitz v. District Court	242
	Questions about the Case	247
	In re Guaranty Ins. Services, Inc.	247
	Questions about the Case	253
	Ullman v. Denco, Inc., et al.	253
	Questions about the Case	257
	Sheppard, Mullin, Richter & Hampton, LLP v. J-M	
	Manufacturing Co.	258
	Questions about the Case	263
6	Advertising and Solicitation	265
A.	Advertising	266
	1. Background and History	266
	2. Case Law on Advertising	268
	3. Ethics Rules on Advertising	270
	4. Application of the Rules to Electronic	
	Communications	273
В.	Solicitation	279
	Review Questions	282
	Discussion Questions and Hypotheticals	282
	Research Projects and Assignments	285
	Cases for Analysis	286
	Bates v. State Bar of Arizona	286
	Questions about the Case	292
	Searcy v. The Florida Bar, et. al.	292
	Questions about the Case	296
	In the Matter of Cartmel	297
	Questions about the Case	298
	Ohralik v. Ohio State Bar Association	299
	Questions about the Case	303
	Hunter v. Virginia State Bar	303
	Questions about the Case	308
	Gibson v. Texas Dept. of Ins. Div. of Workers' Comp.	309
	Questions about the Case	313

7	Fees and Client Funds	315
A.	Fee Arrangements with Clients	316
11.	1. Fixed Fees	316
	2. Contingency Fees	316
	3. Hourly Fees	318
	4. Alternative Fee Arrangements	318
	5. Billing for Paralegal Time	319
	6. Ethics Rules on Fees	320
В.	Terms and Communication of Fee Arrangements	
	with Clients	324
C.	Court-Awarded Attorneys' Fees	328
	Review Questions	333
	Discussion Questions and Hypotheticals	334
	Research Projects and Assignments	335
D.	Fee Splitting, Referral Fees, and Partnerships Between	
	Nonlawyers and Lawyers	337
E.	Client Funds and Property	341
	Review Questions	345
	Discussion Questions and Hypotheticals	346
	Research Projects and Assignments	347
	Cases for Analysis	348
	Missouri v. Jenkins	348
	Questions about the Case	355
	Richlin Security Service Co. v. Chertoff	355
	Questions about the Case	360
	Taylor v. Chubb	360
	Questions about the Case	363
	Mogck v. UNUM Life Insurance Company of America	363
	Questions about the Case	367
	GreatAmerica Leasing v. Cool Comfort Air Conditioning	267
	and Refrigeration, Inc.	367
	Questions about the Case	370
	Perez v. Cate	370
	Questions about the Case	374
	St. Farm Mutual Automobile Ins. Co. v. Edge Family	275
	Chiropractic	375
	Questions about the Case	378
	Sanford v. GMRI, Inc.	378 381
	Questions about the Case Cincinnati Bar Assn. v. Kathman	381
	Questions about the Case	385
	Questions about the Case	203

8	Competence	387
	•	
٨	Turkun Junkinu	200
А. В.	Introduction	388 388
	Legal Education	
D.	Paralegal Education	389 391
D.	A Definition of Competency	391
	 Knowledge Professional Skills 	392
		393
	3. Thoroughness and Preparation	393
	4. Diligence and Promptness5. Communication with Clients	393
E		394 394
Ε.	Consequences of Failure to Act Competently	394 396
F.	Current Developments and Issues re: Competence	396
G. H.	Avoiding Malpractice	399 401
П.	Factors Affecting Paralegal Competence	
	Review Questions	404
	Discussion Questions and Hypotheticals	406 407
	Research Projects and Assignments	
	Cases for Analysis	409
	In re Gillaspy	409
	Questions about the Case	411
	Mississippi Bar v. Thompson	411
	Questions about the Case	416
	People v. Smith	417
	Questions about the Case	424
	Pincay v. Andrews	424
	Questions about the Case	429
	Tegman v. Accident & Medical Investigations	429
	Questions about the Case	435
	Zamora v. Clayborn Contracting Group, Inc.	435
	Questions about the Case	440
	Official Comm. of Unsecured Creditors of Motors	
	Liquidation Co. v. JPMorgan Chase Bank, N.A.	4.40
	(In re Motors Liquidation Co.)	440
	Questions about the Case	444
	Abbott Laboratories, et al. v. Adelphia Supply USA	445
	Questions about the Case	451

9	Special Issues in Advocacy	453
A.	Introduction	454
В.	Unmeritorious Claims, Delay, and Discovery Abuse	455
C.	Disruption in the Courtroom and Disobeying Court Orders	458
D.	Candor and Honesty	461
	Review Questions	464
	Discussion Questions and Hypotheticals	464
	Research Projects and Assignments	466
E.	Relationships and Communications with Others	467
	1. Judges	467
	2. Jurors	469
	3. Parties and Unrepresented Persons	470
	4. Witnesses	472
F.	Trial Publicity	474
G.	Special Rules for Prosecutors	475
Н.		476
	Review Questions	479
	Discussion Questions and Hypotheticals	480
	Research Projects and Assignments	481
	Cases for Analysis	483
	Bonda Industrial (HK) Co., Ltd. v. Talbot Group, LLC	483
	Questions about the Case	488
	Massey v. Prince George's County	488
	Questions about the Case	491
	Crane v. State Bar of California	492
	Questions about the Case	494
	Omaha Bank v. Siouxland Cattle Cooperative	494
	Questions about the Case	496
	Eaton v. Fink	497
	Questions about the Case	499
	In re Ositis	499
	Questions about the Case	501
	Sayhers v. Prugh	501
	Questions about the Case	504

10. Professionalism 505 The State of Professionalism in the Legal Field 506 Professionalism and the Paralegal 512 1. Commitment to Legal Services 514 2. Commitment to Education 514 3. Commitment to the Highest Standards of Ethical Conduct 514 4. Commitment to Excellence 515 5. Commitment to the Paralegal Profession 515 6. Commitment to a Strong Work Ethic 515 7. Commitment to Acting with Integrity and Honor 515 8. Commitment to Balance as a Person 515 9. Commitment to Good Judgment, Common Sense, and Communication 516 C. Current Issues in Professionalism 516 Pro Bono Work 520 Review Questions 522 Discussion Questions and Hypotheticals 523 Research Projects and Assignments 523 527 Glossary Table of Cases 533 Index 537