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3:30 pm–5:00 pm

6001 The Evolving Role of the In-house Paralegal

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Faculty Biographies

Cindy Arvanites

Cindy Arvanites is a senior litigation paralegal at Seagate Technology at its corporate headquarters in Scotts Valley, California. Seagate is the worldwide leader in the design, manufacture and marketing of hard disc drives and storage solutions. She works in Seagate's in-house law department where her responsibilities include managing electronic discovery, conducting factual investigations, and interviewing witnesses. She has worked on cases from small claims court to federal circuit court case, often supervising cases where millions of pages have been collected.

Ms. Arvanites is an active member of the San Francisco Paralegal Association and currently serves as the features editor of the association's newsletter *At Issue*. In addition to her paralegal work, Ms. Arvanites co-chaired Seagate's employee based diversity program. She is also a long-time Meal's On Wheels volunteer.

Ms. Arvanites received her B.A. from UC Santa Cruz and her paralegal certificate from UC Berkeley Extension.

Brian Haberly

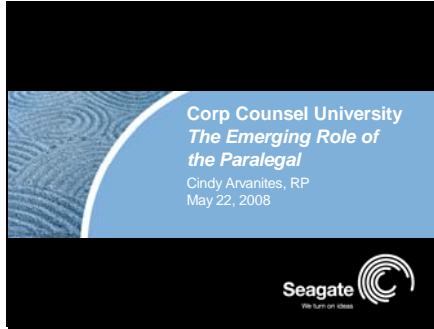
Brian Haberly is a senior paralegal in the Corporate and Securities practice group of Starbucks Coffee Company in Seattle, Washington.

Mr. Haberly has working at several leading public companies including Expedia, InfoSpace, Avaya Communications, and Northrop Grumman and also with the prominent Seattle law firms of Lane Powell PC and Williams Kastner & Gibbs, as well as Los Angeles offices of Irell and Manella and Jones Day Reavis & Pogue.

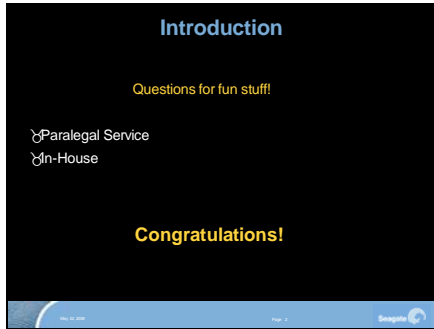
Mr. Haberly is a member of the Washington State Paralegal Association and is also a member of the National Association of Stock Plan Professionals. Mr. Haberly served as an advisory board member to ACC's inaugural paralegal track at the 2007 Corporate Counsel University program in St. Louis, and participated on two of its paralegal panels. Also in 2007, Mr. Haberly was named a member of the Advisory Committee of the Edmonds Community College paralegal program near Seattle.

Mr. Haberly received his undergraduate degree from California State University, Northridge and his Paralegal Certificate from the University of West Los Angeles.

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Business Partners
The Emersion

Enron, followed by SOX

- ✧ Many companies embrace new business model
- ✧ No choice – we have to play nicely with each other
- ✧ Rethinking alliances



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Business Partners
Paralegal Opportunity

From Foe to Friend

- ✧ Legal Department
 - ✧ Proactive advising
 - ✧ Participating as a partner
- ✧ Paralegal
 - ✧ Cross functional powerhouse
 - ✧ Active participant, equal collaborator
 - ✧ Versatility


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Project Managers
Old School Style

Way Back when Gas Was:

\$1.16/gallon



- ✧ Paper – and lots of it
- ✧ Copy machines
- ✧ Snail Mail
- ✧ Complex Post-It Management

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Slide 8



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EVOLVING ROLE OF THE IN-HOUSE PARALEGAL

ACC Corporate Counsel University

**Brian Haberly, Senior Paralegal
Starbucks Coffee Company**

Disclaimer: The comments made in this presentation are the views of the author alone and do not necessarily represent the views or positions of Starbucks Coffee Company.

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Appendix A – NFPA Model Code of Ethics

I. Definitions and Historical Role of the Paralegal

What is a Paralegal?

ABA Definition of Legal Assistant/Paralegal

A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.

<http://www.abanet.org/legalservices/paralegals/>

National Association of Legal Assistants

Legal assistants (also known as paralegals) are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.

<http://www.nala.org/terms.htm>

National Federation of Paralegal Associations

A Paralegal is a person, qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work. Substantive shall mean work requiring recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts.

<http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=788>

American Association for Paralegal Education

Paralegals perform substantive and procedural legal work as authorized by law, which work, in the absence of the paralegal, would be performed by an attorney. Paralegals have knowledge of the law gained through education, or education and work experience, which qualifies them to perform legal work. Paralegals adhere to recognized ethical standards and rules of professional responsibility.

http://www.aafpe.org/p_about/whatis.htm

How long have there been Paralegals?

Many textbooks speak of the paralegal profession being recognized in the late 1960's or early 1970's. A number of paralegal programs around the country sprouted up in the 1970's, and soon thereafter, so too did a handful of local paralegal associations to support this fledgling profession.

One recent publication has suggested that the military was the first employer to identify paralegals as a separate career field. The Judge Advocate General corps recently advertised openings for motivated retrainees for the paralegal career field, and noted that in 1955, paralegals were recognized as their own career field and awarded their own Air Force specialty code. More recently, in 1979, the Air Force approved a Community College of the Air Force Associate Degree program, and the American Bar Association now offers certification for paralegals upon completion of their CCAF degree.

Historical Role of Paralegals

In the early days, Legal Assistants/Paralegals were often seen primarily as “document organizers” (today's docket and file clerks). They may have had some training or education to help them identify, classify and label documents, but many paralegals were simply trained on the job and lacked any type of formal legal training that might have permitted them to look at documents with a more knowledgeable eye.

More recently, in the last 20 years or so, paralegal programs have become much better aligned with law firm and corporate legal department needs.

The American Association for Paralegal Education helped standardize core curriculum, and Bar Associations began to accredit Paralegal Programs with periodic audits and on-site visits. Today, roughly only 25% of all paralegal programs in the U.S. have obtained ABA approval.

In the 1990's, many paralegal organizations changed their own organizational names from “Legal Assistant” to “Paralegal” to reflect the heightened sense of professionalism of this career path. For others, it was important to gravitate towards the title of paralegal because many employers had watered down the significance of the title “Legal Assistant” by granting it to Administrative Assistants or Secretaries that may have had fine quality office skills but lacked any formal legal training. As the number of law firm positions for paralegals grew, soon thereafter the number of in-house paralegal positions grew as well.

II. Public Perceptions/Your Task

With the maturing of the Paralegal Profession, there have been some modest gains in the general public's awareness of what Paralegals do in their jobs, and what they are capable of doing.

For many people though, their only image of paralegals is that of Julia Roberts portraying the resourceful Erin Brockovich along side of her attorney Ed Masry (played by Albert Finney). The mainstream media has not featured paralegals in prominent story lines very often.

Do your friends outside of work know what you do as a paralegal?

Do you still have to explain to relatives what it is that you do?

Your Task

Consider putting together a 30-second "elevator speech" that explains in a nutshell what you do, and ideally, why you enjoy your position!

Be enthusiastic, unabashed supporters of the paralegal profession. When given the chance to speak at school career days, be ready to describe some of the many different specialty areas that paralegals now work in, not just your own, and why you think others should consider becoming paralegals too.

Help overcome stereotypes that attorneys are all ambulance chasers and that courtroom drama is a regular part of the job. Few of the paralegals I work with ever set foot in a courtroom. I'll bet the same is true for many of you!

If you want to be seen as a professional, you should join your local paralegal association. Better yet, consider serving as an officer or committee chair. Volunteer some of your time, knowledge, and passion in small and large ways in order to lift up the profession for all of us.

Do you work for a terrific attorney or in a great legal department? Spread the word so that your office is known as a great environment in which to work!

Do you tell your friends about good and bad movies you have seen? What about good and bad restaurants you have eaten at.

Even with the increasingly important role of the internet for locating everyday information, a word of mouth description from a friend is still one of the most effective ways to learn about new opportunities.

III. Ethics and the Paralegal

The ACC has some terrific resources online regarding Ethics.

In-house Paralegals need to be aware that complying with ethics is not just the attorney's responsibility, but that it is theirs too.

Unlike law firms where lines are brighter between the roles of the attorney, the paralegal, and the client, in-house legal departments often rely on their paralegals to provide essential information directly to internal "clients" (departments and individuals) without having attorney review and oversight for each and every piece of communication or research.

NFPA'S Model Code of Ethics and Professional Responsibility

The National Federation of Paralegal Associations adopted a Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement in 1993. (See attached Exhibit). This Code was adopted to delineate the principles for ethics and conduct to which every paralegal should aspire.

In recent years, especially post Enron and Sarbanes-Oxley, In-house counsel (both attorneys and their paralegals) at public companies have come under increasing scrutiny for their practices. Beefed up Business Codes of Conduct have been implemented by many companies.

Changes in attorney-client confidentiality privileges, whistleblower protections, up the ladder reporting, and good corporate governance practices in general have required in-house paralegals to become increasingly involved and knowledgeable about their own role and their responsibilities. Haven't looked at your own company's practices in these areas recently? You should!!

Need for More Ethics Training Opportunities for Paralegals

Paralegals perform key roles in companies, and allow attorneys to be more productive. But formal Ethics training for paralegals is still fairly rare, even though paralegals are front line contacts for the legal department and are often responding directly to their clients.

Identifying formal Ethics training specifically designed for paralegals is something I would encourage you to take back to your companies. Both you and your manager will be better served by you having a clearer understand of ethics and what tools you have available to answer your own questions.

Paralegals, unlike lawyers, are generally not required in most states to continue their legal education. Even for dedicated, career oriented paralegals, finding quality CLE programs in their immediate area that are suited to their needs can often be a challenge. Training in ethics for paralegals is one of the things that companies should be looking to do more of, if they really want to have a competent staff meeting the company's needs.

IV. Evolving Roles

Advanced Certification

Today, many paralegals have been in the profession for a number of years, and are looking for new options and career paths.

For some of us, that has meant looking to advanced paralegal certification, such as becoming a PACE Registered Paralegal ("RP") to further demonstrate your competency, as administered through the National Federation of Paralegal Associations.

I'm very pleased and honored to note that my co-panelist today, Cindy Arvanites, R.P. is a PACE Registered Paralegal, and she proudly displays her R.P. initials following her name in her signature block in correspondence she originates from her role as a Senior Litigation Paralegal a Seagate Technologies.

I'm currently taking part in a PACE study group in my home state of Washington, and hope to take the PACE test this Fall.

Washington State is a proud NFPA affiliate, but if your local paralegal association where you live is a NALA affiliate, look into taking NALA's exam to obtain your Certified Legal Assistant/Certified Paralegal ("CLA/CP") status, as administered through the National Associations of Legal Assistants.

In-house Paralegal Titles

As noted earlier, there is a continuing trend towards use of the title Paralegal over that of Legal Assistant, and that trend has been in place for many years.

In-house paralegals have often had limited options for meaningful distinction between levels of experience. Smaller offices may identify each of their staff members simply as a “Paralegal”. Mid-size and larger offices often use additional terms like Senior Paralegal, or may even break down categories into Paralegal I, II, III and Senior Paralegal I, and Senior Paralegal II. Despite the definitions of the ABA and others, a handful of employers somewhat confusingly try to distinguish between Legal Assistants and Paralegals in their offices, and designate Paralegal positions as positions that Legal Assistants might be promoted into.

A distinct minority of companies have positions labeled as “Junior Paralegal.”

A few more offer Paralegal Manager positions, but in a recent Legal Assistant Today survey, the percentage of paralegals identifying themselves in that way numbered less than 5%.

Emerging Trends

Few paralegals today have clear supervisory responsibilities of other, less experienced paralegals in their departments, and fewer still are responsible for the hiring and firing of employees.

Some paralegals are involved in the creation of performance reviews of their co-workers, but that is seldom with chief ownership of the process.

One encouraging recent trend has been that of a management oriented track for paralegals. In some cases this means that more senior paralegals would have direct supervisory responsibility for the more entry-level type paralegals, and would be tasked with their training and development. Budgeting, forecasting, and performance reviews fall on their shoulders.

These individuals are variously known as “**Paralegal Manager**” or “**Managing Paralegal**” and are usually exempt from overtime positions that would be eligible to participate in management incentive plans and annual bonus pools that other paralegals would not ordinarily be eligible for.

A handful of paralegals are now be recognized for their many years of acquired specialty knowledge, their ability to meet key business needs, and their demonstrated competence within a particular legal practice area. These individuals have sometimes been identified with the title **Paralegal Specialist**.

This is a role that would most often be non-supervisory, but would be seen to be on a par with directors and managers that have key business roles in an organization, and are therefore compensated at higher rates than non-specialists.

Non-traditional Roles

Some paralegals have taken a career path that is a bit less traditional. As companies grow, they tend to have an increased need for strong Ethics and Compliance policies, and for well-qualified staff to address possible violations of those policies.

Compliance Managers

Paralegals have the legal training and knowledge to understand the sensitivity behind claims, and the understanding of the importance of maintaining confidentiality.

This has sometimes meant that paralegals are well suited to move into roles of **Compliance Managers**. Paralegals serving as Compliance Managers can collect information, interview witnesses, organize depositions, and summarize case status to keep their management up to date on individual cases and their progress.

Policy Managers

In large organizations, with many business units that often have conflicting needs and interests, it can be difficult to coordinate the various company policies that the different groups have issued.

Legal departments usually oversee Insider Trading policies and Corporate Governance policies. Treasury will usually have issued Banking policies. Purchasing departments have Procurement policies designed to avoid conflicts of interest. Public Relations and Investor Relations departments often restrict who can talk to members of the press on particular subjects affecting the company's business.

The end result of this is a high likelihood of confusion and sometimes conflicting or out of date policies being referenced, or worse yet, being violated as they not even known about by other parts of an organization.

One model that has been seen to have increasing success is the creation of Policy Governance Councils. These bodies oversee the ownership, updating, and sometimes the dissemination of policies, but usually do not write the policies themselves. These Councils need individuals that can both read and

communicate what each policy is about. They need to be able to spot issues, raise concerns, and notify the various parties if there is a need for further action. Here again is a management role that is well suited to many paralegals, that of being a **Policy Manager** for a company.

Some employment law paralegals have worked for years and years with members of the Human Resources department. Having an understanding of both the legal underpinnings of issues and the company's business needs that the HR department must fulfill, some employment law paralegals have made a jump across departments and have been promoted into positions of management within HR departments. Your company may have other unique business units where your skills and experience would be suited to a managerial track.

Creating Your Own Role

Do you have specialty knowledge about your company and your specialty that could be better utilized in a yet to be created role? Talk with your Managing Attorney and your HR Department. Let them know you enjoy working for the company, and that you have a keen desire to further your career and ask them for suggestions as to what role you might be suited to fill.

Better yet, ask your co-workers about the biggest unmet needs of the department and the company. Find out if you have the right combination of skills and experience to fill that need. It might require the creation of an entirely new category of specialist—and **that specialist could be you!**

V. How to Succeed in the current Economy

All smart employers today are keenly aware of their competition. The need to run lean means that marginal performers may be let go in tough times. How do you ensure your position is one seen as essential to your company, and what is the best way to succeed in the current economy?

One answer is to not be satisfied being a “one trick pony”. That is to say, don't just have skills in one specialty area. Push yourself to stay current in multiple areas of the law. Attend CLE programs in your local area.

If your local associations don't have topics on point for you, offer to help them find a speaker and a meeting location for an upcoming meeting. Ask your attorneys to refer you to outside counsel that might be willing to present a talk to a paralegal group. You will have demonstrated both your desire to further your education and your willingness to lead – key skills in demand!

Appendix A

NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.

MODEL CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY AND GUIDELINES FOR ENFORCEMENT

PREAMBLE

The National Federation of Paralegal Associations, Inc. ("NFPA") is a professional organization comprised of paralegal associations and individual paralegals throughout the United States and Canada. Members of NFPA have varying backgrounds, experiences, education and job responsibilities that reflect the diversity of the paralegal profession. NFPA promotes the growth, development and recognition of the paralegal profession as an integral partner in the delivery of legal services.

In May 1993 NFPA adopted its Model Code of Ethics and Professional Responsibility ("Model Code") to delineate the principles for ethics and conduct to which every paralegal should aspire.

Many paralegal associations throughout the United States have endorsed the concept and content of NFPA's Model Code through the adoption of their own ethical codes. In doing so, paralegals have confirmed the profession's commitment to increase the quality and efficiency of legal services, as well as recognized its responsibilities to the public, the legal community, and colleagues.

Paralegals have recognized, and will continue to recognize, that the profession must continue to evolve to enhance their roles in the delivery of legal services. With increased levels of responsibility comes the need to define and enforce mandatory rules of professional conduct. Enforcement of codes of paralegal conduct is a logical and necessary step to enhance and ensure the confidence of the legal community and the public in the integrity and professional responsibility of paralegals.

In April 1997 NFPA adopted the Model Disciplinary Rules ("Model Rules") to make possible the enforcement of the Canons and Ethical Considerations contained in the NFPA Model Code. A concurrent determination was made that the Model Code of Ethics and Professional Responsibility, formerly aspirational in nature, should be recognized as setting forth the enforceable obligations of all paralegals.

The Model Code and Model Rules offer a framework for professional discipline, either voluntarily or through formal regulatory programs.

§1. NFPA MODEL DISCIPLINARY RULES AND ETHICAL CONSIDERATIONS

1.1 A PARALEGAL SHALL ACHIEVE AND MAINTAIN A HIGH LEVEL OF COMPETENCE.

Ethical Considerations

- EC-1.1(a) A paralegal shall achieve competency through education, training, and work experience.
- EC-1.1(b) A paralegal shall aspire to participate in a minimum of twelve (12) hours of continuing legal education, to include at least one (1) hour of ethics education, every two (2) years in order to remain current on developments in the law.
- EC-1.1(c) A paralegal shall perform all assignments promptly and efficiently.

1.2 A PARALEGAL SHALL MAINTAIN A HIGH LEVEL OF PERSONAL AND PROFESSIONAL INTEGRITY.

Ethical Considerations

- EC-1.2(a) 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 or the benefit of only one party.
- EC-1.2(b) 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.
- EC-1.2(c) A paralegal shall ensure that all timekeeping and billing records prepared by the paralegal are thorough, accurate, honest, and complete.
- EC-1.2(d) 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.
- EC-1.2(e) 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.
- EC-1.2(f) 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 whom 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.

1.3 A PARALEGAL SHALL MAINTAIN A HIGH STANDARD OF PROFESSIONAL CONDUCT.

Ethical Considerations

- EC-1.3(a) A paralegal shall refrain from engaging in any conduct that offends the dignity and decorum of proceedings before a court or other adjudicatory body and shall be respectful of all rules and procedures.
- EC-1.3(b) 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.
- EC-1.3(c) 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.
- EC-1.3(d) 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 whom 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.
- EC-1.3(e) A paralegal shall not knowingly assist any individual with the commission of 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.
- EC-1.3(f) If a paralegal possesses knowledge of future criminal activity, that knowledge must be reported to the appropriate authority immediately.

1.4 A PARALEGAL SHALL SERVE THE PUBLIC INTEREST BY CONTRIBUTING TO THE IMPROVEMENT OF THE LEGAL SYSTEM AND DELIVERY OF QUALITY LEGAL SERVICES, INCLUDING PRO BONO PUBLICO SERVICES.

Ethical Considerations

- EC-1.4(a) A paralegal shall be sensitive to the legal needs of the public and shall promote the development and implementation of programs that address those needs.
- EC-1.4(b) A paralegal shall support efforts to improve the legal system and access thereto and shall assist in making changes.
- EC-1.4(c) A paralegal shall 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.

EC-1.4(d) A paralegal should 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:

1. persons of limited means; or
2. 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
3. individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

The twenty-four (24) hours of Pro Bono Publico services contributed annually by a paralegal may consist of such services as detailed in this EC-1.4(d), and/or administrative matters designed to develop and implement the attainment of this aspiration as detailed above in EC-1.4(a) B (c), or any combination of the two.

1.5 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.

Ethical Considerations

EC-1.5(a) A paralegal shall be aware of and abide by all legal authority governing confidential information in the jurisdiction in which the paralegal practices.

EC-1.5(b) A paralegal shall not use confidential information to the disadvantage of the client.

EC-1.5(c) A paralegal shall not use confidential information to the advantage of the paralegal or of a third person.

EC-1.5(d) A paralegal may reveal confidential information only 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.

EC-1.5(e) 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.

EC-1.5(f) A paralegal shall not engage in any indiscreet communications concerning clients.

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

Ethical Considerations

EC-1.6(a) 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.

- EC-1.6(b) A paralegal shall avoid conflicts of interest that may arise from previous assignments, whether for a present or past employer or client.
- EC-1.6(c) A paralegal shall avoid conflicts of interest that may arise from family relationships and from personal and business interests.
- EC-1.6(d) In order to be able to determine whether an actual or potential conflict of interest exists a paralegal shall create and maintain an effective recordkeeping system that identifies clients, matters, and parties with which the paralegal has worked.
- EC-1.6(e) 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.
- EC-1.6(f) A paralegal shall not participate in or conduct work on any matter where a conflict of interest has been identified.
- EC-1.6(g) 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.

1.7 A PARALEGAL'S TITLE SHALL BE FULLY DISCLOSED.

Ethical Considerations

- EC-1.7(a) 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.
- EC-1.7(b) A paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures, directories, and advertisements.
- EC-1.7(c) 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.
- EC-1.7(d) 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.
- EC-1.7(e) A paralegal shall not participate in the creation, issuance, or dissemination of fraudulent records, diplomas, or certificates.

1.8 A PARALEGAL SHALL NOT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW.

Ethical Considerations

- EC-1.8(a) A paralegal shall comply with the applicable legal authority governing the

unauthorized practice of law in the jurisdiction in which the paralegal practices.

§2. NFPA GUIDELINES FOR THE ENFORCEMENT OF THE MODEL CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY

2.1 BASIS FOR DISCIPLINE

- 2.1(a) Disciplinary investigations and proceedings brought under authority of the Rules shall be conducted in accord with obligations imposed on the paralegal professional by the Model Code of Ethics and Professional Responsibility.

2.2 STRUCTURE OF DISCIPLINARY COMMITTEE

- 2.2(a) The Disciplinary Committee ("Committee") shall be made up of nine (9) members including the Chair.
- 2.2(b) Each member of the Committee, including any temporary replacement members, shall have demonstrated working knowledge of ethics/professional responsibility-related issues and activities.
- 2.2(c) The Committee shall represent a cross-section of practice areas and work experience. The following recommendations are made regarding the members of the Committee.
- 1) At least one paralegal with one to three years of law-related work experience.
 - 2) At least one paralegal with five to seven years of law related work experience.
 - 3) At least one paralegal with over ten years of law related work experience.
 - 4) One paralegal educator with five to seven years of work experience; preferably in the area of ethics/professional responsibility.
 - 5) One paralegal manager.
 - 6) One lawyer with five to seven years of law-related work experience.
 - 7) One lay member.
- 2.2(d) The Chair of the Committee shall be appointed within thirty (30) days of its members' induction. The Chair shall have no fewer than ten (10) years of law-related work experience.
- 2.2(e) The terms of all members of the Committee shall be staggered. Of those members initially appointed, a simple majority plus one shall be appointed to a term of one year, and the remaining members shall be appointed to a term of two years. Thereafter, all members of the Committee shall be appointed to terms of two years.
- 2.2(f) If for any reason the terms of a majority of the Committee will expire at the same time, members may be appointed to terms of one year to maintain continuity of the

Committee.

- 2.2(g) The Committee shall organize from its members a three-tiered structure to investigate, prosecute and/or adjudicate charges of misconduct. The members shall be rotated among the tiers.

2.3 OPERATION OF COMMITTEE

- 2.3(a) The Committee shall meet on an as-needed basis to discuss, investigate, and/or adjudicate alleged violations of the Model Code/Model Rules.
- 2.3(b) A majority of the members of the Committee present at a meeting shall constitute a quorum.
- 2.3(c) A Recording Secretary shall be designated to maintain complete and accurate minutes of all Committee meetings. All such minutes shall be kept confidential until a decision has been made that the matter will be set for hearing as set forth in Section 6.1 below.
- 2.3(d) If any member of the Committee has a conflict of interest with the Charging Party, the Responding Party, or the allegations of misconduct, that member shall not take part in any hearing or deliberations concerning those allegations. If the absence of that member creates a lack of a quorum for the Committee, then a temporary replacement for the member shall be appointed.
- 2.3(e) Either the Charging Party or the Responding Party may request that, for good cause shown, any member of the Committee not participate in a hearing or deliberation. All such requests shall be honored. If the absence of a Committee member under those circumstances creates a lack of a quorum for the Committee, then a temporary replacement for that member shall be appointed.
- 2.3(f) All discussions and correspondence of the Committee shall be kept confidential until a decision has been made that the matter will be set for hearing as set forth in Section 6.1 below.
- 2.3(g) All correspondence from the Committee to the Responding Party regarding any charge of misconduct and any decisions made regarding the charge shall be mailed certified mail, return receipt requested, to the Responding Party's last known address and shall be clearly marked with a "Confidential" designation.

2.4 PROCEDURE FOR THE REPORTING OF ALLEGED VIOLATIONS OF THE MODEL CODE/DISCIPLINARY RULES

- 2.4(a) An individual or entity in possession of non-confidential knowledge or information concerning possible instances of misconduct shall make a confidential written report to the Committee within thirty (30) days of obtaining same. This report shall include all details of the alleged misconduct.
- 2.4(b) The Committee so notified shall inform the Responding Party of the allegation(s) of misconduct no later than ten (10) business days after receiving the confidential written report from the Charging Party.

- 2.4(c) Notification to the Responding Party shall include the identity of the Charging Party, unless, for good cause shown, the Charging Party requests anonymity.
- 2.4(d) The Responding Party shall reply to the allegations within ten (10) business days of notification.

2.5 PROCEDURE FOR THE INVESTIGATION OF A CHARGE OF MISCONDUCT

- 2.5(a) Upon receipt of a Charge of Misconduct ("Charge"), or on its own initiative, the Committee shall initiate an investigation.
- 2.5(b) If, upon initial or preliminary review, the Committee makes a determination that the charges are either without basis in fact or, if proven, would not constitute professional misconduct, the Committee shall dismiss the allegations of misconduct. If such determination of dismissal cannot be made, a formal investigation shall be initiated.
- 2.5(c) Upon the decision to conduct a formal investigation, the Committee shall:
- 1) mail to the Charging and Responding Parties within three (3) business days of that decision notice of the commencement of a formal investigation. That notification shall be in writing and shall contain a complete explanation of all Charge(s), as well as the reasons for a formal investigation and shall cite the applicable codes and rules;
 - 2) allow the Responding Party thirty (30) days to prepare and submit a confidential response to the Committee, which response shall address each charge specifically and shall be in writing; and
 - 3) upon receipt of the response to the notification, have thirty (30) days to investigate the Charge(s). If an extension of time is deemed necessary, that extension shall not exceed ninety (90) days.
- 2.5(d) Upon conclusion of the investigation, the Committee may:
- 1) dismiss the Charge upon the finding that it has no basis in fact;
 - 2) dismiss the Charge upon the finding that, if proven, the Charge would not constitute Misconduct;
 - 3) refer the matter for hearing by the Tribunal; or
 - 4) in the case of criminal activity, refer the Charge(s) and all investigation results to the appropriate authority.

2.6 PROCEDURE FOR A MISCONDUCT HEARING BEFORE A TRIBUNAL

- 2.6(a) Upon the decision by the Committee that a matter should be heard, all parties shall be notified and a hearing date shall be set. The hearing shall take place no more than thirty (30) days from the conclusion of the formal investigation.
- 2.6(b) The Responding Party shall have the right to counsel. The parties and the Tribunal shall have the right to call any witnesses and introduce any documentation that they believe will lead to the fair and reasonable resolution of the matter.
- 2.6(c) Upon completion of the hearing, the Tribunal shall deliberate and present a written decision to the parties in accordance with procedures as set forth by the Tribunal.
- 2.6(d) Notice of the decision of the Tribunal shall be appropriately published.

2.7 SANCTIONS

2.7(a) Upon a finding of the Tribunal that misconduct has occurred, any of the following sanctions, or others as may be deemed appropriate, may be imposed upon the Responding Party, either singularly or in combination:

- 1) letter of reprimand to the Responding Party; counseling;
- 2) attendance at an ethics course approved by the Tribunal; probation;
- 3) suspension of license/authority to practice; revocation of license/authority to practice;
- 4) imposition of a fine; assessment of costs; or
- 5) in the instance of criminal activity, referral to the appropriate authority.

2.7(b) Upon the expiration of any period of probation, suspension, or revocation, the Responding Party may make application for reinstatement. With the application for reinstatement, the Responding Party must show proof of having complied with all aspects of the sanctions imposed by the Tribunal.

2.8 APPELLATE PROCEDURES

2.8(a) The parties shall have the right to appeal the decision of the Tribunal in accordance with the procedure as set forth by the Tribunal.

DEFINITIONS

"Appellate Body" means a body established to adjudicate an appeal to any decision made by a Tribunal or other decision-making body with respect to formally-heard Charges of Misconduct.

"Charge of Misconduct" means a written submission by any individual or entity to an ethics committee, paralegal association, bar association, law enforcement agency, judicial body, government agency, or other appropriate body or entity, that sets forth non-confidential information regarding any instance of alleged misconduct by an individual paralegal or paralegal entity.

"Charging Party" means any individual or entity who submits a Charge of Misconduct against an individual paralegal or paralegal entity.

"Competency" means the demonstration of: diligence, education, skill, and mental, emotional, and physical fitness reasonably necessary for the performance of paralegal services.

"Confidential Information" means information relating to a client, whatever its source, that is not public knowledge nor available to the public. ("Non-Confidential Information" would generally include the name of the client and the identity of the matter for which the paralegal provided services.)

"Disciplinary Hearing" means the confidential proceeding conducted by a committee or other designated body or entity concerning any instance of alleged misconduct by an individual paralegal or paralegal entity.

"Disciplinary Committee" means any committee that has been established by an entity such as a paralegal association, bar association, judicial body, or government agency to: (a) identify, define and investigate general ethical considerations and concerns with respect to paralegal practice; (b) administer and enforce the Model Code and Model Rules and; (c) discipline any individual paralegal or paralegal entity found to be in violation of same.

"Disclose" means communication of information reasonably sufficient to permit identification of the significance of the matter in question.

"Ethical Wall" 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. For more information regarding the Ethical Wall, see the NFPA publication entitled "The Ethical Wall - Its Application to Paralegals."

"Ex parte" means actions or communications conducted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

"Investigation" means the investigation of any charge(s) of misconduct filed against an individual paralegal or paralegal entity by a Committee.

"Letter of Reprimand" means a written notice of formal censure or severe reproof administered to an individual paralegal or paralegal entity for unethical or improper conduct.

"Misconduct" means the knowing or unknowing commission of an act that is in direct violation of those Canons and Ethical Considerations of any and all applicable codes and/or rules of conduct.

"Paralegal" is synonymous with "Legal Assistant" and is defined as a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency, or other entity or may be authorized by administrative, statutory, or court authority to perform this work.

"Pro Bono Publico" means providing or assisting to provide quality legal services in order to enhance access to justice for persons of limited means; 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 individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

"Proper Authority" means the local paralegal association, the local or state bar association, Committee(s) of the local paralegal or bar association(s), local prosecutor, administrative agency, or other tribunal empowered to investigate or act upon an instance of alleged misconduct.

"Responding Party" means an individual paralegal or paralegal entity against whom a Charge of Misconduct has been submitted.

"Revocation" means the rescission of the license, certificate or other authority to practice of an individual paralegal or paralegal entity found in violation of those Canons and Ethical Considerations of any and all applicable codes and/or rules of conduct.

"Suspension" means the suspension of the license, certificate or other authority to practice of an individual paralegal or paralegal entity found in violation of those Canons and Ethical Considerations of any and all applicable codes and/or rules of conduct.

"Tribunal" means the body designated to adjudicate allegations of misconduct.