

Ethics and the Kentucky Paralegal:

Thank Goodness for Specific Guidelines & Other Musings¹

Introduction

This brief article is designed to supplement the informative and voluminous materials contained elsewhere in the Certified Kentucky Paralegal (CKP) certification exam preparation study guide. It consists of general comments on the value of the *Kentucky Paralegal Standards of Professional Conduct (KPSPC)* and some general musings on items not specifically covered elsewhere (i.e., “loose ends”). Even though referenced as loose ends, these items are of considerable importance to Kentucky paralegals.

Hooray! for the KPSPC

Because paralegals are not licensed or regulated by one entity, all paralegals in the United States do not have to follow the same written set of ethical standards. When considering the multitude of regulatory schemes proffered by government and private entities alike, the confusion intensifies. To illustrate, some argue for mandatory government regulation (licensing) of the paralegal profession, while others promote voluntary self-regulation (certification). So where does this leave the Kentucky paralegal who merely wants to be hired and stay hired, wants to be respected, and wants to act ethically?

Maybe the Kentucky paralegal can look to the so-called Kentucky “Paralegal Code.” That would be Kentucky Supreme Court Rule 3.700. But there’s the rub – the Kentucky Supreme Court licenses lawyers, not paralegals. Accordingly, Ky. Sup. Ct. R. 3.700 applies directly to lawyers and only indirectly to paralegals.

From either the national or Kentucky-specific perspective, there are indeed challenges connected with regulating paralegals and pinpointing the specific ethical standards paralegals are obligated to follow. It is fortunate many Kentucky paralegals see the value of Kentucky Paralegal Association (KPA) and/or local affiliated association membership. With such membership, these paralegals have a concrete set of ethical guidelines to follow – the *Kentucky Paralegal Standards of Professional Conduct (KPSPC)*. When a paralegal joins the KPA or one of its affiliates, that paralegal is agreeing to abide by the KPSPC. And since the KPSPC were designed to mirror the Professional Standards of Conduct for attorneys in Kentucky – as promulgated by the Kentucky Supreme Court – both attorneys and paralegals should now know they are basically working from the same ethical page.

Loose Ends: Defining “Confidential Information”

There are multiple ways to define “confidential information” in the legal context. Suffice it to say the simplest definition is also the most accurate definition. Confidential information is ***any information relating to the representation of a client.***

Loose Ends: Billing Paralegal Time & Work

While it has long been established that lawyers can legitimately bill clients for the time spent and work performed by paralegals on behalf of clients, the U.S. Supreme Court decision in Missouri v. Jenkins, 491 U.S. 274 (1989), provides further validation of such practice. Although the case focused on the recovery of attorney fees under a federal statute and whether paralegal fees should be included as part of the attorney fees award, the Supreme Court touted the appropriateness of paralegal utilization and its cost effective nature.

[P]aralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate . . . Much of this work lies in a gray area of tasks that might appropriately be performed either by an attorney or a paralegal.

Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989)

Loose Ends: The Shapero Advertising Legacy

The Kentucky paralegal needs to have rudimentary knowledge of how lawyers may advertise in the Commonwealth. Law firm and attorney advertising might affect the paralegal's chances of being hired – advertising hopefully brings in more clients, which in turn leads to the need for more paralegals. It is also possible the paralegal may be directly or tangentially involved in such advertising activities.

At one time, Kentucky lawyers were prohibited from sending targeted, direct mail letters to potential clients. After much maneuvering and activity, Richard Shapero, a well-known Louisville lawyer took the matter of targeted, direct mail letters all the way to the U.S. Supreme Court. In Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988), the Supreme Court provided a detailed historical account of the direct mail prohibition in the Commonwealth and then ruled that Kentucky's blanket prohibition of targeted, direct-mail solicitation by lawyers for pecuniary gain violated Kentucky lawyers' commercial speech protections under the First Amendment of the United States Constitution.

The paralegal asked to help in developing an advertising plan for a solo practicing attorney or a law firm should know what is or is not allowed. For more details on lawyer advertising, the wise paralegal should review the most current version of Kentucky Supreme Court Rules 3.130(7.01) through 3.130(7.60).

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