

PARALEGAL ETHICS, RULES & GUIDELINES KNOW WHEN TO FOLLOW YOUR MORAL COMPASS

JAMIE COLLINS

In life and legal careers, we often find ourselves cloaked beneath a veiled façade with regard to ethical issues in the work place. Most of us choose to believe we will never have the misfortune of working in an environment where we could fall victim to a potentially catastrophic ethical dilemma that could call into question our existence within the walls of the organization. But life and legal careers aren't always clear cut. And they aren't always pretty. One day you find yourself sitting at your desk, knee deep in pleadings, happy as a caffeinated paralegal subsiding on Godiva chocolates, and the next you may find yourself staring a major ethical dilemma in the ugly eyes, one which cannot be easily navigated, ignored, or escaped.

Not all employers are created equal in

the ethical arena. Recent headlines have been peppered with news stories spinning the fates of attorneys and paralegals personally entrenched in prosecutions or high stakes court battles after discovering, or worse yet becoming involved in, ethical dilemmas or illegal acts. Ethical dilemmas are things we must be prepared to face head on. Alas, we arrive at the question of how to recognize an ethical dilemma.

With regard to the main ethical guidelines, most paralegals could readily recite them verbatim, as these points were permanently etched into the frontal lobes of our attorneys during law school. These well-known ethical guidelines dictate that a paralegal shall not:

- Enter into the attorney-client relationship;
- Negotiate fees with a client;
- Appear in court on behalf of a client; and/or
- Give legal advice.

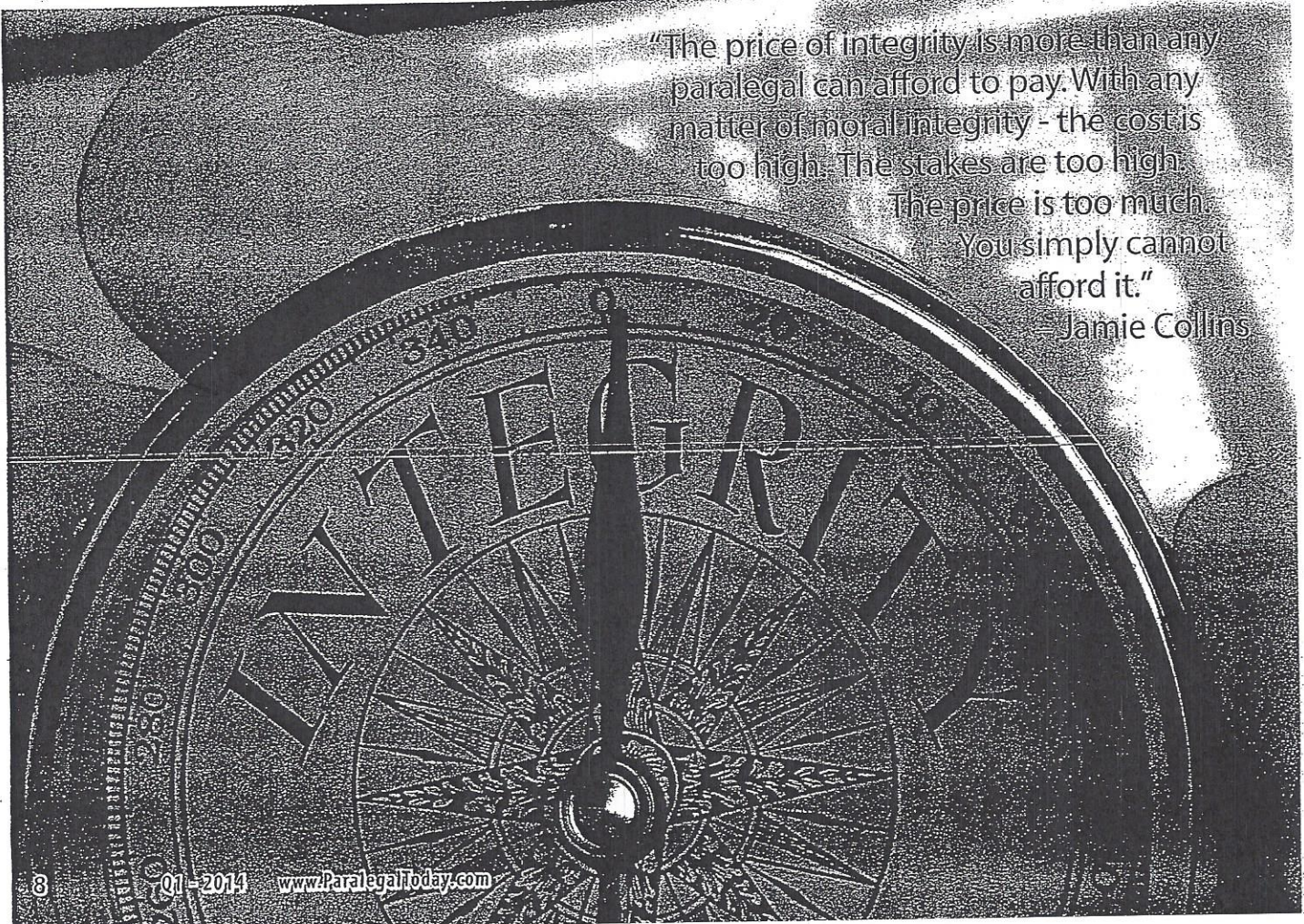
But there are some additional guidelines which are not so well known in most paralegal circles; ones that could leave a paralegal potentially vulnerable ethi-

cal violations or career sabotage. These points are contained within the Model Rules of Professional Conduct.

Compliance with the Model Rules of Professional Conduct is Mandatory

A paralegal must abide by the same rules of professional conduct as an attorney. Failure to comply with these rules may result in an attorney being sanctioned, disciplined, or suspended. A paralegal's failure to abide by these rules could not only result in a disgruntled supervising attorney or law firm after an ethical fall out, but also in a paralegal potentially being black-listed within the legal community, having one's "registered paralegal" status revoked in states that regulate their paralegals, or being stripped of any additional designations a paralegal has worked to earn. If an ethical violation steps into criminal territory, the paralegal could also face sanctions, fines, or imprisonment.

Now that I have your attention, here are some additional points of importance:



"The price of integrity is more than any paralegal can afford to pay. With any matter of moral integrity - the cost is too high. The stakes are too high. The price is too much. You simply cannot afford it."

— Jamie Collins

Rule 1.1 – Competence, Client-Lawyer Relationship

This rule states that an attorney shall provide “competent representation to a client” through “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” It sounds easy enough. Most attorneys do provide competent representation to their clients. But what if you believe your attorney is not competent to represent his clients? What then? What if he arrives at the office intoxicated by alcohol or high on drugs? What if you become aware of a discreet affair he has entered into with a client or witness? While these types of occurrences are not at all commonplace in the legal sector (thank goodness for that), if you ever find yourself in a situation where your attorney’s competence is called into question, do everything you can to depart your position immediately. The attorney has an obligation to provide competent representation. You have an ethical obligation to work for an attorney who does.

Rule 1.6 – Confidentiality of Information

Rule 1.6 deals specifically with issues surrounding confidentiality. Judge Gary Miller of the Marion Superior Court in Indianapolis, Indiana, recommends that every paralegal work to develop a better understanding of issues related to the confidentiality of client matters. Some paralegals may be under the false assumption that they simply must not share information which is not contained within the public record, but Judge Miller advises that a paralegal should not share *anything* learned through the representation of a particular client with *anyone* outside of the representation. He even takes it one step further to jokingly state, “This would even include a statement made by a member of the firm that a particular client is the client from hell,” because that is something undoubtedly learned through the representation of that client.

He advises that a case or client should never be discussed with anyone outside of the legal team, even in general terms. This means no vague discussions with a spouse or friend over dinner. It also means not revealing anything that would not be known to individuals outside of the firm.

Even if a particular client is listed on a firm’s website or a topic is laced clearly throughout the public record or other court documents, it is off limits for discussion. In essence, if you learned it while representing the client, it is confidential.

Any information concerning a client matter *may* typically be discussed with other members of the firm, unless the client has indicated limitations to the contrary.

Rule 4.1 - Truthfulness in Statements to Others

A paralegal must be truthful in all statements made to witnesses or third parties. A paralegal cannot deliberately mislead a witness or third party by communicating an untrue statement (or an inferred mistruth) to a witness or third party at any time, even in an attempt to glean information or evidence for a case. This includes the investigation stage of pre-litigation claims and lawsuits. A paralegal cannot mislead or deceive others under any circumstance, verbally or otherwise.

So what can you do to avoid a potential misstep in dealing with third parties? Discuss the appropriate way to conduct witness interviews with your supervising attorney beforehand. Develop a clear understanding of how to handle any issues which may arise during a discussion with a third party. Understand your ethical boundaries and how to navigate a potential issue before it presents itself. Finally, document any discussions or interactions you have with any witness or third party to leave a paper trail detailing the substance of any conversations held or issues that arose in order to protect yourself and your firm.

Rule 4.2 – Communication with Person Represented by Counsel

Pursuant to the Model Rules of Professional Conduct, an attorney (and by association, his or her paralegal) shall not communicate with any person represented by counsel without the prior consent of the individual’s lawyer or a court order. In order to avoid potential issues or violations, do not take any calls from individuals known to you as being represented by counsel, or in the alternative,

simply advise the individual that you cannot discuss the matter with him, but will gladly pass his contact information along to the attorney. When in doubt, avoid the call or communication until further instructions or guidance can be sought from your supervising attorney.

Rule 8.3 – Reporting Professional Misconduct – Maintaining the Integrity of the Profession

While this rule specifically addresses integrity as it relates to other lawyers and an attorney’s ethical obligation to report any issues of misconduct, if a paralegal must adhere to the *Model Rules of Professional Conduct* (and we must), this rule includes us too. If you become aware of conduct that “raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects,” the rules dictate that there is an obligation to report it to the “appropriate professional authority.” The same is true if an attorney becomes aware of a violation committed by a judge.

While Rule 1.6 regarding confidentiality of information still applies to this type of situation, the obligation to report does exist. If an issue of misconduct makes its way onto your radar, deal with it in a timely, appropriate manner. Have a discussion with the attorney regarding the issue, if warranted, and report the misconduct to the appropriate authority if you believe it to rise to the level of misconduct.

The Performance of Illegal Acts

While all of the ethical issues discussed in this article are of great importance, of paramount importance are any issues which may arise that a paralegal believes to be not only unethical, but also crossing into the realm of illegality. Think along the lines of a misappropriation of a firm’s trust account funds, embezzlement, unethical billing practices, an attorney acting in the firm’s best interests during a time of financial hardship rather than the client’s, or a lawyer committing perjury or improperly misrepresenting himself or a certain material fact before a court of law. While these issues may seem farfetched and unlikely to occur - they can and do occur, hence attorneys and paralegals nationwide peppering newspaper stories and headlines as the result of illegal acts.

It is important to know what to do if you ever find yourself facing a situation which could compromise your integrity, reputation, and professional standing.

Resources

There are several online resources available. A complete list of ethical guidelines can be found online by utilizing the search term: *Model Rules of Professional Conduct*. There is also a *Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement* included on the website for the National Federation of Paralegal Associations, Inc. Go to the tab for "Positions and Issues" and click on the "Ethics" tab. The National Association of Legal Assistants also shares the *NALA Code of Ethics and Professional Responsibilities* on its website, under the "About Paralegals"

tab. NALS... the association for legal professionals provides its *Code of Ethics and Professional Responsibility* on its website, under the "Join/About NALS" tab.

One can never be too knowledgeable where matters of integrity, ethics,

your radar, trust your gut. Conduct some research. Contact a few trusted colleagues (paralegals and attorneys) outside your place of employment to seek their professional opinions. Reach out to the Ethics Board for the National Federation of Paralegal

Associations, Inc., to share your issue and seek additional guidance. It bears mentioning that any ethical inquiries directed to that board are treated in a confidential manner. If warranted, take it one step further to meet with a retained attorney to discuss the

issue. Your discussion will be protected by the attorney-client privilege, making it a safe place to air any issues without breaching your confidentiality obligations.

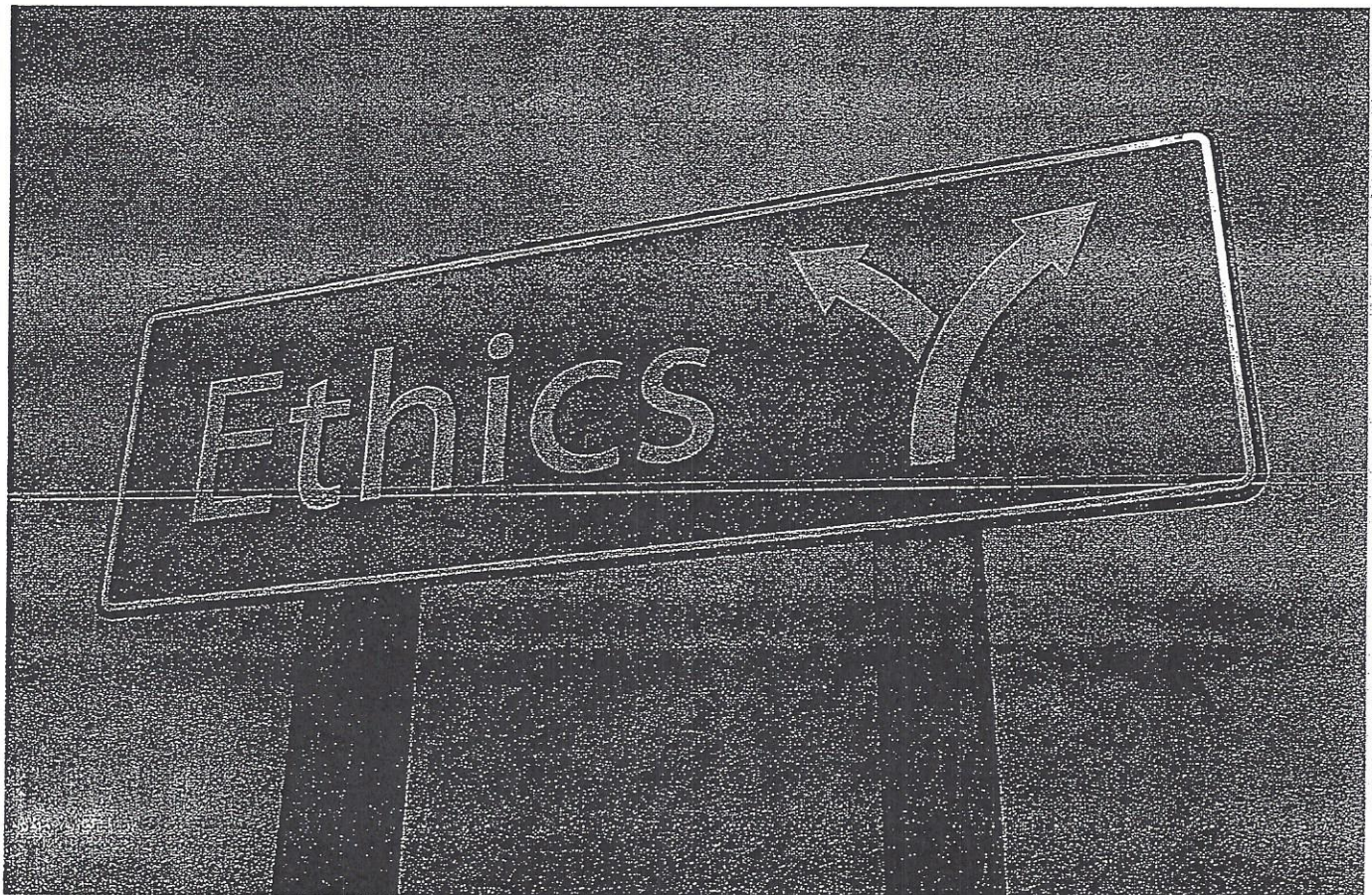
After conducting sufficient due diligence, if warranted, contact your local disciplinary commission or the proper authorities to report the potential vio-

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and ethical obligations are concerned. Do yourself a favor - visit these sites today, review the rules and guidelines, and print them off or bookmark them as a personal resource.

What To Do If You Face an Ethical Dilemma - An Action Plan

If an ethical issue makes its way onto



lations. Matters of ethical integrity or illegality must not be taken lightly. They could damage your spirit, tarnish your reputation, and kill your career.

A Judge's Advice

When asked what a paralegal should do if he or she ever faces a potential ethical issue involving either a supervising attorney or employing firm, Judge Miller candidly states: "You have to follow your moral compass. If you think an attorney's integrity or ethical conduct is being called into question on a particular issue, realize that ethical violations typically run down a slippery slope. In other words, if an attorney would bend the rules here, he would likely bend them elsewhere, too. If your gut tells you something is wrong, your intuition is probably right. I would recommend doing everything you can to depart your place of employment as soon as possible. Issues of ethical violations or moral miscon-

duct are never fun to deal with, but are incredibly important to tackle head on. Don't chance it."

One thing is for certain - navigating an ethical issue can be a lot like treading water in a lagoon of crystal blue water with gnashing piranhas swimming underfoot. It looks appealing from the outside, but as an insider, it is a fight for one's personal, professional, and moral survival. If you ever find yourself entrenched in an ethical dilemma, turn to the ethical rules and guidelines, listen to Judge Miller's sage advice, reach out to a few trusted colleagues, and follow your own moral compass, as you work to successfully navigate your way out of the unethical employer's web of moral deceit en route to a more suitable work environment. Make your grand exit with poise, professionalism, confidence, and dignity.

And don't forget to grab your integrity on the way out the door. It's yours to keep.

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Jamie Collins is the Founder of The Paralegal Society™, a forum created to educate, motivate and inspire paralegals. She works as a senior-level litigation paralegal in Indianapolis, Indiana, where she handles predominantly personal injury and wrongful death cases. She is a contributing writer to several mainstream publications, sits on NFPA's Ethics Board, has appeared as a guest blogger on The Estrin Report, and sits on the advisory board for Indiana University-Purdue University in Indianapolis. She was awarded Indiana's New Member Paralegal of the Year in 2012. You can reach Jamie at: jamietheparalegal@yahoo.com.



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