

Session Number	7	
Session Name	Legal Ethics	
Group Size	Large	
Total Time	60 minutes	
Timeline	<p>a. Presentation</p> <ul style="list-style-type: none"> i. Overview 3" ii. What does ethics have to do with me? 10" iii. Understanding the rules of ethics 5" iv. Sources of ethical responsibility 5" v. Definition of unlicensed practice of law 5" vi. Top 10 reasons why lawyers get into trouble 2" vii. Strategies in handling ethic violations 5" <p>b. Exercises 25"</p> <ul style="list-style-type: none"> i. Break group into 6 workgroups of 3-4 each and assign each of three case studies to two of these groups 5" ii. Work groups discuss case study and determine the ethical response 10" iii. Report back and debrief, including concluding remarks 10" 	
Overview	<p>This session, designed for any non-lawyer professional in a legal services office, provides an overview of important ethics questions, how ethics impact non-lawyers', and offers constructive suggestions for keeping ethics in perspective. After soliciting ethical issues from the participants, and offering an interactive presentation on these subjects, the presenter will break participants into small groups to consider the ethical response to 3 case studies. They will then report back their conclusions which will be debriefed by the presenter.</p>	
Training Objectives	<p>a) Drawing from large group session, participants will be able to:</p> <ul style="list-style-type: none"> i) Identify the most important ethical issues facing non-lawyers ii) Sort through fact patterns and issue spot instances of ethical misconduct 	
Participant Materials	<ul style="list-style-type: none"> • Session Materials • Paralegal Canons of Ethics • Other assorted professional documents 	
Trainer Materials		
Equipment	Flip charts, easel, marker, tape.	
Room Set-up	Large (in support staff break-out track)	

DETAILED DESCRIPTION OF ACTIVITIES

I. INTRODUCTION

A. Overview (3 minutes)

Trainer presents the overall objectives of the session and goes over the topics that the session will cover

1. Session objectives
2. Session agenda, topics to cover
 - a) Understanding the code of ethics that apply to non-lawyers in a law firm setting
 - (1) Working under the license of a lawyer
 - b) Specific ethics issues related to legal services setting
 - (1) Unlicensed practice of law
 - (2) Conflicts of interest
 - (3) Confidentiality
 - (4) Competent representation
 - (5) Dealing with unrepresented litigants
 - (6) Dealing with agencies or opposing parties
 - (7) Clients under a disability
 - c) Strategies to handle ethics violations
 - d) Resources

B. I am not a lawyer, why should I care about this? (12 minutes)

1. The biggest body of ethics violation involving nonlawyers is in the area of unlicensed practice of law; usually in the form of running legal “clinic” that provides assistance with court forms. Reference Florida Rule 10-1.1.

2. The notion of protecting the public from being harmed
 - a) Ask participants how unethical conduct in the legal profession can be harmful?
 - (1) Subprime mortgage
 - (2) Elders being swindled, losing life time savings
 - (3) Lost claims due to incompetence of lawyers who missed deadlines.
 - b) Is there a difference between unethical and incompetent behavior?
 - (1) Not under Florida rules, 4-1.1 – being incompetent is unethical
3. What does it mean to be working under a lawyer's license?
 - a) Ask participants what are the protocols in their office:
 - (1) Letter writing, who can sign it?
 - (2) Communication with client, how do you preface the conversation?
 - (3) Conducting intake, how do you introduce yourself? How do you end the session? Why?
 - (4) Do you know what constitutes legal advice? Is it ever ok to give legal advice?
 - (a) Nonlawyers can represent individuals in administrative hearings where the law allows, e.g. Social Security, unemployment compensation, public assistance, etc. In these cases, paralegals can provide legal advice on these matters, presumably under the supervision of licensed attorneys. In some cases, paralegals can conduct real estate closings, as long as an attorney is reasonably available should a question arise.
 - (5) What do you do when friends and relatives ask you: You work in legal services; I have this legal problem and proceed to describe it to you?

(6) Retainer agreements, what are the contents? Why do we do this?

4. Top 10 reasons lawyers get into trouble (5 minutes)

a) Trainer asks participants to list some of the common issues that get lawyers into trouble. A sample list would include the following:

- (1) Failure to return phone call
- (2) Failure to effectively communicate with clients
- (3) Missing deadlines, statutes of limitations
- (4) Mishandling money
- (5) Conflicts of interest

5. What are the top 10 reasons how paralegals or support staff get into trouble?

a) Trainer asks participants to list some of the most common issues, e.g.

- (1) Unlicensed practice of law
 - (a) Pressured by clients, family or friends
- (2) Breaching client confidentiality
- (3) Neglecting to identify self as nonlawyer in writing or other communication
- (4) Failure to check for potential conflicts before getting information from potential clients

C. Understanding the rules of ethics (5 minutes)

Trainer introduces the key concepts in the ethics in the practice of law, with attention paid to the particular setting of a legal services environment, especially the following issues:

1. Competence, Florida Rules 4-1.1 (to answer frequent challenge from clients that they would hire real lawyers if they had money. The notion that legal services lawyers are not real lawyers, and paralegals are looked at as clerks who are not competent to represent them)

2. Diligence, Florida Rules 4-1.3
 3. Communication, Florida Rule 4-1.4 (to inform clients of the status of their case, to include clients in determining legal strategy, to fulfill legal services' mission of ensuring equal justice for those who have little resources to pay for access to the system)
 4. Confidentiality, Florida Rule 4-1.6 (to build trust with clients by assuring them that their information is kept confidential, with exceptions)
 5. Conflicts of interests,
 - a. With current clients, Florida Rule 4-1.7
 - b. Engage in business dealings with a client, Florida Rule 4-1.8
 - c. With former client, Florida Rule 4-1.9
 - d. Imputation of conflict to entire law firm, Florida Rule 4-1.10
 6. Representing organizations as clients, Florida Rule 4-1.13
 7. Representing clients under a disability, Florida Rule 4-1.14 (duty to maintain a normal relationship, or appoint of guardian or take protective action when client is believed unable to act in his/her own interest)
 8. Duty to prospective clients, Florida Rule 4-1.18 (rules on confidentiality and conflict of interest apply)
- D. Sources of ethical responsibility (5 minutes)

Trainer explains to participants that the legal profession is a self-regulated industry that devises its own rules to govern the practice of law. In Florida, the regulation of the legal profession is delegated from its Constitution:

Florida Constitution

Florida Supreme Court

Florida Bar

all lawyers must be members of the Florida Bar

In addition to the Florida-specific regulation, there is an overall trade association that has significant influence over the conduct of the legal profession: American Bar Association. The ABA developed the first set of professional rules for lawyers in 1908, referred to as "Canons," which has over the years been refined to meet

changing times. Most states adopt a version of the ABA rules as its own ethical rules for lawyers. Below is the hierarchy of rules governing the profession:

1. State law or regulation governing the licensing of lawyers
2. Bar Association governing the practice of law
3. Bar Association rules regulating the paralegal profession
4. Ethics opinions

Trainer asks participants what are the advantages and disadvantages to have a profession that is purely self-regulating.

E. Definition of unlicensed practice of law (5 minutes)

1. Florida Statute, Section 454.23 enumerate the punishment for unlicensed practice of law as follows:

Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony in the third degree.

2. The **unlicensed practice of law** shall mean the practice of law, as prohibited by statute, court rule, and case law of the state of Florida. Rules Regulating The FL Bar, Rule 10-2.1 (a).

a) (*What does this really mean?* There is no single definition of the practice of law OR of UPL – you must look to relevant statutes, court rules and case law on a case by case basis. If there are no relevant statutes, court rules or case law, look to The FL Bar advisory opinions on UPL.)

F. Strategies in handling ethics violations (5 minutes)

1. Trainer asks participants to list ways to deal with ethics issues in the office, include the following if not elicited:
 - a) Teach each other what are the ethical obligations of staff working in a legal setting

- b) Address behavior
 - (1) Talk to someone
 - (2) Talk to supervisor
- c) Correct behavior
 - (1) Be conscientious in conducting ourselves, e.g. protect client's privacy by not talking about their cases in public areas, file away their documents properly, so that they are not out in the open, establish a private setting for intakes and interviews, use qualified interpreters to work with clients
 - (2) When you observe others committing ethical violations, address it: they may be unaware
 - (3) Discuss how to address ethical violations
- d) Report unethical behavior
 - (1) What to do if a non-lawyer dispenses legal advice freely? What is the complaint process?

II. APPLYING ETHNICAL RULES TO CASE SCEANRIOS (25 minutes)

A. Set up small groups (5 minutes)

- 1. Divide the participants into 3 small groups, each will be assigned a case scenario (in participant's materials, end of session notes)

B. Group brainstorming (10 minutes)

- 1. Provide a flip chart to each group to list their strategies in dealing with the ethics violation in their case scenario

C. Debrief (10 minutes)

- 1. Each group present their action plan
- 2. Refer participants to reference materials on ethics, and state agencies dealing with this issue.

Legal Ethics for Paralegals Case Scenarios

1. **Norwest Legal Services** is located in Northwestern Florida. It serves clients in the northwestern border of Florida and surrounding areas. Norwest has fifteen attorneys and four paralegals. Sarah Adams is the litigation director in charge of supervising the attorneys and paralegals at Norwest. Adams is responsible for overseeing *Schim v. Mountain Day Labor, LLC.*, a large employment case brought affirmatively by a client of Norwest's. The case alleges poor worker treatment and under-aged employment in dangerous work settings.

On a Thursday afternoon, when Adams is leaving and is not expected to be back in the office until Tuesday, she realizes that an Answer is due from Mountain Day Labor's attorney on Friday. She asks Azeena, one of the newer paralegals who has been closely working on the case, to contact Mountain's attorney to find out if they are going to file their answer on time or request an extension. Adams then leaves the office.

Azeena calls Mountain's attorney, Sheila Rayson, only to be told that the Attorney Rayson will be out of the office for the rest of the week. There doesn't seem to be anyone in the Rayson's office who is familiar with the case, so Azeena decides to contact Mountain Day Labor directly.

Jim Mayson, CEO of Mountain Day Labor, was surprised to learn that his attorney was out of town and a bit angry that Rayson hadn't filed an answer. "I just want to settle this matter," he tells Azeena. "Tell Schim that I will give him \$20,000."

Azeena knows this is much more than Adams was expecting in settlement. Azeena knows she is unauthorized to accept the offer, but she tells Mayson that the offer sounds great and that she just needs to reach Schim to get his approval on the deal.

What basic rules of ethics have been broken and who has broken them in this matter?
What would you have done if you were Azeena?

2. The client of Jaylon Swicks, an elder law attorney, is missing. Swicks' client is Georgia Hale, a woman with a past record of criminal activity. Swicks has been assisting Hale with her health care proxy and last will and testament. Swicks finds out from the local paper that Hale has been arrested for driving without a license and driving while intoxicated.

Marissa Hale, Georgia's daughter, calls the office to see if you have seen Georgia. Apparently, Georgia jumped bail and has disappeared. Swicks suspected that Georgia has headed up to Maine to stay in a small cabin that she talked about during previous meetings

with Swicks. Georgia made provisions to leave the cabin to a charitable organization and has told Swicks that none of her children know where it is or that it even exists.

Swick's is somewhat worried about Georgia's state of mind, but Swicks just met with her two days ago and she seemed fine. Marissa tells Swicks that she just wants to know where to find Georgia because she may have left without her heart medications. Swicks has never met Marissa but knows that Georgia wrote her out of her will.

Swicks decides to keep quiet about Georgia's whereabouts. Is he acting unethically? What if the police call asking for information?

3. You are a paralegal who have been helping Andrea Jiminez in a fair housing case. Before Jiminez leaves for her annual two week excursion out West, she gives you brief instructions to prepare interrogatories in the case and have them served on the opposing counsel. The trial date is coming up on the case, and you know it is a priority for Jiminez. Although you have had some prior experience in drafting discovery documents, you have never before worked on a fair housing case and you are a bit unsure of the rules and procedures when it comes to suing a government housing provider. There are interrogatories in several other files in Jiminez's office that you could use for guidance, and the applicable court rules are online and in a hard copy in the office's library. You could ask for help, but you are reluctant to let on how little you know.

The other attorneys you assist have seen Jiminez's upcoming absence as a time to clear their desks of pending projects. They have delegated to you much of their work. Things are starting to snowball. Jiminez will be gone for two weeks and no one will ask about the interrogatories until she gets back, so perhaps you could just work on them later . . . what should you do?