


NCPA's 39th ANNUAL MEETING & SEMINAR
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Follow The Ethical Brick Road

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by

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RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

Rule 5.3(a) With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a principal, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or organization shall make reasonable efforts to ensure that the firm or organization has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

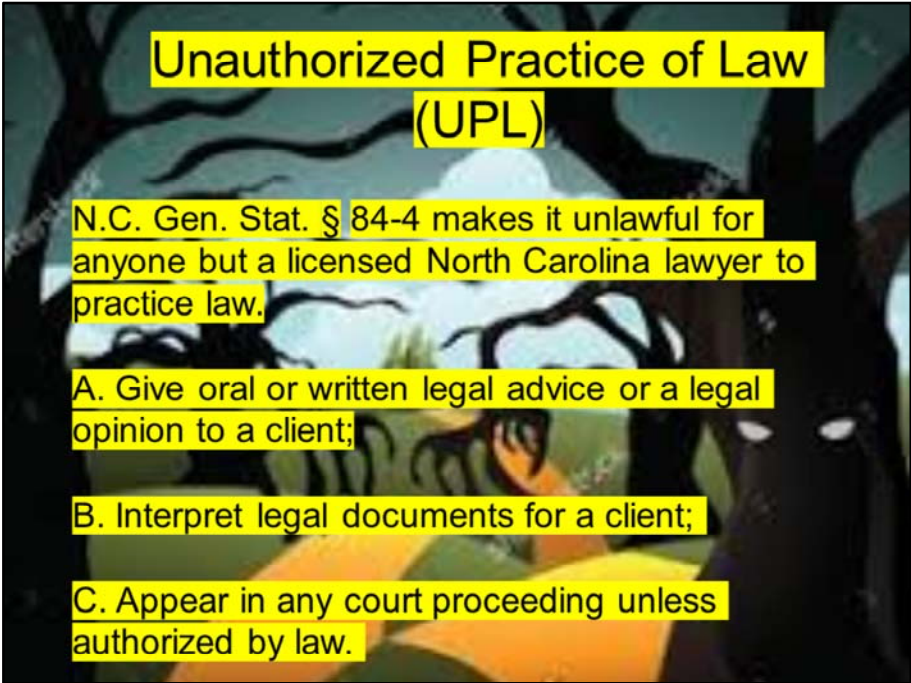
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:



RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a principal or has comparable managerial authority in the law firm or organization in which the person is employed, or has direct supervisory authority over the nonlawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

The background of the slide is a dark, atmospheric illustration of a forest at night. A full moon is visible through the silhouettes of trees. In the foreground, a person is shown from the chest up, wearing a hat and reading a book. The overall mood is mysterious and somewhat somber.

Unauthorized Practice of Law (UPL)

N.C. Gen. Stat. § 84-4 makes it unlawful for anyone but a licensed North Carolina lawyer to practice law.

A. Give oral or written legal advice or a legal opinion to a client;

B. Interpret legal documents for a client;

C. Appear in any court proceeding unless authorized by law.

Examples of UPL

Appearances before courts and agencies

2000 FEO 10 permits nonlawyer to appear at calendar call ONLY to notify court of lawyer's whereabouts and availability

Preparing any filing before a judicial or quasi-judicial body

Appearing as a representative of another before any court or quasi-judicial body

Exception- Social Security Administration, IRS, Patent and Trademark Office, US Citizenship and Immigration Services



More UPL

Organizing corporations

– Preparing the Articles of Incorporation

– Preparing shareholder agreements

– Preparing Bylaws and minutes

– LLC's, partnerships, and other entities are treated as corporations for UPL purposes

Trust Account

Rule 1.15-3. The purpose of a lawyer's trust account is to segregate the funds belonging to others from those belonging to the lawyer.

It is a Lawyers obligation to protect client money

Paralegals often have check writing authority

Reconcile the trust account on quarterly basis

- Must be detailed and include all pertinent info
- Deposit slips
- Ledger card
- Trust account checks

Trust Accounts

The basics- **create the paper trail** that tells:

- Total sum of deposit
- Client name/client matter
- Date of deposit
- Disbursing amount, bearer's name, date, client name/matter and balance

Trust Account

Random Audits

- Truly are random
- Checking to make sure lawyers following trust account Rules 1.15-2 and 1.15-3
- If not, could result in full financial audit at direction of the Chair of the Grievance Committee
- Audits as a result of a grievance





Misappropriation or Theft

Misappropriation of client funds by paralegal may result in discipline, up to and including disbarment, to the lawyer

possible criminal prosecution to paralegal

Do Not Disclose Client Confidences

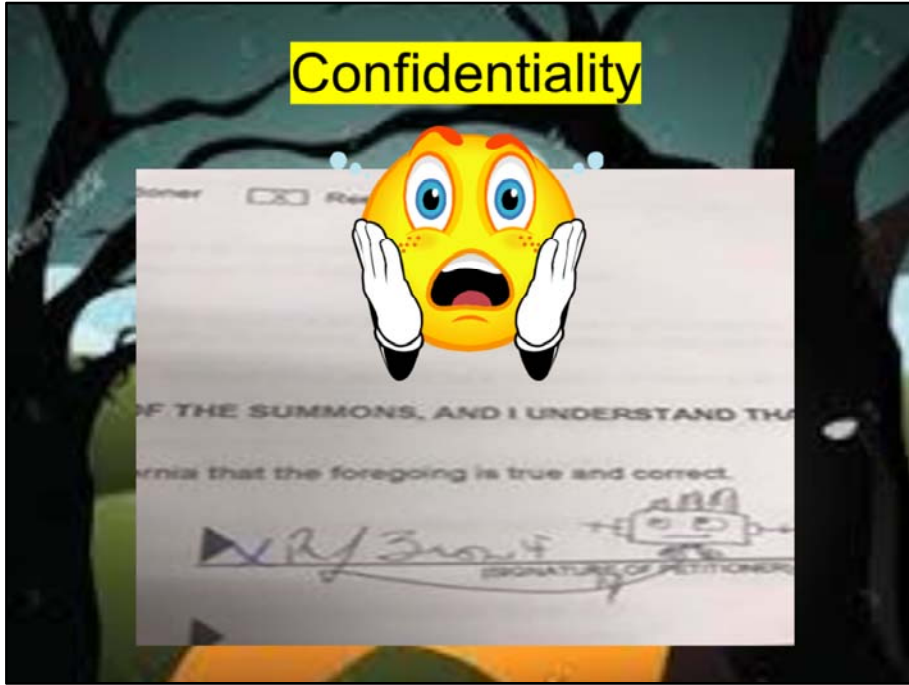
- Rule 5.3 provides that a lawyer must give nonlawyer employees appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of a client.

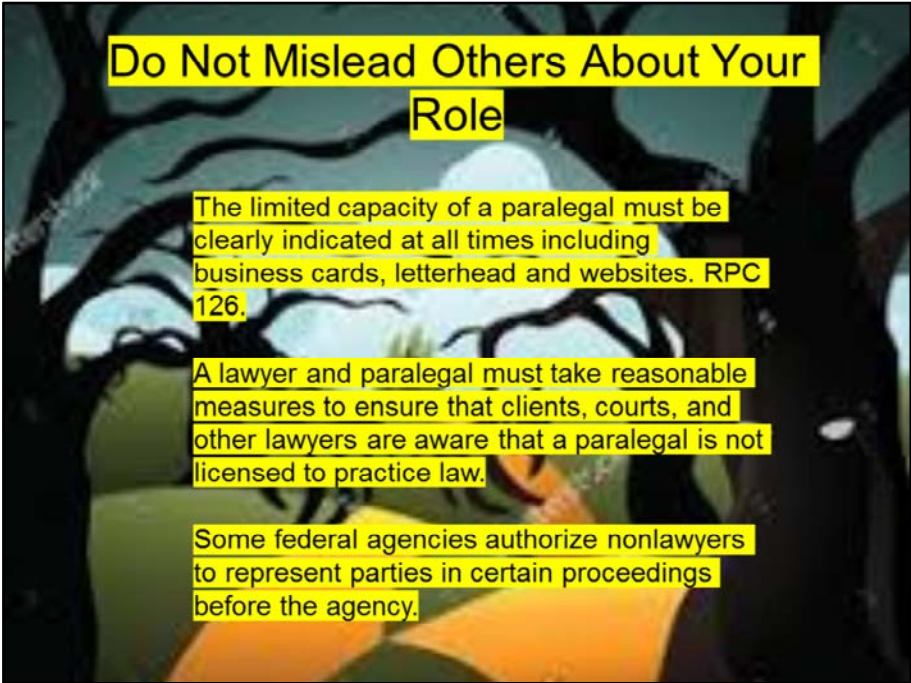
A client's identity, and the fact that the client had previously retained a lawyer for a particular purpose, is confidential information.



Facebook post of a clients signature with a robot.

Confidentiality





Do Not Mislead Others About Your Role

The limited capacity of a paralegal must be clearly indicated at all times including business cards, letterhead and websites. RPC 126.

A lawyer and paralegal must take reasonable measures to ensure that clients, courts, and other lawyers are aware that a paralegal is not licensed to practice law.

Some federal agencies authorize nonlawyers to represent parties in certain proceedings before the agency.

Assisting the Lawyer

Permitted to perform legal work, such as:

- Drafting legal documents, pleadings, etc.
- MUST be under lawyers supervision
- No legal advice even if you know the answer

Signing lawyer's name to pleadings:

- 06 FEO 13 permits for limited circumstances
- Not a violation of law, court order, local rule or civil procedure rule
- Exigent and no other lawyer available
- Lawyer has reviewed and approved document (Supervision)
- Clear that paralegal signing for lawyer (full name)

Do Not Assume Responsibility for Lawyer's Work Product

A lawyer may delegate legal and non-legal work to a paralegal subject to any limitations imposed by statute, court order or rule, administrative regulation, or the Rules of Professional Conduct. Rule 5.3.

If warranted by exigent circumstances, a lawyer may allow a paralegal to sign his or her name to court documents as long as: 1) it does not violate any law, court order, local rule, or rule of civil procedure, 2) the lawyer has provided the appropriate level of supervision, and 3) the signature clearly discloses that another has signed on the lawyer's behalf. 2006 FEO 13.



What is NOT UPL

Handling personal legal matters

Applies only to individuals

Corporations may use non-lawyer employees for transactional legal document preparation

Corporations may only use non-lawyer employees for small claims court

Federal Agency Practice (IRS, SS, Patent, Citizenship)

Financial Advice

Investments

Accounting

Financial statements

General business consulting



Powers of the Bar via the Authorized Practice Committee

- Issue letters of caution to cease and desist
- File complaint for injunction if find probable cause
- Refer matter to District Attorney for criminal prosecution
- Issue advisory opinion as to whether the conduct is unauthorized practice.



State Bar Authority

REVOKE


Or

SUSPEND

YOUR

PARALEGAL

CERTIFICATION



Call, Write or E-mail
for Advice

The Ethics Hotline 8:30 am to 5:00
pm

– Suzanne Lever in the morning
Nichole McLaughlin in the
afternoon

• Contact us

– 919-828-4620

– www.ncbar.gov

– PO Box 25908, Raleigh, NC
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