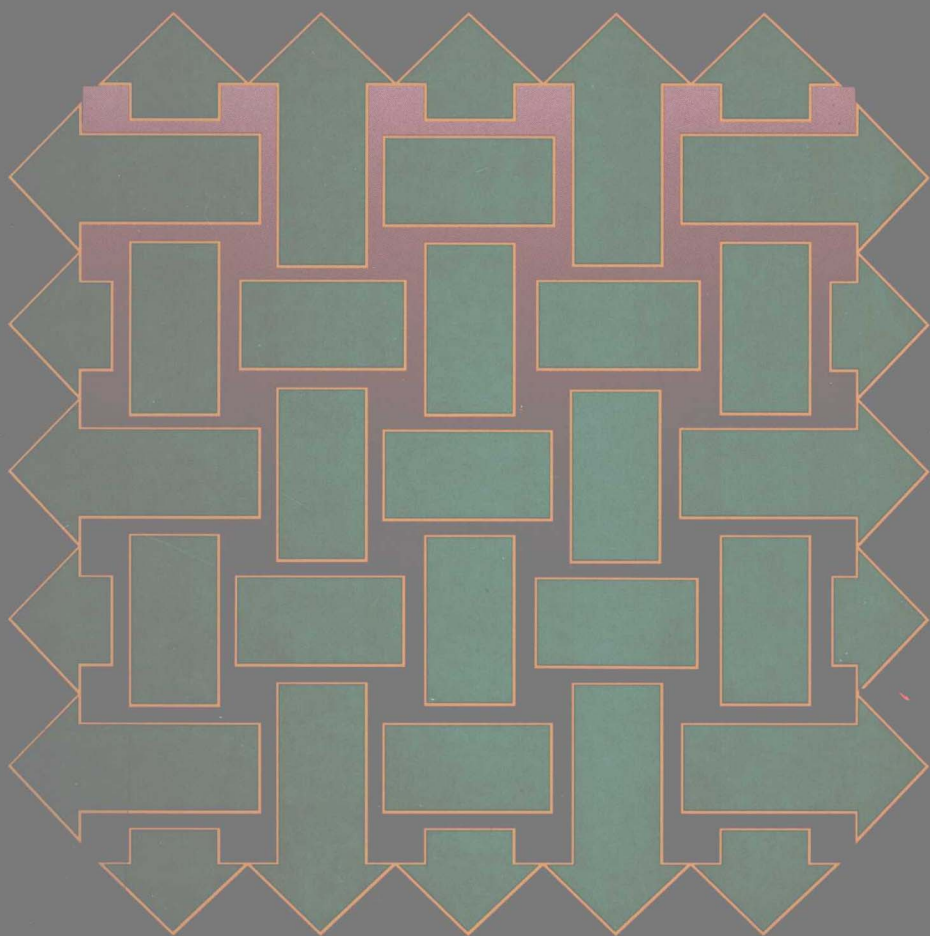


Ethics and Professional Responsibility for Legal Assistants



THERESE A. CANNON

Little, Brown and Company

Ethics and Professional Responsibility for Legal Assistants

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This book is dedicated to my father

Preface

This book is written for paralegal students and working legal assistants, as well as the attorneys who employ them. It is intended for use both as a text and a reference manual.

It has been little more than 20 years since the advent of the paralegal profession, years that have seen an idea about how to deliver legal services more efficiently but less expensively become a reality. The paralegal occupation has been one of the fastest growing in the country for at least a decade. There are now an estimated 150,000 legal assistants, employed by private law firms of all sizes and types as well as by government and in the corporate sector. The career is recognized by the general public, and young people learn of and aspire to it. The roles and functions of legal assistants continue to expand into new and exciting areas.

These past 20 years have also witnessed tremendous growth and change in the legal profession generally. The forces of change have been many, including the adoption of new technology, the use of marketing and advertising, greater competitiveness among firms for clients, the influx of new attorneys, increased attorney mobility, the development of mega-firms, the impact of a global economy, more complex laws, and legal specialization by firms. These changes have greatly affected legal ethics, in ways that probably no one anticipated. New ethics rules continue to develop in response to this dynamic environment. Especially now it is important for legal assistants to have a clear understanding of legal ethics — the concepts and rules that should govern their practice. This grounding is essential for legal assistants to function effectively and with integrity in modern law practice, to be alert to ethical dilemmas that occur in their daily work

lives, and to keep abreast of changes in ethical rules as they develop.

The book is comprehensive and covers all the major areas of legal ethics, placing special emphasis on how the rules affect legal assistants. The book begins with a chapter on the regulation of attorneys because legal assistants must understand how the legal profession is regulated generally to understand their place in it and the impact that their conduct has on the attorneys who employ them. Chapter 2 contains a brief history of the paralegal career and the efforts made to guide and regulate it. The chapter examines ethical guidelines developed by both bar and paralegal associations, including one of the most important areas of concern for legal assistants, the unauthorized practice of law. Chapter 3 covers this topic, from an introduction to the concept of unauthorized practice to the specific functions that either are prohibited outright to nonlawyers or are on the borderline. Confidentiality, always a critical area, is covered in Chapter 4. In discussing the attorney-client privilege, the work product rule, and the ethics rules regarding confidentiality, the chapter outlines the most common ways that confidentiality is violated and the ways to avoid violating it.

Chapter 5 covers conflicts of interest, an important concern of legal assistants right now because of the changing nature of law practice and paralegals' role in it. This chapter includes an in-depth discussion of how conflicts rules apply to legal assistants, including the use of screens and conflicts checks. Rules regarding legal advertising and solicitation, with up-to-date Supreme Court cases and information on the current uses of marketing, are covered in Chapter 6. Chapter 7 is devoted to financial matters, often the source of ethical problems for legal assistants and lawyers. It offers a thorough discussion of billing fees, statutory fee awards that include compensation for paralegal work, fee-splitting, referral fees, partnerships between attorneys and nonlawyers, and handling client funds. Chapter 8 on competence defines the concept specifically in relation to legal assistants. Special issues confronted by litigation paralegals are covered in Chapter 9. Finally, Chapter 10 examines professionalism and pro bono work.

Each chapter begins with an overview that describes in a few words the main topics of the chapter. The text body of each chapter is divided topically. Key terms are called out in *italics* when first introduced. At the end of each chapter are review questions that test each student's memory and understanding of the material. The discussion questions that follow the review questions may be assigned to students or used for in-class discussion. Some questions are de-

signed to challenge students to apply the concepts and rules to hypothetical fact situations; some call for research; some refer specifically to the cases included at the end of Chapters 1-9. Some of these representative cases demonstrate how the rules introduced in the chapter are applied, specifically to legal assistants whenever possible. Others stand as influential cases in the ethics area that all legal assistants should be familiar with.

Recognizing that all paralegal programs teach ethics, but each in its own way, I have chosen a comprehensive approach so that professors may use the entire book in full courses on legal ethics or use only selective parts in programs that teach ethics in several courses or across the curriculum. I also recognize that certain topics — such as the regulation of legal assistants and nonlawyer practice — are experiencing rapid change. I have chosen not to catalog the many proposals in this volatile area since such information is quickly out of date and is more adequately monitored through other sources.

Finally, I have many people to thank for their support and assistance. The American Association for Paralegal Education, National Association of Legal Assistants, National Federation of Paralegal Associations, Legal Assistant Management Association, and American Bar Association Standing Committee on Legal Assistants gave me valuable advice and counsel. My faculty and staff, friends, family, and colleagues provided help and encouragement whenever I needed it.

Therese A. Cannon

February 1992

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