



Feature

Learning from Others' Mistakes: Legal Staff in Court over Ethical Violations

By Ursula Furi-Perry

To err is human, but errors made by employees of a law firm may be costly.



While attorneys are held to strict ethical guidelines by their respective state bar associations, those working under their supervision are not. Yet serious ethical violations and mistakes by paralegals, legal assistants, and other legal staff are not unheard of; and they're not without consequence either. Such mistakes may warrant tort liability by the firm and

employee, as well as lead to termination of employment and serious harm to the employee's reputation. "People take pride in the work product they turn out," explained Tracy O'Keefe, President-Elect of the International Paralegal Management Association and Director of Paralegal Services at Gardner Carton & Douglas, LLP. "You don't want to [compromise] your ethics by unprofessional behavior."

Consider the following mistakes and ethical breaches; in all of them, legal staff found their way into the courtroom to answer for their actions.

- **Errors made in utmost confidence**

Protecting the attorney-client and attorney work product privileges is perhaps one of the most important ethical considerations for any law firm employee, but one that has been broken intentionally or inadvertently by paralegals of the past. Take, for example, the paralegal who mistakenly included transcripts of a privileged attorney-client conversation as part of an exhibit prepared for trial.¹

Whether it's erroneously faxing strategy memos to opposing counsel, leaving files out in the open, or telling one's spouse the details of a case, legal staff should be just as conscious about client confidentiality as the attorneys who supervise them. "All law offices that employ paralegals should have some ethical-consideration training program, which should be covering what can and cannot go to opposing parties," recommended O'Keefe. Legal staff must understand what's

considered privileged information and take measures not to divulge it.

- **It was a simple, costly mistake**

Reading directions carefully doesn't just make for a conscientious employee; it may also save the firm from a costly error. Consider the paralegal who misread her supervisor's instructions, underbid at a crucial sale on behalf of her client, and ended up causing an error worth \$100,000. Then there's the paralegal who thought she had plenty of time to file an appeal: after the deadline passed, the court ruled the employee's mistake did not constitute excusable neglect, and the client lost out on the appeal.³

It goes without saying that mistakes should be avoided and that legal staff should ask for help when necessary. "Whenever something is questionable, they should be seeking the help of an attorney," said O'Keefe. When innocent errors are made, immediate disclosure is essential. "As soon as you know about it, immediately let the attorneys know," O'Keefe said, noting that when problems are dealt with sooner rather than later, attorney and paralegal both appear more professional and ethical.

- **When clothes come off, the firm (or employee) pays**

The old adage about not mixing business with pleasure may be sound advice after all. Consider the case of the legal assistant whose firm represented the wife in a divorce proceeding, but whose loyalties also lied to the husband—with whom the legal assistant was having an affair⁴. The wife sued the firm when she suspected the legal assistant had provided her ex with strategy information; and the appellate court reversed a dismissal, saying the firm may be liable for the employee's actions under vicarious liability.

"One of the things paralegals should become familiar with as they step into a firm is the firm's policies on sexual conduct



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and sexual harassment," says O'Keefe. Also, legal staff should know whom to seek for guidance in a questionable situation. "It's important for paralegals to know that the same professional conduct rules that apply to attorneys should also apply to [them]," O'Keefe believes. "Paralegal supervisors can absolutely play a key role in training and making them aware of what their options are."

- **Conflicts that cause disqualification**

Attorneys are not alone in creating potential conflicts of interest when moving from one firm to another: paralegals and other legal staff may also be the source for such conflicts. Courts have been reluctant to penalize firms for paralegals' past involvement in cases, with most judges satisfied as long as proper measures are taken by the firm to avoid future contact by the "tainted" paralegal. In some instances, however, conflicts of interest brought about by legal staff have led to law firm disqualification. When a firm hired a paralegal who used to work directly for the opposing counsel who represented the plaintiff, an Ohio court granted the plaintiff's motion to disqualify the defendant's firm.⁵

"It's becoming more common for paralegals to be screened before employment," said O'Keefe. Besides proper screening and the implementation preventive measures for "tainted" legal staff, it's equally essential for legal staff to keep complete and accurate records of the clients with whom they work and from whom they receive confidential information. "The same amount of respect that attorneys have for the attorney-client privilege should be expected of paralegals," O'Keefe advised.

¹ *Georgetown Manor, Inc. v. Ethan Allen, Inc.*, 753 F. Supp. 936 (S.D. Fla, 1991)

² *Wells Fargo Credit Corp. v. Martin*, 605 So. 2d 531 (Fla, 1992)

³ *U.S. v. Hooper*, 43 F. 3d 26 (C. 2, 1994)

⁴ *Logan v. Hyatt Legal Plans, Inc.*, 874 S.W. 2d 548 (Missouri, 1994)

⁵ *Latson v. Blanchard*, 1998 Ohio App. LEXIS 4619

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