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ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Appointed by the Supreme Court of New Jersey

JOINT OPINION

OPINION 720

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

OPINION 46

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

**Paralegals and Non-
Attorney Legal Assistants
Signing Correspondence;
Modifying Opinion 611**

The New Jersey State Bar Association submitted an inquiry to the Advisory Committee on Professional Ethics (ACPE) by forwarding a request of its Paralegal Committee seeking reconsideration of ACPE Opinion 611, 121 *N.J.L.J.* 301 (February 18, 1988). Opinion 611 found that paralegals may not sign correspondence to clients, adverse attorneys, and courts, even when such correspondence is routine and non-substantive. As the inquiry concerns potential unauthorized practice of law, the ACPE requested the assistance of the Committee on the Unauthorized Practice of Law. In this Joint Opinion, the Committees modify Opinion 611 and find that the rules governing attorney ethics are not violated when paralegals sign routine, non-substantive correspondence to clients, adverse attorneys, or courts, provided an attorney is

supervising the paralegal and is aware of the exact nature of the correspondence, the paralegal's identity and non-attorney status is noted, and the name of the responsible attorney is set forth in the correspondence.

Opinion 611 is grounded on concerns about potential unauthorized practice of law and appropriate professional conduct for attorneys. The Opinion found that a paralegal may sign documents on the letterhead of the firm that employs him or her when the document is confined to "the gathering [or dissemination] of factual information and documents including from governmental agencies (other than tribunals)" and the identity and non-lawyer status of the paralegal is set forth. The Committee reasoned that if a paralegal is permitted to sign correspondence to clients, attorneys, or courts, the paralegal may drift into the unauthorized practice of law. Limiting such correspondence to the responsible attorney "avoids the opportunity or temptation for the non-lawyer assistant to step over the line by rendering legal advice, for example in the interpretation of the meaning or effect of legal documents." *Id.*

Moreover, the limitation forces the responsible attorney to "keep abreast of the matter by controlling important correspondence and so performing his essential function as the responsible attorney including his obligation of close supervision of the activities of the legal assistant." *Id.* It "further emphasizes the notion that it is the attorney and not the legal assistant who is the responsible advisor or actor in the matter" and "tends to maintain direct contact between the attorney and his client, the attorney and his adversary, and the attorney and the tribunal so that there can be no question or excuse regarding the origin of or the responsibility for the subject matter of the correspondence." *Id.*

This flat ban on paralegals signing certain broad categories of correspondence is a prophylactic measure that minimizes potential unauthorized practice of law by the paralegal. It also is a rule that probably is violated on a daily basis. Paralegals may regularly send, for

example, a letter or email to a client asking about availability for an independent medical examination. This ministerial scheduling communication would not ordinarily be viewed as the practice of law and would not ordinarily trigger ethics concerns. It is, however, a violation of the current prohibition on all correspondence by a paralegal with a client, is banned by Opinion 611, and is therefore considered "unethical."

Moreover, the current rule myopically focuses on the conduct of the paralegal instead of on the conduct of the attorney charged with supervising the paralegal. When the Supreme Court reviewed whether paralegals may operate independently, outside of a law firm, the Court maintained its gaze on the conduct of the supervising attorney. *In re Opinion No. 24 of the Committee on the Unauthorized Practice of Law*, 128 *N.J.* 114 (1992).

> [T]he important inquiry is whether the paralegal, whether employed or retained, is working directly for the attorney, under that attorney's supervision. Safeguards against the unauthorized practice of law exist through that supervision. . . . [A]n attorney who does not properly supervise a paralegal is in violation of the ethical Rules. Although fulfilling the ethical requirements of *RPC* 5.3 is primarily the attorney's obligation and responsibility, a paralegal is not relieved from an independent obligation to refrain from illegal conduct and to work directly under the supervision of the attorney. A paralegal who recognizes that the attorney is not directly supervising his or her work or that such supervision is illusory . . . must understand that he or she is engaged in the unauthorized practice of law. . . . The key is supervision, and that supervision must occur regardless of whether the paralegal is employed by the attorney or retained by the attorney.
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> [*Id.* at 127.]

In this Joint Opinion, the Committees likewise focus on the responsibility of attorneys to supervise paralegals rather than on the temptations paralegals may face when signing correspondence. If the supervising attorney permits his or her paralegal to sign correspondence to clients, attorneys, or courts, the attorney must be aware of the exact nature of the correspondence and be satisfied that it is non-substantive and does not cross the line into the

unauthorized practice of law. Paralegals also have the responsibility to ensure that their work is directly supervised by the responsible attorney and they are not engaging in the unauthorized practice of law.

The New Jersey State Bar Association Paralegal Committee suggested, in the inquiry, that a paralegal should not be permitted to sign correspondence that provides legal advice, negotiates a settlement or fee agreement, threatens legal action, or can be construed as a legal agreement or pleading. A person signing correspondence of this character clearly is engaging in the practice of law and such correspondence must be signed only by an attorney.

The Committee on Unauthorized Practice of Law has investigated grievances involving paralegals (and out-of-state attorneys) who signed correspondence seeking to negotiate a settlement, threatening legal action to collect a debt, taking positions on landlord-tenant issues such as eviction, drafting a contract of sale or other legal document, and soliciting legal business. The Committee has also investigated grievances where the paralegal has signed and even filed pleadings in immigration, divorce, and expungement actions. Each of these matters comprised the unauthorized practice of law. Signing correspondence that interprets the meaning or effect of legal documents also is the practice of law. Under no circumstances may a paralegal sign such documents or correspondence, even if the paralegal is directly supervised by an attorney.

At the other end of the spectrum is routine, non-substantive correspondence, such as letters (or emails) to a client inquiring about availability for a meeting and letters to adverse attorneys merely transmitting an underlying document such as a deposition transcript. Such correspondence does not reflect the practice of law.

Much correspondence to clients and adverse attorneys will fall between these two poles. It can be difficult to determine whether a communication provides legal advice. The supervising

attorney must be aware of the exact nature of the correspondence and make the determination whether it is routine and non-substantive and, therefore, may be signed by the paralegal.

The Committees note that correspondence sent by electronic means, such as by email, is governed by the same principles as correspondence sent in paper form. The person who is considered to have "signed" an email generally is viewed as the person who "sends" the email. Hence, an email interpreting the meaning or effect of a legal document, for example, must be sent from the email account of the attorney and not the paralegal.

The Committees agree with the suggestion of the New Jersey State Bar Association Paralegal Committee that all correspondence to clients and adverse attorneys signed by, or sent from the email account of, a paralegal must include the name of the responsible attorney as the person to whom questions or comments should be directed. The Committees add that such correspondence must also reflect the identity and non-attorney status of the paralegal.

The prohibition in Opinion 611 also was supported by concerns about appropriate professional conduct and the erosion of professionalism that may occur when busy attorneys overly rely on non-lawyer assistants. The Opinion noted that prohibiting paralegals from signing such correspondence requires the responsible attorney to control important correspondence, emphasizes that the attorney, not the paralegal, is the responsible advisor, and maintains direct contact between the attorney and his or her client, adversary, and courts. The Committees agree that these are substantial concerns.

Correspondence to courts generally should be signed by attorneys and not paralegals. Similarly, electronic communications to a court should be submitted by the attorney, not the paralegal. It is the better practice for attorneys to sign *all* correspondence, especially correspondence to clients, adversaries, and courts but, with regard to routine, non-substantive

correspondence, the Committees recognize that it is more a matter of style and respect than of ethics.

The caliber, training, and professionalism of paralegals have risen significantly but attorneys still have the ethical responsibility to directly supervise their paralegals and the professional duty to maintain appropriate contact with clients, adverse attorneys, and courts. Opinion 611 is hereby modified. The Committees find that the *Rules of Professional Conduct* do not prohibit paralegals from signing routine, non-substantive correspondence to clients, adverse attorneys, and courts, provided supervising attorneys are aware of the exact nature of the correspondence. As noted above, the correspondence must reflect the identity and non-attorney status of the paralegal and include the name of the responsible attorney in the matter.