



PASSION OF THE PARALEGAL

“A successful paralegal practice is less about making money and more about making a *difference*.”

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Sean Carter is the co-founder of *MESA CLE*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

INTRODUCTION

For most, the initial decision to become a legal professional was not based on financial considerations. Many of us were inspired by heroic figures in literature and movies, such as Atticus Finch of *To Kill a Mockingbird* and Erin Brockovich. Others were inspired to enter into the profession through personal contact with a parent, uncle, grandmother or family friend who exemplified the best attributes of the profession. And still others were inspired by great figures, past and present, who have belonged to our noble profession, such as Abraham Lincoln, Clarence Darrow, Thurgood Marshall, Sandra Day O'Connor, etc.

Yet, over time, the day-to-day responsibilities of law practice can cause even the best-intentioned person to view being a paralegal as more of a vocation than a calling. So how do we keep our focus on using the law to make a difference (as opposed to just making money)? Ironically, by turning to our ethical canon. Through strict adherence to both the letter and the spirit of the NALA Code of Ethics and Professional Responsibility and the California Rules of Professional Conduct, we not only preserve our privilege of making a living as legal professionals but we preserve those lofty ideals that motivated many of us to enter the profession in the first place. In that way, we can cash in, but not sell out our calling to serve the best interests of our clients, our profession, and society at large.

And, in doing so, each of us might actually earn something far more valuable than money – a realization of our higher “self.” And ironically, our ethical canons push us towards that realization through its primary dictates:

- S – Selfless service to the proper administration of justice
- E – Excellence in skill and character
- L – Loyalty to our clients’ best interests
- F – Fidelity to the law and the profession

Selfless Service to the Proper Administration of Justice

Selfless service to the proper administration of justice requires a certain reverence and respect for the rule of law and our ethical obligations thereunder. In other words, it means that we put the process of the law ahead of our individual desires. In a practical sense, it means that we follow the rules of evidence and procedure, even when it's not in our (or even the client's) best interest to do so. As a result, we don't attempt to deceive the court or suppress evidence [See Rules 5-200 & 5-220] or otherwise subvert the judicial process [See Rule 5-300]. Nor do we attempt to obtain an unfair advantage by making improper threats [See Rule 5-100], attempting to bypass opposing counsel in communications with the other party [See Rule 2-100], or simply bringing baseless actions in the first place [See Rule 3-200].

National Association of Legal Assistants Code of Ethics and Professional Responsibility

Canon 10 A paralegal's conduct is guided by bar associations' codes of professional responsibility and rules of professional conduct.

California Rules of Professional Conduct

Rule 2-100 Communication With a Represented Party

(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

Rule 3-200 Prohibited Objectives of Employment

A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is:

- (A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
- (B) To present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law.

Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges

- (A) A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

Rule 5-200 Trial Conduct

In presenting a matter to a tribunal, a member:

- (A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;
- (B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law;
- (C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;
- (D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and
- (E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness.

Rule 5-220 Suppression of Evidence

A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce.

Rule 5-300 Contact With Officials

- (A) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official, or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit a member from contributing to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to such contributions.

Rule 5-310 Prohibited Contact With Witnesses

A member shall not:

- (A) Advise or directly or indirectly cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein.

- (B) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a member may advance, guarantee, or acquiesce in the payment of:
- (1) Expenses reasonably incurred by a witness in attending or testifying.
 - (2) Reasonable compensation to a witness for loss of time in attending or testifying.
 - (3) A reasonable fee for the professional services of an expert witness.

Excellence in Skill and Character

A legal professional is first and foremost defined by her professional acumen and skill. As a result, a legal professional must strive to be knowledgeable and diligent in the performance of duties to the client [See Canon 6 and Rule 3-110]. And part of competence in this regard is maintaining (1) adequate physical, mental and emotional health for this task and (2) proficiency through continuing legal education and study. Furthermore, a legal professional should act only in accordance with their prescribed duties [See Canons 4 & 5].

Finally, a legal professional must have integrity. Others must be able to depend that her word is her bond. As a result, a legal professional must be truthful in all dealings with others, even when it comes to advertising and marketing [See Rule 1-400]. And, of course, a prerequisite to performing this duty is to fully communicate with others in the first place, particularly clients [See Rule 3-500].

National Association of Legal Assistants Code of Ethics and Professional Responsibility

- Canon 4** A paralegal must use discretion and professional judgment commensurate with knowledge and experience but must not render independent legal judgment in place of an attorney. The services of an attorney are essential in the public interest whenever such legal judgment is required.
- Canon 5** A paralegal must disclose his or her status as a paralegal at the outset of any professional relationship with a client, attorney, a court or administrative agency or personnel thereof, or a member of the general public. A paralegal must act prudently in determining the extent to which a client may be assisted without the presence of an attorney.
- Canon 6** A paralegal must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal service.

California Rules of Professional Conduct

Rule 1-400 Advertising and Solicitation

- (D) A communication or a solicitation (as defined herein) shall not:
- (1) Contain any untrue statement; or
 - (2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or
 - (3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public; or
 - (4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or
 - (5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.
 - (6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.

Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice.

- (B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race , national origin, sex, sexual orientation, religion, age or disability in:
- (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or
 - (2) accepting or terminating representation of any client.

Rule 3-110 Failing to Act Competently

- (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
- (B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

- (C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

Rule 3-500 Communication

A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

Loyalty to the Client's Best Interests

One of the hallmarks of professional employment is putting the client's interests first. Part of this obligation is avoiding conflicts of interest with the client [See Canon 8 and Rules 3-120, 3-300, 3-310 & 3-320]. Another part of this obligation entails using restraint in the incurrence of expenses on behalf of the client, particularly legal fees [See Rules 4-100, 4-200 & 4-400]. Finally, legal professionals must protect client confidentiality [See Canon 7 and Rule 3-100].

National Association of Legal Assistants Code of Ethics and Professional Responsibility

- Canon 7** A paralegal must protect the confidences of a client and must not violate any rule or statute now in effect or hereafter enacted controlling the doctrine of privileged communications between a client and an attorney.
- Canon 8** A paralegal must disclose to his or her employer or prospective employer any pre-existing client or personal relationship that may conflict with the interests of the employer or prospective employer and/or their clients.

California Rules of Professional Conduct

Rule 3-100 Confidential Information of a Client

- (A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

Rule 3-120 Sexual Relations With Client

- (B) A member shall not:
- (1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; or
 - (2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or
 - (3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110.

Rule 3-300 Avoiding Interests Adverse to a Client

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
- (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

Rule 3-310 Avoiding the Representation of Adverse Interests

- (B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:
 - (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
 - (2) The member knows or reasonably should know that:
 - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
 - (b) the previous relationship would substantially affect the member's representation; or
 - (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
 - (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.
- (C) A member shall not, without the informed written consent of each client:
 - (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.
- (D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.
- (E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Rule 3-320 Relationship With Other Party's Lawyer

A member shall not represent a client in a matter in which another party's lawyer is a spouse, parent, child, or sibling of the member, lives with the member, is a client of the member, or has an intimate personal relationship with the member, unless the member informs the client in writing of the relationship.

Rule 4-100 Preserving Identity of Funds and Property of a Client

- (A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction....
- (B) A member shall:
 - (1) Promptly notify a client of the receipt of the client's funds, securities, or other properties.
 - (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
 - (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.
 - (4) Promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.

Rule 4-200 Fees for Legal Services

- (A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

Rule 4-400 Gifts From Client

A member shall not induce a client to make a substantial gift, including a testamentary gift, to the member or to the member's parent, child, sibling, or spouse, except where the client is related to the member.

Fidelity to the Law and the Profession

The word “legal” is a key component of the term legal professional. As a result, we have an obligation to follow the law [See §§6101 & 6106]. This obligation is particularly acute as it pertains to avoiding the unauthorized practice of law [See Canons 1-3 and Rules 1-311 & 1-300]. And finally, legal professionals must take extra care to not violate our ethical obligations, or encourage others to do so in our place [See Canons 9 & 10 and Rule 3-210].

National Association of Legal Assistants Code of Ethics and Professional Responsibility

- Canon 1** A paralegal must not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.
- Canon 2** A paralegal may perform any task which is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client, maintains a direct relationship with the client, and assumes professional responsibility for the work product.
- Canon 3** A paralegal must not: (a) engage in, encourage, or contribute to any act which could constitute the unauthorized practice of law; and (b) establish attorney-client relationships, set fees, give legal opinions or advice or represent a client before a court or agency unless so authorized by that court or agency; and (c) engage in conduct or take any action which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.
- Canon 9** A paralegal must do all other things incidental, necessary, or expedient for the attainment of the ethics and responsibilities as defined by statute or rule of court.
- Canon 10** A paralegal's conduct is guided by bar associations' codes of professional responsibility and rules of professional conduct.

California Rules of Professional Conduct

Rule 1-120 Assisting, Soliciting, or Inducing Violations

A member shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act.

Rule 1-311 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member

- (B) A member shall not employ, associate professionally with, or aid a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the member's client:
- (1) Render legal consultation or advice to the client;
 - (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
 - (3) Appear as a representative of the client at a deposition or other discovery matter;
 - (4) Negotiate or transact any matter for or on behalf of the client with third parties;
 - (5) Receive, disburse or otherwise handle the client's funds; or
 - (6) Engage in activities which constitute the practice of law.
- (C) A member may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive member to perform research, drafting or clerical activities, including but not limited to:
- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
 - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
 - (3) Accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active member who will appear as the representative of the client.

Rule 1-300 Unauthorized practice of Law

- (A) A member shall not aid any person or entity in the unauthorized practice of law.
- (B) A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

Rule 3-210 Advising the Violation of Law

A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

California Business and Professions Code

§6101. Conviction of Crimes Involving Moral Turpitude

- (a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

§6106. Moral Turpitude, Dishonesty or Corruption Irrespective of Criminal Conviction

The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor.