



# Paralegal Ethics 2015

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Practice Round

The background of the slide features a dark grey chalkboard with several hand-drawn lightbulbs in white and yellow. One lightbulb in the upper right is illuminated with yellow rays. A thick yellow curved line arches over the title.

# Prep Question #1

Your lawyer is suing a large corporation. He asks you to FB-friend an executive at the company who you do not know in order to access that person's Facebook information. Should you?



# Prep Answer #1

No, you cannot make ex parte contact with an opposing party.

See Rule 4-4.2; 4.3; San Diego Bar 2011-2



Let's Play!

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# Question #1

You often check if witnesses and jurors have public Facebook accounts.

Your lawyer now asks you to research jurors' LinkedIn profiles; you have a LinkedIn account which you rarely use. You log in to see the jurors' LinkedIn profiles. Any ethical concern?

# Answer #1

Yes, likely there is a concern.

If LinkedIn (or any social media site) would notify the person that you looked at his/her page, this “might run afoul” of the ethic rules against direct communication with jurors.

Facebook and Twitter do not notify people that you have searched for them (at least currently).

Unless you change your LinkedIn settings, people can see that you’ve looked at their LinkedIn profile.

NY City Bar Opinion 2012-2; see also FI Rule 4-3.5(d)(1)-(2).





The background is dark with several lightbulbs, some of which are glowing. A large, bright yellow arc curves across the top of the slide, framing the title.

## Question #2

You work for plaintiff's counsel. Your lawyer won a case in arbitration. Defendant's counsel moved for trial *de novo*.

Defendant himself sent you an email saying that he, as the party, did not want trial and asked if you might put in a good word with your lawyer to bring this case to an end. He said his lawyer and insurance company wanted to continue litigating.

What should you do?



## Answer #2

You cannot communicate directly with a represented party.

Cease communication, advise opposing counsel, and/or inform the court.

*Engstrom v. Rebecca Goodman et al.* (Wash. 2012) (Washington State's rule is equivalent to Fl. Rule 4.2).

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## Question #3

Your lawyer asks you to insert a more recent date on her client's HIPAA release so that the release will be accepted by treating doctors. The client lives out of town and is difficult to contact and get documents.

Can you proceed?



## Answer #3

No. While the firm represents the client, neither you nor the law firm can waive (or extend waiver) of the client's privacy rights without authority. And you are improperly altering a signed / dated document (misleading).

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## Question #4

You take a statement from a witness who tells you that his cousin has additional information but the cousin does not want to get involved.

You prepare a memo to your attorney which explains everything.

The lawyer removes that one sentence and gives it to opposing counsel, claiming the one line is work product.  
What should you do?



## Answer #4

Nothing. Your witness statement memo is work product. The omitted part was non-waived work product and could be properly withheld.

*It is conceivable that a court might order complete production but that is not an ethical issue.*

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## Question #5

You are asked to do the initial interview with an injured client who wants to sue the other driver. You take a break and go to your lawyer's office to explain that this is a good case. She sends you back to the conference room with a contingency contract and asks you to sign the person up.

Can you proceed?



## Answer #5

Yes. There is no explicit requirement that the lawyer explain the contingency contract before the client reviews and signs.

The Bar states that lawyers should be “reasonably available” for questions. In this scenario, the client has not asked you any questions nor solicited legal advice. You were just asked to deliver the form contract to the client.

Rule 4-1.5; *see also* A Consumer Guide to Clients’ Rights pamphlet



# Question #6

A legal ethics question arises and you remember that you downloaded Christopher's legal ethics iPhone app. You look up the rule on the app and act accordingly. You acted ethically, right?



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## Lawyer Christopher Hopkins' iPhone app references legal rules on the go

By John Nelander  
Special to the Daily News

Technology is changing the practice of law like every other profession. So Palm Beach attorney Christopher Hopkins reached into cyberspace and came up with a new way to give lawyers instant access to information on professional codes of ethics.

His iPhone application — downloadable free at iTunes — lets judges, attorneys, paralegals and law students punch up state and local rules of professional conduct whether they're in court or having lunch at the corner deli.

The application features Southern District guidelines and local bar rules for Palm Beach, Broward, Miami-Dade and Duval counties. And since Hopkins updates it regularly, he'd like to eventually add local bar rules from other parts of the state.

"You used to see a lot of lawyers using BlackBerries at the courthouse, but now it's moved more toward iPhones," Hopkins says. "You can get e-mails and read documents very easily."

"And with the popularity of iPhone apps, having access to rules of civil procedure, rules of evidence, those types of things, right on your phone — as opposed to walking around with a book — makes a lot of sense. The first thing that came to mind was doing something that had the nice ring of professional conduct."



## Answer #6

Nope. That app stopped being updated in 2011 and the ethics rules have been updated.

Beware researching rules on the internet or on apps unless you are certain they are up-to-date. Stick with the Florida Bar site.

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## Question #7

You want to take work home but the PDF documents are too big to attach to an email and the firm computers do not allow you to access a USB drive.

You use a website that allows you to upload files and it will email you a link which you send to yourself to download at home. Any ethical issue?



## Answer #7

Yes. You must use reasonable precautions to ensure the confidentiality of client information and that this website service provider maintains adequate security.

Does the site scan the files for marketing purposes?

What is the site's deletion policy?

*Also you may be violating your firm's computer / internet policy.*

See Opinion 12-3; see also 10-2 and 7-2

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## Question #8

Your firm won a big case. They are putting together a Motion for Fees.

They want you to sign an affidavit as to your paralegal time and hourly rate which appears accurate.

Before signing your affidavit, you notice that the Motion is seeking compensation for your time under the heading, "Attorney Time."

Can you proceed?



## Answer #8

Yes. Paralegal time is considered “attorney time” under Chapter 57. It should be designated as paralegal time just so its not misleading.

*Demendrano v. Labor Finders of the Treasure Coast* (Fla. 1<sup>st</sup> DCA 2009).

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## Question #9

You are emailing with opposing counsel regarding an issue in the case. Opposing counsel replies and makes reference to a quote from your lawyer which uses foul language.

You tell opposing counsel not to use bad words with you, regardless of who said them.

He says that he was quoting your boss and will not censor himself when it relates to the case.

Is he committing an ethics violation? Are you?



## Answer #9

No, as an isolated issue and one which is presumably relevant to the topic at hand, this is not an ethics issue.

The Oath of Admission was updated in 2011 to include a “civility clause” in written and verbal communications. But this is not likely an oath violation.

*Now, what your lawyer said to opposing counsel might conceivably be a violation.*



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## Question #10

In advance of a big securities trial you've been working on, you get a call from the client who is travelling in Vancouver. She is calling from a relative's house where she is staying. Your lawyer is not available and you routinely handle calls from this client.

The client requests that you email her the most recent draft of a motion which your lawyer is working on as well as some recent reports on the case. Just use her regular work email and she'll get it remotely. She also wants you to take some notes on some strategy questions and ideas she has since it is too long for her to type a long email on her iPad and she wants to get back to her vacation.

Any ethical issues?



# Answer #10

Yes, client confidentiality.

You're working on a **securities** case which typically means government regulators are involved (or watching).

Under the FISA Amendments Act, the **US government can monitor international calls and emails without a warrant or suspicion of wrongdoing**. The 4th Amendment has little to no application outside of the US.

In fact, the government has taken the position that "privacy rights of US persons in international communications are significantly diminished, if not completely eliminated, when those communications have been transmitted from non-US persons outside of the United States."

The client is using her relatives' phone and wifi. The US government is going to assume she is a non-US person outside of the country.

Moreover, you have no idea if other countries are listening.

Thanks for Playing!



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