

LEGAL ETHICS INQUIRY 76-7

WEST VIRGINIA STATE BAR JOURNAL

Spring, 1977

Volume 3, Number 1

Reference is made to your letter in which you inquire as to the use of paralegal personnel for criminal investigative work. The Code of Professional Responsibility as adopted by the Supreme Court of Appeals does not specifically define or limit the permitted activities of nonlegal personnel. EC 3-6 of the Code of Professional Responsibility provides as follows:

A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal services more economically and efficiently.

While the Code of Professional Responsibility does not specifically define or limit the permitted activities of nonlegal personnel, this Committee feels that the following guidelines should be followed. The delegation of tasks required in performance of legal services to his clients may be delegated by an attorney to clerks, secretaries, and other non-lawyer personnel whom he employs. Such delegation which extends beyond duties merely ministerial in nature would be proper under the following circumstances:

(1) If it is for the purposes of (a) investigation of a factual situation or consultation with a lawyer's client for the

purpose, only, of obtaining factual information; or (b) legal research; or (c) preparation or selection of legal instruments and documents, provided, however, that in each such situation the delegated work will assist the employer-lawyer in carrying the matter to a completed service either through the lawyer's personal examination and approval thereof or by other additional participation by the lawyer. However, the delegated work must be such as it loses its separate identity and becomes the service or is merged in the service of the lawyer.

(2) The lawyer must maintain an initial continuing and direct relationship with his client, directly supervise the delegated work, and assume complete professional responsibility for the work product. This requirement must not be ignored by a lawyer or given superficial recognition.

(3) The lawyer shall not permit employed lay persons to counsel the lawyer's clients about legal matters, appear in any court or administrative proceeding, or otherwise engage in the unauthorized practice of law. A lawyer must recognize that he should be present when a client executes a will, contract, deed or other legal document to assure that it is executed in compliance with the law and to answer the client's questions. A lawyer has a continuing affirmative duty to preserve and enhance the public's confidence in the legal profession. This is best accomplished when the client has direct access to the lawyer for the purpose of asking for and receiving legal advice prior to or at the time the client takes any contemplated legal action.

(4) When communicating with persons outside the law office, including other lawyers, the paralegal must disclose his status as such. The disclosure must be made in a way that avoids confusion. With respect to oral communications, disclosure should be made at the outset of the conversation. It is permissible for lay office personnel to sign letters on the firm's stationery as long as the non-lawyer's status is clearly indicated.

(5) The supervising lawyer must exercise care to insure that his lay person employees comply with all applicable provisions of the Code of Professional Responsibility. This includes the obligation referred to in DR 4-101(D) and EC 4-2 to see that such employees preserve and refrain from using the confidences and secrets of the lawyer's clients.

You have asked specifically whether your paralegal employee is limited to seeing prisoners during reasonable working hours. Prisoners may be interviewed by a paralegal at any time that they might be interviewed by the lawyer himself. The county sheriff or jailer may impose some restrictions or limitations upon the interviewing of prisoners. However, the Committee knows of no reason to otherwise limit the time when nonlegal personnel may conduct investigative work.