



Barreau  
de l'Ontario

# Paralegal Professional Conduct Guidelines

*Adopted by Convocation October 2008*

*Amendments based on the Federation of Law Societies Model Code of Professional Conduct effective October 1, 2014*

*Amendments current to February 27, 2020*

The *Paralegal Professional Conduct Guidelines* have been created to assist paralegals with the interpretation and application of the *Paralegal Rules of Conduct*.

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## INTRODUCTION TO THE PARALEGAL PROFESSIONAL CONDUCT GUIDELINES

### Purpose

1. Under the *Law Society Act* (“*Act*”), the Law Society has the right to make rules and regulations to govern the professional conduct of lawyers and paralegals.  
The *Act* also gives the Society the ability to discipline those lawyers or paralegals who do not adhere to the rules. Regulations include the By-Laws under the *Act* and the *Paralegal Rules of Conduct* (“*Rules*”), which were adopted to govern the professional conduct of licensed paralegals.
2. The *Paralegal Professional Conduct Guidelines* (“*Guidelines*”) have been created to assist paralegals with the interpretation and application of the *Paralegal Rules of Conduct*. The *Guidelines* should be considered along with the *Rules*, the *Act*, the By-Laws made under the *Act* and any other relevant case law or legislation. Neither the *Rules* nor the *Guidelines* can cover every situation; they should be interpreted and applied with common sense and in a manner consistent with the public interest and the integrity of the profession. It is expected that a paralegal will exercise his or her professional judgment in interpreting the *Guidelines*, keeping in mind the paralegal’s obligations to the client, the court or tribunal and the Law Society.

### Accessing the Guidelines

3. The Guidelines are available in electronic form. They are cross-referenced to the *Rules* and are linked directly to the *Rules* on the Law Society's website.

## Terminology

4. For the purposes of these Guidelines, the word
- “Act” refers to the *Law Society Act*,
  - “Guidelines” refers to the *Paralegal Professional Conduct Guidelines*,
  - “Rules” refers to the *Paralegal Rules of Conduct*,
  - “paralegal” refers to paralegals licensed to provide legal services by the Law Society of Ontario, and
  - “lawyer” refers to lawyers licensed to practise law by the Law Society of Ontario.
5. The following may be of assistance in interpreting the Guidelines:
- The terms “shall” or “must” are used in those instances where compliance is mandated by either the By-Laws made pursuant to the *Act* or the *Rules*.
  - The term “should” and the phrase “should consider” indicate a recommendation. These terms refer to those practices or policies that are considered by the Law Society to be a reasonable goal for maintaining or enhancing professional conduct.
  - The term “may” and the phrase “may consider” convey discretion. After considering suggested policies or procedures preceded by “may” or “may consider”, a paralegal has discretion whether or not to follow the suggestions, depending upon the paralegal's particular circumstances, areas of professional business or clientele, or the circumstances of a particular client or matter.

## GUIDELINE 1: PROFESSIONALISM – INTEGRITY & CIVILITY

### General

#### **Rule Reference: Rule 2.01(1) & (2)**

1. A paralegal should inspire the respect, confidence and trust of clients and the community.
2. Public confidence in the administration of justice and in the paralegal profession may be eroded by a paralegal's unprofessional conduct. A paralegal's conduct should

reflect favourably on the legal professions, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

3. A paralegal has special responsibilities by virtue of the privileges afforded the paralegal profession and the important role it plays in a free and democratic society and in the administration of justice. This includes a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals and to respect human rights laws in force in Ontario.

## Integrity and Civility

### Rule Reference: Rule 2.01(1) & (2)

4. Acting with **integrity** means that a paralegal will be honest and will act with high ethical and moral principles. **Integrity** is the fundamental quality of any person who seeks to provide legal services. If integrity is lacking, the paralegal's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the paralegal may be.
5. Acting with **civility** means that a paralegal will communicate politely and respectfully and act in a manner that does not cause unnecessary difficulty or harm to another.
6. The obligation to show courtesy and good faith extends to clients, opposing parties, other paralegals and lawyers, support staff, adjudicators, court and tribunal officers and staff and representatives of the Law Society. This obligation applies regardless of where the paralegal may be appearing or at what stage of the process the matter may be.

## GUIDELINE 2: OUTSIDE INTERESTS

### General

#### Rule Reference: Rule 2.01(4) & (5)

1. The term "outside interest" covers the widest range of activities. It includes activities that may overlap or be connected with provision of legal services, for example, acting as a director of a corporation or writing on legal subjects, as well as activities less connected such as, for example, a career in business, politics, broadcasting or the performing arts.

2. When participating in community activities, a paralegal should be mindful of the possible perception that the paralegal is providing legal services and a paralegal-client relationship has been established. A paralegal should not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the paralegal is acting, or that would give rise to a conflict of interest or duty to a client.
3. It is the paralegal's responsibility to consider whether the outside interest may impair his or her ability to act in the best interest of his or her client(s). If so, the paralegal must withdraw, either from representation of the client or from the outside interest.
4. When acting in another role, the paralegal must continue to fulfill his or her obligations under the *Rules*, for example, to
  - act with integrity,
  - be civil and courteous,
  - be competent in providing legal services,
  - avoid conflicts of interest, and
  - maintain confidentiality.

## Acting as a Mediator

### Rule Reference: Rule 2.01(6)

5. A mediator works with disputing parties to help them resolve their dispute. A paralegal acting as a mediator is not providing legal services to either party – the relationship is not a paralegal-client relationship. This does not preclude the mediator from giving information on the consequences if the mediation fails.
6. When acting as a mediator, the paralegal should guard against potential conflicts of interest. For example, neither the paralegal nor the paralegal's partners or associates should provide legal services to the parties. Further, a paralegal-mediator should suggest and encourage the parties to seek the advice of a qualified paralegal or a lawyer before and during the mediation process if they have not already done so. Refer to Guideline 9: Conflicts of Interest for more information on how a paralegal's outside interests may conflict with the paralegal's duty to his or her clients.

## GUIDELINE 3: UNDERTAKINGS AND TRUST CONDITIONS

### General

**Rule Reference: Rule 2.02**

1. Money and property change hands in most legal transactions. A paralegal may be required to hold documents and property in trust until the performance of particular conditions. These conditions are called **trust conditions**. Promises to carry out specific tasks and/or fulfill specific conditions are called **undertakings**. Rule 2.02 sets out a paralegal's obligations in relation to undertakings and trust conditions.

**Undertakings****Rule Reference: Rule 2.02(1), (2) & (3)**

2. An undertaking is a personal promise. A paralegal could, for example, give an undertaking to complete a task or provide a document. Fulfilling that promise is the responsibility of the paralegal giving the undertaking.
3. The person who accepts the paralegal's undertaking is entitled to expect the paralegal to carry it out personally. Using the phrase "on behalf of my client," even in the undertaking itself, may not release the paralegal from the obligation to honour the undertaking. If a paralegal does not intend to take personal responsibility, this should be clearly outlined in the written undertaking. In those circumstances, it may only be possible for the paralegal to personally undertake to make "best efforts."
4. A court or a tribunal may enforce an undertaking. The paralegal may be brought before a court or tribunal to explain why the undertaking was not fulfilled. The court or tribunal may order the paralegal to take steps to fulfill the undertaking and/or pay damages caused by the failure to fulfill the undertaking.
5. To avoid misunderstandings and miscommunication, a paralegal should remember the following points about undertakings. A paralegal
  - should ensure that the wording of the undertaking is clear. If a paralegal is the recipient of an undertaking given by another paralegal or a lawyer, the paralegal should ensure that the wording is clear and consistent with his or her understanding of the undertaking. The paralegal should contact the other paralegal or lawyer to clarify the issue as soon as possible if this is not the case.
  - should consider specifying a deadline for fulfilling the undertaking.
  - should ensure that the undertaking provides for contingencies (e.g. if the obligations in the undertaking rely on certain events occurring, the paralegal should indicate what will happen if these events do not occur).

- should confirm whether or not the individual providing the undertaking is a paralegal or a lawyer.

## Trust Conditions

### Rule Reference: Rule 2.02(4)

6. Once a trust condition is accepted, it is binding upon a paralegal, whether imposed by another legal practitioner or by a lay person.
7. Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed and accepted in writing. Trust conditions may be varied with the consent of the person imposing them, and the variation should be confirmed in writing,
8. A paralegal should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a paralegal accepts property subject to trust conditions, the paralegal must fully comply with such conditions, even if the conditions subsequently appear unreasonable.
9. A paralegal may seek to impose trust conditions upon a non-licensee, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law.

## GUIDELINE 4: HARASSMENT AND DISCRIMINATION

### The Human Rights Code

#### Rule Reference: Rule 2.03

1. A paralegal's obligations regarding harassment and discrimination are outlined in the *Rules*, the *Human Rights Code* and related case law.
2. The *Human Rights Code* gives everyone equal rights and opportunities without discrimination relating to matters such as employment, housing and services. The purpose of the Code is to prevent discrimination or harassment on the grounds of
  - race or colour,
  - citizenship, ancestry, place of origin or ethnic origin,
  - creed,
  - sex (including pregnancy),
  - sexual orientation,
  - age (means an age that is 18 or more),

- record of offences (in the context of employment only),
  - marital or family status,
  - disability,
  - gender identity or gender expression or
  - the receipt of public assistance (in the context of housing only).
3. More information about obligations under the *Human Rights Code* may be found at <http://www.ohrc.on.ca/>.

## Discrimination

### Rule Reference: Rule 2.03(4) & (5)

4. **Discrimination** means treating another person in the context, for example, of employment, services or housing, differently and less than others, because of any of the Code's prohibited grounds.
5. A paralegal should review and become familiar with human rights laws to ensure that the paralegal is meeting his or her legal and ethical obligations to others.

## Harassment

### Rule Reference: Rule 2.03(3)

6. **Harassment** is a form of discrimination. Harassment means vexatious comments or actions that are unwelcome to the person receiving the comments or actions, or comments or actions that ought reasonably be known to be unwelcome. Generally speaking, harassment is a "course of conduct" or a pattern of behaviour where more than one incident has occurred. Even one incident, however, may constitute harassment if the incident is serious in nature.
7. **Sexual harassment** means an incident or series of incidents involving unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when one or more of the following circumstances are present:
- such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to the recipient(s) of the conduct,
  - submission to such conduct is made implicitly or explicitly a condition for the provision of professional services,
  - submission to such conduct is made implicitly or explicitly a condition of employment,



- submission to or rejection of such conduct affects the paralegal's employment decisions regarding his or her employee (which may include assigning file work to the employee, matters of promotion, raise in salary, job security, and employee benefits, among other things), or
- such conduct has the purpose or the effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.

8. Examples of behaviour considered as harassment include, but are not limited to

- sexist jokes causing embarrassment or offence,
- the display of offensive material, such as racial graffiti,
- the use of sexually degrading words to describe a person,
- the use of derogatory or degrading remarks directed at one's sex or one's sexual orientation,
- the use of sexually suggestive or obscene comments or gestures,
- unwelcome comments or inquiries about one's sex life,
- repeated racial slurs directed at the language or accent of a particular group,
- unwelcome sexual flirtations, advances or propositions,
- leering,
- persistent unwanted contact or attention after the end of a consensual relationship,
- requests for sexual favours,
- unwanted touching,
- verbal abuse or threats, or
- sexual assault.

## Employment Practices

### Rule Reference: Rule 2.03(7)

9. Paralegals who employ one or more workers or who contract for the services of one or more workers are also required to comply with workplace violence and harassment provisions in the *Occupational Health and Safety Act* ("OHSA"). Under the OHSA, employers must prepare written workplace violence and workplace harassment policies and must review those policies as often as necessary, but at least annually. Paralegals who employ six or more workers must post their written policies at a conspicuous place in the workplace.

10. The OHSA requires that employers assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, and then develop and maintain a program to implement their workplace violence policy. That program must set out how the employer will investigate and deal with incidents or complaints of workplace violence, and must include measures and procedures to control any risks identified in the assessment, for summoning immediate assistance when workplace violence occurs or is likely to occur, and for workers to report incidents of workplace violence to the employer or supervisor.
  11. Employers must also develop a program to implement the workplace harassment policy, which must include measures and procedures for workers to report incidents of workplace harassment to the employer or their supervisor, or to another person if the employer or supervisor is the alleged harasser. The program must also set out:
    - a. how incidents or complaints of workplace harassment will be investigated and dealt with;
    - b. how information obtained about an incident or complaint, including identifying information about any individuals involved, will not be disclosed unless necessary for the investigation or for taking corrective action with respect to the incident or complaint, or is otherwise required by law; and
    - c. how a worker who has allegedly experienced workplace harassment and the alleged harasser will be informed of the results of the investigation or the results of the investigation and of any corrective action taken as a result of the investigation.
9. The OHSA also provides that an inspector may order, at the employer's expense, a third party investigation into allegations of workplace harassment.

## **Promoting Equity and Diversity**

13. The Law Society's Equity Initiatives department has developed a series of best practices and model policies to guide paralegals and lawyers in promoting equity and diversity in all areas of their professional business. All paralegals should consider adopting model policies to assist them in meeting their legal and professional conduct responsibilities. Model policies cover practices relating to employment and the provision of services to clients and include
  - preventing and responding to workplace harassment and discrimination,
  - promoting equity in the workplace,

- parental and pregnancy leaves and benefits,
  - accommodation in the workplace, flexible work arrangements, and
  - issues relating to creed and religious beliefs, to gender and sexual orientation, and to individuals with disabilities.
14. Equity Initiatives has also developed a professional development program to design and deliver education and training to legal service providers regarding these equity and diversity issues. A paralegal may contact the Law Society to discuss available training sessions, which may be offered as seminars, workshops or informal meetings. Full information regarding these initiatives is available on the [Equity section](#) of the Law Society website.

## Discrimination and Harassment Counsel

15. The Law Society provides the services of ***Discrimination and Harassment Counsel*** to anyone who may have experienced discrimination by a paralegal or a lawyer, or within a paralegal or lawyer's professional business. This service is funded by the Law Society but is completely independent of the Law Society. The service is free to the Ontario public, including paralegals and lawyers, and is strictly confidential.
16. The Discrimination and Harassment Counsel can provide advice and support and will review options with the individual using the service, which may include
- filing a complaint with the Law Society,
  - filing a complaint with the Ontario Human Rights Commission, and
  - allowing the Discrimination and Harassment Counsel to mediate a resolution if all parties agree.
17. More information is available at [www.dhcounsel.on.ca/](http://www.dhcounsel.on.ca/).

## GUIDELINE 5: CLIENTS

### General

#### Rule Reference: Rule 1.02, Rule 3

1. One of the most important duties of a paralegal is the duty of service to his or her ***client***. This duty includes obligations to be competent, maintain confidentiality, avoid conflicts of interest and continue to represent the client unless the paralegal has good reason for withdrawing. As a result, it is important for the paralegal to

know exactly who is a client because it is to the client that most of the duties outlined in the *Rules* are owed. **Client** is defined in Rule 1.02.

2. The courts have made a distinction between a solicitor-client relationship and a solicitor-client retainer. This jurisprudence may be used by the courts to define the paralegal-client relationship and paralegal-client retainer in future. The **relationship** is established when the prospective client has his or her first consultation with the lawyer or law firm about retaining services. The relationship may be established without formality. The **retainer** is established once the lawyer agrees (expressly or implied by the lawyer's conduct) to provide legal services. The solicitor-client relationship, with all of its important duties, for example, confidentiality, continues after the retainer is established.
3. In most cases, it is clear who is the **client**. However, there may be situations where it is difficult to determine who is the client from whom the paralegal should be receiving instructions. Problems may develop in situations involving **joint clients**, **authorized representatives**, **organizations**, **"phantom" clients** or **unrepresented opposing parties**.

## Joint Clients

### Rule Reference: Rule 3.04(6) – (12)

4. A **joint retainer** occurs where a paralegal agrees to represent two or more clients in the same matter. As with any retainer, the paralegal should clearly identify the clients to whom legal services will be provided, to ensure that the paralegal fulfills his or her duties to those clients.

## Authorized Representatives

### Rule Reference: Rule 3.02(13) & (14)

### Rule Reference: Rule 3.04(6) – (12)

5. Identifying who is the client and whose instructions should be followed can be difficult where a client representative is involved. The paralegal should consider, determine and clearly outline these matters at the start of the relationship. If a paralegal is acting for both the individual and the individual's authorized representative, the paralegal must comply with the rules regarding joint retainers.

## Acting for an Organization

**Rule Reference: Rule 3.04(6) – (12)**

6. When acting for a client that is an organization, it is in the paralegal's interests to clarify which officers, employees or agents of the organization may properly give instructions on the organization's behalf. The paralegal should confirm with those individuals that the paralegal acts for the organization and not for the individuals who act as its instructing agents.
7. If a paralegal is retained by both the organization and one or more of its officers, employees, or agents in the same matter, the paralegal must comply with Rule 3.04(6) – (12) regarding joint retainers.

**“Phantom” Clients**

8. An individual may believe that he or she is represented by a paralegal, though he or she has not formally retained or hired the paralegal. In these cases, the paralegal may be unaware that the individual considers himself or herself the paralegal's client. These types of individuals are sometimes referred to as “phantom” clients.
9. Phantom clients are problematic because they may in fact be clients or prospective clients to whom the paralegal owes duties, yet they are phantoms that the paralegal does not see. This situation may arise when something the paralegal has done, or a conversation the paralegal has had, has led a person to believe that the paralegal represents that person. One of the common ways in which phantom clients are created is through a person who consults with the paralegal on a matter but does not clearly indicate whether he or she wants to hire the paralegal or pursue the matter.
10. To avoid the problem of phantom clients, it is helpful for the paralegal to clearly identify who is the client, what is the client's matter, and who is to provide instructions. To avoid collecting phantom clients, a paralegal should also clearly communicate his or her role with anyone the paralegal deals with as a paralegal. It may be helpful for the paralegal to
  - confirm in writing whether or not the paralegal will provide legal services for a person who has consulted with him or her and refer to any limitation periods (i.e. retainer agreement, engagement or non-engagement letter),
  - inform third party individuals who attend meetings with a client that the paralegal represents the client only, and not the third party,
  - discourage clients from relaying legal advice to third parties, and

- avoid discussing legal matters outside the working environment or a working relationship.

## GUIDELINE 6: COMPETENCE AND QUALITY OF SERVICE

### General

#### **Rule Reference: Rule 3.01**

#### **Rule Reference: Rule 3.02(1)**

1. A licensed paralegal is held out to be knowledgeable, skilled and capable in his or her permissible area of practice. A client hires a legal service provider because the client does not have the knowledge and skill to deal with the legal system on his or her own. When a client hires a paralegal, the client expects that the paralegal is competent and has the ability to properly deal with the client's case.

2. A paralegal should not undertake a matter without honestly feeling competent to handle it or being able to become competent without undue delay, risk, or expense to the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

### Limited Scope Retainers

3. A paralegal may provide legal services under a limited scope retainer, but must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. Although an agreement for such services does not exempt a paralegal from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The paralegal should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services.

3.1. A paralegal who is asked to provide legal services under a limited scope retainer to a client who has diminished capacity to make decisions should carefully consider and assess in each case if, under the circumstances, it is possible to render those services in a competent manner and in compliance with Rule 3.02(13) and (14).

*[New - September 2015]*

Cross reference Rule 3.02(15)–(17)

## **The Required Standard of Competence**

**Rule Reference: Rule 3.01(1)**

**Rule Reference: Rule 3.01(4)**

### **Knowledge**

**Rule Reference: Rule 3.01(4)(a) & (b)**

4. Competence is founded upon both ethical and legal principles. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the paralegal should keep abreast of developments in all areas of law in which the paralegal provides legal services.

5. The competent paralegal will ensure that only after all necessary information has been gathered, reviewed and considered does he or she advise the client as to the course(s) of action that will most likely meet the client's goals, taking care to ensure that the client is made aware of all foreseeable risks and/or costs associated with the course(s) of action.

6. Unless the client instructs otherwise, the paralegal should investigate the matter in sufficient detail to be able to express an opinion, even where the paralegal has been retained to provide services under a limited scope retainer. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the paralegal should so state in the opinion.

7. A paralegal should only provide his or her legal opinion to a client when it is the legal opinion that the paralegal holds and it is provided to the standard of a competent paralegal.

8. A paralegal should be wary of providing unreasonable or over-confident assurances to the client, especially when the paralegal's employment or retainer may depend upon advising in a particular way.

*[Amended - September 2017]*

## **Client Service and Communication**

**Rule Reference: Rule 3.01(4)(d), (e), (f) & (g)**

9. Client service is an important part of competence. Most of the complaints received by the Law Society relate to client service, such as not communicating with a client, delay, not following client instructions and not doing what the paralegal or lawyer was retained to do.

10. Rule 3.01(4) contains important requirements for paralegal-client communication and service. In addition to those requirements, a paralegal can provide more effective client service by

10.1 keeping the client informed regarding his or her matter, through all relevant stages of the matter and concerning all aspects of the matter,

10.2 managing client expectations by clearly establishing with the client what the paralegal will do or accomplish and at what cost, and

10.3 being clear about what the client expects, both at the beginning of the retainer and throughout the retainer.

11. A paralegal should meet deadlines, unless the paralegal is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a paralegal should be prompt in prosecuting a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

## **Providing Services Under a Limited Scope Retainer**

### **Rule Reference: Rule 3.02(15) – (17)**

12. Where a paralegal provides services under a limited scope retainer to a client, it is very important to clearly identify the scope of the retainer, such as identifying the services that the paralegal will and will not be providing to the client. It is advisable that the limits of the paralegal's retainer be clearly stated in a written retainer agreement.

12.1 For greater clarity and to avoid miscommunications, a paralegal should confirm with the client in writing when the limited scope retainer is complete. Where appropriate under the rules of the tribunal, the paralegal may consider providing notice to the tribunal that the retainer is complete.

*[New - September, 2015]*



12.2 Where the limited services being provided include an appearance before a tribunal, a paralegal must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

12.3 A paralegal should also consider whether the existence of a limited scope retainer should be disclosed to the tribunal or to an opposing party or, if represented, to an opposing party's representatives. The paralegal may need to obtain instructions from the client to make the disclosure.

## **Practice Management**

**Rule Reference: Rule 3.01(4)(h)**

### **By-Law 9**

13. In a busy office, practice management includes ensuring that there is sufficient staff to assist the paralegal in fulfilling his or her professional responsibilities, for example, ensuring that communications from clients, other paralegals or lawyers are responded to and that financial records are kept in accordance with the requirements of By-Law 9.

14. Competent practice management requires that the paralegal effectively manage his or her staff, time, finances and client information. A paralegal should consider the following practice management tools:

14.1 workplace policies and business procedures for staff,

14.2 planning and reminder systems, and time docketing systems for time management, and

14.3 filing organizational and storage systems for management of client information and a system for effectively identifying and avoiding conflicts.

## **Applying Skills & Judgment**

**Rule Reference: Rule 3.01(4)(c), (i) & (l)**

15. When serving clients, or otherwise acting in a professional capacity, a competent paralegal should understand the legal concepts, issues and facts, give careful consideration to the matters he or she handles and make decisions that are reasoned and make sense in the client's circumstances.

16. A competent paralegal knows the *Rules* and understands why each rule is important. The paralegal uses this knowledge and understanding to guide his or her own conduct.

## **Continuing Education / Professional Development**

### **Rule Reference: Rule 3.01(4)(j) & (k)**

17. A paralegal is responsible for remaining competent throughout his or her career. A competent paralegal understands that maintaining competence is an ongoing professional commitment that requires the paralegal to constantly assess his or her knowledge and skills.

## **Failing to be Competent**

### **Rule Reference: Rule 3.01**

18. The *Rules* do not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a breach of Rule 3.01. Conversely, incompetent professional practice may constitute professional misconduct whether or not the error or omission is actionable through the courts for professional negligence. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

## **GUIDELINE 7: ADVISING CLIENTS**

### **Honesty and Candour**

#### **Rule Reference: 3.02(2)**

1. A paralegal has a duty of candour with the client on matters relevant to the retainer. A paralegal is required to inform the client of information known to the paralegal that may affect the interests of the client in the matter.
2. A paralegal must honestly and candidly advise the client regarding the law and the client's options, possible outcomes and risks of his or her matter, so that the client is able to make informed decisions and give the paralegal appropriate instructions regarding the case. Fulfillment of this professional responsibility may require a difficult but necessary conversation with a client and/or delivery of bad news. It can be helpful for advice that is not well-received by the client to be given or confirmed by the paralegal in writing.

When advising a client, a paralegal

- should explain to and obtain agreement from the client about what legal services the paralegal will provide and at what cost. Subject to any specific instructions or agreement, the client does not direct every step taken in a matter. Many decisions made in carrying out the delivery of legal services are the responsibility of the paralegal, not the client, as they require the exercise of professional judgment. However, the paralegal and the client should agree on the specific client goals to be met as a result of the retainer. This conversation is particularly important in the circumstances of a limited scope retainer.
  - should explain to the client under what circumstances he or she may not be able to follow the client's instructions (for example, where the instructions would cause the paralegal to violate the *Rules*).
  - should ensure that clients understand that the paralegal is not a lawyer and should take steps to correct any misapprehension on the part of a client or prospective client.
3. In some limited circumstances, it may be appropriate to withhold information from a client. For example, with client consent, a paralegal may act where the paralegal receives information in the course of representing the client on the basis that the paralegal is not permitted to share the information with the client. However, it would not be appropriate to act for a client where the paralegal has relevant material information about that client received through a different retainer. In those circumstances the paralegal cannot be honest and candid with the client and should not act.

## **Dishonesty, Fraud or Crime by Client or Others**

**Rule Reference: Rule 3.02(4), (5), (6), (7) & (8)**

**Rule Reference: Rule 3.08**

### **By-Law 9**

4. A paralegal must be alert to the warning signs that may indicate dishonesty or illegal conduct by a client or any other person. The paralegal may need to, or be forced to, withdraw from representing a client where the client takes part in this type of dishonourable conduct.

5. The requirement in subrule (5) is especially important where a paralegal has suspicions or doubts about whether he or she might be assisting a client in crime or fraud. For example, if a paralegal is consulted by a prospective client who requests the paralegal to deposit an amount of cash into the paralegal's trust account but is vague about the purpose of the retainer, the paralegal has an obligation to make further inquiries about the retainer. (The paralegal should also have regard to the provisions of By-Law 9 regarding cash transactions). The paralegal should make a record of the results of these inquiries.
6. A client or another person may attempt to use a paralegal's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. These situations highlight the fact that when handling trust funds, it is important for a paralegal to be aware of his or her obligations under the *Rules* and the Law Society's By-Laws regulating the handling of trust funds.
7. Rule 3.02(8) speaks of conduct that is dishonest, fraudulent, criminal or illegal, and this conduct would include acts of omission as well as acts of commission. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, would invoke this rule.

## Settlement and Dispute Resolution

### Rule Reference: Rule 3.02(11) & (12)

8. A paralegal has an important role to play in both commencing and settling legal proceedings.
9. The paralegal should assist the client in his or her decision about commencing legal proceedings by reviewing the reasons for and against starting the proceeding, and explaining the potential consequences of a decision to commence litigation.
10. In the course of the proceedings, the paralegal should seek the client's instructions to make an offer of settlement to the other party as soon as reasonably possible. As soon as possible after receipt of an offer of settlement from the other party, the paralegal must explain to the client the terms of the offer, the implications of accepting the offer and the possibility of making a counter-offer. When making an offer of settlement, a paralegal should allow the other party reasonable time for review and acceptance of the offer. The paralegal should not make, accept or reject an offer of settlement without the client's clear and informed instructions. To avoid

any misunderstandings, the paralegal should confirm the client's instructions in writing.

## Client with Diminished Capacity

**Rule Reference: Rule 3.02(13) & (14)**

**Rule Reference: Rule 2.03**

11. A paralegal must be particularly sensitive to the individual needs of a client under a disability. The paralegal should maintain a good professional relationship with the client, even if the client's ability to make decisions is impaired because of minority, mental disability or some other reason. The paralegal should also be aware of his or her duty to accommodate a client with a disability.
12. A paralegal who is asked to provide services under a limited scope retainer to a client under a disability should carefully consider and assess in each case how, under the circumstances, it is possible to render those services in a competent manner.

## Medical-Legal Reports

**Rule Reference: Rule 3.02(18), (19) & (20)**

13. On occasion, in the course of representing and advising a client, a paralegal may need to obtain a report from an expert to help the client's case. Since a medical-legal report may contain information sensitive to the client, a paralegal has special responsibilities where such reports are concerned.
14. After an expert has been hired, but before the report has been prepared, the paralegal should speak to the expert to see if the findings in the report will advance the client's cause. If the findings do not, and subject to any legal requirements, the paralegal may decide not to obtain a *written* report.

## Errors

**Rule Reference: Rule 3.02(21)**

15. When providing legal services, the paralegal may make a mistake or fail to do something he or she should have done. When the paralegal realizes this has happened, he or she must fulfill specific duties to the client.

## Official Language Rights

**Rule Reference: Rule 3.02(22) & (23)**

16. When advising a client of the client's language rights, a paralegal should consider the following:

- the paralegal should advise the client of the client's language rights as soon as possible;
- the choice of language is that of the client not the paralegal. The paralegal should be aware of relevant statutory and constitutional law relating to language rights including the *Canadian Charter of Rights and Freedoms*, s. 19(1) and Part XVII of the *Criminal Code* regarding language rights in courts under federal jurisdiction and in criminal proceedings. The paralegal should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages; and
- when a paralegal considers whether to provide the required services in the language chosen by the client, the paralegal should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.02(23).

## Multi-Discipline Practices

**Rule Reference: Rule 3.04(14)**

**Rule Reference: Rule 8.01(5)**

**Rule 1.02 definitions of “associate” and “professional misconduct”**

**By-Law 7**

17. In a multi-discipline practice, a paralegal should be particularly alert to ensure that the client understands that he or she is receiving legal services only from the paralegal. If advice or service is sought from non-licensed members of the firm, it should be sought and provided independently of and outside the scope of the retainer for the provision of legal services. A paralegal should also be aware that advice or services provided by a non-licensed member of the firm will be subject to the constraints outlined in the relevant By-Laws and *Rules* governing multi-discipline practices. One way to distinguish the advice or services of non-licensed members of the firm is to ensure that such advice or services is provided from a location separate from the premises of the multi-discipline practice.

## Affiliations

**Rule Reference: Rule 3.04 (15), (16) & (17)**

**Rule 1.02 definitions of “affiliated entity” and “affiliation”****By-Law 7**

18. Before accepting a retainer, the *Rules* impose certain disclosure and consent requirements on a paralegal providing legal services jointly with non-legal services of an affiliated entity.

**Civil Society Organizations****Rule Reference: 1.02 definition of “civil society organization”****Rule 3.04 (17)****Rule 5.01 (15) & (17)****By-Law 7**

19. Paralegals who provide legal services through civil society organizations to clients are required to control the delivery of legal services. The paralegal should take care to:

- (a) act on behalf of the client’s interest;
- (b) advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide through the civil society organization; and
- (c) avoid conflicts of interest between the client and the civil society organization.

20. Where other services are provided through the civil society organization, or where the paralegal’s services are provided together with other services, the paralegal should take care to protect client confidentiality and privilege, and should only disclose client confidential or privileged information with client consent, or as required by law.

**GUIDELINE 8: CONFIDENTIALITY****General****Rule Reference: Rule 3.03(1)**

1. A paralegal cannot render effective professional service to a client, unless there is full and unreserved communication between them. The client must feel completely

secure that all matters discussed with the paralegal will be held in strict confidence. The client is entitled to proceed on this basis, without any express request or stipulation.

2. A paralegal's duty of loyalty to a client prohibits the paralegal from using any client information for a purpose other than serving the client in accordance with the terms of the retainer. A paralegal cannot disclose client information to serve another client or for his or her own benefit.

## **What Information Must be Protected?**

### **Rule Reference: Rule 3.03(1)**

3. The obligation to protect client information extends to information whether or not it is relevant or irrelevant to the matter for which the paralegal is retained. The source of the information does not matter. The information could be received from the client or from others. The information may come in any form – the spoken word, paper, computer documents, e-mails, audio or video recordings. The obligation also extends to the client's papers and property, the client's identity and the fact that the client has consulted or retained the paralegal.
4. A paralegal should be cautious in accepting confidential information on an informal or preliminary basis from anyone, since possession of the information may prevent the paralegal from subsequently acting for another party in the same or a related matter.
5. Generally, unless the nature of the matter requires such disclosure, a paralegal should not disclose having been retained by a person about a particular matter; or consulted by a person about a particular matter, whether or not a paralegal-client relationship has been established between them.

## **How Long Does the Duty Last?**

### **Rule Reference: Rule 3.03(2)**

6. The Rules provide that the duty of confidentiality lasts indefinitely. The duty continues, even after the client or former client dies.
7. Problems can arise when information is provided to a paralegal or a paralegal firm by a prospective client. For lawyers, the duty to protect confidential information begins when a prospective client first contacts the lawyer or law firm. The courts may



determine that a paralegal also owes a duty of confidentiality to prospective clients, even if the paralegal is never actually retained by the prospective client.

## Who Owes the Duty?

**Rule Reference: Rule 3.03(1) & (3)**

**Rule Reference: Rule 8.01(1)**

8. The paralegal, and all other employees of the paralegal firm, owe the duty of confidentiality to every client. A paralegal must ensure that his or her employees, and anyone involved with the client's matter, understand the duty of confidentiality as set out in the *Rules*. The paralegal is ultimately responsible, if someone employed by the paralegal discloses confidential information without client authorization or as permitted by the *Rules*.

## When, If Ever, is Disclosure of Confidential Information Permitted?

### Disclosure With Client Authority

**Rule Reference: Rule 3.03(1)**

9. Disclosure of confidential information may be authorized by the client. This authorization may be express or implied. For example, where a paralegal is retained to represent a client in a Small Claims Court matter, the paralegal has the client's implied authority to disclose enough information to complete the necessary forms.
10. When disclosing confidential information on the express authority of the client, the paralegal should consider
  - whether the client understands his or her right to confidentiality,
  - whether the client understands the potential implications of disclosure,
  - whether the client has shown a clear, informed and voluntary intention to forego the right to confidentiality, and
  - whether, in the particular circumstances, it would be prudent to obtain the client's written authorization to disclose.

### Disclosure Without Client Authority: General

**Rule Reference: Rule 3.03(4), (5), (6), (7), (8) & (9)**

11. Rule 3.03 identifies a number of situations in which a paralegal **shall** or **may** disclose confidential client information, whether or not the client consents to the disclosure.

12. This rule does not permit the paralegal to reveal confidential information about past criminal conduct, or to prevent future illegal or criminal conduct that does not involve death or serious bodily harm.

## **Disclosure Without Client Authority to Prevent Serious Bodily Harm**

### **Rule Reference: Rule 3.03(5), (8) & (9)**

13. Serious psychological harm may constitute serious bodily harm if it substantially interferes with the health or well-being of an individual.
14. A paralegal who believes that disclosure may be warranted may wish to seek legal advice. In assessing whether disclosure of confidential information is justified to prevent death or serious bodily harm, the paralegal should consider a number of factors, including:
  - (a) the likelihood that the potential injury will occur and its imminence;
  - (b) the apparent absence of any other feasible way to prevent the potential injury; and
  - (c) the circumstances under which the paralegal acquired the information of the client's intent or prospective course of action.
15. If confidential information is disclosed, the paralegal should record the circumstances of the disclosure as soon as possible.

## **Disclosure Without Client Authority to Establish or Collect Fees**

### **Rule Reference: Rule 3.03(7) & (9)**

16. If a paralegal wishes to use a collection agency for an outstanding account, the information provided to the collection agency should be limited to that necessary to collect the fees. Information contained in documents that is not necessary to enforce payment should either be deleted or blocked out.

## **Disclosure Without Client Authority to Detect Conflict**

### **Rule Reference: Rule 3.03-(10)**

16.1. Rule 3.03 provides that a paralegal may disclose information to the extent reasonably necessary to detect and resolve conflicts of interest arising from a paralegal's change of employment, or from changes in the composition or ownership of a paralegal firm, but only if the information disclosed does not compromise client confidentiality or otherwise prejudice a client.

16.2. In these situations, the rule permits paralegals and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred. This exchange of information needs to be done in a manner consistent with the obligation to protect client confidentiality and avoid prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

16.3. The disclosure should be made to as few persons at the new firm as possible, ideally to only one person. The information should always be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship.

16.4. Since the disclosure would be solely for the purpose of checking for conflicts, the disclosure should be coupled with an undertaking by the new firm to the former firm that it will:

- (a) limit access to the disclosed information;
- (b) not use the information for any purpose other than detecting and resolving conflicts; and
- (c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

16.5. The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the paralegal and client. In some circumstances, however, because of the nature of the retainer, the transferring paralegal and the new firm may be required to obtain the consent of clients to such disclosure or to the disclosure of any further information about the clients. This is especially the case where disclosure would prejudice the client, such as where a person has consulted a paralegal about a criminal investigation that has not led to a public charge.

## Other Obligations Relating to Confidential Information – Security of Court Facilities and Misconduct

**Rule Reference: Rule 3.03**

**Rule Reference: Rule 6.01(3)**

**Rule Reference: Rule 9.01(2)**

17. The *Rules* require a paralegal to disclose confidential client information in other circumstances – for the security of court facilities, and to report certain acts of misconduct to the Law Society.
18. Where a paralegal discloses confidential information to prevent a dangerous situation from developing at a court facility, the paralegal should consider providing this information to the persons having responsibility for security at the facility anonymously or through another paralegal or a lawyer.

## Avoiding Inadvertent Disclosure

**Rule Reference: Rule 3.03(1)**

19. The following steps may assist a paralegal in meeting his or her obligation to protect confidential client information:
  - not disclosing having been consulted or retained by a particular person unless the nature of the matter requires disclosure,
  - taking care not to disclose to one client confidential information about another client and declining any retainer that might require such disclosure,
  - being mindful of the risk of disclosure of confidential information when the paralegal provides legal services in association with other licensees in cost-sharing, space-sharing or other arrangements, and taking steps to minimize the risk,
  - avoiding indiscreet conversations about a client's affairs, even with the paralegal's spouse or family,
  - shunning any gossip about a client's affairs, even though the client is not named or otherwise identified,
  - not repeating any gossip or information about a client's business or affairs that is overheard or recounted to the paralegal, and

- avoiding indiscreet shop-talk between colleagues that may be overheard by third parties.

## Office Procedures

**Rule Reference: Rule 3.03(1) & (3)**

**Rule Reference: Rule 8.01(1)**

20. A paralegal should establish office procedures to ensure that the confidentiality of client information is protected, such as:

- recording the identity and particulars of every client or potential client,
- screening for conflicts of interest when a potential client first contacts the firm, and prior to his or her disclosure of confidential information to the paralegal,
- establishing a communication policy with each client outlining how communications between the client and firm will be conducted,
- keeping file cabinets away from the reception area, placing computer screens so they cannot be viewed by people not in the firm, keeping client files out of sight, locking file cabinets when no one is in the office, limiting access to client files only to staff who work on the matter, shredding confidential information before discarding and ensuring appropriate security for off-site storage of files,
- taking steps to protect confidential information obtained and sent in an electronic form,
- ensuring that all staff understand their obligations with respect to confidentiality, and
- limiting access to confidential information by outside service providers.

## GUIDELINE 9: CONFLICTS OF INTEREST

### GENERAL

#### Definition

#### Examples of Conflicts of Interest

**Rule Reference: Rule 1.02**

1. Conflicts of interest are defined in Rule 1.02.

## DUTY TO AVOID CONFLICTS OF INTEREST

## The Duty

### Rule Reference: Rule 3.04(1) & (2)

2. The duty to avoid conflicts of interest is found in Rule 3.04 (1) and (2).

## To Whom is the Duty Owed – Current Clients and Prospective Clients

### Rule Reference: Rule 1.02

### Rule Reference: Rule 3.04(1) & (3)

3. A conflict of interest exists when there is a substantial risk that a paralegal's loyalty to or representation of a client would be materially and adversely affected by the paralegal's own interest or the paralegal's duties to another client, a former client, or a third person. A "substantial risk" is one that is significant and plausible, even if it is not certain or even probable that it will occur. There must be more than a mere possibility that impairment will occur.
4. Rule 3.04 protects the duties owed by paralegals to their clients and the paralegal-client relationship from impairment as a result of a conflicting duty or interest. A client's interests may be seriously prejudiced unless the paralegal's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest. A paralegal owes the duty of avoiding conflicts of interest to all clients, including prospective clients. A paralegal should identify potential conflicts of interest at the first contact with a prospective client. A **prospective client** can be described as one who has consulted with a paralegal or paralegal firm to see if the firm will take on his or her matter or to see if he or she would like to hire the paralegal or firm.
5. Conflicts of interest may arise at any time. A paralegal should use a conflicts checking system to assist in managing conflicts of interest. The paralegal should examine whether a conflict of interest exists not only at the outset, but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.
6. At the time that a paralegal becomes aware of a conflict, or potential conflict, the paralegal should consider whether to accept the retainer, or to continue to act. This applies even where the client consents or where the retainer would not, in the paralegal's opinion, breach the *Rules*. The paralegal should consider the delay, expense and inconvenience that would arise for the client and/or the paralegal,

should the paralegal be required to withdraw from the matter at a later stage in the proceedings.

7. In addition to the duties of representation arising from a retainer, the law imposes other duties on the paralegal, particularly the duty of loyalty. The duty of confidentiality, the duty of candour and the duty of commitment to the client's cause are aspects of the duty of loyalty. The rule protects all of these duties from impairment by a conflicting duty or interest.

## **Examples of Conflicts of Interest**

### **Rule Reference: Rule 3.04(1)**

8. Examples of conflicts of interest include: personal interest conflicts, current client conflicts, former client conflicts and conflicts arising from duties to other persons.

## **Personal Interest Conflicts**

9. A paralegal's own interests can impair client representation and loyalty. This can be reasonably obvious, for example, where a paralegal is asked to represent a client in respect of a matter in which the paralegal, the paralegal's partner or associate or a family member has a material direct or indirect financial interest. Another example of a personal interest conflict is a close personal relationship, sexual or otherwise, with a client.

## **Current Client Conflicts**

10. Duties owed to another current client may also impair client representation and loyalty. Representing opposing parties in a dispute provides a particularly stark example of a current client conflict.

11. A bright line rule has been developed by the courts to protect the representation of and loyalty to current clients. Subject to certain limited exceptions, the bright line rule holds that a paralegal cannot act directly adverse to the immediate legal interests of a current client, without the client's consent. Paralegals should assume that matters undertaken against a current client are directly adverse to the immediate legal interests of that current client and that the bright line rule ordinarily applies because of the nature of paralegal practice.

## **Former Client Conflicts**

12. Duties owed to a former client can impair client representation and loyalty.

## **Conflicts Arising From Duties to Other Persons**

13. Duties owed to other persons can impair client representation and loyalty. Paralegals should carefully consider the propriety, and the wisdom, of "wearing more than one hat" at the same time.

## **Other Issues to Consider**

14. A paralegal should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. For example, the addition of new parties in litigation can give rise to new conflicts of interest that must be addressed.

## **To Whom is the Duty Owed – the Firm’s Clients**

### **Rule Reference: Rule 1.02 definition of “client”**

15. Since every client of a paralegal firm is also the client of every other paralegal employed at the firm, if one paralegal in the firm has a conflict of interest in a matter, then all paralegals in the firm have a conflict in that matter. As a result, when checking for conflicts, the paralegal should review the names of all current and former clients of the firm and not just the clients personally served by the individual paralegal.

## **DEALING WITH A CONFLICT OF INTEREST**

### **Disclosing All Information**

#### **Rule Reference: Rule 3.04(3)**

16. Disclosure is an essential element to obtaining a client’s consent and arises from the duty of candour owed to the client. The client needs to know of anything that may influence the paralegal’s judgment or loyalty. Once the paralegal has provided the client with all the details, the paralegal must allow the client time to consider them or to ask for further clarification.
17. There may be situations where it is impossible for a paralegal to give a client or prospective client all necessary information. This may happen when the details about the conflict involve another client or a former client. Since a paralegal cannot



reveal confidential information regarding another client, the paralegal may only say that there is a conflict and that he or she cannot continue with or accept the retainer.

## Obtaining Consent

**Rule Reference: Rule 1.02 definition of “consent”**

**Rule Reference: Rule 3.04(3)**

18. The client may only consent after being given all information required to make an informed decision. This is called ***informed consent***. Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure of the confidentiality of the information of another client, a paralegal should decline to act.
19. Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The paralegal should therefore inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the paralegal's relation to the parties and any interest in and connection with the matter.
20. Following the required disclosure, the client can decide whether to give consent. Factors to be taken into consideration may include the availability of another paralegal of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another paralegal, and the latter's unfamiliarity with the client and the client's affairs.
21. A paralegal may be able to request that a client consent in advance to conflicts that might arise in the future. The effectiveness of such consent is generally determined by the extent to which the client understands the material risks involved. A paralegal may wish to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent should be recorded in writing.

## Independent Legal Advice/Legal Representation

**Rule Reference: Rules 3.04(7), 3.06(2)(b), (4)(b), & (6)(c)**

22. There are situations where the client's informed and written consent is not enough to allow the paralegal to accept or continue with a matter. In some circumstances, the client must receive advice from an independent legal advisor regarding the matter or transaction before the paralegal may take any further steps in the client's matter.
23. An independent legal advisor is another paralegal or lawyer, who can provide the client with ***independent legal advice***. This advisor is unrelated to the client's matter, associated parties or the paralegal. He or she is unbiased and objective and does not have a conflict of interest.
24. In circumstances where the paralegal is prohibited from acting for a client or prospective client, the paralegal must suggest that the individual obtain his or her own independent legal representation. ***Independent legal representation*** means that the individual has retained a legal representative, either a paralegal or lawyer, to act as his or her own representative in the matter. This retained representative is objective and does not have any conflicting interest with regards to the matter.

## Refusal to Act, Withdrawal of Services

**Rule Reference: Rule 3.04(1)**

**Rule Reference: Rule 3.08**

[Amended - April 2017]

25. In some cases, the only way to deal with the conflict is to refuse to act. The paralegal may have to decline the retainer at the outset or may have to terminate the retainer and withdraw from representing the client at a later time. A paralegal may need to take this step even where the client wants the paralegal to accept the retainer, or to continue to act.

## JOINT CLIENTS

### General

**Rule Reference: Rule 3.04(6) – (12)**

26. A paralegal may be asked to represent more than one client in a matter or transaction. This is referred to as a ***joint retainer***.
27. Acting in a joint retainer places the paralegal in a potential conflict of interest. A paralegal has an obligation to all clients and in a joint retainer, the paralegal must

remain loyal and devoted to all clients equally – the paralegal cannot choose to serve one client more carefully or resolutely than any other. If the interests of one client change during the course of the retainer, the paralegal may be in a conflict of interest.

## **Before Accepting the Joint Retainer**

**Rule Reference: Rule 3.04(6) – (12)**

**Rule Reference: Rule 3.02(13) & (14)**

28. In cases where one of the joint clients is not sophisticated or is vulnerable, the paralegal should consider the provisions of Rule 3.02(13) and (14) regarding clients under a disability. The paralegal may want to recommend that the client obtain independent legal advice prior to agreeing to the joint retainer. This will ensure that the client's consent to the joint retainer is informed, genuine, and not obtained through coercion.

## **If a Conflict Develops Between Joint Clients**

**Rule Reference: Rule 3.04(11) – (12)**

29. Subrules 3.04(11) – (12) set out the steps a paralegal must take in the event that a conflict develops between joint clients.

## **ACTING AGAINST CLIENTS**

### **Acting Against Former Clients in the Same or Related Matters**

**Rule Reference: Rule 3.04(2) & (4)(a) & (b)**

30. A paralegal is not permitted to act against a former client in the same or related matters, except with the former client's informed consent.

### **Acting Against Former Clients in New Matters**

**Rule Reference: Rule 3.04(4)(c) & (5)**

31. A paralegal is not permitted to act against a former client in a new matter, except in accordance with subrules 3.04(4)(c) and (5).
32. Even where the *Rules* do not prohibit a paralegal from acting against a client or former client, the paralegal should consider whether to accept the retainer (or

continue acting). To act against a client or former client may damage the paralegal-client relationship, result in court proceedings or a complaint to the Law Society.

## **PARALEGAL TRANSFER BETWEEN FIRMS**

### **Paralegal Changing Firms**

**Rule Reference: Rule 3.05**

### **Paralegal Changing Firms**

**Rule Reference: Rule 3.05**

33. Problems concerning confidential information may arise when a paralegal changes firms and the firms act for opposing clients in the same or a related matter. The potential risk is that confidential information about the client from the paralegal's former office may be revealed to the members of the new firm and used against that client. A paralegal should carefully review the *Rules* when transferring to a new office or when a new paralegal is about to join the paralegal firm.

### **Actual Knowledge**

**Rule Reference: Rule 3.05**

34. The purpose of the rule is to deal with what a paralegal actually knows, not what a paralegal might be assumed to know. Paralegals working together in the same firm are assumed to share confidences on the matters on which they are working, with the result that actual knowledge may be presumed. However, that presumption of actual knowledge can be rebutted by clear and convincing evidence that all reasonable measures have been taken to ensure that no disclosure will occur by the transferring paralegal to the member or members of the firm who are engaged against a former client.
35. The duties imposed by this rule concerning confidential information are in addition to the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.
36. Firms with multiple offices – this rule treats as one “firm” such entities as the various legal services units of a government, a corporation with separate regional legal departments and an inter-jurisdictional legal firm.

## How to Determine If a Conflict Exists Before a Paralegal Changes Firms

### Rule Reference: Rule 3.05

37. When a firm considers hiring a paralegal from another firm, the transferring paralegal and the new firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring paralegal is leaving and with respect to clients of a firm in which the transferring paralegal worked at some earlier time.
38. After completing the interview process and before hiring the transferring paralegal, the new firm should determine whether any conflicts exist. In determining whether the transferring paralegal actually possesses relevant confidential information, both the transferring paralegal and the new firm must be very careful, during any interview of a potential transferring paralegal, or other recruitment process, to ensure that they do not disclose client confidences. See Rule 3.03, which provides that a paralegal may disclose confidential information to the extent the paralegal reasonably believes necessary to detect and resolve conflicts of interest where paralegals transfer between firms.
39. A paralegal's duty to the firm may also govern a paralegal's conduct when exploring a professional opportunity with another firm and is beyond the scope of these Rules.

*[New - December 2015]*

## DEALING WITH UNREPRESENTED PERSONS

### General

#### Rule Reference: Rule 4.05

#### Rule Reference: Rule 3.04(6) – (12)

40. When a paralegal deals on a client's behalf with an unrepresented person, there is a potential danger to the paralegal that the unrepresented person may think that the paralegal is looking after his or her interests. Rule 4.05 provides specific requirements aimed at minimizing this risk.
41. If an unrepresented person who is the opposite party requests the paralegal to advise or act in the matter, the paralegal is not permitted to accept the retainer. If the unrepresented party otherwise has an interest in the matter, such as a co-accused,

the paralegal may be permitted to act, but should be governed by the considerations outlined in Rule 3.04(6) – (12) about joint retainers.

## **FINANCIAL INTERESTS**

### **Doing Business With a Client**

#### **Rule Reference: Rule 3.06(1) – (3)**

42. A paralegal should be cautious about entering into a business arrangement with his or her client(s) that is unrelated to the provision of paralegal services. This includes any transaction with a client, including lending or borrowing money, buying or selling property, accepting a gift, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment and entering into a common business venture.
43. Since the paralegal is or was the client's advisor, the paralegal may have a conflict of interest. The paralegal may unknowingly influence the client to agree to an arrangement that may be unfair or unreasonable to the client. This danger is present when the client wants to invest with the paralegal.

### **Borrowing From Clients**

#### **Rule Reference: Rule 3.06(5)**

44. A paralegal must not borrow from clients except in accordance with Rule 3.06(4).

### **Guaranteeing Client Debts**

#### **Rule Reference: Rule 3.06(5) – (6)**

45. A paralegal must not guarantee client debts except in accordance with Rule 3.06(5) and (6).

## **PERSONAL INTERESTS**

### **Conflicts of Interest Arising From Personal Relationships**

#### **Rule Reference: Rule 3.04(1)**

46. The *Rules* do not prohibit a paralegal from providing legal services to friends or family members, but they do require the paralegal to avoid existing or potential conflicts of interest.

47. A conflict of interest may arise when a paralegal provides legal services to a friend or family member, or when the client and the paralegal have a sexual or intimate personal relationship. In these circumstances, the paralegal's personal feelings for the client may impede the paralegal's ability to provide objective, disinterested professional advice to the client. Before accepting a retainer from or continuing a retainer with a person with whom the paralegal has a sexual or intimate personal relationship, a paralegal should consider the following factors:

- The vulnerability of the client, both emotional and economic;
- The fact that the paralegal and client relationship may create a power imbalance in favour of the paralegal or, in some circumstances, in favour of the client;
- Whether the sexual or intimate personal relationship may jeopardize the client's right to have all information concerning the client's business and affairs held in strict confidence. For example, the existence of the personal relationship may obscure whether certain information was acquired by the paralegal in the course of the paralegal and client relationship;
- Whether such a relationship may require the paralegal to act as a witness in the proceedings;
- Whether such a relationship may interfere with the paralegal's fiduciary obligations to the client, including his or her ability to exercise independent professional judgment and his or her ability to fulfill obligations to the administration of justice.

48. Generally speaking, there is no conflict of interest if another paralegal or lawyer at the firm who does not have a sexual or intimate personal relationship with the client handles the client's matter.

## **Conflicts of Interest Arising From a Paralegal's Outside Interests**

**Rule Reference: Rule 1.02 definition of "conflict of interest"**

**Rule Reference: Rule 2.01(4) & (5)**

49. A conflict of interest may arise from the paralegal's outside interests. Outside interests covers the widest possible range of activities and includes those that may overlap with the business of providing legal services, as well as activities that have no connection to the law or working as a paralegal. If a paralegal has other businesses or interests separate from his or her paralegal firm, those interests may

influence the way the paralegal serves clients. Whatever the outside interest, a paralegal must guard against allowing those outside interests to interfere or conflict with his or her duties to clients. (Also refer to Guideline 2: Outside Interests).

50. If a paralegal is in public office while still providing legal services to clients, the paralegal must not allow his or her duties as a public official to conflict with his or her duties as a paralegal. If there is a possibility of a conflict of interest, the paralegal should avoid it either by removing himself or herself from the discussion and voting in the public capacity or by withdrawing from representation of the client.

## **MULTI-DISCIPLINE PRACTICE**

### **Conflicts of Interest Arising From Multi-discipline Practice**

**Rule Reference: 3.04(13)**

**By-Law 7**

51. A paralegal should be alert to conflicts of interest arising from a multi-discipline practice, as he or she is subject to the requirements of Rule 3.04(14).

## **AFFILIATIONS**

### **Conflicts of Interest Arising From Paralegals and Affiliated Entities**

**Rule Reference: Rule 1.02 definition of “conflict of interest”**

**Rule Reference: Rule 3.04(14), (15) & (16)**

**By-Law 7**

52. A conflict of interest may arise from a paralegal's, or his or her associate's, interest in an affiliated firm of non-licensees where that interest conflicts with the paralegal's duties to a client. Rule 3.04(14) and (15) impose disclosure and consent requirements on a paralegal in an affiliation.
53. Conflicts of interest arising out of a proposed retainer by a client should be addressed as if the paralegal's practice and the practice of the affiliated entity were one where the paralegal accepts a retainer to provide legal services to that client jointly with non-legal services of the affiliated entity.
54. The affiliation is subject to the same conflict of interest rules as apply to paralegals.

## **PRO BONO AND OTHER SHORT-TERM LEGAL SERVICES**



## Conflicts of Interest Arising From Pro Bono and Other Short-term Legal Services

### Rule Reference: Rule 3.04(18) - (22)

55. Short-term legal services, such as duty counsel programs, are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the short-term provider, the paralegal and the paralegal's firm. Performing a full conflicts screening in circumstances in which short-term legal services are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.
56. The limited nature of short-term legal services significantly reduces the risk of conflicts of interest. Accordingly, the paralegal is disqualified from acting for a client receiving short-term legal services only if the paralegal has actual knowledge of a conflict of interest in the same or a related matter. For example, a conflict of interest of which the paralegal has no actual knowledge but which is imputed to the paralegal because of the paralegal's membership in or association or employment with a firm would not preclude the paralegal from representing the client seeking short-term legal services.
57. In the provision of short-term legal services, the paralegal's knowledge about conflicts is based on the paralegal's reasonable recollection and information provided by the client in the ordinary course of the consulting with the short-term provider regarding the short-term legal services.
58. The disqualification of a paralegal participating in a short-term legal services program does not create a conflict for the other paralegals participating in the program, as the conflict is not imputed to them.
59. Confidential information obtained by a paralegal representing a short-term client will not be imputed to the lawyers, paralegals and others at the

paralegal's firm. As such, these people may continue to act for another client adverse in interest to the short-term client and may act in future for another client adverse in interest to the short-term client.

60. Information obtained by a paralegal representing short-term clients may result in a conflict for the paralegal with an existing client that could require the paralegal to cease representation of that existing client. This risk can be minimized by the establishment of a system to search for conflicts of interest of the paralegal's firm prior to representing short-term clients.
61. Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the short-term client to other persons at the paralegal's firm. Rule 3.04(20) extends, with necessary modifications, the rules and guidelines about conflicts arising from a paralegal transfer between paralegal firms (rule 3.05) to the situation of a paralegal firm acting against a current client of the firm in providing short-term legal services. Measures that the paralegal providing the short-term legal services should take to ensure the confidentiality the client's information include:
  - (a) having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the short-term client;
  - (b) identifying relevant files, if any, of the short-term client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and
  - (c) ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.
62. Rule 3.04(21) precludes a paralegal from obtaining a waiver in respect of conflicts of interest that arise in providing short-term legal services.
63. Rules 3.04(19) and (20) are intended to permit the provision of short-term legal services by a paralegal without the client being considered to be a

client of the paralegal's firm for conflicts and other purposes. However, it is open to the paralegal and the short-term client to agree that the resources of the paralegal's firm, including other paralegals, may be accessed for the benefit of the client, in which case the provisions of Rules 3.04(19) and (20) do not apply, the paralegal would be required to clear conflicts, and the short-term client would be considered a client of the paralegal's firm.

## GUIDELINE 10: DEALING WITH CLIENT PROPERTY

### General

**Rule Reference: Rule 3.07**

#### By-Law 9

1. The term ***client property*** covers a wide range of items such as money or other valuables, physical items and information. For proper receipt, handling and disbursement of monies received from or on behalf of a client, refer to By-Law 9 and Guideline 15: Trust Accounts.

### The Valuable Property Record

**Rule Reference: By-Law 9, section 18.9**

2. The valuable property record documents the paralegal's receipt, storage and delivery of client property. Client property may include, for example:
  - stocks, bonds or other securities in bearer form,
  - jewelry, paintings, furs, collector's items or any saleable valuables, and
  - any property that a paralegal can convert to cash on his or her own authority.
3. The valuable property record should not include items that cannot be sold or negotiated by the paralegal, for example, wills, securities registered in the client's name, corporate records or seals. A paralegal should maintain a list of these items, but that list should be separate from the valuable property record.

### The Client File

**Rule Reference: Rule 3.07**

**Rule Reference: Rule 3.03(3)**

4. The duty to preserve client property also applies to the documents that a client may give to the paralegal at the beginning of the paralegal-client relationship and documents that are created or collected by the paralegal for the client's benefit during the relationship.
5. The courts have developed law on the issue of the client file as between lawyers and clients. This jurisprudence may be applied to define the paralegal's client file in future. Generally, documents provided to a lawyer at the start of the retainer and those created during the retainer as part of the services provided would belong to the client. These include
  - originals of all documents prepared for the client,
  - all copies of documents for which copies the client has paid,
  - a copy of letters from a lawyer to third parties or from third parties to a lawyer,
  - originals of letters from a lawyer to the client (presumably these would have already been sent to the client in the course of the retainer),
  - copies of case law,
  - briefs,
  - memoranda of law, where the client paid for preparation of the memoranda,
  - notes or memoranda of meetings with opposing parties or their representatives, court or tribunal conferences, interviews of witnesses, etc.,
  - trial preparation documents, trial briefs, document briefs, trial books,
  - copies of vouchers and receipts for disbursements a lawyer made on the client's behalf,
  - experts' reports,
  - photographs, and
  - electronic media such as computer discs.
6. Documents belonging to a lawyer (for example, notes or memoranda of meetings or telephone calls with the client) would not need to be provided to the client.
7. A paralegal should consider retaining copies of client documents, at his or her own cost, to defend against complaints or claims that may be made against the paralegal in future.

## GUIDELINE 11: WITHDRAWAL FROM REPRESENTATION

### General

**Rule Reference: Rule 3.08**

1. A client may end the paralegal-client relationship at any time and for any reason. A paralegal is subject to certain restrictions in ending the paralegal-client relationship. The Rule requires reasonable notice; an essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts.
2. Whether the paralegal has good cause for withdrawal will depend on many factors, including
  - the nature and stage of the matter,
  - the relationship with the client,
  - the paralegal's expertise and experience, and
  - any harm or prejudice to the client that may result from the withdrawal.
3. Rule 3.08 specifies a paralegal's obligations when withdrawing legal services. It sets out situations in which the paralegal
  - may choose to withdraw (**optional withdrawal**),
  - must withdraw (**mandatory withdrawal**), and
  - must comply with special rules (**withdrawal from quasi-criminal and criminal cases**).
4. To avoid misunderstandings, it will be helpful for the paralegal to explain to the client, at the beginning of the relationship
  - that all documents to which the client is entitled will be returned to the client when their relationship ends or the matter concludes, and
  - which documents in the file will belong to the paralegal, so that they will be kept by the paralegal when their relationship ends or the matter is finished.
5. To ensure that the client understands these details, the paralegal should consider including them in his or her engagement letter or retainer agreement.
6. Every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings in keeping with the paralegal's obligations. The tribunal, opposing parties and others directly affected should also be notified of the withdrawal.
7. When the paralegal withdraws, he or she is subject to restrictions relating to the disclosure of client information. This would restrict the paralegal from revealing the reason for withdrawing to a **successor** (a paralegal or lawyer who accepts the client's

matter after the original paralegal has withdrawn). Refer to Guideline 8: Confidentiality for further information on this subject.

8. Cooperation with the successor licensee will normally include providing any memoranda of fact or law that have been prepared by the paralegal in connection with the matter, but confidential information not clearly related to the matter should not be disclosed without the written consent of the client.

## Optional Withdrawal

### Rule Reference: Rule 3.08(2), (3), (4), (6), (7), (8) & (9)

9. During a retainer, a situation may arise that will allow the paralegal to withdraw from representing the client.
10. A **serious loss of confidence** means that the paralegal and the client can no longer trust and rely on each other, making it impossible to have a normal paralegal-client relationship. An example would be where the client deceives or lies to the paralegal. Another example would be where the client refuses unreasonably to accept and act on the paralegal's advice on an important point.
11. If the retainer relates to a criminal or quasi-criminal matter, the paralegal must ensure that he or she complies with the special rules relating to withdrawal in those types of cases (refer to section entitled "Withdrawal From Quasi-Criminal and Criminal Cases" at Rule 3.08(7)).

## Mandatory Withdrawal

### Rule Reference: Rule 3.08(5), (7), (8) & (9)

12. In certain situations, a paralegal is required to withdraw from representing a client, even if the paralegal or the client wishes to continue with the retainer.

## Withdrawal From Criminal or Quasi-Criminal Matters

### Rule Reference: Rule 3.08(7), (8) & (9)

13. Whether a paralegal may withdraw in these types of matters has to do with the amount of time between **the withdrawal** (the date and time the paralegal intends to stop representing the client) and **the trial** (the date and time the client's trial begins).
14. Generally, the amount of time between the withdrawal and trial must be sufficient to allow the client to hire another representative and the new representative to prepare properly for trial.

15. While the *Rules* do not require the paralegal to make an application to be removed as the client's representative, most tribunal rules do. Therefore, the paralegal should consult the rules of the tribunal to determine what process is to be followed. The paralegal must not tell the tribunal or the prosecutor the reasons for withdrawal, unless disclosure is justified in accordance with the *Rules*.
16. The paralegal may seek to adjourn the trial to give the client or the new representative more time to prepare, as long as the adjournment does not prejudice the client.

## **Manner of Withdrawal**

### **Rule Reference: Rules 3.08 (10), (11), (12) & (13)**

17. Where a paralegal withdraws from representation of a client, the required manner of withdrawal is set out in subrules 3.08(10), (11), (12) and (13).

## **Leaving a Firm**

### **Rule Reference: Rule 3.08 (13.1)**

18. When a paralegal leaves a firm to provide legal services elsewhere, it may result in the termination of the paralegal-client relationship between that paralegal and a client.
19. The client's interests are paramount. Clients should be free to decide whom to retain without undue influence or pressure by either the paralegal or the firm. The client should be provided with sufficient information by the paralegal and the remaining paralegals to make an informed decision about whether to continue with the departing paralegal, remain with the firm where that is possible, or retain a new paralegal.
20. The paralegal and the remaining paralegals should cooperate to ensure that the client receives the necessary information on the available options. While it is preferable to prepare a joint notification setting forth such information, factors to consider in determining who should provide it to the client include the extent of the paralegal's work for the client, the client's relationship with other paralegals in the firm and access to client contact information. In the absence of agreement between the departing paralegal and the remaining paralegals as to who will notify the

clients, both the departing paralegal and the remaining paralegals should provide notification.

21. If a client contacts a firm to request a departed paralegal's contact information, the remaining paralegals should provide the professional contact information where reasonably possible.
22. Where a client decides to remain with the departing paralegal, the instructions referred to in the rule should include written authorizations for the transfer of files and client property. In all cases, the situation should be managed in a way that minimizes expense and avoids prejudice to the client.
23. In advance of providing notice to clients of his or her intended departure the paralegal should provide such notice to the firm as is reasonable in the circumstances.
24. When a client chooses to remain with the firm, the firm should consider whether it is reasonable in the circumstances to charge the client for time expended by another firm member to become familiar with the file.
25. The principles outlined in this rule and commentary will apply to the dissolution of a firm. When a firm is dissolved, the paralegal-client relationship may end with one or more of the paralegals involved in the retainer. The client should be notified of the dissolution and provided with sufficient information to decide who to retain. The paralegals who are no longer retained by the client should try to minimize expense and avoid prejudice to the client.

[Amended - June 2017]

26. Paralegals are reminded that Rules 3.7-7A(1) and 3.7-7A(2) and Commentary of the Rules of Professional Conduct describe similar obligations for lawyers.

## Duties of the Successor Paralegal

### Rule Reference: Rule 3.08 (14)

27. If a client who was represented by another paralegal or a lawyer contacts a paralegal, that paralegal has obligations as the **successor paralegal**.



## Written Confirmation

28. If a paralegal's services are terminated while the client's matter is ongoing and the client requests that the matter be transferred to a new paralegal or lawyer, the paralegal should confirm, in writing, the termination of the retainer. The paralegal should also obtain a **direction**, signed by the client, for release of the client's file to a successor paralegal or lawyer. A **direction** is a written document instructing the paralegal to release the file to the successor paralegal or lawyer. If the file will be collected by the client personally, the paralegal should obtain a written acknowledgement signed by the client, confirming that the client has received the file.

## GUIDELINE 12: ADVOCACY

### Definitions

**Rule Reference: Rule 4**

**Rule Reference: Rule 1.02 definition of "tribunal"**

1. An **advocate** is someone who speaks and acts on behalf of others. Rule 4 outlines a paralegal's duties when appearing as an advocate before a tribunal. Rule 4 applies to all appearances and all proceedings before all tribunals. A **tribunal** can be either an administrative board or a court of law. An **adjudicator** is any person who hears or considers any type of proceeding before a tribunal and renders a decision with respect to that proceeding.

### General

**Rule Reference: Rule 4**

2. The paralegal has a duty to represent his or her client diligently and fearlessly. Generally, the paralegal has no obligation to assist an opposing party, or to advance matters harmful to the client's case. However, these general principles do not mean that, when acting as advocate for a client before a tribunal, the paralegal can behave as he or she likes or, in some cases, as his or her client may instruct. Rule 4 describes the professional obligations that a paralegal owes to opposing parties, other paralegals and lawyers, the tribunal and the administration of justice. These obligations are paramount, and must be met by the paralegal in each and every tribunal proceeding in which the paralegal acts as advocate for a client.

## **Candour, Fairness, Courtesy and Respect**

**Rule Reference: Rule 4.01(1), 4.01(4)(d)**

**Rule Reference: Rule 4.01(5)(o)**

**Rule Reference: Rule 7.01(3)**

3. A paralegal should not engage in rude and disruptive behaviour before a tribunal, or uncivil correspondence, language or behaviour towards opposing parties or their advocates.

## **Malicious Proceedings**

**Rule Reference: Rule 4.01(5)(a)**

4. A paralegal should not help a client to bring proceedings that have no merit. Claims that have no merit waste the time of the tribunal and its officers, and do not further the cause of justice.

## **Misleading the Tribunal**

**Rule Reference: Rule 4.01(5)(c), (d), (f), (i), (j), (k)**

5. A paralegal must ensure that neither the paralegal nor his or her client(s) misleads the tribunal. For a tribunal to decide a matter effectively and appropriately, the tribunal must have access to everything that is relevant to the issues to be decided.

## **Improperly Influencing the Tribunal**

**Rule Reference: Rule 4.01(5)(e) & (h)**

6. For the public to have respect for the administration of justice, tribunals must be fair, objective, independent and neutral. There should be no personal connection between an adjudicator and any of the parties to a proceeding or their advocates.
7. The only appropriate way to influence the tribunal's decision is through open persuasion as an advocate. This is done by making submissions based on legal principles and offering appropriate evidence before the tribunal in the presence of, or on notice to, all parties to the proceeding, or as otherwise permitted or required by the tribunal's rules of procedure. A paralegal should not communicate directly with the adjudicator in the absence of the other parties, unless permitted to do so by the tribunal's rules of procedure.

## Dishonest Conduct

### Rule Reference: Rule 4.01(5)(b), (c) & (f)

8. Acting with integrity before a tribunal means being honest and acting with high ethical principles.

## Admissions by the Client

### Rule Reference: Rule 4.01(5)(b), (c) & (f)

9. When defending an accused person, a paralegal's duty is to protect the client from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, a paralegal may properly rely on any evidence or defences, including "technicalities", as long as they are not known to be false or fraudulent.
10. However, admissions made by a client to a paralegal may impose strict limitations on the paralegal's conduct of the client's defence. The client should be made aware of this by the paralegal. Where the client has admitted to the paralegal any or all of the elements of the offence with which the client is charged, a paralegal must not do or say anything before the tribunal, including calling any evidence, that would contradict the facts admitted by the client to the paralegal. This would be misleading the court.
11. Where the client has admitted to the paralegal all the elements of the offence, and the paralegal is convinced that the admissions are true and voluntary, the paralegal may properly take objection to the jurisdiction of the tribunal, or to the form, admissibility or sufficiency of the evidence. The paralegal could not suggest that someone else committed the offence, try to establish an alibi or call any evidence which, by reason of the admissions, the paralegal believes to be false. Admission by the client to the paralegal of all of the elements of the offence with which the paralegal is charged also limits the extent to which the paralegal may attack the evidence for the prosecution. The paralegal may test the evidence given by each witness for the prosecution and may argue that the evidence, as a whole, is not enough to prove the client guilty. The paralegal should go no further than that.

## Incriminating Physical Evidence

### Rule Reference: Rule 4.01(5.2)

12. A paralegal is not ordinarily required to take or keep possession of incriminating physical evidence or to disclose its existence. Possession of illegal things could constitute an offence. A paralegal should immediately consult an experienced criminal lawyer regarding their professional obligations. The paralegal should carefully consider his or her options, which may include, as soon as reasonably possible;

(a) considering whether to retain independent legal counsel to provide advice about the paralegal's obligations. If retained, the paralegal and independent legal counsel should consider

(i) whether independent legal counsel should be informed of the identity of the client and instructed not to disclose the identity of the instructing paralegal to law enforcement authorities or to the prosecution, and

(ii) whether independent legal counsel should, either directly or anonymously, taking into account the procedures appropriate in the circumstances

(I) disclose or deliver the evidence to law enforcement authorities or the prosecution, or

(II) both disclose and deliver the evidence to law enforcement authorities and to the prosecution;

(b) delivering the evidence to law enforcement authorities or to the prosecution, either directly or anonymously, taking into account the procedures appropriate in the circumstances;

(c) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination; or

(d) disclosing the existence of the evidence to the prosecution.

13. A paralegal should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a paralegal discloses or delivers incriminating physical evidence to law enforcement authorities or to the prosecution, the paralegal has a duty to protect client confidentiality, including the client's identity.

14. A paralegal has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. The paralegal's advice to a client that the client has the right to refuse to divulge the location of physical evidence does not constitute hindering an investigation. A paralegal who becomes aware of the existence of incriminating physical evidence or declines to take possession of it should not participate in its concealment, destruction or alteration.

*[Amended - June 2017]*

## **Witnesses**

**Rule Reference: Rule 4.01(5) (g), (i), (j), (l), (m) & (n)**

**Rule Reference: Rule 4.02**

**Rule Reference: Rule 4.03**

**Rule Reference: Rule 7.01(6)**

15. As an advocate, a paralegal may contact all possible witnesses for both sides of a matter (subject to Rule 7.02 regarding communications with a represented person, corporation, or organization), but the paralegal must be fair and honest when dealing with them. This includes the paralegal speaking to the opposing party or co-accused. The paralegal must make it clear to the witness who the paralegal's client(s) is/are and that the paralegal is acting only in the interests of his or her client(s). As part of this disclosure, the paralegal should give the witness his or her name and tell the witness that he or she is a paralegal, the name of the client(s) he or she represents in the matter, and his or her status in the proceeding. A paralegal should make an extra effort to be clear when the witness does not have legal representation. Note that, although a paralegal may ask to speak to a potential witness, the witness does not have to speak to the paralegal.

16. During a hearing, a paralegal's ability to speak with a witness giving testimony is limited. This ensures that the paralegal does not influence the evidence the witness will give. A comment made by the paralegal to the paralegal's own witness during court recess, for example, may result in a breach of the *Rules*. The witness may return to the witness box and, as a result of the communication with the paralegal, offer evidence that is slanted to benefit the paralegal's client. Such evidence is no longer neutral and could mislead the tribunal.

## **Disclosure of Documents**

**Rule Reference: Rule 4.01(6)**

17. The rules of procedure of the tribunal may require parties to produce documents and information to the tribunal or to the other parties in the matter. Timely, complete and accurate disclosure helps settlement efforts and makes the hearing process more effective and fair.

**Agreement on Guilty Pleas****Rule Reference: Rule 4.01(8) & (9)**

18. As an advocate for a person accused in a criminal or quasi-criminal matter, the paralegal should take steps reasonable in the circumstances to satisfy himself or herself that the client's instructions to enter into the agreement on a guilty plea are informed and voluntary. The paralegal should ensure the client's instructions to enter into an agreement on a guilty plea are in writing.

**The Paralegal as Witness****Rule Reference: Rule 4.04**

19. As an advocate, the paralegal's role is to further the client's case within the limits of the law. The role of a witness is to give evidence of facts that may or may not assist in furthering the case of any of the parties to a proceeding. Because these roles are different, a person may not be able to carry out the functions of both advocate and witness at the same time.

20. Unless permitted by the Tribunal, when acting as an advocate for his or her client before a tribunal, the paralegal should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination, or challenge, or otherwise appear to be giving unsworn testimony. This is improper and may put the paralegal's own credibility in issue.

20.1 Unless permitted by the tribunal, the paralegal who is a necessary witness should testify and entrust the conduct of the case to another licensee. A paralegal who has appeared as a witness on a matter should not act as an advocate or legal representative in any appeal of that matter.

20.2 There are no restrictions on the advocate's right to cross-examine another licensee, however, and the paralegal who does appear as a witness should not expect to receive special treatment because of professional status.

## Dealing With Unrepresented Persons

### Rule Reference: Rule 4.05

21. The paralegal has a special duty when representing a client and an opposing party is not represented by a paralegal or a lawyer.

22. To avoid misunderstandings, it will be helpful for the paralegal to confirm in writing the steps he or she takes to fulfill the requirements of Rule 4.05.

## Withdrawal and Disclosure Obligations

### Rule Reference: Rule 4.01(7)

### Rule Reference: Rule 3.08

23. If, after explanation and advice from the paralegal, the client persists in instructing the paralegal to engage in or continue a type of conduct prohibited by Rule 4, the paralegal must withdraw from representing the client in the matter. (See Guideline 11: Withdrawal of Representation.)

## GUIDELINE 13: FEES

### Introduction

#### Rule Reference: Rule 5.01 (1)

1. Too often, misunderstandings about fees and disbursements result in disputes over legal bills and complaints from unhappy clients. Since these disputes reflect badly on the paralegal profession and the administration of justice, it is important that a paralegal discuss with his or her client(s) the amount of fees and disbursements that will likely be charged. It will be to the benefit of all concerned if the paralegal ensures that the client has a clear understanding not only of what legal services the paralegal will provide, but how much those services are likely to cost.

## Fees and Disbursements

2. Generally, a **fee** refers to the paralegal's wage. Clients pay fees for the legal services provided by the paralegal. Fees may be billed in a variety of ways, including:
  - An *hourly rate*, charging for the actual time spent on the client matter,
  - A *block, fixed or flat fee*, charging a fixed amount for performing a particular task,
  - *Fees by stages*, charging for a matter which is broken down into stages, and an estimate is given as to the fee for each stage or step in the matter, or
  - *Contingency fees*, where part or all of the paralegal's fee depends on the successful completion of the matter, and the amount may be expressed as a percentage of the client's recovery in the matter.
3. The paralegal should consider which method best suits the circumstances and the client.
4. A **disbursement** refers to any expense that the paralegal pays on behalf of the client for which the paralegal is entitled to be reimbursed by the client. Common disbursements include charges for
  - research, such as Quicklaw charges or research conducted by third party professionals,
  - mileage,
  - postage, photocopying, faxing documents or sending documents by courier,
  - long-distance phone calls,
  - expert reports,
  - transcripts or certified documents, and/or
  - tribunal or court filing fees related to the client matter.
5. A paralegal cannot charge more than the actual cost of the disbursement. A paralegal cannot make a profit from disbursements at the client's expense.

## Discussing Fees and Disbursements

### Rule Reference: Rule 5.01(1)

6. The following are steps that will assist a paralegal in meeting his or her obligations under Rule 5.01(1).



(a) A paralegal should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest as is reasonable and practical in the circumstances, including the basis on which fees will be determined;

(b) A paralegal should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses. The paralegal may revise the initial estimate of fees and disbursements.

(c) A paralegal should openly disclose and discuss with clients all items that will be charged as disbursements and how those amounts will be calculated. If an administrative charge forms part of the amount charged as a disbursement, disclosure of such charge should be made to the client(s) in advance.

7. In discussing fees and disbursements with clients, it is appropriate for a paralegal to
  - provide a reasonable estimate of the total cost as opposed to an unreasonable estimate designed to garner the client's business, and
  - not manipulate fees and disbursements in a manner as to provide a lower fee estimate.
8. When something happens in the matter that the paralegal or client did not expect, resulting in costs that are higher than the paralegal's original estimate, the paralegal should immediately give the client a revised estimate of cost, and an explanation of why the original estimate has changed. The client can then instruct the paralegal based on the new information. The new understanding should be confirmed in writing.

## Hidden Fees

### Rule Reference: Rule 5.01(3)

9. The relationship between paralegal and client is based on trust. The client must be able to rely on the paralegal's honesty and ability to act in the client's best interests. This means that the paralegal cannot hide from the client any financial dealings in his or her matter.

## Payment and Appropriation of Funds

### Rule Reference: Rule 5.01(5)

**Rule 2.01(1)**

10. The *Rules* are not intended to be an exhaustive statement of the considerations that apply to payment of a paralegal's account from trust. The handling of trust money is generally governed by the by-laws of the Law Society.
11. Refusing to reimburse any portion of advance fees for work that has not been carried out when the contract of professional services with the client has terminated is a breach of the obligation to act with integrity.

**Fee Splitting and Referral Fees****Rule Reference: Rule 5.01(11), (12) & (13)****By-Law 7 (Multi-discipline Practices)**

12. **Fee splitting** occurs when a paralegal shares or divides his or her fee with another person. Where a client consents, a paralegal and another paralegal or lawyer who are not at the same firm may divide between them the fees for a matter, so long as the fees are split relative to the work done and the responsibility assumed by each paralegal and/or lawyer. Multi-discipline practices are exempt from the prohibition against fee-splitting in certain circumstances.
13. A **referral fee** is defined in Rule 5.01(14) of the Paralegal Rules of Conduct and includes:
  - a fee paid by a paralegal to another paralegal or lawyer for referring a client to the paralegal, or
  - a fee paid to the paralegal by another paralegal or lawyer for his or her referral of a client to the other paralegal or lawyer.
14. The *Rules* do not prohibit a paralegal from:
  - (a) Making an arrangement respecting the purchase and sale of a professional business when the consideration payable includes a percentage of revenues generated from the business sold;
  - (b) Entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the provision of legal services;
  - (c) Paying an employee for services, other than for referring clients, based on the revenue of the paralegal's firm or professional business.

15. Rule 5.01(20) is intended to ensure that paralegals do not avoid or evade Rules 5.01(11), (14), and (15).
16. Where a paralegal does anything that has the effect of obtaining or giving financial or other reward for the referral of legal work, Rule 5.01(20) is breached unless the paralegal may reasonably be considered to have done so primarily for bona fide purposes other than for obtaining or giving such a reward.
17. Examples of breaches of Rule 5.01(20) could include entering into transactions at non-market prices between the paralegal or lawyer who makes a referral and the paralegal or lawyer who receives the referral. Specific examples could include non-market leases or cost-sharing arrangements. Similarly, Rule 5.01(20) could be breached where a paralegal or lawyer enters into a consulting or other relationship with a paralegal or lawyer who has received a referral for consideration that does not fairly reflect the work done as such.
18. A paralegal who refers clients to other paralegals or lawyers, and a paralegal who receives referrals from other paralegals or lawyers each have fiduciary duties to the referred clients. Referral of a client must be in the client's best interests.
19. The decision about who to retain is that of the client. The requirements in Rules 5.01(15) to (19) of the Paralegal Rules of Conduct are intended to ensure that the client has all of the relevant information to make this decision, including information about fees.
20. In the normal course, a paralegal who is referring a client should recommend more than one paralegal or lawyer to the client. There may be circumstances however in which there is only one suitable referral, for reasons such as expertise or geographic location, and this must be noted in the referral agreement.

## The Statement of Account

### Rule Reference: Rule 5.01(4)

21. In addition to detailing fees and disbursements, the **statement of account** or bill delivered to the client by the paralegal should detail clearly and separately the amount the paralegal has charged for Harmonized Sales Tax (HST). The HST applies to fees and some disbursements, as outlined by the Canada Revenue Agency (CRA) guidelines. The paralegal should review and sign the statement of account before it is sent to the client.

22. Should a dispute arise about the statement of account, the paralegal should discuss the matter openly and calmly with the client in an effort to resolve the matter. Civility and professionalism must govern all discussions, including discussions relating to fee disputes with clients.

## Contingency Fees

### Rule Reference: Rule 5.01(6) – (8)

23. A **contingency fee** is a fee that is paid when and if a particular result is achieved in a client's matter.
24. Rule 5.01(7) outlines the factors to be considered in determining the appropriate percentage (or other basis) of the contingency fee agreement. Regardless of which factors are used to determine the fee and the other terms of the contingency fee agreement, the ultimate fee must still be fair and reasonable.
25. The contingency fee agreement should be clear about how the fee will be calculated.
26. It may be helpful for a paralegal to refer to *Regulation 195/04 to the Solicitor's Act* (which applies to contingency fees for lawyers) for guidance as to what terms should be included in a paralegal contingency fee agreement.

## GUIDELINE 14: RETAINERS

### General

1. In the context of providing legal services, the word **retainer** may mean any or all of the following:
- the client's act of hiring the paralegal to provide legal services (i.e., a **retainer**),
  - the contract that outlines the legal services the paralegal will provide to the client and the fees and disbursements and HST to be paid by the client (i.e., a **retainer agreement**), or
  - monies paid by the client to the paralegal in advance to secure his or her services in the near future and against which future fees will be charged (i.e., a **money retainer**).

### The Retainer Agreement

#### Rule Reference: Rule 5.01(1)

2. Once the paralegal has been hired by a client for a particular matter, it is advisable that the paralegal discuss with the client two essential terms of the paralegal's retainer by the client: the scope of the legal services to be provided and the anticipated cost of those services. The paralegal should ensure that the client clearly understands what legal services the paralegal is undertaking to provide. It is helpful for both the paralegal and client to confirm this understanding in writing by
  - a written retainer agreement signed by the client,
  - an engagement letter from the paralegal, or
  - a confirming memo to the client (sent by mail, e-mail or fax).

**Rule Reference: Rule 3.02(15)****2.1.**

A written retainer agreement is particularly helpful in the circumstances of a limited scope retainer.

3. This written confirmation should set out the scope of legal services to be provided and describe how fees, disbursements and HST will be charged (see Guideline 13: Fees).

**The Money Retainer****Rule Reference: By-Law 9, part IV****Rule Reference: Rule 5.01**

4. If practical, the paralegal should obtain a money retainer from the client at the beginning of the relationship. When determining the amount of the money retainer, the paralegal should consider the circumstances of each case, the circumstances of the client and the anticipated fees, disbursements and HST. Many of the factors are the same as those used in deciding if a fee is fair and reasonable.
5. The client should be advised at the outset if and when further retainers will be required. There may also be circumstances where a money retainer is not appropriate, for example, when a client and the paralegal have entered into a contingency fee agreement.
6. A money retainer must be deposited into a paralegal's trust account. After the paralegal has delivered to the client a statement of account or bill, the paralegal pays the amount of his or her statement of account from the money retainer held in trust. Disbursements and expenses paid on behalf of the client to others may be paid

directly from the money retainer in the paralegal's trust account. To avoid disagreements in circumstances where a disbursement will be particularly substantial, a paralegal may want to obtain the client's approval prior to the expense being incurred.

## GUIDELINE 15: TRUST ACCOUNTS

### General

#### Rule Reference: By-Law 9

1. A paralegal has special obligations when handling client funds. When a paralegal receives money that belongs to a client or is to be held on behalf of a client, the funds must be deposited to a **trust account**. Because client funds must be held in trust by the paralegal, they are also known as **trust funds**.
2. By-Law 9 outlines a paralegal's responsibilities regarding financial transactions and record-keeping, including the operation of a trust account.

### Authorization to Withdraw From Trust

#### Rule Reference: By-Law 9

3. A paralegal must be in control of his or her trust account. Although a person who is not a licensed paralegal or lawyer may be permitted to disburse trust funds alone in exceptional circumstances, the Law Society has found appropriate exceptional circumstances to be very rare.
4. If there is only one paralegal with signing authority on the trust account(s) it would be prudent to make arrangements for another paralegal or a lawyer to have signing authority on the trust account(s) in case of an unexpected emergency (i.e. illness or accident) or planned absence (i.e. vacation). The paralegal may arrange this through his or her financial institution through a power of attorney. The chosen paralegal or lawyer must be insured and entitled to provide legal services or to practise law.
5. To ensure that no unauthorized withdrawals from trust are being made, the paralegal should limit access to blank trust account cheques and electronic banking software. A paralegal should never sign blank trust cheques. The paralegal should use pre-numbered trust cheques and keep them locked up when not in use.

## GUIDELINE 16: DUTY TO THE ADMINISTRATION OF JUSTICE

## General

### Rule Reference: Rule 6.01

1. An important part of a paralegal's duty to act with integrity is his or her obligation to the administration of justice detailed in Rule 6. The obligation includes a paralegal's duty to assist in maintaining the security of court facilities, to refrain from inappropriate public statements, and the obligation to prevent unauthorized practice.

## Security of Court Facilities

### Rule Reference: Rule 6.01(3)

#### Rule 3.03

2. An aspect of supporting the justice system is ensuring that its facilities remain safe. Where appropriate, a paralegal in the situation covered by Rule 6.01(3) should consider requesting additional security at the facility and notifying other paralegals or lawyers who may be affected. In considering what, if any, action to take with respect to this obligation, the paralegal must consider his or her obligations under Rule 3.03.

## Public Appearances and Statements

### Rule Reference: Rule 6.01(1), (2), (4) & (4.1)

### Rule Reference: Rule 3.03, 3.04

### Rule Reference: Rule 4.01(1)

### Rule Reference: Rule 7.01(4)

3. When making statements to the media with, or on behalf of, a client, a paralegal must be mindful of his or her obligations to act in the client's best interests and within the scope of his or her instructions from the client. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before a case has concluded.

## Provision of Legal Services without a Licence / Practice of Law without a Licence

### Rule Reference: Rule 6.01(5) & (6)

4. The obligations found in subrules 6.01(5) & (6) stem from a paralegal's obligation to the administration of justice and from the regulatory scheme for paralegals and lawyers set out in the *Act* and discussed below.
5. Under the *Act*, anyone who provides legal services or practises law must be licensed by the Law Society, unless they are exempt from this requirement, or deemed not to be providing legal services or practising law. A person who is not a lawyer or a licensed paralegal is subject neither to a professional code of conduct nor the Law Society's jurisdiction, which exist to protect the public. Only clients of regulated service providers have important protections, such as the following:
  - adherence to a mandatory code of professional conduct,
  - maintenance and operation of a trust account in accordance with strict mandatory guidelines,
  - mandatory professional liability insurance coverage, and
  - the Law Society's Compensation Funds.

## GUIDELINE 17: DUTY TO PARALEGALS, LAWYERS AND OTHERS

### General

**Rule Reference: Rule 2.01(3)**

**Rule Reference: Rule 7.01**

1. Discourteous and uncivil behaviour between paralegals or between a paralegal and a lawyer will lessen the public's respect for the administration of justice and may harm the clients' interests. Any ill feeling that may exist between parties, particularly during adversarial proceedings, should never be allowed to influence paralegals or lawyers in their conduct and demeanour toward each other or the parties. Hostility or conflict between representatives may impair their ability to focus on their respective clients' interests and to have matters resolved without undue delay or cost.

### Prohibited Conduct

**Rule Reference: Rule 7.01**

2. The presence of personal animosity between paralegals or between a paralegal and a lawyer involved in a matter may cause their judgment to be clouded by emotional



factors and hinder the proper resolution of the matter. To that end, Rule 7.01 outlines various types of conduct that are specifically prohibited.

3. One of the prohibitions in Rule 7.01(1) refers to sharp practice. Sharp practice occurs when a paralegal obtains, or tries to obtain, an advantage for the paralegal or client(s), by using dishonourable means. This would include, for example, lying to another paralegal or a lawyer, trying to trick another paralegal or a lawyer into doing something or making an oral promise to another paralegal or lawyer with the intention of reneging on the promise later. As another example, if an opposing paralegal were under a mistaken belief about the date of an upcoming trial, a paralegal would be obligated to tell the opposing representative about the error, rather than ignoring the matter in the hope the opposing representative would not appear at the trial.

## **Limited Scope Retainer**

### **Rule Reference: Rule 7.02(2)**

3.1. Where notice as described in Rule 7.02(2) has been provided to a paralegal, the paralegal is required to communicate with the legal practitioner who is representing the person under a limited scope retainer, but only to the extent of the matter(s) within the limited scope retainer as identified by the legal practitioner. The paralegal may communicate with the person on matters outside the limited scope retainer.

## GUIDELINE 18: SUPERVISION OF STAFF

### **General**

#### **Rule Reference: By-Law 7.1**

#### **Rule 8.01(1), (3), (4) & (5)**

#### **By-Law 7 (Multi-discipline practices)**

1. A paralegal may, in appropriate circumstances, provide services with the assistance of persons of whose competence the paralegal is satisfied. Proper use of support staff allows the paralegal to make efficient use of the time he or she has for providing legal services, and may result in savings to the client. Under By-Law 7.1, some tasks may be delegated to persons who are not licensed and other tasks may not. Though certain tasks may be delegated, the paralegal remains responsible for all services rendered and all communications by and prepared by his or her employees.

2. The extent of supervision required will depend on the task, including the degree of standardization and repetitiveness of the task and the experience of the employee. Extra supervisory care may be needed if there is something different or unusual in the task. The burden rests on the paralegal to educate the employee concerning the tasks that may be assigned and then to supervise the manner in which these tasks are completed.
3. A paralegal should ensure that employees who are not licensed clearly identify themselves as such when communicating with clients, prospective clients, courts or tribunals, or the public. This includes both written and verbal communications.
4. A paralegal in a multi-discipline practice is responsible for the actions of his or her non-licensee partners and associates as set out in Rule 8.01(5).

## Hiring & Training Staff

**Rule Reference: Rule 8.01(1)**

**Rule Reference: Rule 3.01(4)(c)(h)**

5. In order to fulfill his or her responsibilities to clients under the *Rules* and By-Laws, a paralegal should take care to properly hire and train staff. A paralegal should obtain information about a potential employee to inform himself or herself about the employee's competence and trustworthiness. If the position involves handling money, the paralegal may ask for the applicant's consent to check his or her criminal record and credit reports. A paralegal must comply with privacy legislation and should refer to the *Rules* to review questions that can and cannot be asked of an applicant, as outlined in the *Human Rights Code*. A paralegal should confirm the information contained in a candidate's resume, consult references and verify previous employment experiences before offering employment to a candidate.
6. Proper hiring and training of persons who are not licensed will assist the paralegal in managing his or her practice effectively, as required by Rule 3.01(4)(c)(h). Since the paralegal is responsible for the professional business, it will assist the paralegal in fulfilling this responsibility if the paralegal educates staff regarding
  - the types of tasks which will and will not be delegated,
  - the need to act with courtesy and professionalism,
  - the definition of discrimination and harassment, and the prohibition against any conduct that amounts to discrimination and harassment,

- the duty to maintain client confidentiality and methods used to protect confidential client information (e.g. avoiding gossip inside and outside of the office),
- the definition of a conflict of interest, the duty to avoid conflicts and how to use a conflict checking system,
- proper handling of client property, including money, and
- proper record keeping.

## GUIDELINE 19: MAKING LEGAL SERVICES AVAILABLE AND MARKETING OF LEGAL SERVICES

### **Making Legal Services Available**

**Rule Reference: Rule 8.02**

**Rule Reference: Rule 8.03**

1. Rule 8.02(1) describes the paralegal's obligation to make legal services available and the manner in which he or she must do so. A paralegal has a general right to decline a particular representation (except when assigned as representative by a tribunal), but it is a right that should be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, the paralegal should not exercise the right merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the paralegal's private opinion about the guilt of the accused. A paralegal declining representation should assist in obtaining the services of a lawyer or another licensed paralegal qualified in the particular field and able to act.
2. A person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover may need the professional assistance of a paralegal. A paralegal is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the paralegal for this purpose, and to offer assistance to a person with whom the paralegal has a close family or professional relationship. Rules 8.02 and 8.03 prohibit the paralegal from using unconscionable or exploitive or other means that bring the profession or the administration of justice into disrepute.

### **Marketing of Legal Services**

**Rule Reference: Rule 8.02****Rule Reference: Rule 8.03**

3. In presenting and promoting a paralegal practice, a paralegal must comply with the *Rules* regarding the marketing of legal services.
4. Rules 8.02 and 8.03 impose certain restrictions and obligations on a paralegal who wishes to market and/or advertise his or her legal services. The *Rules* help to ensure that a paralegal does not mislead clients or the public while still permitting the paralegal to differentiate himself or herself and his or her services from those of lawyers or other paralegals. A paralegal should ensure that his or her marketing and advertising does not suggest that the paralegal is a lawyer and should take steps to correct any misapprehension on the part of a client or prospective client in that respect.
5. Examples of marketing practices that may contravene Rule 8.03(1) include:
  - (a) stating an amount of money that the paralegal has recovered for a client or refer to the paralegal's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;
  - (b) suggesting qualitative superiority to lawyers or other paralegals;
  - (c) raising expectations;
  - (d) suggesting or implying the paralegal is aggressive;
  - (e) disparaging or demeaning other persons, groups, organizations or institutions;
  - (f) using testimonials or endorsements which contain emotional appeals.
6. Examples of marketing that do contravene Rule 8.03(1) include:
  - (a) marketing services that the paralegal is not currently able to perform to the standard of a competent paralegal;

(b) bait and switch marketing, that is marketing by which clients are attracted by offers of services, prices or terms different from those commonly provided to clients who respond to the marketing;

(c) marketing that fails to clearly and prominently disclose a practice that the paralegal has of referring clients for a fee, or other consideration, to other licensees;

(d) failing to expressly state that the marketed services will be provided by licensed lawyers, by licensed paralegals or both as the case may be;

(e) referring to awards, rankings and third party endorsements that are not bona fide or are likely to be misleading, confusing, or deceptive; and

(f) taking advantage of a vulnerable person or group.

7. Rule 8.03(2) establishes, among other things, requirements for communication in the marketing of legal services. These requirements apply to different forms of marketing including advertisements about the size, location and nature of the paralegal's practice and awards and endorsements from third parties.

8. Paragraphs 6(a-d) of these Guidelines are intended to ensure that marketing does not mislead by failing to make clear what services are actually available and are intended to be provided. Paragraph (d) is intended to better ensure that prospective clients are aware whether the marketed services being offered will be performed by lawyers or paralegals.

9. Paragraph 6(e) of these Guidelines addresses marketing by reference to awards, rankings and third party endorsements. The terms "awards" and "rankings" are intended to be interpreted broadly and to include superlative titles such as "best", "super", "#1" and similar indications. Awards, rankings and third party endorsements which contravene this rule include awards or rankings that:

(a) do not genuinely reflect the performance of the paralegal and the quality of services provided by the paralegal but appear to do so;

(b) are not the result of a reasonable evaluative process;

(c) are conferred in part as a result of the payment of a fee or other consideration rather than as a result of a legitimate evaluation of the performance and quality of the paralegal; or

(d) the paralegal could not have demonstrated, at the time of reference, were compliant with this rule.

10. Particular care should be taken in respect of awards and rankings referenced in mass advertising, such as in newspaper and internet advertising and advertising on television, billboards, taxis, buses and the like. In such contexts, references to awards, rankings and third party endorsements must be particularly clear and straightforward as there is little opportunity for reflection or appreciation on the part of the potential client or to provide context.
11. References to awards and honours that are genuine reflections of the professional or civic service do not contravene this rule. For example, a potential client may consider it useful to know that a paralegal has been honoured for their service by the Canadian or the Ontario government, the Law Society or a professional organization. However, the paralegal should take care to ensure that such awards and honours reflect a genuine and responsible assessment in the public interest.
12. Rule 8.03(2) also requires marketing to be consistent with a high standard of professionalism. Unprofessional marketing is not in the best interests of the public. It has a negative impact on the reputation of paralegals, the legal professions and the administration of justice. The Law Society has acknowledged in the Rules the special role of the professions to recognize and protect the dignity of individuals and the diversity of the community in Ontario. Marketing practices must conform to the requirements of human rights laws in Ontario.
13. Examples of marketing practices which may be inconsistent with a high degree of professionalism would be images, language or statements that are violent, racist or sexually offensive, take advantage of a vulnerable person or group or refer negatively to other licensees, the legal professions or the administration of justice.
14. Rule 8.03(4) and Guideline 6(d) to Rule 8.03(1) foster public awareness that both lawyers and paralegals are licensed by the Law Society, and transparency as to who is offering to provide services.
15. Rule 8.03(5) prohibits the marketing of second opinion services. The provision of second opinions is a valuable service to clients. However, second opinion marketing is commonly with a view of obtaining the retainer, rather than providing a second opinion. Such "bait and switch" marketing is inappropriate. The marketing of second opinions is prohibited under this rule, whatever the intent of the marketing.

## GUIDELINE 20: INSURANCE

### General

#### Rule Reference: Rule 8.04(1) – (3)

1. As soon as a paralegal discovers an error or omission that is or may reasonably be expected to involve liability to his or her client, the paralegal should take the following steps, in addition to those required by Rule 8.04:
  - immediately arrange an interview with the client and advise the client that an error or omission may have occurred that may form the basis of a claim against the paralegal by the client;
  - advise the client to obtain an opinion from an independent paralegal or lawyer and that, in the circumstances, the paralegal may not be able to continue acting for the client; and
  - subject to the rules about confidentiality, inform the insurer of the facts of the situation.
2. While the introduction of compulsory insurance imposes additional obligations upon a paralegal, those obligations must not impair the relationship between the paralegal and client or the duties owed to the client.

## GUIDELINE 21: DUTY TO THE LAW SOCIETY

### General

#### Rule Reference: Rule 9

1. All paralegals and lawyers owe a duty to their governing body, the Law Society, so that it can effectively and efficiently carry out its mandate to govern the legal professions in the public interest. Rule 9 details various obligations owed to the Law Society, many of which focus on measures to protect the public from inappropriate paralegal or lawyer conduct.

### Duty to Respond Promptly and to Co-operate With an Investigation

#### Rule Reference: Rule 9.01(1)

2. In addition to the obligation to reply promptly and completely to communication from the Law Society which is set out in Rule 9.01(1), a paralegal also has a duty to

cooperate with a person conducting an investigation under the *Act*. A paralegal who fails to respond promptly and completely to a Law Society inquiry about a complaint, or who fails to cooperate with a Law Society investigation, may be disciplined on that issue, regardless of the merits or outcome of the original complaint.

## **Duty to Report Misconduct**

### **Rule Reference: Rule 9.01(2) – (8)**

3. Unless a paralegal or lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients and others may ensue. As such, a paralegal must assist the Law Society in upholding the integrity of the profession by reporting professional misconduct of the type outlined in Rule 9.01(2).
4. Evidence of seemingly isolated events, or “less serious” breaches of the *Rules*, may, under investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is proper therefore (unless it is confidential or otherwise unlawful) for a paralegal to report to the Law Society any instance involving a breach of the *Rules* or the *Rules of Professional Conduct*.
5. The obligation to report misconduct applies to the paralegal’s own conduct, as well as that of other paralegals and lawyers.
6. The onus is on the paralegal to take the necessary steps to carry out his or her obligations to the Law Society and to protect both himself or herself and his or her client. If a paralegal is unsure as to whether to report another paralegal’s or lawyer’s conduct, the paralegal should consider seeking the advice of the Law Society directly (through the Practice Management Helpline at 416-947-3315 or 1-800-668-7380 extension 3315) or indirectly (through another paralegal or lawyer).

## **Duty to Report Certain Offences**

### **Rule Reference: By-Law 8, subsection 3**

### **Rule Reference: Rule 9.01(9)**

7. All paralegals have a duty to report themselves to the Law Society if certain charges (identified in By-Law 8, subsection 3) have been laid against them.
8. The By-Law only requires the paralegal to self-report the above-mentioned criminal charges or convictions. A paralegal is only required to report another paralegal or



lawyer who is involved in criminal activity in certain circumstances.

## GUIDELINE 22: THE LAW SOCIETY AND ITS DISCIPLINARY AUTHORITY

### General

#### Rule Reference: Rule 9.01 (10) – (13)

1. A paralegal may be disciplined by the Law Society for either professional misconduct or for conduct unbecoming a paralegal.
2. Examples of conduct unbecoming a paralegal include a paralegal's conviction of a criminal offence or a finding or sanction imposed on the paralegal by a tribunal or licensing body.
3. Dishonourable or questionable conduct on the part of a paralegal in either private life or while providing legal services will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the paralegal, the Law Society may be justified in taking disciplinary action.
4. Generally, however, the Law Society will not be concerned with the purely private or extra-professional activities of a paralegal that do not bring into question the paralegal's professional integrity.
5. The *Rules* cannot address every situation. As such, a paralegal is required to follow both the "letter" and the "spirit" of the *Rules*. The "letter" of the rule is the meaning of the rule as it is written. The "spirit" of the rule is the sense of the rule or the meaning or importance of the rule, even though it may not be explicit or stated in the written version of the *Rule*.

## GUIDELINE 23: FINANCIAL OBLIGATIONS

### General

#### Rule Reference: 8.01(2)

1. Rule 8.01 establishes a professional duty (apart from any legal liability) regarding financial obligations incurred in the course of providing legal services on behalf of a client.

2. The business of providing legal services often requires that a paralegal incur financial obligations to others on behalf of clients. Such obligations include charges for medical reports, disbursements payable to government registries, fees charged by expert witnesses, sheriffs, special examiners, registrars, court reporters and public officials and the accounts of agents retained in other jurisdictions.
3. To assist in avoiding disputes about payment of accounts, where a paralegal retains a person on behalf of a client, the paralegal should clarify the terms of the retainer in writing. This includes specifying the fees, the nature of the services to be provided, and the person responsible for payment. If the paralegal is not responsible for the payment of the fees, the paralegal should help in making satisfactory arrangements for payment if it is reasonably possible to do so.
4. If there is a change of representative, the paralegal who originally retained the person to whom the financial obligation will be owed should advise him or her about the change and provide the name, address, telephone number, fax number and e-mail address of the new paralegal or lawyer.