

## GUIDELINE 12: ADVOCACY

### Definitions

#### Rule Reference: Rule 4

#### 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 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) & (h)**

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) & (g)**

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.

### **Witnesses**

**Rule Reference: Rule 4.01(5)(i), (j), (k) & (m)**

**Rule 4.02**

**Rule 4.03**

**Rule 7.01(6)**

12. As an advocate, a paralegal may contact all possible witnesses for both sides of a matter, 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 is the paralegal's client(s) 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, 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.
13. 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)**

14. 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)**

15. 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 is 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**

16. 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.
17. When acting as an advocate for his or her client before a tribunal, the paralegal should not appear to be giving unsworn testimony. This is improper and may put the paralegal's own credibility in issue. 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.

### **Dealing With Unrepresented Persons**

#### **Rule Reference: Rule 4.05**

18. The paralegal has a special duty when representing a client and an opposing party is not represented by a paralegal or a lawyer.
19. To avoid misunderstandings, it will 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 3.08**

20. 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).