

## GUIDELINE 3: UNDERTAKINGS

### General

#### Rule Reference: Rule 2.02

1. An *undertaking* is a *personal promise*. Rule 2.02 sets out a paralegal's obligations in relation to undertakings.
2. 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.