

## 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 is often 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(8) – (14)

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(7) & (8) Rule 3.04(8) – (14)

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(8) – (14)

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 (8) – (14) 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, had 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.