

GUIDELINE 7: ADVISING CLIENTS

General

Rule Reference: 3.02(1) & (2)

1. 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.
- 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.

Dishonesty, Fraud or Crime by Client

Rule Reference: Rule 3.02(3), (4), (4.1) & (4.2)

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2. A paralegal must be alert to the warning signs that may indicate dishonesty or illegal conduct by a client. The paralegal may need to, or be forced to, withdraw from representing the client where the client takes part in this type of dishonourable conduct.
3. Before accepting a retainer or during a retainer, if a paralegal has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the paralegal should make reasonable inquiries to obtain information about the client and about the purpose of the retainer. 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.

4. Rules 3.02(4.1) and (4.2) speak 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 these rules.

Dispute Resolution

Rule Reference: Rule 3.02(5), (6)

5. A paralegal has an important role to play in both commencing and settling legal proceedings.
6. 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.
7. 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 Under a Disability

Rule Reference: Rule 3.02(7), (8) Rule 2.03

8. 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.

Medical-Legal Reports

Rule Reference: Rule 3.02 (9), (10), (11)

9. 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.

10. 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.

Official Language Rights

Rule Reference: Rule 3.02(14)

11. When advising French-speaking clients, a paralegal should advise a client of his or her French language rights under each of the following (where appropriate):
- Subsection 19(1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament,
 - Section 530 of the *Criminal Code* (Canada) on an accused's right to a trial before a court that speaks the official language of Canada that is the language of the accused,
 - Section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and
 - Subsection 5(1) of the *French Language Services Act* for services in French from Ontario government agencies and legislative institutions.

Errors

Rule Reference: Rule 3.02(12), (13)

12. 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.

Multi-Discipline Practices

Rule Reference: Rule 3.04(15)

Rule 8.01(5)

Rule 1.02 definitions of "associate" and "professional misconduct"

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13. 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(16) & (17)**
 Rule 1.02 definitions of “affiliated entity” and “affiliation”
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14. 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.