

## **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 that is either 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 facts the client has consulted or retained the paralegal.

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

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

4. The Rules provide that the duty of confidentiality lasts indefinitely. The duty continues, even after the client or former client dies.
5. 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 8.01(1)**

6. 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)**

7. 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.
8. 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

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

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

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

**Rule Reference: Rule 3.03**

**Rule 6.01(3)**

**Rule 9.01(2)**

12. 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.
13. 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 court facility anonymously or through another paralegal or a lawyer.

**Avoiding Inadvertent Disclosure**

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

14. 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,
  - 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 8.01(1)**

15. A paralegal should establish office procedures to ensure that the confidentiality of client information is protected. These procedures could include the following:
  - 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, 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.