

GUIDELINE 9: CONFLICTS OF INTEREST

GENERAL

Definition

Rule Reference: Rule 3.04(1)

1. Conflicts of interest are defined in Rule 3.04(1).

DUTY TO AVOID CONFLICTS OF INTEREST

The Duty

Rule Reference: Rule 3.04 (2) & (3)

2. The duty to avoid conflicts of interest is found in Rule 3.04 (2) and (3).

To Whom is the Duty Owed – Current Clients and Prospective Clients

Rule Reference: Rule 3.04(1) & (3)

3. A paralegal owes the duty of avoiding conflicts of interest to all clients, including prospective clients. A paralegal should identify potential conflicts of interest at the first contact with a prospective client. A *prospective client* can be described as one who has consulted with a paralegal or paralegal firm to see if the firm will take on his or her matter or to see if he or she would like to hire the paralegal or firm.
4. Conflicts of interest may arise at any time. A paralegal should use a conflicts checking system to assist in managing conflicts of interest. The paralegal should examine whether a conflict of interest exists not only at the outset, but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.
5. At the time that a paralegal becomes aware of a conflict, or potential conflict, the paralegal should consider whether to accept the retainer, or to continue to act. This applies even where the client consents or where the retainer would not, in the paralegal's opinion, breach the *Rules*. The paralegal should consider the delay, expense and inconvenience that would arise for the client and/or the paralegal, should the paralegal be required to withdraw from the matter at a later stage in the proceedings.

To Whom is the Duty Owed – the Firm's Clients

Rule Reference: Rule 1.02 definition of "client"

6. Since every client of a paralegal firm is also the client of every other paralegal employed at the firm, if one paralegal in the firm has a conflict of interest in a matter, then all paralegals in the firm have a conflict in that matter. As a result, when checking for conflicts, the paralegal should review the names of all current and former clients of the firm and not just the clients personally served by the individual paralegal.

To Whom is the Duty Owed – Persons Involved or Associated with Clients

Rule Reference: Rule 3.04(4)

7. Sometimes there will be others who are involved or associated with the client in the client's matter. Persons *involved or associated with clients* may include the client's spouse, family members, business associates or employees of any related companies. The duty to avoid conflicts of interest may require a paralegal to avoid acting against those individuals as well.

DEALING WITH A CONFLICT OF INTEREST

Disclosing All Information

Rule Reference: Rule 3.04(3)

8. The client needs to know of anything that may influence the paralegal's judgment or loyalty. Once the paralegal has provided the client with all the details, the paralegal must allow the client time to consider them or to ask for further clarification.
9. There may be situations where it is impossible for a paralegal to give a client or prospective client all necessary information. This may happen when the details about the conflict involve another client or a former client. Since a paralegal cannot reveal confidential information regarding another client, the paralegal may only say that there is a conflict and that he or she cannot continue with or accept the retainer.

Obtaining Consent

Rule Reference: Rule 1.02 definition of "consent" Rule 3.04(3)

10. The client may only consent after being given all information required to make an informed decision. This is called *informed consent*.
11. Where any other relevant persons must consent, the paralegal must make sure that their consent is also informed consent.

Independent Legal Advice/Legal Representation

Rule Reference: Rules 3.04(9), 3.06(1)(b) and 3.06(5)(b), 3.06(7)(c)

12. There are situations where the client's informed and written consent is not enough to allow the paralegal to accept or continue with a matter. In some circumstances, the client must receive advice from an independent legal advisor regarding the matter or transaction before the paralegal may taken any further steps in the client's matter.
13. An independent legal advisor is another paralegal or lawyer, who can provide the client with *independent legal advice*. This advisor is unrelated to the client's matter, associated parties or the paralegal. He or she is unbiased and objective and does not have a conflict of interest.

14. In circumstances where the paralegal is prohibited from acting for a client or prospective client, the paralegal must suggest that the individual obtain his or her own independent legal representation. ***Independent legal representation*** means that the individual has retained a legal representative, either a paralegal or lawyer, to act as his or her own representative in the matter. This retained representative is objective and does not have any conflicting interest with regards to the matter.

Refusal to Act, Withdrawal of Services

Rule Reference: Rules 3.04(2) and 3.08

15. In some cases, the only way to deal with the conflict is to refuse to act. The paralegal may have to decline the retainer at the outset or may have to terminate the retainer and withdraw from representing the client at a later time. A paralegal may need to take this step even where the client wants the paralegal to accept the retainer, or to continue to act.

JOINT CLIENTS

General

Rule Reference: Rule 3.04(8) – (14)

16. A paralegal may be asked to represent more than one client in a matter or transaction. This is referred to as a ***joint retainer***.
17. Acting in a joint retainer places the paralegal in a potential conflict of interest. A paralegal has an obligation to all clients and in a joint retainer, the paralegal must remain loyal and devoted to all clients equally – the paralegal cannot choose to serve one client more carefully or resolutely than any other. If the interests of one client change during the course of the retainer, the paralegal may be in a conflict of interest.

Before Accepting the Joint Retainer

Rule Reference: Rule 3.04(8) – (11)

Rule 3.02(7) & (8)

18. In cases where one of the joint clients is not sophisticated or is vulnerable, the paralegal should consider the provisions of Rule 3.02(7) & (8) regarding clients under a disability. The paralegal may want to recommend that the client obtain independent legal advice prior to agreeing to the joint retainer. This will ensure that the client's consent to the joint retainer is informed, genuine and uncoerced.

If a Conflict Develops Between Joint Clients

Rule Reference: Rule 3.04(12) – (14)

19. Subrules 3.04(12) – (14) set out the steps a paralegal must take in the event that a conflict develops between joint clients.

ACTING AGAINST CLIENTS

Acting Against Clients or Former Clients in the Same or Related Matters

Rule Reference: Rule 3.04(2), (3), (4)(a) & (b)

20. A paralegal is not permitted to act against clients or former clients in the same or related matters, except in accordance with subrules 3.04(2), (3), (4)(a) and (b).

Acting Against Clients or Former Clients in New Matters

Rule Reference: Rule 3.04(3), (4)(c), (5), (6) & (7)

21. A paralegal is permitted to act against a client or former client in a fresh, independent and unrelated matter, in certain circumstances.
22. Even where the *Rules* do not prohibit a paralegal from acting against a client or former client, the paralegal should consider whether to accept the retainer (or continue acting). To act against a client or former client may damage the paralegal-client relationship, may result in court proceedings or a complaint to the Law Society.

PARALEGAL TRANSFER BETWEEN FIRMS

General

Rule Reference: Rule 3.05

23. Problems concerning confidential information may arise when a paralegal changes firms and both firms act for opposing clients in the same or a related matter. The potential risk is that confidential information about the client from the paralegal's former office may be revealed to the members of the new firm and used against that client. A paralegal should carefully review the *Rules* when transferring to a new office or when a new paralegal is about to join the paralegal firm.

DEALING WITH UNREPRESENTED PERSONS

General

Rule Reference: Rule 4.05

Rule 3.04(2), (8) – (14)

24. In the course of providing legal services, a paralegal may have to deal with opposite parties or other individuals with an interest in the matter who are not represented by a paralegal or a lawyer. The potential danger to the paralegal in this situation is that the unrepresented person may think that the paralegal is looking after his or her interests.
25. If an unrepresented person who is the opposite party requests the paralegal to advise or act in the matter, the paralegal is not permitted to accept the retainer. If the unrepresented party otherwise has an interest in the matter, such as a co-accused, the paralegal may be permitted to act, but should be governed by the considerations outlined in Rule 3.04(8) – (14) about joint retainers.

FINANCIAL INTERESTS

Doing Business With a Client

Rule Reference: Rule 3.06(1) – (4)

26. A paralegal should be cautious about entering into a business arrangement with his or her client(s) that is unrelated to the provision of paralegal services. Since the paralegal is or was the client's advisor, the paralegal may have a conflict of interest. The paralegal may unknowingly influence the client to agree to an arrangement that may be unfair or unreasonable to the client. This danger is present when the client wants to invest with the paralegal.

Borrowing From Clients

Rule Reference: Rule 3.06(5)

27. A paralegal must not borrow from clients except in accordance with Rule 3.06(5).

Guaranteeing Client Debts

Rule Reference: Rule 3.06(6) – (7)

28. A paralegal must not guarantee client debts except in accordance with Rule 3.06(6).

PERSONAL INTERESTS

Conflicts of Interest Arising From Personal Relationships

Rule Reference: Rule 3.04(1)

29. The *Rules* do not prohibit a paralegal from providing legal services to friends or family members, but they do require the paralegal to avoid existing or potential conflicts of interest.
30. A conflict of interest may arise when a paralegal provides legal services to a friend or family member, or when the client and the paralegal have a sexual or intimate personal relationship. In these circumstances, the paralegal's personal feelings for the client may impede the paralegal's ability to provide objective, disinterested professional advice to the client. Before accepting a retainer from or continuing a retainer with a person with whom the paralegal has a sexual or intimate personal relationship, a paralegal should consider the following factors:
- The vulnerability of the client, both emotional and economic;
 - The fact that the paralegal and client relationship may create a power imbalance in favour of the paralegal or, in some circumstances, in favour of the client;
 - Whether the sexual or intimate personal relationship may jeopardize the client's right to have all information concerning the client's business and affairs held in strict confidence. For example, the existence of the personal relationship may obscure whether certain information was acquired by the paralegal in the course of the paralegal and client relationship;

- Whether such a relationship may require the paralegal to act as a witness in the proceedings;
 - Whether such a relationship may interfere with the paralegal's fiduciary obligations to the client, including his or her ability to exercise independent professional judgment and his or her ability to fulfill obligations owed as an officer of the court and to the administration of justice.
31. Generally speaking, there is no conflict of interest if another paralegal or lawyer at the firm who does not have a sexual or intimate personal relationship with the client, handles the client's matter.

Conflicts of Interest Arising From a Paralegal's Outside Interests

**Rule Reference: Rule 3.04(1)
Rule 2.01(4) & (5)**

32. A conflict of interest may arise from the paralegal's outside interests. Outside interests covers the widest possible range of activities and includes those that may overlap with the business of providing legal services, as well as activities that have no connection to the law or working as a paralegal. If a paralegal has other businesses or interests separate from his or her paralegal firm, those interests may influence the way the paralegal serves clients. Whatever the outside interest, a paralegal must guard against allowing those outside interests to interfere or conflict with his or her duties to clients. (Also refer to Guideline 2: Outside Interests).
33. If a paralegal is in public office while still providing legal services to clients, the paralegal must not allow his or her duties as a public official to conflict with his or her duties as a paralegal. If there is a possibility of a conflict of interest, the paralegal should avoid it either by removing himself or herself from the discussion and voting in the public capacity or by withdrawing from representation of the client.

MULTI-DISCIPLINE PRACTICE

Conflicts of Interest Arising From Multi-discipline Practice

**Rule Reference: 3.04(15)
By-Law 7**

34. A paralegal should be alert to conflicts of interest arising from a multi-discipline practice, as he or she is subject to the requirements of Rule 3.04(15).

AFFILIATIONS

Conflicts of Interest Arising From Paralegals and Affiliated Entities

**Rule Reference: Rule 3.04(1), (16), (17) & (18)
By-Law 7**

35. A conflict of interest may arise from a paralegal's, or his or her associate's, interest in an affiliated firm of non-licensees where that interest conflicts with the paralegal's duties to a client. Rule 3.04(16) and (17) impose disclosure and consent requirements on a paralegal in an affiliation.
36. Conflicts of interest arising out of a proposed retainer by a client should be addressed as if the paralegal's practice and the practice of the affiliated entity were one where the paralegal accepts a retainer to provide legal services to that client jointly with non-legal services of the affiliated entity.
37. The affiliation is subject to the same conflict of interest rules as apply to paralegals.