

## **Rule 3 Duty to Clients**

### **3.01 COMPETENCE**

#### **Required Standard**

- 3.01 (1) A paralegal shall perform any services undertaken on a client's behalf to the standard of a competent paralegal.
- (2) A paralegal shall be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task and shall not undertake a matter without being competent to handle it or being able to become competent without undue delay or expense to the client.
- (3) If a paralegal discovers that he or she lacks the competence to complete the task for which he or she has been retained, the paralegal shall either decline to act or obtain the client's consent to retain, consult or collaborate with another licensee who is competent and licensed to perform that task.

#### **Who is Competent**

- (4) For the purposes of this rule, a competent paralegal is one who has and applies the relevant skills, attributes, and values appropriate to each matter undertaken on behalf of a client including,
- (a) knowing general legal principles and procedures and the substantive law and procedures for the legal services that the paralegal provides;
  - (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising clients on appropriate courses of action;
  - (c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including,
    - (i) legal research,
    - (ii) analysis,
    - (iii) application of the law to the relevant facts,
    - (iv) writing and drafting,
    - (v) negotiation,
    - (vi) alternative dispute resolution,
    - (vii) advocacy, and

- (viii) problem-solving ability;
- (d) representing the client in a conscientious, diligent, and cost-effective manner;
- (e) communicating with the client at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client and engaging the services of an interpreter when necessary;
- (f) answering reasonable client requests in a timely and effective manner;
- (g) ensuring that all applicable deadlines are met;
- (h) managing one's practice effectively;
- (i) applying intellectual capacity, judgment, and deliberation to all functions;
- (j) pursuing appropriate training and development to maintain and enhance knowledge and skills;
- (k) adapting to changing requirements, standards, techniques and practices; and
- (l) complying in letter and in spirit with these Rules.

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**3.02 ADVISING CLIENTS**

**General**

- 3.02 (1) A paralegal shall be honest and candid when advising clients.
- (2) A paralegal shall not undertake or provide advice with respect to a matter that is outside his or her permissible scope of practice.

**Dishonesty, Fraud, etc. by Client**

(3) A paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct when advising a client and he or she shall not instruct the client on how to violate the law and avoid punishment.

(4) A paralegal shall take all reasonable measures to avoid becoming the tool or dupe of an unscrupulous client or persons associated with such a client.

(4.1) When a paralegal is employed or retained by an organization to act in a matter and the paralegal knows that the organization intends to act dishonestly, fraudulently, criminally, or illegally with respect to that matter, then in addition to his or her obligations under subrules (3) and (4), the paralegal shall

- (a) advise the person from whom the paralegal takes instructions that the proposed conduct would be dishonest, fraudulent, criminal or illegal,
- (b) if necessary, because that person refuses to cause the proposed wrongful conduct to be abandoned, advise the organization's chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct would be dishonest, fraudulent, criminal or illegal,
- (c) if necessary because the chief legal officer or the chief executive officer of the organization refuses to cause the proposed conduct to be abandoned, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct would be dishonest, fraudulent, criminal, or illegal, and
- (d) if the organization, despite the paralegal's advice, intends to pursue the proposed course of conduct, withdraw from acting in the matter in accordance with rule 3.08.

(4.2) When a paralegal is employed or retained by an organization to act in a matter and the paralegal knows that the organization has acted or is acting dishonestly, fraudulently, criminally, or illegally with respect to that matter, then in addition to his or her obligations under subrules (3) and (4), the paralegal shall

- (a) advise the person from whom the paralegal takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the conduct was or is dishonest, fraudulent, criminal, or illegal and should be stopped,

(b) if necessary because that person, the chief legal officer, or the chief executive officer refuses to cause the wrongful conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the conduct was or is dishonest, fraudulent, criminal, or illegal and should be stopped, and

(c) if the organization, despite the paralegal's advice, continues with the wrongful conduct, withdraw from acting in the matter in accordance with rule 3.08.

*[New October 2008]*

**Settlement**

(5) A paralegal shall advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis, and shall discourage the client from commencing ill-advised legal proceedings.

(6) The paralegal shall consider the use of alternative dispute resolution for every dispute, and,

(a) if appropriate, the paralegal shall inform the client of the client's alternative dispute resolution options; and

(b) if so instructed, take steps to pursue those options.

**Client Under a Disability**

(7) If a client's ability to make decisions is impaired because of minority, mental disability or for some other reason, the paralegal shall, as far as reasonably possible, maintain a normal professional relationship with that client.

(8) If the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the paralegal shall take such steps as are appropriate to have a lawfully authorized representative appointed.

**Medical-Legal Reports**

(9) A paralegal who receives a medical-legal report from a physician or health professional that is accompanied by a proviso that it not be shown to the client, shall return the report immediately to the physician or health professional, without making a copy, unless the paralegal has received specific instructions to accept the report on that basis.

(10) A paralegal who receives a medical-legal report from a physician or health professional containing opinions or findings that, if disclosed, might cause harm or injury to the client, shall attempt to dissuade the client from seeing the report but, if the client insists, the paralegal shall produce the report.

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(11) If a client insists on seeing a medical-legal report about which the paralegal has reservations for the reasons noted in subrule (10), the paralegal shall recommend that the client attend at the office of the physician or health professional to see the report, in order that the client will have the benefit of the expertise of the physician or health professional in understanding the significance of the conclusions contained in the medical-legal report.

**Errors**

(12) If, in connection with a matter for which a paralegal is responsible, the paralegal discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the paralegal shall,

- (a) promptly inform the client of the error or omission, being careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise;
- (b) recommend that the client obtain legal advice elsewhere concerning any rights the client may have arising from the error or omission; and
- (c) advise the client that in the circumstances, the paralegal may no longer be able to act for the client.

**Official Language Rights**

(13) A paralegal shall, where appropriate, advise a client who speaks French of the client's language rights, including the right of the client to be served by a paralegal who is competent to provide legal services in the French language.

**Claims under Statutory Accident Benefits Schedule**

(14) In addition to complying with these Rules, a paralegal when acting as an adviser, consultant or representative to a person making a claim under the Statutory Accident Benefits Schedule to the *Insurance Act* shall comply with that Act, the regulations under that Act and the Code of Conduct for Statutory Accident Benefit Representatives.

**3.03 CONFIDENTIALITY**

**Confidential Information**

3.03 (1) A paralegal shall, at all times, hold in strict confidence all information concerning the business and affairs of a client acquired in the course of their professional relationship and shall not disclose any such information unless expressly or impliedly authorized by the client or required by law to do so.

(2) The duty of confidentiality under subrule (1) continues indefinitely after the paralegal has ceased to act for the client, whether or not differences have arisen between them.

(3) The paralegal shall keep the client's papers and other property out of sight, as well as out of reach, of those not entitled to see them.

**Justified or Permitted Disclosure**

(4) A paralegal shall disclose confidential information when required by law or by order of a tribunal of competent jurisdiction.

(5) If a paralegal believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the paralegal may disclose, pursuant to judicial order where practicable, confidential information if it is necessary to do so in order to prevent the death or harm.

(6) In order to defend against the allegations, a paralegal may disclose confidential information if it is alleged that the paralegal or his or her employees are,

- (a) guilty of a criminal offence involving a client's affairs;
- (b) civilly liable with respect to a matter involving a client's affairs; or
- (c) guilty of malpractice or misconduct.

(7) A paralegal may disclose confidential information in order to establish or collect his or her fees.

(8) A paralegal shall not disclose more information than is necessary when he or she discloses confidential information as required or permitted by subrules (4), (5), (6) and (7).

**3.04 CONFLICTS OF INTEREST – GENERAL****Definition**

3.04 (1) In this rule and rule 3.05,

“conflict of interest” or “conflicting interest” means an interest, financial or otherwise,

- (a) that would be likely to affect adversely a paralegal’s judgment on behalf of, or loyalty to, a client or prospective client; or
- (b) that a paralegal might be prompted to prefer over the interests of a client or prospective client.

**Avoidance of Conflicts of Interest**

(2) A paralegal shall not advise or represent more than one side of a dispute.

(3) A paralegal shall not act or continue to act in a matter when there is, or is likely to be, a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

**Acting Against Clients**

(4) Unless the client and those involved or associated with the client consent, a paralegal who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved or associated with the client in that matter,

- (a) in the same matter;
- (b) in any related matter; or
- (c) except as provided by subrule (6), in any new matter, if the paralegal has obtained from the other retainer, relevant confidential information.

(5) If a paralegal has acted for a client and obtained confidential information relevant to a matter, the paralegal’s partner or employee may act in a subsequent matter against that client, if,

- (a) the former client consents to the paralegal’s partner or employee acting; or
- (b) the paralegal’s firm establishes that it is appropriate to act in the new matter having regard to all the circumstances, including,
  - (i) the availability of suitable alternative representation,
  - (ii) the measures in place to ensure that no disclosure of the former client’s confidential information to the partner or employee having carriage of the new matter will occur,

- (iii) the extent of prejudice to any party,
- (iv) the good faith of the parties, and
- (v) issues affecting the public interest.

(6) If a partner or paralegal employed in a paralegal firm has obtained confidential information from a former client that is relevant to a new matter, no partner or paralegal employed in the firm may act against the former client in the new matter unless the requirements of subrule (5) have been satisfied.

(7) A paralegal may act against a client in a fresh, independent and unrelated matter if previously obtained confidential information is irrelevant to that matter.

**Joint Retainers**

(8) Before agreeing to act for more than one client in a matter or transaction, a paralegal shall advise the clients that,

- (a) the paralegal has been asked to act for both or all of them;
- (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
- (c) if a conflict develops that cannot be resolved, the paralegal cannot continue to act for both or all of them and may have to withdraw completely.

(9) If a paralegal has a continuing relationship with a client for whom he or she acts regularly, before agreeing to act for that client and another client in a matter or transaction, the paralegal shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

(10) If a paralegal has advised the clients, as provided under subrules (8) and (9), and the parties are content that the paralegal act for both or all of them, the paralegal shall obtain their consent.

(11) Although all parties concerned may consent, a paralegal shall avoid acting for more than one client if it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(12) Except as provided by subrule (14), if a paralegal's clients have consented to a joint retainer and an issue contentious between them or some of them arises, the paralegal shall not advise them on the contentious issue, but shall refer the clients to other licensees, unless,

- (a) the contentious issue does not involve the provision of legal services; and
- (b) the clients are sophisticated.

- (13) If the conditions set out in clauses (a) and (b) of subrule (12) are met, the clients may settle the contentious issue by direct negotiation in which the paralegal does not participate.
- (14) If a paralegal's clients consent to a joint retainer and also agree that if a contentious issue arises the paralegal may continue to advise one of them and a contentious issue does arise, the paralegal may advise the one client about the contentious matter and shall refer the other or others to another licensee.
- (15) A paralegal in a multi-discipline practice shall ensure that non-licensee partners and associates observe this rule for the provision of legal services and for any other business or professional undertaking carried on by them outside the professional business.
- (16) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a paralegal shall disclose to the client
- (a) any possible loss of confidentiality because of the involvement of the affiliated entity, including circumstances where a non-licensee or staff of the affiliated entity provide services, including support services, in the paralegal's office,
  - (b) the paralegal's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,
  - (c) any financial, economic or other arrangements between the paralegal and the affiliated entity that may affect the independence of the paralegal's representation of the client, including whether the paralegal shares in the revenues, profits or cash flows of the affiliated entity; and
  - (d) agreements between the paralegal and the affiliated entity, such as agreements with respect to referral of clients between the paralegal and the affiliated entity, that may affect the independence of the paralegal's representation of the client.
- (17) Where there is an affiliation, after making the disclosure as required by subrule (16), a paralegal shall obtain the client's consent before accepting a retainer under subrule (16).
- (18) Where there is an affiliation, a paralegal shall establish a system to search for conflicts of interest of the affiliation.

*[New October 2008]*

**3.05 CONFLICTS OF INTEREST - TRANSFERS**

**Application of Rule**

3.05 (1) This rule applies where a paralegal transfers from one paralegal firm (“former paralegal firm”) to another (“new paralegal firm”), and either the transferring paralegal or the new paralegal firm is aware at the time of the transfer or later discovers that,

- (a) the new paralegal firm represents a client in a matter that is the same as or related to a matter in which the former paralegal firm represents its client (“former client”);
- (b) the interests of those clients in that matter conflict; and
- (c) the transferring paralegal actually possesses relevant information respecting that matter.

**Paralegal Firm Disqualification**

(2) If a transferring paralegal actually possesses information respecting a former client that is confidential and that, if disclosed to a paralegal in the new paralegal firm, may prejudice the former client, the new paralegal firm shall cease representation of its client unless the former client consents to the new paralegal firm’s continued representation or the new paralegal firm establishes that it is in the interests of justice that it continue to represent the client.

(3) In deciding whether or not it is appropriate to continue to act for a client, the new paralegal firm shall consider all the circumstances including,

- (a) the adequacy and timing of the measures taken to ensure that no disclosure to any paralegal of the new paralegal firm of the former client's confidential information will occur;
- (b) the availability of suitable alternative representation;
- (c) the measures taken to ensure that no disclosure of the former client’s confidential information, to any paralegal in the new paralegal firm, will occur;
- (d) the extent of any prejudice to any party;
- (e) the good faith of the parties; and
- (f) issues affecting the public interest.

(4) If a transferring paralegal actually possesses relevant information respecting a former client but that information is not confidential information as described in subrule (2), the paralegal shall execute an affidavit or solemn declaration to that effect, and the new paralegal firm shall,

- (a) notify its client and the former client, or if the former client is represented in that matter by a licensee, notify that licensee, of the relevant circumstances and its intended action under this rule; and
- (b) deliver to the persons referred to in clause (a) a copy of the paralegal's affidavit or solemn declaration executed under this subrule.

**Transferring Paralegal Disqualification**

- (5) A transferring paralegal described in subrule (2) or (4) shall not, unless the former client consents,
  - (a) participate in any manner in the new paralegal firm's representation of its client in that matter; or
  - (b) disclose any confidential information respecting the former client.
- (6) No paralegal in the new paralegal firm shall, unless the former client consents, discuss with a transferring paralegal described in subrule (2) or (4) the new paralegal firm's representation of its client or the former paralegal firm's representation of the former client in that matter.
- (7) Anyone who has an interest in, or who represents a party in, a matter referred to in this rule may apply to a tribunal of competent jurisdiction for a determination of any aspect of this rule.

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**3.06 DOING BUSINESS WITH A CLIENT**

**Investment by Client where Paralegal has an Interest**

3.06 (1) Subject to subrule (2), if a client intends to enter into a transaction with a paralegal who is representing the client, or with a corporation or other entity in which the paralegal has an interest other than a corporation or other entity whose securities are publicly traded, the paralegal, before accepting any retainer,

- (a) shall disclose and explain the nature of the conflicting interest to the client, or, in the case of a potential conflict, how and why it might develop later;
- (b) shall recommend independent legal representation and shall require that the client receive independent legal advice; and
- (c) if the client requests the paralegal to act, shall obtain the client's written consent.

(2) If a client intends to pay for legal services by transferring to a paralegal a share, participation or other interest in property or in an enterprise, the paralegal shall recommend, but need not require, that the client receive independent legal advice before agreeing to act for the client.

(3) This rule does not apply to a transfer of a non-material interest in a publicly traded enterprise.

(4) If the paralegal does not choose to make disclosure of the conflicting interest or cannot do so without breaching a confidence, the paralegal shall decline the retainer

**Borrowing from Clients**

(5) A paralegal shall not borrow money from a client unless,

- (a) the client is a lending institution, financial institution, insurance company, trust corporation or any similar institution whose business includes lending money to members of the public; or
- (b) the client is a related person as defined by the Income Tax Act (Canada) and the paralegal is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation.

**Guarantees by Paralegal**

(6) Subject to subrule (7), a paralegal shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

(7) A paralegal may give a personal guarantee if,

- (a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the paralegal, the paralegal's spouse, parent or child;
- (b) the transaction is for the benefit of a non-profit or charitable institution where the paralegal as a member or supporter of such institution is asked, either individually or together with other members or supporters of the institution to provide a guarantee; or
- (c) the paralegal has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course and,
  - (i) the paralegal has complied with the requirements of these Rules regarding the avoidance of conflicts of interest, and
  - (ii) the lender and the participants in the venture who are or were clients of the paralegal have received independent legal representation.

**3.07 CLIENT PROPERTY**

**Preservation of Client's Property**

3.07 (1) A paralegal shall care for a client's property as a careful and prudent owner would when dealing with like property and shall observe all relevant rules and law about the preservation of property entrusted to a fiduciary.

**Notification of Receipt of Property**

(2) A paralegal shall promptly notify the client of the receipt of any money or other property of the client, unless satisfied that the client is aware they have come into the paralegal's custody.

**Identification of Property**

(3) A paralegal shall clearly label and identify the client's property and place it in safekeeping, distinguishable from the paralegal's own property.

(4) A paralegal shall maintain such records as necessary to identify a client's property that is in the paralegal's custody.

**Accounting and delivery**

(5) A paralegal shall account promptly for a client's property that is in the paralegal's custody and upon request, shall deliver it to the order of the client.

(6) If a paralegal is unsure of the proper person to receive a client's property, the paralegal shall apply to a tribunal of competent jurisdiction for direction.

**3.08 WITHDRAWAL FROM REPRESENTATION****Withdrawal from Representation**

3.08 (1) A paralegal shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

**Optional Withdrawal**

(2) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal may withdraw if there has been a serious loss of confidence between the paralegal and the client.

(3) Without limiting subrule (2), a paralegal may withdraw if the client deceives the paralegal or refuses to accept and act upon the paralegal's advice on a significant point.

(4) A paralegal shall not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

**Mandatory Withdrawal**

(5) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal shall withdraw if,

- (a) discharged by the client;
- (b) the paralegal is instructed by the client to do something inconsistent with the paralegal's duty to the tribunal and, following explanation, the client persists in such instructions;
- (c) the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another;
- (d) it becomes clear that the paralegal's continued representation will lead to a breach of these Rules; or
- (e) the paralegal is not competent to handle the matter.

**Non-payment of Fees**

(6) Subject to subrules (7), (8) and (9) and the direction of the tribunal, unless serious prejudice to the client would result, a paralegal may withdraw from a case if, after reasonable notice, the client fails to provide funds on account of disbursements or fees.

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**Withdrawal from Quasi-Criminal and Criminal Cases**

(7) A paralegal who has agreed to act in a quasi-criminal or criminal case may withdraw if the interval between the withdrawal and the trial of the case is sufficient to enable the client to obtain alternate representation and to allow such other licensee adequate time for preparation and if the paralegal,

- (a) advises the client, preferably in writing, that the paralegal is withdrawing and the reason for the withdrawal;
- (b) accounts to the client for any monies received on account of fees and disbursements;
- (c) notifies the prosecution in writing that the paralegal is no longer acting; and
- (d) in a case where the paralegal's name appears in the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the paralegal is no longer acting.

(8) A paralegal who has agreed to act in a quasi-criminal or criminal case may not withdraw because of non-payment of fees if the date set for trial is not far enough removed to enable the client to obtain the services of another licensee or to enable another licensee to prepare adequately for trial and if an adjournment of the trial date cannot be obtained without adversely affecting the client's interests.

(9) If,

- (a) a paralegal is justified in withdrawing from a quasi-criminal or criminal case for reasons other than non-payment of fees; and
- (b) there is not a sufficient interval between a notice to the client of the paralegal's intention to withdraw and the date when the case is to be tried to enable the client to obtain the services of another licensee and to enable the new licensee to prepare adequately for trial,

the paralegal, unless instructed otherwise by the client, shall attempt to have the trial date adjourned and may withdraw from the case only with permission of the court before which the case is to be tried.

**Manner of Withdrawal**

(10) When a paralegal withdraws, he or she shall try to minimize expense and avoid prejudice to the client and shall do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor licensee.

(11) Upon discharge or withdrawal, a paralegal shall,

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- (a) deliver to or to the order of the client, all papers and property to which the client is entitled;
- (b) give the client all information that may be required in connection with the case or matter;
- (c) account for all funds of the client then held or previously dealt with, including the refunding of any monies not earned during the representation;
- (d) promptly render an account for outstanding fees and disbursements; and
- (e) cooperate with the successor licensee so as to minimize expense and avoid prejudice to the client.

**Duties of Successor Paralegal**

- (12) Before agreeing to represent a client of a predecessor licensee, a successor paralegal shall be satisfied that the predecessor has withdrawn or has been discharged by the client.