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## Rule 4 Advocacy

### 4.01 THE PARALEGAL AS ADVOCATE

#### Duty to Clients, Tribunals and Others

4.01 (1) When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect.

(2) This rule applies to appearances and proceedings before all tribunals in which the paralegal may appear.

(3) This rule does not require a paralegal, except as otherwise provided in these Rules, to assist an adversary or advance matters derogatory to the client's case.

(4) Without restricting the generality of subrule (1), the paralegal shall,

(a) raise fearlessly every issue, advance every argument, and ask every question, however distasteful, that the paralegal thinks will help the client's case;

(b) endeavour, on the client's behalf, to obtain the benefit of every remedy and defence authorized by law;

(c) never waive or abandon a client's legal rights, for example, an available defence under a statute of limitations, without the client's informed consent; and

(d) avoid and discourage the client from resorting to frivolous and vexatious objections, or from attempts to gain advantage from mistakes or oversights not going to the merits, or from tactics designed to merely delay or harass the other side.

#### The Paralegal and the Tribunal Process

(5) When acting as an advocate, the paralegal shall not,

(a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit the client to do anything that the paralegal considers to be dishonest or dishonourable;

(c) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any deception, crime or illegal conduct;

- (d) deliberately refrain from informing the tribunal of any binding authority that the paralegal considers to be directly on point and that has not been mentioned by an opponent;
- (e) appear before a judicial officer when the paralegal, a partner of the paralegal, a paralegal employed by the paralegal firm or the client has a business or personal relationship with the officer that gives rise to, or might reasonably appear to give rise to, pressure, influence or inducement affecting the impartiality of the officer;
- (f) knowingly assert as true, a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;
- (g) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of the tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;
- (h) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;
- (i) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;
- (j) needlessly abuse, hector, harass or inconvenience a witness;
- (k) dissuade a witness from giving evidence or suggest that a witness be absent;
- (l) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge; or
- (m) needlessly inconvenience a witness.

**Duty as Prosecutor**

(5.1) When acting as a prosecutor, a paralegal shall act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

*[New May, 2010]*

**Disclosure of Documents**

(6) If the rules of a tribunal require the parties to produce documents, a paralegal, when acting as an advocate,

- (a) shall explain to his or her client the necessity of making full disclosure of all documents relating to any matter in issue and the duty to answer to the best of his or her knowledge, information and belief, any proper question relating to any issue in the action;
- (b) shall assist the client in fulfilling his or her obligation to make full disclosure; and
- (c) shall not make frivolous requests for the production of documents or make frivolous demands for information.

**Errors and Omissions**

(7) A paralegal who does, or fails to do, something which may involve a breach of this rule, shall, subject to rule 3.03 relating to confidentiality, disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

**Agreement on Guilty Pleas**

(8) Before a charge is laid or at any time after a charge is laid, a paralegal acting for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

(9) A paralegal, on behalf of his or her client, may enter into an agreement with a prosecutor about a guilty plea, if, following investigation,

- (a) the paralegal advises the client about the prospects for an acquittal or finding of guilt;
- (b) the paralegal advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;
- (c) the client is prepared voluntarily to admit the necessary factual and mental elements of the offence charged; and
- (d) the client voluntarily instructs the paralegal to enter into an agreement as to a guilty plea.

**4.02 INTERVIEWING WITNESSES****Interviewing Witnesses**

4.02 (1) Subject to subrules (2) and (3), a paralegal may seek information from any potential witness, whether under subpoena or not, but shall disclose the paralegal's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

(2) A paralegal shall not approach or deal with a person who is represented by another licensee, except through or with the consent of that licensee.

(3) A paralegal retained to act for a party in a matter involving a corporation or organization represented by another licensee shall not, without the other licensee's consent or unless otherwise authorized or required by law,

(a) approach directors, officers or persons likely involved in the decision-making process for the corporation or organization; or

(b) approach employees and agents of the corporation or organization whose acts or omissions in connection with the matter may expose the corporation or organization to quasi-criminal, criminal or civil liability.

(4) This rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a licensee concerning the matter to which the communication relates.

(5) The prohibition on communications with a represented person applies if the paralegal has direct knowledge of the representation or if he or she should be able to infer the representation from the circumstances.

**Definition**

(6) In this rule,

“organization” includes a partnership, limited partnership, sole proprietorship, association, union, unincorporated group, government department, government agency, tribunal, and regulatory body. ()

**4.03 COMMUNICATION WITH WITNESSES GIVING TESTIMONY****Communication with Witnesses Giving Testimony**

4.03 (1) Subject to the direction of the tribunal, a paralegal shall observe the following rules respecting communication with witnesses giving evidence:

1. During examination-in-chief, the examining paralegal may discuss with the witness any matter that has not been covered in the examination up to that point.
2. During examination-in-chief by another licensee of a witness who is unsympathetic to the paralegal's cause, the paralegal not conducting the examination-in-chief may discuss the evidence with the witness.
3. Between completion of examination-in-chief and commencement of cross-examination of the paralegal's own witness, the paralegal ought not to discuss the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief.
4. During cross-examination by an opposing licensee, the witness's own representative ought not to have any conversation with the witness about the witness's evidence or any issue in the proceeding.
5. Between completion of cross-examination and commencement of a re-examination, a paralegal who is going to re-examine the witness ought not to have any discussion about evidence that will be dealt with on re-examination.
6. During cross-examination by the representative of a witness unsympathetic to the cross-examiner's cause, the paralegal may discuss the witness's evidence with the witness.
7. During cross-examination by the representative of a witness who is sympathetic to that licensee's cause, any conversations ought to be restricted in the same way as communications during examination-in-chief of one's own witness.
8. During re-examination of a witness called by an opposing licensee, if the witness is sympathetic to the paralegal's cause, the paralegal ought not to discuss the evidence to be given by that witness during re-examination. The paralegal may, however, properly discuss the evidence with a witness who is adverse in interest.

(2) With the consent of the opposing licensee or with leave of the tribunal, a paralegal may enter into discussions with a witness that might otherwise raise a question under this rule as to the propriety of the discussions.

(3) This rule applies, with necessary modifications, to examinations out of court.

**4.04 THE PARALEGAL AS WITNESS****The Paralegal as Witness**

4.04 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, the paralegal who appears as an advocate shall not submit his or her own affidavit to the tribunal.

(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, a paralegal who appears as an advocate shall not testify before the tribunal unless permitted to do so by the rules of the court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

(3) A paralegal who is to testify before a tribunal shall entrust the conduct of the case to another licensee.

(4) A paralegal shall not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge.

**4.05 DEALING WITH UNREPRESENTED PERSONS**

4.05 When a paralegal is dealing on a client's behalf with an unrepresented person, the paralegal shall,

- (a) urge the unrepresented person to obtain independent representation;
- (b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the paralegal; and
- (c) make clear to the unrepresented person that the paralegal is acting exclusively in the interests of the client and accordingly his or her comments may be partisan.