



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Paralegal Rules of Conduct

**BLACKLINE VERSION SHOWING CHANGES ARISING FROM AMENDMENTS
TO THE *RULES OF PROFESSIONAL CONDUCT* AS PART OF THE
IMPLEMENTATION OF THE FEDERATION OF LAW SOCIETIES OF CANADA'S
MODEL CODE OF PROFESSIONAL CONDUCT**

[as approved by Convocation February 27th 2014]

Rule 1 Citation and Interpretation

1.01 CITATION

1.01 (1) These Rules may be cited as the *Paralegal Rules of Conduct*.

1.02 INTERPRETATION**Definitions**

1.02 In these Rules,

“affiliated entity” means any person or group of persons other than a person or group authorized to provide legal services in Ontario;

“affiliation” means the joining on a regular basis of a paralegal or group of paralegals with an affiliated entity in the delivery or promotion and delivery of the legal services of the paralegal or group of paralegals and the non-legal services of the affiliated entity;

[New October 2008]

“associate” includes:

- (a) a licensee paralegal who is an employee of the paralegal firm in which the paralegal provides legal services provides legal services in a firm of licensees through an employment or other contractual relationship; and
- (b) a non-licensee employee of a multi-discipline practice providing services that support or supplement the practice of law or provision of legal services ~~in which the non-licensee provides his or her services.~~

[New October 2008]

“client” means a person who:

- (a) consults a paralegal and on whose behalf the paralegal provides or agrees to provide legal services; or
- (b) having consulted the paralegal, reasonably concludes that the paralegal has agreed to provide legal services on his or her behalf

and includes a client of the paralegal firm of which the paralegal is a partner or employee associate, whether or not the paralegal handles the client’s work;

“conflict of interest” means the existence of a substantial risk that a paralegal’s loyalty to or representation of a client would be materially and adversely affected by the paralegal’s own interest or the paralegal’s duties to another client, a former client or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer.

“consent” means fully informed and voluntary consent after disclosure:

- (a) ~~a consent~~ in writing, provided that where more than one person consents, each signs the same or a separate document recording the his or her consent, or
- (b) ~~an oral consent~~ orally, provided that each person consenting giving the oral consent receives a separate written communication letter recording ~~his or her~~ their consent as soon as practicable;

[New October 2008]

“Law Society” means the Law Society of Upper Canada;

“licensee” means,

- (a) a person licensed to practise law in Ontario as a barrister and solicitor, or
- (b) a person licensed to provide legal services in Ontario;

“legal practitioner” means a person

- (a) who is a licensee;
- (b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction.

[New – September 2011]

“limited scope retainer” means the provision of legal services by a paralegal for part, but not all, of a client’s legal matter by agreement between the paralegal and the client.

[New – September 2011]

“paralegal” means a paralegal licensee of the Law Society;

“paralegal firm” includes one or more paralegals practising in a sole proprietorship, partnership or professional corporation;

“Rules” means the *Paralegal Rules of Conduct*;

“tribunal” includes courts, boards, arbitrators, mediators, administrative agencies, and bodies that resolve disputes, regardless of their function or the informality of their procedures.

~~“legal practitioner” means a person~~

- ~~(c) — who is a licensee;~~
- ~~(d) — who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction.~~

~~[New—September 2011]~~

~~“limited scope retainer” means the provision of legal services by a paralegal for part, but not all, of a client’s legal matter by agreement between the paralegal and the client.~~

~~[New—September 2011]~~

Singular and Plural Words

~~(2) In these Rules, words importing the singular number include more than one person, party, or thing of the same kind and a word interpreted in the singular number has a corresponding meaning when interpreted in the plural.~~

1.03 — MANNER OF INTERPRETATION**Standards of Paralegals**

1.03 These Rules shall be interpreted in a way that recognizes that,

- (a) — a paralegal has a duty to provide legal services and discharge all responsibilities to clients, tribunals, the public and other licensees honourably and with integrity;
- (b) — a paralegal, as a provider of legal services, has an important role to play in a free and democratic society and in the administration of justice and a responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario;
- (c) — a paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions;
- (d) — the Rules are intended to express to licensees and the public, the high ethical ideals of paralegals;
- (e) — the Rules are intended to specify the basis on which paralegals may be disciplined; and
- (f) — the Rules cannot address every situation, and a paralegal should observe the Rules in the spirit, as well as in the letter.

Rule 2 Professionalism

2.01 INTEGRITY AND CIVILITY

Integrity

2.01 (1) A paralegal ~~shall conduct himself or herself in such a way as to maintain the integrity of the paralegal profession.~~ has a duty to provide legal services and discharge all responsibilities to clients, tribunals, the public and other members of the legal professions honourably and with integrity.

(2) A paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions.

Civility

~~(2)~~ (3) A paralegal shall be courteous and civil, and shall act in good faith with all persons with whom he or she has dealings in the course of his or her practice.

Outside Interests and Public Office

~~(3)~~ (4) A paralegal who engages in another profession, business, occupation or other outside interest or who holds public office concurrently with the provision of legal services, shall not allow the outside interest or public office to jeopardize the paralegal's integrity, independence, or competence.

~~(4)~~ (5) A paralegal shall not allow involvement in an outside interest or public office to impair the exercise of his or her independent judgment on behalf of a client.

Acting as Mediator

~~(5)~~ (6) A paralegal who acts as a mediator shall, at the outset of the mediation, ensure that the parties to it understand fully that the paralegal is not acting as a representative for either party but, as mediator, is acting to assist the parties to resolve the issues in dispute.

2.02 UNDERTAKINGS AND TRUST CONDITIONS

2.02 (1) A paralegal shall fulfil every undertaking given and shall not give an undertaking that cannot be fulfilled.

(2) Except in exceptional circumstances, a paralegal shall give his or her undertaking in writing or confirm it in writing as soon as practicable after giving it.

(3) Unless clearly stated in the undertaking, a paralegal's undertaking is a personal promise and it is his or her personal responsibility.

(4) A paralegal shall honour every trust condition once accepted.

2.03 HARASSMENT AND DISCRIMINATION**Application of *Human Rights Code***

2.03 (1) The principles of the Ontario *Human Rights Code* and related case law apply to the interpretation of this rule.

(2) A term used in this rule that is defined in the *Human Rights Code* has the same meaning as in the *Human Rights Code*.

Harassment

(3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Discrimination

(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, or disability with respect to the employment of others or in dealings with other licensees or any other person.

(5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

Services

(6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Employment Practices

(7) A paralegal shall ensure that his or her employment practices do not offend this rule.

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~~ is required to recognize a task for which the paralegal ~~any~~ lacks of competence ~~for a particular task~~ and the disservice that would be done to the client by undertaking that task. ~~A paralegal 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~~

(a) decline to act;

(b) ~~or~~ obtain the client's consent to retain, consult or collaborate with another licensee who is competent and licensed to perform that task; or

(c) obtain the client's consent for the paralegal to become competent without undue delay, risk or expense to the client.

Who is Competent

(4) For the purposes of this rule, a competent paralegal is one who has and applies the relevant knowledge, skills, ~~and~~ 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 relevant 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 all requirements pursuant to the *Law Society Act* ~~these Rules~~.

3.02 ADVISING CLIENTS**General****Quality of Service**

3.02 (1) A paralegal has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a paralegal is service that is competent, timely, conscientious, diligent, efficient and civil.

~~A paralegal shall provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.~~

~~(2)~~ A paralegal shall be honest and candid when advising clients.

~~(23)~~ 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 or Others

~~(34)~~ A paralegal shall not

~~(a)~~ — knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;
or

~~(b)~~ — advise a client or any other person on how to violate the law and avoid punishment.

~~(3-15)~~ When retained by a client, a paralegal shall make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation.

~~(34-26)~~ A paralegal shall not use his or her trust account for purposes not related to the provision of legal services.

[Amended - April 2011]

~~(4)~~~~(7)~~ A paralegal shall not act or do anything or omit to do anything in circumstances where he or she ought to know that, by acting, doing the thing or omitting to do the thing, he or she is being used by a client, by a person associated with a client or by any other person to facilitate dishonesty, fraud, crime or illegal conduct.

[New - May 2012]

~~(4.1) (5.1)~~ — When a paralegal is employed or retained by an organization to act in a matter and the paralegal knows that the organization has acted, is acting or 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 ~~is, was or would be~~ dishonest, fraudulent, criminal or illegal, and should be stopped,

(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 ~~was, is or would be~~ dishonest, fraudulent, criminal, or illegal and should be stopped, 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) (8)~~ When a A paralegal who is employed or retained by an organization to act in a matter and in which the paralegal knows that the organization has acted, ~~or is acting or intends to act~~ dishonestly, fraudulently, criminally, or illegally with respect to that matter, then in addition to his or her obligations under subrule (3) and (4), the paralegal shall do the following, in addition to their obligations under subrule (4) :

(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 ~~proposed~~ conduct ~~was or is~~ is, was or would be dishonest, fraudulent, criminal, or illegal and should be stopped,

(b) if necessary because ~~that~~ the person from whom the paralegal takes instructions, 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 ~~proposed~~ conduct ~~was, or is~~ or would be dishonest, fraudulent, criminal, or illegal and should be stopped, and

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

[New - October 2008]

Threatening Criminal Proceedings

(9) A paralegal shall not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

- (a) To initiate or proceed with a criminal or quasi-criminal charge; or
- (b) To make a complaint to a regulatory authority.

(10) Subrule (9)(b) does not apply to an application made in good faith to a regulatory authority for a benefit to which a client may be legally entitled.

Settlement and Dispute Resolution

~~(5)~~ (11) 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~~ or continuing useless legal proceedings.

~~(6)~~ (12) The paralegal shall consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options, and, if so instructed, take steps to pursue those options. ~~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 with Diminished Capacity

~~(7)~~ (13) 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)~~ (14) 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.

Providing Legal Services Under a Limited Scope Retainer

~~(8.1)~~ (15) Before providing legal services under a limited scope retainer, a paralegal shall advise the client honestly and candidly about the nature, extent and scope of the services that the paralegal can provide and, where appropriate, whether the services can be provided within the financial means of the client.

[New – September 2011]

~~(8.2)~~(16) When providing legal services under a limited scope retainer, a paralegal shall confirm the services in writing and give the client a copy of the written document when practicable to do so.

[New – September 2011]

(8917) Subrule ~~8.2-9.2~~ does not apply to a paralegal if the legal services are

- (a) legal services provided by a licensed paralegal in the course of his or her employment as an employee of Legal Aid Ontario;
- (b) summary advice provided in community legal clinics, student clinics or under the *Legal Aid Services Act, 1998*;
- (c) summary advice provided through a telephone-based service or telephone hotline operated by a community-based or government funded program.
- (d) summary advice provided by the paralegal to a client in the context of an introductory consultation, where the intention is that the consultation, if the client so chooses, would develop into a retainer for legal services for all aspects of the legal matter; or
- (e) *pro bono* summary legal services provided in a non-profit or court-annexed program.

[New – September 2011]

Medical-Legal Reports

~~(9)~~(18) 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)~~ (19) 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.

~~(11)~~ (20) If a client insists on seeing a medical-legal report about which the paralegal has reservations for the reasons noted in subrule ~~(10)~~(11), 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)~~(21) 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)~~ (22) 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)~~ ~~(23)~~ 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~~

(a) expressly or impliedly authorized by the client;

(b) required by law or by order of a tribunal of competent jurisdiction to do so;

(c) required to provide the information to the Law Society, or

(d) otherwise permitted by this rule.

(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. A paralegal may disclose confidential information when the paralegal believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary 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~~ have committed a criminal offence involving a client's affairs;

(b) are civilly liable with respect to a matter involving a client's affairs; or

~~(c) — guilty of malpractice or misconduct.~~

(c) have committed acts of professional negligence; or

(d) have engaged in acts of professional misconduct or conduct unbecoming a paralegal.

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

(8) A paralegal may disclose confidential information to a lawyer or another paralegal to secure legal advice about the paralegal's proposed conduct.

~~(8)~~(9) 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

(1) A paralegal shall not act or continue to act for a client where there is a conflict of interest, except as permitted under this rule.

(2) A paralegal shall not advise or represent more than one side of opposing parties in 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

(3) A paralegal shall not represent a client in a matter when there is a conflict of interest unless

(a) there is express or implied consent from all clients; and

(b) it is reasonable for the paralegal to conclude that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

(4) For the purpose of this rule:

(a) Express consent must be fully informed and voluntary after disclosure.

(b) Consent may be implied and need not be in writing where all of the following apply:

(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel,

(ii) the matters are unrelated,

(iii) the paralegal has no relevant confidential information from one client that might reasonably affect the representation of the other client, and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

Acting Against Former Clients

~~(45) Unless the former client and those involved or associated with the client consents, a paralegal who has acted for a client in a matter shall not thereafter act against the a former client in 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 arising from the representation of the former client that may prejudice that client.~~

~~(56) 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, provided that:~~

- ~~(a) the former client consents to the paralegal's partner or employee acting; or~~
- ~~(b) the paralegal's firm establishes that it has taken adequate measures on a timely basis to ensure that there will be no risk of disclosure of the former client's confidential information to the other licensee having carriage of the new matter. 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

~~(87)~~ 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.

~~(98)~~ 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.

~~(109)~~ 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.

~~(10)~~ Consent to a joint retainer must be obtained from each client in writing, or recorded through a separate written communication to each client.

(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 ~~(13)~~ ~~(14)~~, if a contentious issue arises between two clients who have consented to a joint retainer, the paralegal must not advise either of them on the contentious issue and the following rules apply:

(a) The paralegal shall

- (i) refer the clients to other licensees for that purpose; or
- (ii) if not legal advice is required and the clients are sophisticated, advise them of their option to settle the contentious issue by direct negotiation in which the paralegal does not participate.

(b) If the contentious issue is not resolved, the paralegal shall withdraw from the joint representation.

~~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 either of 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.~~

~~(13)~~(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 for that purpose.

Multi-Discipline Practices

~~(14)~~ (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.

Affiliations

~~(15)~~ (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.

~~(16)~~ (17) Where there is an affiliation, after making the disclosure as required by subrule ~~(16)~~ (15), a paralegal shall obtain the client's consent before accepting a retainer under that subrule ~~(16)~~.

(17) ~~(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.

3.06 DOING BUSINESS WITH A CLIENT

3.06 (1) A paralegal must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

~~Investment by Client where Paralegal has an Interest~~ Transactions with Clients

3.06 ~~(2)~~ 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 in section 251 of 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.

Judicial Interim Release

- (8) Subject to subrule (9), a paralegal shall not in respect of any accused person for whom the paralegal acts
- (a) act as a surety for the accused;
 - (b) deposit with a court the paralegal's own money or that of any firm in which the paralegal is a partner to secure the accused's release;
 - (c) deposit with any court other valuable security to secure the accused's release; or
 - (d) act in a supervisory capacity to the accused.
- (9) A paralegal may do any of the things referred to in subrule (8) if the accused is in a family relationship with the paralegal and the accused is represented by the paralegal's partner or associate.

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 or, if appropriate, at the conclusion of the retainer.

(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 reasonable 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 client's instructions require the paralegal to act contrary to the Rules, or by-laws; or

~~(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)~~(c) the paralegal is not competent to continue 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 a retainer or funds on account of disbursements or fees.

Withdrawal from Quasi-Criminal and Criminal Cases

(7) A paralegal who has agreed to act in a quasi-criminal or criminal case may withdraw because the client has not paid the agreed fee or for other adequate cause if the interval between the withdrawal and the date set for 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; ~~and~~
- (e) complies with the applicable rules of the tribunal or court.

(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 the trial of the case is not far enough removed to enable the client to obtain the services of another licensee or to enable the ~~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,
- ~~(b)~~(a) deliver to the client or to the order of the client, all papers and property to which the client is entitled, (subject to the paralegal's right to a lien);
 - ~~(b)~~(b) subject to any applicable trust conditions, give the client all information that may be required in connection with the case or matter;
 - ~~(e)~~(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)~~(d) promptly render an account for outstanding fees and disbursements; and
 - ~~(e)~~(e) cooperate with the successor licensee so as to minimize expense and avoid prejudice to the client; and
 - (f) comply with the applicable rules of court.

(12) In addition to the obligations set out in subrule (11), upon discharge or withdrawal, a paralegal shall notify the client in writing, stating:

- (i) the fact that the paralegal has withdrawn;
- (ii) the reasons, if any, for the withdrawal; and
- (iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain a new legal practitioner promptly.

~~deliver to or to the order of the client, all papers and property to which the client is entitled;~~

(13) If the paralegal who is discharged or withdraws is a member of a firm, the client shall be notified that the paralegal and the firm are no longer acting for the client.

Duties of Successor Paralegal

~~(12)~~14) 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.

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, unless all parties consent and it is in the interests of justice;
- (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) make suggestions to a witness recklessly or knowing them to be false;
- ~~(g)~~(h) 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)~~(i) 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)~~(j) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;
- (k) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation;
- ~~(j)~~(l) needlessly abuse, hector, harass or inconvenience a witness;
- ~~(k)~~(m) improperly dissuade a witness from giving evidence or suggest that a witness be absent;
- ~~(l)~~ (n) 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)~~ (o) needlessly inconvenience a witness- and
- (p) appear before a court or tribunal while under the influence of alcohol or a drug.

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 the rules on communication with a represented party at Rule 7.02, -A 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.

[Amended – October 2012]

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.~~

A paralegal who appears as advocate shall not testify or submit his or her own affidavit evidence before the tribunal unless

- (a) permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or
- (b) the matter is purely formal or uncontroverted.

~~(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.~~

[Amended – January 2011]

4.05 DEALING WITH UNREPRESENTED PERSONS

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

- ~~(a) — urge the unrepresented person to obtain independent representation;~~
- (~~b~~a) 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
- (~~e~~b) 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.

Rule 5 Fees and Retainers

5.01 FEES AND RETAINERS

Reasonable Fees and Disbursements

5.01 (1) A paralegal shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

- (2) What is a fair and reasonable fee will depend upon such factors as,
- (a) the time and effort required and spent;
 - (b) the difficulty of the matter and importance of the matter to the client;
 - (c) whether special skill or service was required and provided;
 - (d) the amount involved or the value of the subject matter;
 - (e) the results obtained;
 - (f) fees authorized by statute or regulation; ~~and~~
 - (g) special circumstances, such as the loss of other retainers, postponement of payment, uncertainty of reward, or urgency; ~~;~~
 - (h) the likelihood, if made known to the client, that acceptance of the retainer will result in the paralegal's inability to accept other employment;
 - (i) any relevant agreement between the paralegal and the client;
 - (j) the experience and ability of the paralegal;
 - (k) any estimate or range of fees given by the paralegal; and
 - (l) the client's prior consent to the fee.
- (3) No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to his or her employment may be taken by the paralegal from anyone other than the client, without full disclosure to, and the consent of, the client.
- (4) In a statement of account delivered to the client, a paralegal shall clearly and separately detail amounts charged as fees and as disbursements.
- (5) A paralegal shall not appropriate any funds of the client held in trust, or otherwise under the paralegal's control, for or on account of fees, except as permitted by the by-laws under the *Law Society Act*.

~~(6)~~ (6) If the amount of fees or disbursements charged by a paralegal is reduced by a Court Order, the paralegal must repay the monies to the client as soon as is practicable.

Contingency Fees

~~(6)~~(7) Except in quasi-criminal or criminal matters, a paralegal may enter into a written agreement that provides that the paralegal's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the paralegal's services are to be provided.

~~(7)~~(8) In determining the appropriate percentage or other basis of a contingency fee under subrule (7) ~~(6)~~, the paralegal shall advise the client on the factors that are being taken into account in determining the percentage or other basis, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery, who is to receive an award of costs and the amount of costs awarded.

~~(8)~~(9) The percentage or other basis of a contingency fee agreed upon under subrule (7) ~~(6)~~ shall be fair and reasonable, taking into consideration all of the circumstances and the factors listed in subrule (8) ~~(7)~~.

Joint Retainers

~~(9)~~(10) If a paralegal is acting for two or more clients in the same matter, the paralegal shall divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of Fees

~~(10)~~(11) Fees for a matter may be divided between licensees who are not in the same firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed.

[Amended - April 2008]

Fee Splitting

~~(11)~~(12) A paralegal shall not,

- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee, including an affiliated entity; or
- (b) give any financial or other reward to any person who is not a licensee, including an affiliated entity for the referral of clients or client matters.

~~(12)~~(13) Subrule (11) does not apply to multi-discipline practices of paralegal and non-licensee partners where the partnership agreement provides for the sharing of fees, cash flows or profits among members of the firm.

[Amended - October 2008]

Referral Fees

~~(13)~~(14) A paralegal who refers a matter to another licensee because of the expertise and ability of the other licensee to handle the matter may accept, and the other licensee may pay, a referral fee if,

- (a) the referral was not made because of a conflict of interest,
- (b) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (c) the client is informed and consents.

Rule 6 Duty to the Administration of Justice

6.01 ENCOURAGING RESPECT FOR THE ADMINISTRATION OF JUSTICE

General Duty

6.01 (1) A paralegal shall encourage public respect for, and try to improve, the administration of justice.

(2) A paralegal shall take care not to weaken or destroy public confidence in legal institutions or authorities by making irresponsible allegations or comments particularly when commenting on judges or members of a tribunal.

Security of Court Facilities

(3) Subject to Rule 3.03 relating to confidentiality, a paralegal who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility shall inform the ~~local police force~~ persons having responsibility for security at the facility and give particulars.

Public Appearances and Statements

(4) So long as there is no infringement of the paralegal's obligation to the client, the paralegal profession, the courts, or the administration of justice, a paralegal may communicate information to the media and may make public appearances and statements.

(4.1) A paralegal shall not communicate information to the media or make public statements about a matter before a tribunal if the paralegal knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

[New - October 2008]

Working With or Employing Unauthorized Persons

(5) A paralegal shall assist in preventing the unauthorized practice of law and the unauthorized provision of legal services.

(6) Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the provision of legal services any person who, in Ontario or elsewhere,

- (a) is disbarred and struck off the Rolls,
- (b) is a person whose license to practice law or to provide legal services is revoked,

- (c) as a result of disciplinary action, has been permitted to resign his or her membership in the Law Society or to surrender his or her licence to practise law or to provide legal services, and has not had his or her license restored,
 - (d) is suspended,
 - (e) is a person whose license to practise law or to provide legal services is suspended, or
 - (f) is subject to an undertaking not to practise law or to provide legal services.
- [Amended - January 2008]*

Practice by Suspended Paralegal Prohibited

- (7) A paralegal whose license to provide legal services is suspended shall comply with the requirements of the By-laws and shall not
- (a) provide legal services; or
 - (b) represent or hold himself or herself out as a person entitled to provide legal services.

[New - January 2008]

Undertakings Not to Provide Legal Services

- (8) A paralegal who gives an undertaking to the Law Society not to provide legal services shall not,
- (a) provide legal services; or
 - (b) represent or hold himself or herself out as a person entitled to provide legal services.

[New - January 2008]

Undertakings to Provide Legal Services Subject to Restrictions

- (9) A paralegal who gives an undertaking to the Law Society to restrict his or her provision of legal services shall comply with the undertaking.

[New January 2008]

Rule 7 Duty to Licensees and Others

7.01 COURTESY AND GOOD FAITH

- (1) A paralegal shall avoid sharp practice and shall not take advantage of or act without fair warning on slips, irregularities or mistakes on the part of other licensees not going to the merits or involving the sacrifice of a client's rights.
- (2) A paralegal shall agree to reasonable requests concerning trial dates, adjournments, waiver of procedural formalities and similar matters that do not prejudice the rights of the client.
- (3) A paralegal shall not, in the course of providing legal services, communicate, in writing or otherwise, with a client, another licensee, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a paralegal.
- (4) A paralegal shall not engage in ill-considered or uninformed criticism of the competence, conduct, advice or charges of other licensees, but should be prepared, when requested, to represent a client in a complaint involving another licensee.
- (5) A paralegal shall answer with reasonable promptness, all professional letters and communications from other licensees that require an answer, and a paralegal shall be punctual in fulfilling all commitments.
- (6) A paralegal shall not use ~~a tape recorder or other~~ any device to record a conversation between the paralegal and a client or another licensee, even if lawful, without first informing the other person of the intention to do so.
- (7) A paralegal who receives a document relating to the representation of the paralegal's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

[Amended – October 2012]

7.02 COMMUNICATION WITH A REPRESENTED PERSON, CORPORATION OR ORGANIZATION

- (1) Subject to subrules (2) and (3), if a person is represented by a legal practitioner in respect of a matter, a paralegal shall not, except through or with the consent of the legal practitioner,
- (a) approach or communicate or deal with the person on the matter, or
 - (b) attempt to negotiate or compromise the matter directly with the person.
- (2) Subject to subrule (3), if a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a paralegal may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the paralegal receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.
- (3) A paralegal who is not otherwise interested in a matter may give a second opinion to a person who is represented by a legal practitioner with respect to that matter.
- (4) A paralegal retained to act on a matter involving a corporation or organization that is represented by a legal practitioner in respect of that matter shall not, without the legal practitioner's consent or unless otherwise authorized or required by law, communicate, facilitate communication with or deal with a person
- (a) who is a director or officer, or another person who is authorized to act on behalf of the corporation or organization,
 - (b) who is likely involved in decision-making for the corporation or organization or who provides advice in relation to the particular matter,
 - (c) whose act or omission may be binding on or imputed to the corporation or organization for the purposes of its liability, or
 - (d) who supervises, directs or regularly consults with the legal practitioner and who makes decisions based on the legal practitioner's advice.
- (5) If a person described in subrule (4) (a), (b), (c) or (d) is represented in the matter by a legal practitioner, the consent of the legal practitioner is sufficient to allow a paralegal to communicate, facilitate communication with or deal with the person.
- (6) In subrule (4), "organization" includes a partnership, limited partnership, association, union, fund, trust, co-operative, unincorporated association, sole proprietorship and a government department, agency, or regulatory body.

7.02 Communication With A Represented Person, Corporation or Organization Rule 7

(7) 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.

(8) 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.

[New - October 2012]

Rule 8 Practice Management

8.01 GENERAL OBLIGATIONS

Professional Responsibility

8.01 (1) A paralegal shall, in accordance with the By-Laws, assume complete professional responsibility for all business entrusted to him or her.

[Amended - October 2008]

Financial Responsibility

(2) A paralegal shall promptly meet financial obligations incurred in the course of practice on behalf of clients unless, before incurring such an obligation, the paralegal clearly indicates in writing to the person to whom it is to be owed that it is not to be a personal obligation of the paralegal.

[Amended - January 2009]

Supervisory Responsibility

(3) A paralegal shall, in accordance with the By-Laws, directly supervise staff and assistants to whom particular tasks and functions are delegated.

[Amended - October 2008]

Delegation

(4) A paralegal shall not permit a non-licensuree,

(a) to provide legal services;

(b) to be held out as a licensee; or

(c) to perform any of the duties that only paralegals may perform or do things that paralegals themselves may not do.

(5) A paralegal in a multi-discipline practice shall ensure that non-licensuree partners and associates comply with these rules and all ethical principles that govern a paralegal in the discharge of his or her professional obligations.

[New- October 2008]

8.02 MAKING LEGAL SERVICES AVAILABLE

8.02 (1) A paralegal shall make legal services available to the public in an efficient and convenient way.

Restrictions

- (2) In offering legal services, a paralegal shall not use means
 - (a) that are false or misleading,
 - (b) that amount to coercion, duress or harassment,
 - (c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover,
 - (d) that are intended to influence a person who has retained another paralegal or a lawyer for a particular matter to change his or her representative for that matter, unless the change is initiated by the person or the other representative, or
 - (e) that otherwise bring the paralegal profession or the administration of justice into disrepute.
- (3) A paralegal shall not advertise services that are beyond the permissible scope of practice of a paralegal.

[Amended - November 2008]

8.03 MARKETING OF LEGAL SERVICES

- (1) In this Rule, “marketing” includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.
- (2) A paralegal may market legal services if the marketing
 - (a) is demonstrably true, accurate and verifiable,
 - (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and
 - (c) is in the best interests of the public and is consistent with a high standard of professionalism.

Advertising of Fees

- (3) A paralegal may advertise fees charged by the paralegal for legal services if
 - (a) the advertising is reasonably precise as to the services offered for each fee quoted,
 - (b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee, and
 - (c) the paralegal strictly adheres to the advertised fee in every applicable case.

[Amended - November 2008]

8.04 COMPULSORY ERRORS AND OMISSIONS INSURANCE**Duty to Obtain and Maintain Insurance**

8.04 (1) All paralegals practising in Ontario shall obtain and maintain adequate errors and omissions insurance as required by the Law Society.

(2) A paralegal shall give prompt notice of any circumstance that the paralegal may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

(3) When a claim of professional negligence is made against a paralegal, he or she shall assist and cooperate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

(4) In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the paralegal shall pay the balance.

[Amended - January 2010]

Rule 9 Responsibility to the Law Society

9.01 RESPONSIBILITY TO THE LAW SOCIETY

Communications from the Law Society

9.01 (1) A paralegal shall reply promptly and completely to any communication from the Law Society and shall provide a complete response to any request from the Law Society.

Duty to Report Misconduct

(2) A paralegal shall report to the Law Society, unless to do so would be unlawful or would involve a breach of confidentiality between the paralegal and his or her client,

- (a) the misappropriation or misapplication of trust monies by a licensee;
- (b) the abandonment of a law practice by a lawyer or a legal services practice by a paralegal;
- (c) participation in serious criminal activity related to a licensee's practice;
- (d) the mental instability of a licensee of such a serious nature that the licensee's clients are likely to be seriously materially prejudiced; and
- (e) any other situation where a licensee's clients are likely to be severely prejudiced.

(3) Nothing in subrule (2) is meant to interfere with the paralegal's duty to the client.

(4) A report under subrule (2) must be made in good faith and without malice or ulterior motive.

(5) A paralegal shall ~~attempt to persuade~~ encourage a client who has a claim or complaint against an apparently dishonest licensee to report the facts to the Law Society as soon as reasonably practicable ~~before pursuing private remedies~~.

(6) If the client refuses to report a claim against an apparently dishonest licensee to the Law Society, the paralegal shall obtain instructions in writing to proceed with the client's private remedies without notice to the Law Society.

(7) A paralegal shall inform the client of the provision of the *Criminal Code of Canada* dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration. (section 141).

(8) If the client wishes to pursue a private agreement with the apparently dishonest licensee, the paralegal shall not continue to act if the agreement constitutes a breach of section 141 of the *Criminal Code of Canada*.

Duty to Report Certain Offences ~~Criminal Charges and Convictions~~

(9) If a paralegal is charged with an offence described in By-Law 8 of the Law Society, he or she shall inform the Law Society of the charge and of its disposition in accordance with the By-Law.

Disciplinary Authority

(10) A paralegal is subject to the disciplinary authority of the Law Society regardless of where the paralegal's conduct occurs.

Professional Misconduct

(11) The Law Society may discipline a paralegal for professional misconduct.

Conduct Unbecoming a Paralegal

(12) The Law Society may discipline a paralegal for conduct unbecoming a paralegal.

Definitions

(13) In subrules (11) and (12),

“conduct unbecoming a paralegal” means conduct in a paralegal's personal or private capacity that tends to bring discredit upon the paralegal profession including,

- (a) committing a criminal act that reflects adversely on the paralegal's honesty, trustworthiness, or fitness as a paralegal,
- (b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, vulnerability or unbusinesslike habits of another, or
- (c) engaging in conduct involving dishonesty;

“professional misconduct” means conduct ~~by a paralegal~~ in a paralegal's professional capacity that tends to bring discredit upon the paralegal profession, including,

- (a) violating or attempting to violate one of these Rules, or a requirement of the Law Society Act ~~Law Society Act~~ or its regulations or by-laws ~~the regulations or by-laws under that Act,~~
- (b) knowingly assisting or inducing another licensee to violate or attempt to violate these Rules, a requirement of the ~~Law Society Act~~ Law Society Act or its regulations or by-laws ~~the regulations or by-laws under that Act,~~
- (c) knowingly assisting or inducing a non-licensee partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the *Paralegal Rules of Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws,

[Amended - October 2008]

- (d) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property,
- (e) engaging in conduct that is prejudicial to the administration of justice,
- (f) stating or implying an ability to influence improperly a government agency or official, or
- (g) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.