

Law Society of Upper Canada

Implementation of the Model Code of Professional Conduct

Changes to the Paralegal Rules of Conduct and Paralegal Professional Conduct Guidelines

February 2014

Definitions of “associate”, “client”, “conflict of interest” and “consent”, Rule 1.02. These definitions have been revised.

Guideline references: Guidelines 5 and 9 (client), Guideline 9 (conflict of interest), Guidelines 7 and 9 (consent)

Manner of Interpretation Rule 1.03. This rule is removed.

Integrity and Civility Rule 2.01. A paralegal’s obligation to act with integrity in Rule 2.01(1) has been amended. A new Rule 2.01(2) requires a paralegal to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions. No changes have been made to the Rules regarding outside interests and public office or acting as mediator, but new provisions have been added to the Guidelines.

Guideline references: Guideline 1, 2, 22

Undertakings and Trust Conditions, Rule 2.02. New Rule 2.02(4) requires a paralegal to honour trust conditions.

Guideline reference: Guideline 3

Competence Rule, Rule 3.01. Minor changes have been made to the required standard of competency and to the definition of definition of a “competent paralegal”.

Guideline references: Guidelines 5 and 6

Quality of Service, Rule 3.02(1). There is a new and more detailed definition of quality of service in Rule 3.2-1, as well as new Commentary. Rule 3.2-1 requires a paralegal to provide courteous, thorough and prompt service to clients, of a quality that is “competent, timely, conscientious, diligent, efficient and civil”.

Guideline references: Guidelines 5 and 6

Honesty and Candour, Rule 3.02(2). Rule 3.02(2) is unchanged, but new provision in the Guidelines should be noted.

Guideline reference: Guideline 7

Threatening Criminal Proceedings, Rule 3.02(9)-(10). The new Rule expands the prohibition against threatening or advising a client to threaten criminal or quasi-criminal proceedings to include a complaint to a regulatory authority. The prohibition 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.

Guideline reference: Guideline 7

Claims under Statutory Accident Benefits Schedule, Rule 3.02(23). This Rule has been removed.

Confidentiality, Rule 3.03. Rule 3.03(1) provides new exceptions to the prohibition on the disclosure of confidential information, which would permit a paralegal to disclose required information to the Law Society or upon Court order. Changes to Rule 3.03(5) and (6) speak to the circumstances in which disclosure of confidential information is justified or permitted. Rule 3.03(8) is a new rule permitting disclosure to seek legal advice about a proposed course of conduct.

Guideline reference: Guideline 8

Conflicts of Interest, Rule 3.04

The current Rules governing conflicts of interest have been significantly changed. The new Rules should be reviewed in their entirety. The following are the highlights of the changes:

- New definition of the term “conflict of interest” in Rule 1.02, which refers to a “substantial risk” that a paralegal’s loyalty to or representation of a client would be materially and adversely affected.
- A new general rule that prohibits acting where there is a conflict of interest: Rule 3.04(1)
- New Rule requiring client consent to act in a conflict of interest: Rule 3.04(3) and (4)
- New Rules regarding acting against former clients and the circumstances in which this may be permissible: Rule 3.04(5) and (6)
- Changes to the Rules regarding governing joint retainers: Rule 3.04(10) and (12)

Guideline references: Guidelines 5 (joint retainers), 9 (conflicts)

Transfer Between Paralegal Firms, Rule 3.05. The Federation of Law Societies’ Model Rule on conflicts from transfer between firms currently reflects the content of Rule 3.05 of the *Paralegal Rules of Conduct* (modified by references to new Rule numbers).

Guideline reference: Guideline 9

Doing Business with a Client, Rule 3.06(1). New Rule 3.06(1) provides a general rule and guidance respecting a paralegal’s transactions with clients.

Guideline reference: Guideline 9

Judicial Interim Release, Rules 3.06(8) and (9). New rules restrict a paralegal from taking certain steps when acting for an accused person, including acting as surety, using the paralegal’s own funds or security to secure the release of the accused, or acting in a supervisory capacity to the accused. Exemptions are provided in certain circumstances.

Withdrawal from Representation, Rule 3.08. The Rules regarding withdrawal from representation have been modified. New Rule 3.08(1) requires reasonable notice to the client as

a condition for withdrawal. Rule 3.08(11), (12) and (13) speak to a paralegal's obligations upon discharge or withdrawal, including an obligation to notify the client in writing.

Guideline references: Guideline 7, 11, 12

Paralegal as Advocate, Rule 4.01. New Rules expand the list of prohibitions on a paralegal who is acting as an advocate, including a prohibition on appearing before a court or tribunal while under the influence of alcohol or drug (Rule 4.01(5)(p))

Guideline reference: Guideline 12

Paralegal as Witness, Rule 4.04. This provision has been reworded.

Guideline reference: Guideline 12

Dealing with an unrepresented person, Rule 4.05. Rule 4.05 requires a paralegal to clarify his or her role in dealing with an unrepresented person. The requirement to urge the unrepresented person to obtain independent legal representation has been removed.

Guideline reference: Guideline 12

Fees and Retainers, Rule 5.01

- Changes to Rule 5.01(2) expand the factors regarding what is a reasonable fee or disbursement.
- New Rule 5.01(6) requires a paralegal to repay to the client fees or disbursements reduced by a Court Order as soon as is practicable.

Guideline references: Guidelines 13 and 14

Inadvertent communications, Rule 7.01(7). New Rule 7.01(7) requires a paralegal who receives an inadvertent communication to notify the sender.

Making legal services available, Rules 8.02 and 8.03. No changes have been made to the Rules, but new provisions have been added to the Guidelines regarding making legal services available to vulnerable clients.

Guideline references: Guideline 1, 2, 22

Communications from the Society, Rule 9.01(1). Rule 9.01(1) requires a paralegal to reply promptly and completely to any communication from the Law Society in which a response is requested.

Duty to Report Misconduct, Rule 9.01(2). Rule 9.01(2) requires a paralegal to report to the Law Society in certain circumstances, including the mental instability of a licensee. The instability must be of such a serious nature that the licensee's clients are likely to be materially prejudiced.