

1 **Rule 1.6. Confidentiality of information.**

2 (a) A licensed paralegal practitioner shall not reveal information relating to the  
3 representation of a client unless the client gives informed consent, the disclosure is  
4 authorized in order to carry out the representation or the disclosure is permitted by  
5 paragraph (b).

6 (b) A licensed paralegal practitioner may reveal information relating to the  
7 representation of a client to the extent the licensed paralegal practitioner reasonably  
8 believes necessary:

9 (b)(1) to prevent reasonably certain death or substantial bodily harm;

10 (b)(2) to prevent the client from committing a crime or fraud that is reasonably certain  
11 to result in substantial injury to the financial interest or property of another and in  
12 furtherance of which the client has used the licensed paralegal practitioner's services;

13 (b)(3) to prevent, mitigate or rectify substantial injury to the financial interests or  
14 property of another that is reasonably certain to result or has resulted from the client's  
15 commission of a crime or fraud in furtherance of which the client has used the licensed  
16 paralegal practitioner's services;

17 (b)(4) to secure legal advice about the licensed paralegal practitioner's compliance with  
18 these Rules;

19 (b)(5) to establish a claim or defense on behalf of the licensed paralegal practitioner in a  
20 controversy between the licensed paralegal practitioner and the client, to establish a  
21 defense to a criminal charge or civil claim against the licensed paralegal practitioner based  
22 upon conduct in which the client was involved, or to respond to allegations in any  
23 proceeding concerning the licensed paralegal practitioner's representation of the client;

24 (b)(6) to comply with other law or a court order; or

25 (b)(7) to detect and resolve conflicts of interest arising from the licensed paralegal  
26 practitioner's change of employment or from changes in the composition or ownership of a  
27 firm, but only if the revealed information would not compromise the licensed paralegal  
28 practitioner — client privilege or otherwise prejudice the client.

29 (c) A licensed paralegal practitioner shall make reasonable efforts to prevent the  
30 inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to  
31 the representation of a client.

32 Comment

33 [1] This Rule governs the disclosure by a licensed paralegal practitioner of information

34 relating to the representation of a client during the licensed paralegal practitioner's  
35 representation of the client. See Rule 1.18 for the licensed paralegal practitioner's duties  
36 with respect to information provided to the licensed paralegal practitioner by a prospective  
37 client, Rule 1.9(c)(2) for the licensed paralegal practitioner's duty not to reveal information  
38 relating to the licensed paralegal practitioner's prior representation of a former client and  
39 Rules 1.8(b) and 1.9(c)(1) for the licensed paralegal practitioner's duties with respect to  
40 the use of such information to the disadvantage of clients and former clients.

41 [2] A fundamental principle in the licensed paralegal practitioner-client relationship is  
42 that, in the absence of the client's informed consent, the licensed paralegal practitioner  
43 must not reveal information relating to the representation. See Rule 1.0(f) for the definition  
44 of informed consent. This contributes to the trust that is the hallmark of the client-licensed  
45 paralegal practitioner relationship.

46 [3] The principle of licensed paralegal practitioner-client confidentiality is given effect  
47 by related bodies of law including the licensed paralegal practitioner-client privilege, the  
48 work product doctrine and the rule of confidentiality established in professional ethics. The  
49 attorney-client privilege and work product doctrine apply in judicial and other proceedings  
50 in which a licensed paralegal practitioner may be called as a witness or otherwise required  
51 to produce evidence concerning a client. The rule of licensed paralegal practitioner-client  
52 confidentiality applies in situations other than those where evidence is sought from the  
53 licensed paralegal practitioner through compulsion of law. The confidentiality rule, for  
54 example, applies not only to matters communicated in confidence by the client but also to  
55 all information relating to the representation, whatever its source. A licensed paralegal  
56 practitioner may not disclose such information except as authorized or required by the  
57 Licensed Paralegal Practitioner Rules of Professional Conduct or other law. See also Scope.

58 [4] Paragraph (a) prohibits a licensed paralegal practitioner from revealing information  
59 relating to the representation of a client. This prohibition also applies to disclosures by a  
60 licensed paralegal practitioner that do not in themselves reveal protected information but  
61 could reasonably lead to the discovery of such information by a third person. A licensed  
62 paralegal practitioner's use of a hypothetical to discuss issues relating to the  
63 representation is permissible so long as there is no reasonable likelihood that the listener  
64 will be able to ascertain the identity of the client or the situation involved.

#### 65 Authorized Disclosure

66 [5] Except to the extent that the client's instructions or special circumstances limit that  
67 authority, a licensed paralegal practitioner is impliedly authorized to make disclosures

68 about a client when appropriate in carrying out the representation. In some situations, for  
69 example, a licensed paralegal practitioner may be impliedly authorized to admit a fact that  
70 cannot properly be disputed or to make a disclosure that facilitates a satisfactory  
71 conclusion to a matter. Licensed paralegal practitioners in a firm may, in the course of the  
72 firm's practice, disclose to each other information relating to a client of the firm, unless the  
73 client has instructed that particular information be confined to specified licensed paralegal  
74 practitioners.

#### 75 Disclosure Adverse to Client

76 [6] Although the public interest is usually best served by a strict rule requiring licensed  
77 paralegal practitioners to preserve the confidentiality of information relating to the  
78 representation of their clients, the confidentiality rule is subject to limited exceptions.  
79 Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits  
80 disclosure reasonably necessary to prevent reasonably certain death or substantial bodily  
81 harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there  
82 is a present and substantial threat that a person will suffer such harm at a later date if the  
83 licensed paralegal practitioner fails to take action necessary to eliminate the threat.

84 [7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the  
85 licensed paralegal practitioner to reveal information to the extent necessary to enable  
86 affected persons or appropriate authorities to prevent the client from committing a crime  
87 or fraud, as defined in Rule 1.0(e), that is reasonably certain to result in substantial injury  
88 to the financial or property interests of another and in furtherance of which the client has  
89 used or is using the licensed paralegal practitioner's services. Such a serious abuse of the  
90 client-licensed paralegal practitioner relationship by the client forfeits the protection of  
91 this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful  
92 conduct. Although paragraph (b)(2) does not require the licensed paralegal practitioner to  
93 reveal the client's misconduct, the licensed paralegal practitioner may not counsel or assist  
94 the client in conduct the licensed paralegal practitioner knows is criminal or fraudulent.  
95 See Rule 1.2(d). See also Rule 1.16 with respect to the licensed paralegal practitioner's  
96 obligation or right to withdraw from the representation of the client in such circumstances,  
97 ~~and Rule 1.13(c) which permits the licensed paralegal practitioner, where the client is an~~  
98 ~~organization, to reveal information relating to the representation in limited circumstances.~~

99 [8] Paragraph (b)(3) addresses the situation in which the licensed paralegal  
100 practitioner does not learn of the client's crime or fraud until after it has been  
101 consummated. Although the client no longer has the option of preventing disclosure by

102 refraining from the wrongful conduct, there will be situations in which the loss suffered by  
103 the affected person can be prevented, rectified or mitigated. In such situations, the licensed  
104 paralegal practitioner may disclose information relating to the representation to the extent  
105 necessary to enable the affected persons to prevent or mitigate reasonably certain losses or  
106 to attempt to recoup their losses.

107 [9] A licensed paralegal practitioner's confidentiality obligations do not preclude a  
108 licensed paralegal practitioner from securing confidential legal advice about the licensed  
109 paralegal practitioner's personal responsibility to comply with these Rules. In most  
110 situations, disclosing information to secure such advice will be impliedly authorized for the  
111 licensed paralegal practitioner to carry out the representation. Even when the disclosure is  
112 not impliedly authorized, paragraph (b)(4) permits such disclosure because of the  
113 importance of a licensed paralegal practitioner's compliance with the Licensed Paralegal  
114 Practitioner Rules of Professional Conduct.

115 [10] Where a legal claim or disciplinary charge alleges complicity of the licensed  
116 paralegal practitioner in a client's conduct or other misconduct of the licensed paralegal  
117 practitioner involving representation of the client, the licensed paralegal practitioner may  
118 respond to the extent the licensed paralegal practitioner reasonably believes necessary to  
119 establish a defense. The same is true with respect to a claim involving the conduct or  
120 representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or  
121 other proceeding and can be based on a wrong allegedly committed by the licensed  
122 paralegal practitioner against the client or on a wrong alleged by a third person, for  
123 example, a person claiming to have been defrauded by the licensed paralegal practitioner  
124 and client acting together. The licensed paralegal practitioner's right to respond arises  
125 when an assertion of such complicity has been made. Paragraph (b)(5) does not require the  
126 licensed paralegal practitioner to await the commencement of an action or proceeding that  
127 charges such complicity, so that the defense may be established by responding directly to a  
128 third party who has made such an assertion. The right to defend also applies, of course,  
129 where a proceeding has been commenced.

130 [11] A licensed paralegal practitioner entitled to a fee is permitted by paragraph (b)(5)  
131 to prove the services rendered in an action to collect it. This aspect of the rule expresses  
132 the principle that the beneficiary of a fiduciary relationship may not exploit it to the  
133 detriment of the fiduciary.

134 [12] Other law may require that a licensed paralegal practitioner disclose information  
135 about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the

136 scope of these Rules. When disclosure of information relating to the representation appears  
137 to be required by other law, the licensed paralegal practitioner must discuss the matter  
138 with the client to the extent required by Rule 1.4. If, however, the other law supersedes this  
139 Rule and requires disclosure, paragraph (b)(6) permits the licensed paralegal practitioner  
140 to make such disclosures as are necessary to comply with the law.

141 Detection of Conflicts of Interest

142 [13] Paragraph (b)(7) recognizes that licensed paralegal practitioners in different firms  
143 may need to disclose limited information to each other to detect and resolve conflicts of  
144 interest, such as when a licensed paralegal practitioner is considering an association with  
145 another firm, two or more firms are considering a merger, or a licensed paralegal  
146 practitioner is considering the purchase of a licensed paralegal practice. See Rule 1.17,  
147 Comment [7]. Under these circumstances, licensed paralegal practitioners and law firms  
148 are permitted to disclose limited information, but only once substantive discussions  
149 regarding the new relationship have occurred. Any such disclosure should ordinarily  
150 include no more than the identity of the persons and entities involved in a matter, a brief  
151 summary of the general issues involved, and information about whether the matter has  
152 terminated. Even this limited information, however, should be disclosed only to the extent  
153 reasonably necessary to detect and resolve conflicts of interest that might arise from the  
154 possible new relationship. Moreover, the disclosure of any information is prohibited if it  
155 would compromise the licensed paralegal practitioner-client privilege or otherwise  
156 prejudice the client (e.g., the fact that a person has consulted a licensed paralegal  
157 practitioner about the possibility of divorce before the person's intentions are known to  
158 the person's spouse). Under those circumstances, paragraph (a) prohibits disclosure unless  
159 the client or former client gives informed consent. A licensed paralegal practitioner's  
160 fiduciary duty to the licensed paralegal practitioner's firm may also govern a licensed  
161 paralegal practitioner's conduct when exploring an association with another firm and is  
162 beyond the scope of these Rules.

163 [14] Any information disclosed pursuant to paragraph (b)(7) may be used or further  
164 disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph  
165 (b)(7) does not restrict the use of information acquired by means independent to any  
166 disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the  
167 disclosure of information within a law firm when the disclosure is otherwise authorized,  
168 see Comment [5], such as when a licensed paralegal practitioner in a firm discloses  
169 information to another licensed paralegal practitioner in the same firm to detect and  
170 resolve conflicts of interest that could arise in connection with undertaking a new

171 representation.

172 [15] A licensed paralegal practitioner may be ordered to reveal information relating to  
173 the representation of a client by a court or by another tribunal or governmental entity  
174 claiming authority pursuant to other law to compel the disclosure. Absent informed  
175 consent of the client to do otherwise, the licensed paralegal practitioner should assert on  
176 behalf of the client all nonfrivolous claims that the order is not authorized by other law or  
177 that the information sought is protected against disclosure by the attorney-client privilege  
178 or other applicable law. In the event of an adverse ruling, the licensed paralegal  
179 practitioner must consult with the client about the availability of appeal and refer the client  
180 to an attorney to the extent required by Rule 1.4. Unless review is sought, however,  
181 paragraph (b)(6) permits the licensed paralegal practitioner to comply with the court's  
182 order.

183 [16] Paragraph (b) permits disclosure only to the extent the licensed paralegal  
184 practitioner reasonably believes the disclosure is necessary to accomplish one of the  
185 purposes specified. Where practicable, the licensed paralegal practitioner should first seek  
186 to persuade the client to take suitable action to obviate the need for disclosure. In any case,  
187 a disclosure adverse to the client's interest should be no greater than the licensed paralegal  
188 practitioner reasonably believes necessary to accomplish the purpose. If the disclosure will  
189 be made in connection with a judicial proceeding, the disclosure should be made in a  
190 manner that limits access to the information to the tribunal or other persons having a need  
191 to know it and appropriate protective orders or other arrangements should be sought by  
192 the licensed paralegal practitioner to the fullest extent practicable.

193 [17] Paragraph (b) permits but does not require the disclosure of information relating  
194 to a client's representation to accomplish the purposes specified in paragraphs (b)(1)  
195 through (b)(7). In exercising the discretion conferred by this Rule, the licensed paralegal  
196 practitioner may consider such factors as the nature of the licensed paralegal practitioner's  
197 relationship with the client and with those who might be injured by the client, the licensed  
198 paralegal practitioner's own involvement in the transaction and factors that may extenuate  
199 the conduct in question. A licensed paralegal practitioner's decision not to disclose as  
200 permitted by paragraph (b) does not violate this Rule. Disclosure may be required,  
201 however, by other rules. Some rules require disclosure only if such disclosure would be  
202 permitted by paragraph (b). See Rules 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand,  
203 requires disclosure in some circumstances regardless of whether such disclosure is  
204 permitted by this Rule. See Rule 3.3.

205 Acting Competently to Preserve Confidentiality

206 [18] Paragraph (c) requires a licensed paralegal practitioner to act competently to  
207 safeguard information relating to the representation of a client against unauthorized access  
208 by third parties and against inadvertent or unauthorized disclosure by the licensed  
209 paralegal practitioner or other persons who are participating in the representation of the  
210 client or who are subject to the licensed paralegal practitioner's supervision. See Rules 1.1,  
211 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of,  
212 information relating to the representation of a client does not constitute a violation of  
213 paragraph (c) if the licensed paralegal practitioner has made reasonable efforts to prevent  
214 the access or disclosure. Factors to be considered in determining the reasonableness of the  
215 licensed paralegal practitioner's efforts include, but are not limited to, the sensitivity of the  
216 information, the likelihood of disclosure if additional safeguards are not employed, the cost  
217 of employing additional safeguards, the difficulty of implementing the safeguards, and the  
218 extent to which the safeguards adversely affect the licensed paralegal practitioner's ability  
219 to represent clients (e.g., by making a device or important piece of software excessively  
220 difficult to use). A client may require the licensed paralegal practitioner to implement  
221 special security measures not required by this Rule or may give informed consent to forgo  
222 security measures that would otherwise be required by this Rule. Whether a licensed  
223 paralegal practitioner may be required to take additional steps to safeguard a client's  
224 information in order to comply with other law, such as state and federal laws that govern  
225 data privacy or that impose notification requirements upon the loss of, or unauthorized  
226 access to, electronic information, is beyond the scope of these Rules. For a licensed  
227 paralegal practitioner's duties when sharing information with nonparalegal practitioners  
228 outside the licensed paralegal practitioner's own firm, see Rule 5.3. Comments [3]-[4].

229 [19] When transmitting a communication that includes information relating to the  
230 representation of a client, the licensed paralegal practitioner must take reasonable  
231 precautions to prevent the information from coming into the hands of unintended  
232 recipients. This duty, however, does not require that the licensed paralegal practitioner use  
233 special security measures if the method of communication affords a reasonable expectation  
234 of privacy. Special circumstances, however, may warrant special precautions. Factors to be  
235 considered in determining the reasonableness of the licensed paralegal practitioner's  
236 expectation of confidentiality include the sensitivity of the information and the extent to  
237 which the privacy of the communication is protected by law or by a confidentiality  
238 agreement. A client may require the licensed paralegal practitioner to implement special  
239 security measures not required by this Rule or may give informed consent to the use of a  
240 means of communication that would otherwise be prohibited by this Rule. Whether a

241 licensed paralegal practitioner may be required to take additional steps in order to comply  
242 with other law, such as state and federal laws that govern data privacy, is beyond the scope  
243 of these Rules.

244       Former Client

245       [20] The duty of confidentiality continues after the licensed paralegal practitioner-  
246 client relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition  
247 against using such information to the disadvantage of the former client.

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