

1 **Rule 1.6. Confidentiality of Information.**

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

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

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

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

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

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

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

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

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

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

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31 Comment

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

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

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

60

61 [4] Paragraph (a) prohibits a licensed paralegal practitioner from revealing information
62 relating to the representation of a client. This prohibition also applies to disclosures by a licensed

63 paralegal practitioner that do not in themselves reveal protected information but could reasonably
64 lead to the discovery of such information by a third person. A licensed paralegal practitioner's
65 use of a hypothetical to discuss issues relating to the representation is permissible so long as
66 there is no reasonable likelihood that the listener will be able to ascertain the identity of the client
67 or the situation involved.

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69 Authorized Disclosure

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71 [5] Except to the extent that the client's instructions or special circumstances limit that
72 authority, a licensed paralegal practitioner is impliedly authorized to make disclosures about a
73 client when appropriate in carrying out the representation. In some situations, for example, a
74 licensed paralegal practitioner may be impliedly authorized to admit a fact that cannot properly
75 be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. licensed
76 paralegal practitioners in a firm may, in the course of the firm's practice, disclose to each other
77 information relating to a client of the firm, unless the client has instructed that particular
78 information be confined to specified licensed paralegal practitioners.

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80 Disclosure Adverse to Client

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

90

91 [7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the
92 licensed paralegal practitioner to reveal information to the extent necessary to enable affected
93 persons or appropriate authorities to prevent the client from committing a crime or fraud, as

94 defined in Rule 1.0(e), that is reasonably certain to result in substantial injury to the financial or
95 property interests of another and in furtherance of which the client has used or is using the
96 licensed paralegal practitioner's services. Such a serious abuse of the client-licensed paralegal
97 practitioner relationship by the client forfeits the protection of this Rule. The client can, of
98 course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph
99 (b)(2) does not require the licensed paralegal practitioner to reveal the client's misconduct, the
100 licensed paralegal practitioner may not counsel or assist the client in conduct the licensed
101 paralegal practitioner knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with
102 respect to the licensed paralegal practitioner's obligation or right to withdraw from the
103 representation of the client in such circumstances, and Rule 1.13(c) which permits the licensed
104 paralegal practitioner, where the client is an organization, to reveal information relating to the
105 representation in limited circumstances.

106

107 [8] Paragraph (b)(3) addresses the situation in which the licensed paralegal practitioner does
108 not learn of the client's crime or fraud until after it has been consummated. Although the client
109 no longer has the option of preventing disclosure by refraining from the wrongful conduct, there
110 will be situations in which the loss suffered by the affected person can be prevented, rectified or
111 mitigated. In such situations, the licensed paralegal practitioner may disclose information
112 relating to the representation to the extent necessary to enable the affected persons to prevent or
113 mitigate reasonably certain losses or to attempt to recoup their losses.

114

115 [9] A licensed paralegal practitioner's confidentiality obligations do not preclude a licensed
116 paralegal practitioner from securing confidential legal advice about the licensed paralegal
117 practitioner's personal responsibility to comply with these Rules. In most situations, disclosing
118 information to secure such advice will be impliedly authorized for the licensed paralegal
119 practitioner to carry out the representation. Even when the disclosure is not impliedly authorized,
120 paragraph (b)(4) permits such disclosure because of the importance of a licensed paralegal
121 practitioner's compliance with the Licensed Paralegal Practitioner Rules of Professional
122 Conduct.

123

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

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139 [11] A licensed paralegal practitioner entitled to a fee is permitted by paragraph (b)(5) to
140 prove the services rendered in an action to collect it. This aspect of the rule expresses the
141 principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the
142 fiduciary.

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144 [12] Other law may require that a licensed paralegal practitioner disclose information about a
145 client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these
146 Rules. When disclosure of information relating to the representation appears to be required by
147 other law, the licensed paralegal practitioner must discuss the matter with the client to the extent
148 required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure,
149 paragraph (b)(6) permits the licensed paralegal practitioner to make such disclosures as are
150 necessary to comply with the law.

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152 Detection of Conflicts of Interest

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

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174 [14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed
175 only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not
176 restrict the use of information acquired by means independent to any disclosure pursuant to
177 paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law
178 firm when the disclosure is otherwise authorized, see Comment [5], such as when a licensed
179 paralegal practitioner in a firm discloses information to another licensed paralegal practitioner in
180 the same firm to detect and resolve conflicts of interest that could arise in connection with
181 undertaking a new representation.

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183 [15] A licensed paralegal practitioner may be ordered to reveal information relating to the
184 representation of a client by a court or by another tribunal or governmental entity claiming

185 authority pursuant to other law to compel the disclosure. Absent informed consent of the client to
186 do otherwise, the licensed paralegal practitioner should assert on behalf of the client all
187 nonfrivolous claims that the order is not authorized by other law or that the information sought is
188 protected against disclosure by the attorney-client privilege or other applicable law. In the event
189 of an adverse ruling, the licensed paralegal practitioner must consult with the client about the
190 availability of appeal and refer the client to an attorney to the extent required by Rule 1.4. Unless
191 review is sought, however, paragraph (b)(6) permits the licensed paralegal practitioner to
192 comply with the court's order.

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194 [16] Paragraph (b) permits disclosure only to the extent the licensed paralegal practitioner
195 reasonably believes the disclosure is necessary to accomplish one of the purposes specified.
196 Where practicable, the licensed paralegal practitioner should first seek to persuade the client to
197 take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the
198 client's interest should be no greater than the licensed paralegal practitioner reasonably believes
199 necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial
200 proceeding, the disclosure should be made in a manner that limits access to the information to
201 the tribunal or other persons having a need to know it and appropriate protective orders or other
202 arrangements should be sought by the licensed paralegal practitioner to the fullest extent
203 practicable.

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205 [17] Paragraph (b) permits but does not require the disclosure of information relating to
206 a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(7).
207 In exercising the discretion conferred by this Rule, the licensed paralegal practitioner may
208 consider such factors as the nature of the licensed paralegal practitioner's relationship with the
209 client and with those who might be injured by the client, the licensed paralegal practitioner's
210 own involvement in the transaction and factors that may extenuate the conduct in question. A
211 licensed paralegal practitioner's decision not to disclose as permitted by paragraph (b) does not
212 violate this Rule. Disclosure may be required, however, by other rules. Some rules require
213 disclosure only if such disclosure would be permitted by paragraph (b). See Rules 4.1(b), 8.1 and
214 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether
215 such disclosure is permitted by this Rule. See Rule 3.3.

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217 Acting Competently to Preserve Confidentiality

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

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242 [19] When transmitting a communication that includes information relating to the
243 representation of a client, the licensed paralegal practitioner must take reasonable precautions to
244 prevent the information from coming into the hands of unintended recipients. This duty,
245 however, does not require that the licensed paralegal practitioner use special security measures if
246 the method of communication affords a reasonable expectation of privacy. Special

247 circumstances, however, may warrant special precautions. Factors to be considered in
248 determining the reasonableness of the licensed paralegal practitioner's expectation of
249 confidentiality include the sensitivity of the information and the extent to which the privacy of
250 the communication is protected by law or by a confidentiality agreement. A client may require
251 the licensed paralegal practitioner to implement special security measures not required by this
252 Rule or may give informed consent to the use of a means of communication that would otherwise
253 be prohibited by this Rule. Whether a licensed paralegal practitioner may be required to take
254 additional steps in order to comply with other law, such as state and federal laws that govern data
255 privacy, is beyond the scope of these Rules.

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257 Former Client

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259 [20] The duty of confidentiality continues after the licensed paralegal practitioner-client
260 relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against
261 using such information to the disadvantage of the former client.