

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others.

In the course of representing a client a licensed paralegal practitioner shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact, when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Comment

Misrepresentation

[1] A licensed paralegal practitioner is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the licensed paralegal practitioner incorporates or affirms a statement of another person that the licensed paralegal practitioner knows is false.

Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentation by a licensed paralegal practitioner other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Licensed paralegal practitioners should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

28 Crime or Fraud by Client

29 [3] Under Rule 1.2(d), a licensed paralegal practitioner is prohibited from counseling or assisting
30 a client in conduct that the paralegal practitioner knows is criminal or fraudulent. Paragraph (b)
31 states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation
32 where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a licensed
33 paralegal practitioner can avoid assisting a client's crime or fraud by withdrawing from the
34 representation. Sometimes it may be necessary for the licensed paralegal practitioner to give
35 notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In
36 extreme cases, substantive law may require a licensed paralegal practitioner to disclose
37 information relating to the representation to avoid being deemed to have assisted the client's
38 crime or fraud. If the licensed paralegal practitioner can avoid assisting a client's crime or fraud
39 only by disclosing this information, then under paragraph (b) the licensed paralegal practitioner
40 is required to do so, unless the disclosure is prohibited by Rule 1.6.