

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

1 (a) A licensed paralegal practitioner shall not enter into a business transaction with a client
2 or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a
3 client unless:

4 (a)(1) the transaction and terms on which the licensed paralegal practitioner acquires the
5 interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a
6 manner that can be reasonably understood by the client;

7 (a)(2) the client is advised in writing of the desirability of seeking and is given
8 a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

9 (a)(3) the client gives informed consent, in a writing signed by the client, to the essential
10 terms of the transaction and the licensed paralegal practitioner's role in the transaction, including
11 whether the licensed paralegal practitioner is representing the client in the transaction.

12 (b) A licensed paralegal practitioner shall not use information relating to representation of a
13 client to the disadvantage of the client unless the client gives informed consent, except as
14 permitted or required by these Rules.

15 (c) A licensed paralegal practitioner shall not solicit any substantial gift from a client,
16 including a testamentary gift.

17 (d) Prior to the conclusion of representation of a client, a licensed paralegal practitioner shall
18 not make or negotiate an agreement giving the licensed paralegal practitioner literary or media
19 rights to a portrayal or an account based in substantial part on information relating to the
20 representation.

21 (e) A licensed paralegal practitioner shall not provide financial assistance to a client in
22 connection with pending or contemplated litigation, except that:

23 (e)(1) a licensed paralegal practitioner may advance court costs and expenses of litigation,
24 the repayment of which may be contingent on the outcome of the matter; and

25 (e)(2) a licensed paralegal practitioner representing an indigent client may pay court costs
26 and expenses of litigation, and minor expenses reasonably connected to the litigation, on behalf
27 of the client.

28 (f) A licensed paralegal practitioner shall not accept compensation for representing a
29 client from one other than the client unless:

30 (f)(1) the client gives informed consent;

31 (f)(2) there is no interference with the licensed paralegal practitioner's independence of
32 professional judgment or with the licensed paralegal practitioner-client relationship; and

33 (f)(3) information relating to representation of a client is protected as required by Rule 1.6.

34 (g) A licensed paralegal practitioner who represents two or more clients shall not participate
35 in making an aggregate settlement of the claims of or against the clients unless each client
36 gives informed consent, in writing signed by the client. The licensed paralegal practitioner's
37 disclosure shall include the existence and nature of all the claims involved and of the
38 participation of each person in the settlement.

39 (h) A licensed paralegal practitioner shall not:

40 (h)(1) make an agreement prospectively limiting the licensed paralegal practitioner's liability
41 to a client for malpractice unless the client is independently represented in making the
42 agreement; or

43 (h)(2) settle a claim or potential claim for such liability with an unrepresented client or
44 former client unless that person is advised in writing of the desirability of seeking, and is given
45 a reasonable opportunity to seek, the advice of independent legal counsel in connection
46 therewith.

47 (i) A licensed paralegal practitioner shall not acquire a proprietary interest in the cause of
48 action or subject matter of litigation the licensed paralegal practitioner is providing services on
49 for a client.

50 (j) A licensed paralegal practitioner shall not engage in sexual relations with a client that
51 exploit the licensed paralegal practitioner-client relationship. For the purposes of this Rule:

52 (j)(1) "sexual relations" means sexual intercourse or the touching of an intimate part of
53 another person for the purpose of sexual arousal, gratification, or abuse; and

54 (j)(2) except for a spousal relationship or a sexual relationship that existed at the
55 commencement of the licensed paralegal practitioner-client relationship, sexual relations
56 between the licensed paralegal practitioner and the client shall be presumed to be exploitive. This
57 presumption is rebuttable.

58 (k) While licensed paralegal practitioners are associated in a firm, a prohibition in the
59 foregoing paragraphs (a) through (i) that applies to any one of the firm shall apply to all
60 members of the firm.

61

62 Comment

63 Business Transactions Between Client and Licensed Paralegal Practitioner

64 [1] A licensed paralegal practitioner's legal skill and training, together with the relationship
65 of trust and confidence between licensed paralegal practitioner and client, create the possibility
66 of overreaching when the licensed paralegal practitioner participates in a business, property or
67 financial transaction with a client, for example, a loan or sales transaction or a licensed paralegal
68 practitioner investment on behalf of a client. The requirements of paragraph (a) must be met even
69 when the transaction is not closely related to the subject matter of the representation, as when a
70 licensed paralegal practitioner drafting a will for a client learns that the client needs money for
71 unrelated expenses and offers to make a loan to the client. The Rule applies to licensed paralegal
72 practitioners engaged in the sale of goods or services related to the practice of law, for example,
73 the sale of title insurance or investment services to existing clients of the licensed paralegal
74 practitioner's legal practice. It does not apply to ordinary fee arrangements between client and
75 licensed paralegal practitioner, which are governed by Rule 1.5, although its requirements must
76 be met when the licensed paralegal practitioner accepts an interest in the client's business or
77 other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not
78 apply to standard commercial transactions between the licensed paralegal practitioner and the
79 client for products or services that the client generally markets to others, for example, banking or
80 brokerage services, medical services, products manufactured or distributed by the client, and
81 utilities' services. In such transactions, the licensed paralegal practitioner has no advantage in
82 dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

83 [2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its
84 essential terms be communicated to the client, in writing, in a manner that can be reasonably
85 understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the
86 desirability of seeking the advice of independent legal counsel. It also requires that the client be
87 given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the licensed
88 paralegal practitioner obtain the client's informed consent, in a writing signed by the client, both
89 to the essential terms of the transaction and to the licensed paralegal practitioner's role. When
90 necessary, the licensed paralegal practitioner should discuss both the material risks of the
91 proposed transaction, including any risk presented by the licensed paralegal practitioner's
92 involvement, and the existence of reasonably available alternatives and should explain why the

93 advice of independent legal counsel is desirable. See Rule 1.0(f) (definition of informed
94 consent).

95 [3] The risk to a client is greatest when the client expects the licensed paralegal practitioner
96 to represent the client in the transaction itself or when the licensed paralegal practitioner's
97 financial interest otherwise poses a significant risk that the licensed paralegal practitioner's
98 representation of the client will be materially limited by the licensed paralegal practitioner's
99 financial interest in the transaction. Here the licensed paralegal practitioner's role requires that
100 the licensed paralegal practitioner must comply, not only with the requirements of paragraph (a),
101 but also with the requirements of Rule 1.7. Under that Rule, the licensed paralegal practitioner
102 must disclose the risks associated with the licensed paralegal practitioner's dual role as both legal
103 adviser and participant in the transaction, such as the risk that the licensed paralegal practitioner
104 will structure the transaction or give legal advice in a way that favors the licensed paralegal
105 practitioner's interests at the expense of the client. Moreover, the licensed paralegal practitioner
106 must obtain the client's informed consent. In some cases, the licensed paralegal practitioner's
107 interest may be such that Rule 1.7 will preclude the licensed paralegal practitioner from seeking
108 the client's consent to the transaction.

109 [4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule
110 is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a
111 written disclosure by the licensed paralegal practitioner involved in the transaction or by the
112 client's independent counsel. The fact that the client was independently represented in the
113 transaction is relevant in determining whether the agreement was fair and reasonable to the client
114 as paragraph (a)(1) further requires.

115 Use of Information Related to Representation

116 [5] Use of information relating to the representation to the disadvantage of the client violates
117 the licensed paralegal practitioner's duty of loyalty. Paragraph (b) applies when the information
118 is used to benefit either the licensed paralegal practitioner or a third person, such as another
119 client or business associate of the licensed paralegal practitioner. For example, if a licensed
120 paralegal practitioner learns that a client intends to purchase and develop several parcels of land,
121 the licensed paralegal practitioner may not use that information to purchase one of the parcels in
122 competition with the client or to recommend that another client make such a purchase. The rule
123 does not prohibit uses that do not disadvantage the client. Paragraph (b) prohibits

124 disadvantageous use of client information unless the client gives informed consent, except as
125 permitted or required by these Rules. See Rules 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

126 Gifts to Licensed Paralegal Practitioners

127 [6] A licensed paralegal practitioner may accept a gift from a client, if the transaction meets
128 general standards of fairness. For example, a simple gift such as a present given at a holiday or as
129 a token of appreciation is permitted. If a client offers the licensed paralegal practitioner a more
130 substantial gift, paragraph (c) does not prohibit the licensed paralegal practitioner from accepting
131 it, although such a gift may be voidable by the client under the doctrine of undue influence,
132 which treats client gifts as presumptively fraudulent. In any event, due to concerns about
133 overreaching and imposition on clients, a licensed paralegal practitioner may not suggest that a
134 substantial gift be made to the licensed paralegal practitioner or for the licensed paralegal
135 practitioner's benefit.

136 [7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or
137 conveyance, the client should have the detached advice that another licensed paralegal
138 practitioner or a lawyer can provide.

139 [8] This Rule does not prohibit a licensed paralegal practitioner from seeking to have the
140 licensed paralegal practitioner or a partner or associate of the licensed paralegal practitioner
141 named as executor of the client's estate or to another potentially lucrative fiduciary position.
142 Nevertheless, such appointments will be subject to the general conflict of interest provision in
143 Rule 1.7. In obtaining the client's informed consent to the conflict, the licensed paralegal
144 practitioner should advise the client concerning the nature and extent of the licensed paralegal
145 practitioner's financial interest in the appointment, as well as the availability of alternative
146 candidates for the position.

147 Literary Rights

148 [9] An agreement by which a licensed paralegal practitioner acquires literary or media rights
149 concerning the conduct of the representation creates a conflict between the interests of the client
150 and the personal interests of the licensed paralegal practitioner. Measures suitable in the
151 representation of the client may detract from the publication value of an account of the
152 representation.

153 Financial Assistance

154 [10] Licensed paralegal practitioners may not subsidize lawsuits brought on behalf of their
155 clients, including making or guaranteeing loans to their clients for living expenses, because to do
156 so would encourage clients to pursue lawsuits that might not otherwise be brought and because
157 such assistance gives licensed paralegal practitioners too great a financial stake in the litigation.
158 These dangers do not warrant a prohibition on a licensed paralegal practitioner lending a client
159 court costs and litigation expenses.

160 Person Paying for a Licensed Paralegal Practitioner's Services

161 [11] Licensed paralegal practitioners are frequently asked to represent a client under
162 circumstances in which a third person will compensate the licensed paralegal practitioner, in
163 whole or in part. The third person might be a relative or friend. Because third-party payers
164 frequently have interests that differ from those of the client, including interests in minimizing the
165 amount spent on the representation and in learning how the representation is progressing,
166 licensed paralegal practitioners are prohibited from accepting or continuing such representations
167 unless the licensed paralegal practitioner determines that there will be no interference with the
168 licensed paralegal practitioner's independent professional judgment and there is informed
169 consent from the client. See also Rule 5.4(c) (prohibiting interference with a licensed paralegal
170 practitioner's professional judgment by one who recommends, employs or pays the licensed
171 paralegal practitioner to render legal services for another).

172 [12] Sometimes, it will be sufficient for the licensed paralegal practitioner to obtain the
173 client's informed consent regarding the fact of the payment and the identity of the third-party
174 payer. If, however, the fee arrangement creates a conflict of interest for the licensed paralegal
175 practitioner, then the licensed paralegal practitioner must comply with Rule. 1.7. The licensed
176 paralegal practitioner must also conform to the requirements of Rule 1.6 concerning
177 confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the
178 licensed paralegal practitioner's representation of the client will be materially limited by the
179 licensed paralegal practitioner's own interest in the fee arrangement or by the licensed paralegal
180 practitioner's responsibilities to the third-party payer (for example, when the third-party payer is
181 a co-client). Under Rule 1.7(b), the licensed paralegal practitioner may accept or continue the
182 representation with the informed consent of each affected client, unless the conflict is
183 nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be
184 confirmed in writing.

185 Aggregate Settlements

186 [13] Differences in willingness to make or accept an offer of settlement are among the risks
187 of common representation of multiple clients by a single licensed paralegal practitioner. Under
188 Rule 1.7, this is one of the risks that should be discussed before undertaking the representation,
189 as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects
190 each client's right to have the final say in deciding whether to accept or reject an offer of
191 settlement.

192 Limiting Liability and Settling Malpractice Claims

193 [14] Agreements prospectively limiting a licensed paralegal practitioner's liability for
194 malpractice are prohibited unless the client is independently represented in making the
195 agreement because they are likely to undermine competent and diligent representation. Also,
196 many clients are unable to evaluate the desirability of making such an agreement before a dispute
197 has arisen, particularly if they are then represented by the licensed paralegal practitioner seeking
198 the agreement. This paragraph does not, however, prohibit a licensed paralegal practitioner from
199 entering into an agreement with the client to arbitrate legal malpractice claims, provided such
200 agreements are enforceable and the client is fully informed of the scope and effect of the
201 agreement. Nor does this paragraph limit the ability of licensed paralegal practitioners to practice
202 in the form of a limited-liability entity, where permitted by law, provided that each licensed
203 paralegal practitioner remains personally liable to the client for his or her own conduct and the
204 firm complies with any conditions required by law, such as provisions requiring client
205 notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in
206 accordance with Rule 1.2 that defines the scope of the representation, although a definition of
207 scope that makes the obligations of representation illusory will amount to an attempt to limit
208 liability.

209 [15] Agreements settling a claim or a potential claim for malpractice are not prohibited by
210 this Rule. Nevertheless, in view of the danger that a licensed paralegal practitioner will take
211 unfair advantage of an unrepresented client or former client, the licensed paralegal practitioner
212 must first advise such a person in writing of the appropriateness of independent representation in
213 connection with such a settlement. In addition, the licensed paralegal practitioner must give the
214 client or former client a reasonable opportunity to find and consult independent counsel.

215 Acquiring Proprietary Interest in Litigation

216 [16] Paragraph (i) states the traditional general rule that licensed paralegal practitioners are
217 prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule
218 has its basis in common law champerty and maintenance and is designed to avoid giving the
219 licensed paralegal practitioner too great an interest in the representation. In addition, when the
220 licensed paralegal practitioner acquires an ownership interest in the subject of the representation,
221 it will be more difficult for a client to discharge the licensed paralegal practitioner if the client so
222 desires. The rule is subject to specific exceptions developed in decisional law and continued in
223 these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph
224 (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the
225 licensed paralegal practitioner's fees or expenses and contracts for reasonable contingent fees.
226 The law of each jurisdiction determines which liens are authorized by law. These may include
227 liens granted by statute, liens originating in common law and liens acquired by contract with the
228 client. When a licensed paralegal practitioner acquires by contract a security interest in property
229 other than that recovered through the licensed paralegal practitioner's efforts in the litigation,
230 such an acquisition is a business or financial transaction with a client and is governed by the
231 requirements of paragraph (a). Contracts for contingent fees in civil cases are prohibited by Rule
232 1.5.

233 Client-Licensed Paralegal Practitioner Sexual Relationships

234 [17] The relationship between licensed paralegal practitioner and client is a fiduciary one in
235 which the licensed paralegal practitioner occupies the highest position of trust and confidence.
236 The relationship is almost always unequal; thus, a sexual relationship between licensed paralegal
237 practitioner and client can involve unfair exploitation of the licensed paralegal practitioner's
238 fiduciary role, in violation of the licensed paralegal practitioner's basic ethical obligation not to
239 use the trust of the client to the client's disadvantage. In addition, such a relationship presents a
240 significant danger that, because of the licensed paralegal practitioner's emotional involvement,
241 the licensed paralegal practitioner will be unable to represent the client without impairment of
242 the exercise of independent professional judgment. Because of the significant danger of harm to
243 client interests and because the client's own emotional involvement renders it unlikely that the
244 client could give adequate informed consent, this Rule creates a rebuttable prohibition on the
245 licensed paralegal practitioner's having sexual relations with a client regardless of whether the
246 relationship is consensual and regardless of the absence of prejudice to the client.

247 [18] Spousal relationships and sexual relationships that predate the licensed paralegal
248 practitioner-client relationship are not prohibited. Issues relating to the exploitation of the
249 fiduciary relationship and client dependency are diminished when the sexual relationship existed
250 prior to the commencement of the licensed paralegal practitioner-client relationship. However,
251 before proceeding with the representation in these circumstances, the licensed paralegal
252 practitioner should consider whether the licensed paralegal practitioner’s ability to represent the
253 client will be materially limited by the relationship. See Rule 1.7(a)(2).

254 [19] When the client is an organization, paragraph (j) of this Rule prohibits a licensed
255 paralegal practitioner for the organization from having a sexual relationship with a constituent of
256 the organization who supervises, directs or regularly consults with that licensed paralegal
257 practitioner concerning the organization’s legal matters.

258 Imputation of Prohibitions

259 [20] Under paragraph (k), a prohibition on conduct by an individual licensed paralegal
260 practitioner in paragraphs (a) through (i) also applies to all licensed paralegal practitioners
261 associated in a firm with the personally prohibited licensed paralegal practitioner. For example,
262 one licensed paralegal practitioner in a firm may not enter into a business transaction with a
263 client of another member of the firm without complying with paragraph (a), even if the first
264 licensed paralegal practitioner is not personally involved in the representation of the client. The
265 prohibition set forth in paragraph (j) is personal and is not applied to associated licensed
266 paralegal practitioners.

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