

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (h) A licensed paralegal practitioner shall not:

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

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

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

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

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

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

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

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63 Comment64 Business Transactions Between Client and Licensed Paralegal Practitioner

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

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

93 involvement, and the existence of reasonably available alternatives and should explain why the  
94 advice of independent legal counsel is desirable. See Rule 1.0(f) (definition of informed  
95 consent).

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

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

#### 116 Use of Information Related to Representation

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

123 competition with the client or to recommend that another client make such a purchase. The rule  
124 does not prohibit uses that do not disadvantage the client. Paragraph (b) prohibits  
125 disadvantageous use of client information unless the client gives informed consent, except as  
126 permitted or required by these Rules. See Rules 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

#### 127 Gifts to Licensed Paralegal Practitioners

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

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

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

#### 148 Literary Rights

149 [9] An agreement by which a licensed paralegal practitioner acquires literary or media rights  
150 concerning the conduct of the representation creates a conflict between the interests of the client  
151 and the personal interests of the licensed paralegal practitioner. Measures suitable in the

152 representation of the client may detract from the publication value of an account of the  
153 representation.

154 Financial Assistance

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

161 Person Paying for a Licensed Paralegal Practitioner's Services

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

173 [12] Sometimes, it will be sufficient for the licensed paralegal practitioner to obtain the client's  
174 informed consent regarding the fact of the payment and the identity of the third-party payer. If,  
175 however, the fee arrangement creates a conflict of interest for the licensed paralegal practitioner,  
176 then the licensed paralegal practitioner must comply with Rule. 1.7. The licensed paralegal  
177 practitioner must also conform to the requirements of Rule 1.6 concerning confidentiality. Under  
178 Rule 1.7(a), a conflict of interest exists if there is significant risk that the licensed paralegal  
179 practitioner's representation of the client will be materially limited by the licensed paralegal  
180 practitioner's own interest in the fee arrangement or by the licensed paralegal practitioner's

181 responsibilities to the third-party payer (for example, when the third-party payer is a co-client).  
182 Under Rule 1.7(b), the licensed paralegal practitioner may accept or continue the representation  
183 with the informed consent of each affected client, unless the conflict is nonconsentable under  
184 that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

#### 185 Aggregate Settlements

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

#### 191 Limiting Liability and Settling Malpractice Claims

192 [14] Agreements prospectively limiting a licensed paralegal practitioner's liability for  
193 malpractice are prohibited unless the client is independently represented in making the  
194 agreement because they are likely to undermine competent and diligent representation. Also,  
195 many clients are unable to evaluate the desirability of making such an agreement before a dispute  
196 has arisen, particularly if they are then represented by the licensed paralegal practitioner seeking  
197 the agreement. This paragraph does not, however, prohibit a licensed paralegal practitioner from  
198 entering into an agreement with the client to arbitrate legal malpractice claims, provided such  
199 agreements are enforceable and the client is fully informed of the scope and effect of the  
200 agreement. Nor does this paragraph limit the ability of licensed paralegal practitioners to practice  
201 in the form of a limited-liability entity, where permitted by law, provided that each licensed  
202 paralegal practitioner remains personally liable to the client for his or her own conduct and the  
203 firm complies with any conditions required by law, such as provisions requiring client  
204 notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in  
205 accordance with Rule 1.2 that defines the scope of the representation, although a definition of  
206 scope that makes the obligations of representation illusory will amount to an attempt to limit  
207 liability.

208 [15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this  
209 Rule. Nevertheless, in view of the danger that a licensed paralegal practitioner will take unfair

210 advantage of an unrepresented client or former client, the licensed paralegal practitioner must  
211 first advise such a person in writing of the appropriateness of independent representation in  
212 connection with such a settlement. In addition, the licensed paralegal practitioner must give the  
213 client or former client a reasonable opportunity to find and consult independent counsel.

#### 214 Acquiring Proprietary Interest in Litigation

215 [16] Paragraph (i) states the traditional general rule that licensed paralegal practitioners are  
216 prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule  
217 has its basis in common law champerty and maintenance and is designed to avoid giving the  
218 licensed paralegal practitioner too great an interest in the representation. In addition, when the  
219 licensed paralegal practitioner acquires an ownership interest in the subject of the representation,  
220 it will be more difficult for a client to discharge the licensed paralegal practitioner if the client so  
221 desires. The rule is subject to specific exceptions developed in decisional law and continued in  
222 these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph  
223 (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the  
224 licensed paralegal practitioner's fees or expenses and contracts for reasonable contingent fees.  
225 The law of each jurisdiction determines which liens are authorized by law. These may include  
226 liens granted by statute, liens originating in common law and liens acquired by contract with the  
227 client. When a licensed paralegal practitioner acquires by contract a security interest in property  
228 other than that recovered through the licensed paralegal practitioner's efforts in the litigation,  
229 such an acquisition is a business or financial transaction with a client and is governed by the  
230 requirements of paragraph (a). Contracts for contingent fees in civil cases are prohibited by Rule  
231 1.5.

#### 232 Client-Licensed Paralegal Practitioner Sexual Relationships

233 [17] The relationship between licensed paralegal practitioner and client is a fiduciary one in  
234 which the licensed paralegal practitioner occupies the highest position of trust and confidence.  
235 The relationship is almost always unequal; thus, a sexual relationship between licensed paralegal  
236 practitioner and client can involve unfair exploitation of the licensed paralegal practitioner's  
237 fiduciary role, in violation of the licensed paralegal practitioner's basic ethical obligation not to  
238 use the trust of the client to the client's disadvantage. In addition, such a relationship presents a  
239 significant danger that, because of the licensed paralegal practitioner's emotional involvement,



240 the licensed paralegal practitioner will be unable to represent the client without impairment of  
241 the exercise of independent professional judgment. Because of the significant danger of harm to  
242 client interests and because the client's own emotional involvement renders it unlikely that the  
243 client could give adequate informed consent, this Rule creates a rebuttable prohibition on the  
244 licensed paralegal practitioner's having sexual relations with a client regardless of whether the  
245 relationship is consensual and regardless of the absence of prejudice to the client.

246 [18] Spousal relationships and sexual relationships that predate the licensed paralegal  
247 practitioner-client relationship are not prohibited. Issues relating to the exploitation of the  
248 fiduciary relationship and client dependency are diminished when the sexual relationship existed  
249 prior to the commencement of the licensed paralegal practitioner-client relationship. However,  
250 before proceeding with the representation in these circumstances, the licensed paralegal  
251 practitioner should consider whether the licensed paralegal practitioner's ability to represent the  
252 client will be materially limited by the relationship. See Rule 1.7(a)(2).

253 [19] When the client is an organization, paragraph (j) of this Rule prohibits a licensed paralegal  
254 practitioner for the organization from having a sexual relationship with a constituent of the  
255 organization who supervises, directs or regularly consults with that licensed paralegal  
256 practitioner concerning the organization's legal matters.

#### 257 Imputation of Prohibitions

258 [20] Under paragraph (k), a prohibition on conduct by an individual licensed paralegal  
259 practitioner in paragraphs (a) through (i) also applies to all licensed paralegal practitioners  
260 associated in a firm with the personally prohibited licensed paralegal practitioner. For example,  
261 one licensed paralegal practitioner in a firm may not enter into a business transaction with a  
262 client of another member of the firm without complying with paragraph (a), even if the first  
263 licensed paralegal practitioner is not personally involved in the representation of the client. The  
264 prohibition set forth in paragraph (j) is personal and is not applied to associated licensed  
265 paralegal practitioners.