Convocation February 27, 2020

# Changes to By-law 4, Rule 3.04(18-22), and Guideline 9

**Convocation approved amendments to By-Law 4, the *Paralegal Rules of Conduct* and Guideline 9. Read more about the changes in the Law Society Gazette news release “Paralegal rules amended re: conflict of interest standard for pro bono and short-term legal services” at** [**http://www.lawsocietygazette.ca/news/paralegal-rules-amended-re-conflict-of-interest-standard-for-pro-bono-and-short-term-legal-services/**](http://www.lawsocietygazette.ca/news/paralegal-rules-amended-re-conflict-of-interest-standard-for-pro-bono-and-short-term-legal-services/)**.**

**The changes are summarized as follows.**

1. Subsection 31 (1) of the English version of the By-Law is amended by deleting “ ‘injured workers’ group’ means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;”. ..

3. The By-Law is further amended by revoking subsection 31 (4).

## Changes to Rule 3.04(18)

3.04 (18) In this rule, “short-term client” means a client to whom a paralegal provides short-term legal services;

"paralegal’s firm" means the paralegal firm at which the paralegal provides legal services as a partner, associate, employee, or otherwise;

"short-term provider" means a pro bono or not-for-profit legal service provider that makes paralegals available to provide advice or representation to clients;

"paralegal" means (i) a volunteer paralegal who provides short-term legal services to clients under the auspices of a short-term provider; (ii) a paralegal providing services under the auspices of a Pro Bono Ontario program; (iii) a paralegal providing short-term legal services under the auspices of a Legal Aid Ontario program or clinic; or (iv) a paralegal providing short term legal services under the auspices of a clinical education course or program;

“clinical education course or program” means a course, program, placement or partnership that is organized or accepted by an Ontario law school and that provides Ontario law students with an opportunity to gain practical and applied legal experience;

"short-term legal services" means short-term legal services or representation to a short-term client under the auspices of a short-term provider with the expectation by the paralegal and the client that the paralegal will not provide continuing legal services or representation in the matter.

(19) A paralegal may provide short-term legal services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the paralegal’s firm or of the short-term provider;

(20) A paralegal shall take reasonable measures to ensure that no disclosure of the short-term client’s confidential information is made to another paralegal in the paralegal’s firm;

(21) A paralegal shall not provide or shall cease providing short-term legal services to a shortterm client where the paralegal knows or becomes aware of a conflict of interest;

(22) A paralegal who is unable to provide short-term legal services to a client because there is a conflict of interest shall cease to provide such services as soon as the paralegal actually becomes aware of the conflict of interest and the paralegal shall not seek the short-term client’s waiver of the conflict.

## Changes to Guideline 9

**PRO BONO AND OTHER SHORT-TERM LEGAL SERVICES**

**Conflicts of Interest Arising From Pro Bono and Other Short-term Legal Services**

**Rule Reference: Rule 3.04(18) – (22)**

55. Short-term legal services, such as duty counsel programs, are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the short-term provider, the paralegal and the paralegal's firm. Performing a full conflicts screening in circumstances in which short-term legal services are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

56. The limited nature of short-term legal services significantly reduces the risk of conflicts of interest. Accordingly, the paralegal is disqualified from acting for a client receiving shortterm legal services only if the paralegal has actual knowledge of a conflict of interest in the same or a related matter. For example, a conflict of interest of which the paralegal has no actual knowledge but which is imputed to the paralegal because of the paralegal's membership in or association or employment with a firm would not preclude the paralegal from representing the client seeking short-term legal services.

57. In the provision of short-term legal services, the paralegal's knowledge about conflicts is based on the paralegal's reasonable recollection and information provided by the client in the ordinary course of the consulting with the short-term provider regarding the shortterm legal services.

58. The disqualification of a paralegal participating in a short-term legal services program does not create a conflict for the other paralegals participating in the program, as the conflict is not imputed to them.

59. Confidential information obtained by a paralegal representing a short-term client will not be imputed to the lawyers, paralegals and others at the paralegal's firm. As such, these people may continue to act for another client adverse in interest to the short-term client and may act in future for another client adverse in interest to the short-term client.

60. Information obtained by a paralegal representing short-term clients may result in a conflict for the paralegal with an existing client that could require the paralegal to cease representation of that existing client. This risk can be minimized by the establishment of a system to search for conflicts of interest of the paralegal’s firm prior to representing short-term clients.

61. Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the short-term client to other persons at the paralegal's firm. Rule 3.04(20) extends, with necessary modifications, the rules and guidelines about conflicts arising from a paralegal transfer between paralegal firms (rule 3.05) to the situation of a paralegal firm acting against a current client of the firm in providing short-term legal services.

Measures that the paralegal providing the short-term legal services should take to ensure the confidentiality the client's information include:

(a) having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the short-term client;

(b) identifying relevant files, if any, of the short-term client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and

(c) ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

62. Rule 3.04(21) precludes a paralegal from obtaining a waiver in respect of conflicts of interest that arise in providing short-term legal services.

63. Rules 3.04(19) and (20) are intended to permit the provision of short-term legal services by a paralegal without the client being considered to be a client of the paralegal's firm for conflicts and other purposes. However, it is open to the paralegal and the short-term client to agree that the resources of the paralegal's firm, including other paralegals, may be accessed for the benefit of the client, in which case the provisions of Rules 3.04(19) and (20) do not apply, the paralegal would be required to clear conflicts, and the short-term client would be considered a client of the paralegal's firm.