

For Discussion Purposes

Rule 1.4.2 ~~Informed Written Consent~~Mandatory Disclosure* Prior to Consultation with a Prospective Client

- (a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal service or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide the written* disclosures to the prospective client in the prospective client's preferred language ~~and obtain the prospective client's informed written consent*~~ to proceed with the consultation:
- (1) A statement that the licensed paraprofessional is not a lawyer;
 - (2) A statement describing the limited scope of legal practice under the licensed paraprofessional's licensure;
 - (3) A statement that the prospective client may need to hire a lawyer or another licensed paraprofessional if the legal services that the prospective client seeks are beyond the limited scope of legal practice under the licensed paraprofessional's licensure;
 - (4) A statement that there may be other alternative choices available for the prospective client to consider, including, but not limited to, a free consultation with a lawyer, limited-scope services from a lawyer, or potentially free legal services from a local legal aid organization if the prospective client qualifies;
 - (4)(5) A price list/cost sheet that identifies the billing method and costs that could be charged.
 - (5)(6) If the licensed paraprofessional knows* or reasonably should know* that the licensed paraprofessional does not have professional liability insurance, a statement that the licensed paraprofessional does not have professional liability insurance.
- (b) The disclosure required under paragraph (a) shall be signed by both the licensed paraprofessional and the prospective client and~~The informed written consent* to a consultation required under paragraph (a)~~ shall be obtained regardless of whether a licensed paraprofessional-client relationship subsequently ensues. The ~~informed written consent*~~disclosure under this rule shall be in a separate writing* from the ~~informed written consent* to representation required under rule 1.4.3 or the~~ written* agreement to representation required under rule 1.5.2.

Comment

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Rule 1.4.3 ~~Informed Written Consent* to Representation~~

- ~~(a) Prior to a prospective client's engagement of the licensed paraprofessional, the licensed paraprofessional shall obtain the prospective client's informed written consent* to representation. The informed written consent* shall be provided in the prospective client's preferred language and without limitation, must include the following disclosures:~~
- ~~(1) A statement that the licensed paraprofessional is not a lawyer;~~
 - ~~(2) Reasonable* disclosure of other available choices, including the availability of a lawyer as an alternative, the availability of a free consultation with a lawyer, the availability of limited-scope services from a lawyer,~~

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- ~~and the possibility that free legal services may be available if the client qualifies;~~
- ~~(3) The risks of agreeing to obtaining legal services from a licensed paraprofessional's licensure;~~
- ~~(4) The potential need to hire a lawyer or another licensed paraprofessional if needed services go beyond the limited scope of legal practice under the licensed paraprofessional's licensure;~~
- ~~(5) the existence of any financial arrangements related to the representation that the licensed paraprofessional has with others, such as referral fees or fee sharing;~~
- ~~(6) a reasonable estimate of the total fees and costs of services provided by the licensed paraprofessional; and~~
- ~~(7) if the licensed paraprofessional knows* or reasonably should know* that the licensed paraprofessional does not have professional liability insurance, the licensed paraprofessional shall inform a prospective client that the licensed paraprofessional does not have professional liability insurance.~~
- ~~(b) If notice under paragraph (a)(7) has not been provided prior to a client's engagement of the licensed paraprofessional, the licensed paraprofessional shall inform the client in writing* within thirty days of the date the licensed paraprofessional knows* or reasonably should know* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~
- ~~(c) Notwithstanding paragraphs (a)(7) and (b), the obligation to disclose that a licensed paraprofessional does not have professional liability insurance does not apply to:~~
- ~~(1) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client; or~~
- ~~(2) a licensed paraprofessional who has previously advised the client in writing* under paragraph (a)(7) or (b) that the licensed paraprofessional does not have professional liability insurance.~~
- ~~(d) The informed written consent* to representation required under paragraph (a) shall be in a separate writing* from the informed written consent* to representation required under rule 1.4.3 or the written* agreement to representation required under rule 1.5.2.~~

Rule 1.5.2 Written Agreement to Representation

(a) Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written* agreement with the client, provided in the prospective client's preferred language, and signed by both the client and the licensed paraprofessional, that provides the name, specialty area, and license number of the licensed paraprofessional, and includes the following provisions:

- ~~(a)(1)~~ A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services with the scope of the licensed paraprofessional's licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend ~~them~~; in a print that contrasts with the

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background against which they appear; in boldface, larger type than the surrounding text; in a manner that clearly calls attention to the language.

~~(b)~~(2) _____ An explanation of the general nature of the legal services to be provided to the client in the matter;

~~(e)~~(3) _____ Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, costs, and charges applicable to the matter;

~~(d)~~(4) _____ A statement that, pursuant to rule 1.4, the licensed paraprofessional must keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed;

~~(e)~~(5) _____ A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services provided by the licensed paraprofessional;

~~(f)~~(6) _____ A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2). ~~This statement shall be clearly and conspicuously set forth in the contract;~~

~~(g)~~(7) _____ A statement confirming that the licensed paraprofessional is required to carry a surety bond as required by [add rule of court reference];

~~(h)~~(8) _____ A statement describing how to file a complaint with the State Bar of California;

~~(i)~~(9) _____ A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and

~~(j)~~(10) _____ Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

(b) Notwithstanding any other required informed consent within the Rules of Professional Conduct, the written agreement under section (a) shall also contain the prospective client's informed written consent that they understand the licensed paraprofessional is not an attorney, that the client may need to seek an attorney if needed services go beyond the scope of the licensed pp, and that there are other alternatives available to the client.

Comments

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