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Advisory Services: Tools and Rules

Professional Development & Competence
The Law Society of Upper Canada

Practice Workshop: Opening your Law Office



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Continuing Legal Education



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Experienced counsel will answer your questions concerning ethical and practice issues about Law Society legislation, Rules of Professional Conduct, policy and more.

We aim to return your call within 24 hours - if the matter is urgent, we'll do our best to provide immediate assistance.

Call 416-947-3315 or 1-800-668-7380 extension 3315.

The Practice Advisory service is strictly confidential.

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- [The Bookkeeping Guide - *New!*](#)
- [CLE Calendar](#)
- [Client Service & Communication Guideline](#)
- [Closing Down Your Practice Guideline](#)
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- [File Management Guideline](#)
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- [Guide to Leaving Your Practice](#)
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- [Practice Management Guidelines](#)
- [Preventing & Responding to Harassment & Discrimination in the Workplace](#)
- [Professional Management Guideline](#)
- [Best Practices Self-assessment - *Coming soon!*](#)
- [Technology Guideline](#)
- [Time Management Guideline](#)

Substantive Information Resources

- [AdvoCAT Catalogue](#)
- [A Page from CLE](#)
- [BAC Materials - *New!*](#)
- [CLE Materials](#)
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For more information contact the Member Resource Centre at
416-947-3315 or 1-800-668-7380 ext. 3315



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Practice Management Guidelines

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Client Service and Communication

The *Guideline* is not intended to replace a lawyer's professional judgment or to establish a one-size-fits-all approach to the practice of law. Subject to *Guideline* provisions that incorporate legal, by-law or *Rules of Professional Conduct* requirements, a decision not to follow the *Guideline* will not, in and of itself, indicate that a member has failed to provide quality service. Conversely, use of the *Guideline* may not ensure that a lawyer has delivered quality service. Whether a lawyer has provided quality service will depend upon the circumstances of each case.

Introduction

[Law Society Act, s.41](#)

[By-law 24](#)

[Rule 2.01](#)

Successful lawyers are competent managers of client expectations - they manage and meet their clients' expectations. Clients have expectations about many aspects of their lawyers' services, ranging from the legal results to be achieved to the frequency of reporting by their lawyers. Managing client expectations is accomplished by reaching a consensus between lawyer and client.

The *Client Service and Communication Guideline* views client service as an agreement, explicit or implicit, between the lawyer and the client. The lawyer and client agree on what the client may expect from the lawyer and the lawyer promises to meet those expectations. The process of managing and then meeting client expectations will be subject to ongoing revision as the matter progresses or new developments arise.

The *Guideline* is a tool to assist lawyers in avoiding misunderstandings with their clients. Not every topic or issue raised in the *Guideline* will apply to all matters. For example, in limited-scope retainers, such as where the lawyer is only required to issue a demand letter, there may be no need to discuss the circumstances that will give rise to termination of the retainer. In more complex cases, lawyers will find it necessary to document in detail communications relating to termination of the retainer.

The *Guideline* provides a practical tool for lawyers to manage their client service and communications with success.

☐ Initial Contact Between Lawyer and Client

At the commencement of the lawyer-client relationship, the lawyer should

- ascertain the client's objectives, and
- obtain relevant information about the matter.

**Law Society of
Upper Canada Video
and Publication**
[Practice Workshop:
Opening your Law
Practice](#)

**Article: Lawyer Client
Communications and
Quality of Service**

☐ Identify the Client(s)

☐ Institutional Clients

Practice Tip: Practice Tips on Client Relations; Keeping Clients Satisfied

Lawyers acting for institutional clients should determine which officers, employees or agents of the organization may properly instruct the lawyer on behalf of the institutional client.

Article: Managing Client Relationships - An Overview

Lawyers should confirm with the agents of the institutional client that the lawyer acts and owes duties to the organization and not the individuals who act as its agents.

LawPro Booklet: Managing the Lawyer/Client Relationship

If the lawyer is retained to act for both the institution and any officer, employee or agent of the corporation in the same matter, then the lawyer shall comply with the joint retainer rule. [*Rule 2.04(6) of the Rules of Professional Conduct*]

■ **Clients Under Disabilities and Their Lawful Representatives**

Canadian Bar Association Booklet: Seven Keys to Great Client Service

Lawyers providing legal services for individuals who lack legal capacity to give instructions or enter into binding relationships should determine and confirm who is the individual's lawfully authorized representative.

Canadian Bar Association Booklet: Great Expectations

The lawyer should confirm with the authorized representative whether the lawyer is retained to act for the individual lacking capacity, the representative, or both. If the lawyer is to act for both in the same matter, then the lawyer shall comply with the joint retainer rule. [*Rule 2.04(6) of the Rules of Professional Conduct*]

Whether or not a lawfully authorized representative has been appointed for a client under a disability, the lawyer shall comply with *Rule 2.02(6) of the Rules of Professional Conduct*.

■ **Joint Retainers**

Lawyers acting for two or more clients in the same matter shall, before accepting the joint retainer, comply with *Rule 2.04(6) of the Rules of Professional Conduct*.

Practice Tip: Dealing With the Joint Retainer Rule

Acting for Borrower and Lender, Exceptions

Lawyers shall not act for both lender and borrower in a mortgage or loan transaction subject to the exceptions set out in the *Rule 2.04(12) of the Rules of Professional Conduct*.

■ **Identifying the Essential Terms of Engagement**

If a lawyer agrees to provide legal services to the client, the lawyer should discuss with the client the essential terms of the engagement.

The essential terms that should be discussed and agreed upon will vary depending on the circumstances of the matter. Relevant circumstances may include

- type, urgency, complexity, or scope of the legal services to be provided
- whether the client is a new, current or former client.

LawPro Booklet: Managing the Lawyer/Client Relationship

■ **Engagement Letters and Retainer Agreements**

Retainer Letters:

Lawyers should consider whether the terms of the engagement should be reduced to writing to avoid any misunderstanding between lawyer and client.

- General
- Family

Law Pro Model Retainer Agreement:

General Retainer
General Retainer
 (Short)
Criminal Retainer
Family Retainer

Article: Establishing the Retainer - Preliminary Matters and Initial Consultation

Non-Engagement
 - Checklist of Key Elements
 - Sample Letter

Essential terms of the engagement may be confirmed by way of

- retainer agreement executed by the client, or
- engagement letter.

■ **Non-Engagement Letter**

If a lawyer determines that he or she will not provide legal services to a client either because the client does not retain the lawyer or the lawyer refuses the engagement, the lawyer should confirm the non-engagement in writing immediately and advise of any limitation periods.

■ **Client's Expectations, Objectives and Options**

Lawyers should discuss with their client

- **client objectives and expectations**
 - specific legal services the client will receive from the lawyer
 - specific results the lawyer is likely to achieve for the client
 - costs associated with achieving those objectives
 - time required to complete the legal services and achieve the results
- **client's instructions**
 - choice of options or strategies the client instructs the lawyer to pursue
 - impact of choosing particular options or strategies
 - estimated fees and disbursements relative to those instructions
- **advice given to the client**
 - options recommended
 - explanation of the law
 - referral to other professionals
- **course of action**
 - strategy to be undertaken by the lawyer
 - estimated length of time required to complete the strategy
- **limitation periods relevant to the matter**
 - what the limitation period(s) is
 - legal effect of limitation periods on the client or matter
 - preliminary plan or outline of steps to meet the deadline
- **risk analyses**

- if the matter relates to litigation, the client's potential liability for court costs
- risks or benefits associated with the matter
- lawyer's and, if different from the lawyer's, the client's assessment of whether or not the likely outcome is justified by the expense or risk involved.

Fees and Disbursements

The lawyer should provide the client with a timely estimate of the fees or disbursements involved so that the client is able to make an informed decision. The estimate should reasonably include

- **basis for charging legal fees**
 - hourly rate
 - flat fee
 - other method
- **amount and payment date of any**
 - initial monetary retainer
 - ongoing monetary retainers
 - accounts
- **billing frequency**
- **consequences of the client's failure to pay accounts** in accordance with the terms of the engagement
- **estimated fees and disbursements** including
 - facts or circumstances which form the basis of the cost estimate
 - possible facts or circumstances that may result in an increase or decrease in the estimate
 - that interest on outstanding accounts shall be calculated in accordance with the *Solicitors Act*.

Memo to Client: Re Fees

See Also: Financial Management Guideline

Practice Tip: Improving Profitability

Article: Credit Cards in the Legal Practice

Q & A: Confidentiality and Client Accounts

Article: Interest on Overdue Solicitors Accounts

Article: Flat Fee Billing Disbursements

The lawyer should consider implementing a firm policy about fees or billings and/or set out the terms in a letter to the client.

Lawyer Responsible for File

At the outset of the engagement, lawyers may provide to the client

- name of the lawyer primarily responsible for the retainer
- names of any other persons in the firm who may be involved with the case and the functions each will perform.

File Supervision

If a lawyer anticipates changes, or any changes occur, such that the lawyer is unable to meet any of the terms of the engagement, the lawyer should promptly advise the client of

- changes or anticipated changes
- reasons for such changes so that the client has an opportunity to determine
 - if the client wishes to continue with the engagement
 - if the client wishes to vary his or her instructions in light of the changed circumstances.

See Also: [File Management Guideline](#)

Throughout the course of the engagement the lawyer

- **shall** ensure that he or she carries out the terms of the engagement in accordance with the *Rules of Professional Conduct*
- should ensure that he or she carries out the terms of the engagement in accordance with any agreement(s) between the lawyer and client.

Timeliness

Lawyers should discuss with their clients

- estimated length of time it will take to complete the engagement or matter, including
 - an account of the assumptions, facts, or circumstances on which the time estimate is based
 - an indication of the potential or foreseeable facts or circumstances which may alter the time estimate and how the time estimate will change in light of these facts or circumstances
 - if relevant, an indication of appropriate milestones
- follow up requirements
 - actions or next steps to be taken by the lawyer
 - actions or next steps to be taken by the client, including any requirements for further
 - information or documentation from the client
 - funds from the client on account of fees or disbursements
- actions or next steps to be taken by third parties such as investigators, experts or other agents of either the client or the lawyer
- instructions to be provided to third parties
- clear indication that if necessary action or next steps are not taken by the client or third parties, the lawyer will be unable to commence or continue with the retainer.

See Also: [Time Management Guideline](#)

Timely and Effective Lawyer-Client Communications

Lawyers should discuss with their clients what constitutes timely and effective

communications and should address

- manner of communication between lawyer and client if communications are to be primarily by
 - telephone, the telephone number or numbers and the person or persons with whom messages may be left
 - e-mail, e-mail address
 - mail, mailing addresses
 - courier, courier address if different from mailing address
 - priority post, mailing address
 - facsimile, facsimile numbers
- how the lawyer will keep the client apprised of the matter on an ongoing basis. Methods of keeping the client informed on an ongoing basis may include sending the client copies of
 - correspondence, including e-mail communications sent or received
 - pleadings or other court documents
 - documents relating to the matter
 - memos to file confirming communications or attendance with the client or third parties
- how the client will keep the lawyer apprised of the matter on an ongoing basis
- frequency of reporting to the client
 - formally in writing
 - on an informal basis
- estimated time it will normally take for the lawyer to respond to client calls, e-mails, letters or other communications.

Keeping Client Informed

Lawyers should advise clients of the progress of a matter at appropriate intervals having regard to

- requirements of the particular matter or proceeding
- any agreement between the lawyer and client respecting the frequency of progress reports to be provided to the client

If little or no progress has been made the lawyer should

- advise the client accordingly
- indicate to the client the reason(s) for the delay
- advise what, if any, steps may be taken to ensure progress on the

matter continues

- outline the costs, risks and benefits associated with taking those steps.

Responding to Client Communications

When the client contacts the lawyer's office the lawyer should ensure that he or she responds in a timely fashion and in accordance with any time estimates agreed to with the client. In the event the lawyer is unable to respond to the client's contact in a timely fashion or within the time agreed then

- if the lawyer has support staff, the lawyer should instruct support staff to respond to the client's communication and indicate to the client
 - that the lawyer is unable to respond personally to the client
 - reasons for the lawyer's inability to respond in a timely fashion and
 - when the client may expect to communicate with the lawyer personally or
- the lawyer should contact the client in accordance with the amended time estimate given.

If the lawyer is unable to promptly respond to voice mail or e-mail messages because the lawyer is out of the office for an extended period of time, the lawyer should ensure that his or her voice mail or e-mail contains a notification advising of his absence and when the lawyer is expected to return or respond to messages. Lawyers should consider implementing a firm policy that requires

- lawyer or support staff to respond to all client communications within twenty four (24) hours
- all messages marked urgent are to be dealt with on a priority basis
- all telephone attendances or conversations are to be documented or confirmed by way of written memo to the file.

Confirmation of Changes to Essential Terms of the Engagement

Lawyers should consider confirming in writing any changes to the essential terms of the engagement. In particular, the following should be confirmed in writing

- changes in the client's instructions
- changes in the risk or benefits associated with the matter
- acceptance or rejection by the client of any offers to settle
- changes to the client's address or other contact information.

Withdrawal of Services, or Otherwise Ending the Engagement

Lawyers should advise the client of the

- **facts or circumstances which may result in termination or withdrawal** of services by the lawyer, including
 - client's failure to pay retainers or accounts in accordance with retainer agreement
 - existence of a conflict of interest which cannot be resolved
 - other facts or circumstances contemplated by *Rule 2.09* of the *Rules of Professional Conduct*

- optional withdrawal
- mandatory withdrawal

Article: Interest on Overdue Solicitors Accounts

- **ownership of file contents**

- file documents or contents that will be returned or provided to the client or other counsel at termination of the retainer, or
- will be retained by the lawyer and will not be provided to the client or other counsel at termination of the retainer and the reasons why those documents will be retained by the lawyer

- **charges for file transfer in the event the file is transferred to the client or other counsel**

- whether or not the client will be charged for
 - time and effort in preparing the file for transfer
 - additional photocopies of file documents
 - if closed and in storage, retrieval of the file
- restrictions on file transfer if accounts remain unpaid at the time of transfer.

Article: Withdrawal of Services

Article: File Transfer on Termination of Retainer

Article: File Retention

Article: Solicitor Liens

Article: Termination of Retainer

Q & A: Undertakings

When the engagement is completed or terminated the lawyer

- shall give the client all information that may be required in connection with the case or matter [*Rule 2.09(9)(b) of the Rules of Professional Conduct*]
- should provide in writing a report to the client on the outcome
- explain of any further action that the client is required to do or that the law firm will do
- **shall** promptly render an account to the client [*Rule 2.09(9)(d) of the Rules of Professional Conduct*]
- **shall** account to client for outstanding money [*Rule 2.09(9)(c) of the Rules of Professional Conduct*]
- advise client about arrangements for storage and retrieval of file contents
- advise client whether there is a need for the client to review the matter in the future
- **shall**, subject to the lawyer's right to a lien, deliver to or to the order of the client, all documents and property to which the client is entitled

[Rule 2.09(9)(a) of the Rules of Professional Conduct]

- **shall** in the event the client matter is to be transferred to the client new lawyer, co-operate with the successor lawyer so as to minimize expense and prejudice to the client [Rule 2.09(9)(e) of the Rules of Professional Conduct].


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Checklist: Non Engagement Letter

Date of Interview

- ☐ Set out the date of the interview.

Reason for Declining or Non Engagement

- ☐ Explain why lawyer cannot or will not represent the individual.
- ☐ Professional Conduct Issues: ie Conflict of interest (careful not to disclose confidential information regarding other client).
- ☐ Fees Issues: Individual's failure to pay retainer.

Confirm that Not Retained

- ☐ Clearly state that you are not acting for the individual.

Statute of Limitation

- ☐ Refer to any applicable Statutes of Limitation.
- ☐ If a specific statute of limitation poses an immediate problem, refer to the statute and specifically to the need for the individual to take urgent action.

Recommend Legal Representation

- ☐ Recommend that the individual seek other representation.

No Legal Opinion

- ☐ Take care not to express an opinion on the merits of any claim or matter unless you have conducted careful research to support the position.

Return Property to Individual

- ☐ If you received property or documents from the individual during a consultation, return to the individual and confirm their return in the letter.

Conflict of Interest Issues

- ☐ In instances where representation declined because of a conflict of interest, if applicable, confirm that,
 - ☐ Lawyer has recommend that the individual to seek independent legal, and
 - ☐ Lawyer has received any confidential information regarding the individual's interests in the matter.

Retain Copy, Input Conflicts Checking System

- ☐ keep copy of letter in client file or file containing non engagement confirmations.
- ☐ ensure information entered into conflicts checking system.

Sample Client Letter: Non Engagement, Failure to Pay Retainer

To: [Client name]
File Name: [file name]
File Number: [file number]
Date: [date of memo]

This letter is further to our initial meeting on _____ (date of interview).

As indicated to you at that time, unless we received a money retainer \$ _____ by _____ (date retainer funds due), we would not commence or undertake any legal services on your behalf.

To date we have not received any funds. Accordingly, please treat this letter as confirmation that

- a. we are not acting for you , and
- b. we will not be taking any steps on your behalf in respect of this matter.

Note that although the time for commencing your claim will not expire for some time, _____ (date of limitation), it is important that you retain a lawyer as soon as possible to ensure your matter is dealt with appropriately and in a timely fashion. We recommend that you immediately take steps to obtain legal representation.

We confirm that we do not have any documents belonging to you. All documents were returned to you at the end of the initial meeting.