

## **Additional Guidance – Monitoring Requirement**

### **Monitoring Rule:**

1549. During a retainer with a client in which the member is engaged in or gives instructions in respect of any of the activities described in rule 1543, the member must:

(a) monitor on a periodic basis the professional business relationship with the client for the purposes of:

(i) determining whether:

(A) the client's information in respect of their activities,

(B) the client's information in respect of the source of the funds described in rule 1543, and

(C) the client's instructions in respect of transactions

are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule, and

(ii) assessing whether there is a risk that the member may be assisting in or encouraging fraud or other illegal conduct; and

(b) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of subrule (a) above.

### **Why is monitoring required?**

When you act for a client for a long period of time, there is an increased risk that the client's background, instructions and/or the source of funds may change. This rule requires you to monitor the professional relationship with the client on a periodic basis. You must determine whether the client's information both in respect of their activities and the source of funds, as well as the client's instructions are consistent with the purpose of the retainer and the information retained during the client identification and verification process.

The process of properly monitoring clients will help you to reduce the risk of assisting your clients in fraud or other illegal conduct. This new rule requires you to withdraw from representation of the client if you know or ought to know that you would be assisting.

This may be a new rule, but these requirements are not exactly new. *The Code of Professional Conduct* sections 3.2-7, and 3.2-8 and the commentaries thereto have, in a fashion, reflected these requirements for some time.

## **What is required of you?**

The monitoring rule requires you to know your client on an ongoing basis. This means:

1. Exercising vigilance about a client relationship that involves a receipt, transfer or payment of funds;
2. Assessing whether there is a risk that you may be assisting in fraud or other illegal conduct;
3. Pay attention to red flags (see below); and
4. Keep a record of your inquiries.

## **What does monitoring mean?**

It means you:

- Occasionally check in with your client with whom you have a long term established relationship.
- Follow up if circumstances have changed. For example, this might include:
  - Obtaining additional information about your client (e.g. occupation, assets, information available through public databases, internet, etc.);
  - Obtaining information on the source of funds or the source of wealth of your client;
  - Obtaining information on the reasons for intended or conducted transactions;
  - Gathering additional documents, data or information, or taking additional steps to verify the documents obtained;
  - Flagging certain activities that appear to deviate from expectations; or
  - Reviewing transactions against the usual processes and procedures for such transactions relevant to the legal work for which you were retained.
- Make a note to file regarding your inquiries and keep copies of documents that arise from your inquiries.

## **How often am I required to monitor?**

- That's up to you. You must use your discretion depending on the client, the nature of the work, the anticipated duration of the retainer, and the services provided.

## **Red Flag Examples:**

Please note that this list is not exhaustive and those involved in criminality are continuously changing their strategy to avoid detection. The mere presence of a red flag indicator is not necessarily the basis for the suspicion of money laundering or terrorist financing, as a client may be able to provide a legitimate explanation. You must use professional judgment and your discretion when complying with these Rules.

- Client is overly secretive about where the money is coming from, why they are doing the transaction this way, what the big picture is, etcetera;
- Client is using an agent without a good reason;
- Client is actively avoiding personal contact without good reason;
- Client is a business entity which cannot be found on the internet and/or uses an email address with an unusual domain part (Hotmail, Gmail, Yahoo, etc.), especially if the client is otherwise secretive;
- Client is a known criminal or is known to be associated with one;
- There are attempts to disguise the real owner or parties to the transaction;
- The client is prepared to pay higher fees than usual, without legitimate reason;
- Client has changed lawyers multiple times without a reasonable explanation;
- Client makes unexplained changes and instructions, especially at the last minute.

For additional information please see the [Guidance to the Profession](#) (Prepared by the Federation of the Law Societies)

If you have any further questions or concerns, please contact the Law Society of Saskatchewan Auditors or Jody Martin.