

TOP 10 THINGS TO DO TO AVOID COMPLAINTS

1. Don't Lie or Steal

- Should be the most obvious of the list
- Stealing will put you on the fast track to disbarment
- Lying is more nuanced
 - “white” lies regarding time
 - Intentionally misleading the court/law society and/or lying in affidavits or statutory declarations
 - Forgery/fabrication of legal/court document

2. Manage Client Fee Expectations

- A big problem in the legal profession
 - Upset clients more likely to file complaints with the LSS

3. Manage Process and Outcome Expectations

- Clients often have unrealistic expectations of how quickly matters move through the system
 - Clients should be told at the outset to be ready for the long haul

4. Be Courteous and Civil to Opposing Counsel and the Opposing Party

- The LSS is seeing a rise in these sorts of complaints
 - Lawyers need to avoid loss of perspective
 - Don't get emotionally invested in your clients cause
 - Remember that it's a small Bar in Saskatchewan – reputational issues can, and do, spread very quickly

5. Respond Promptly to Communications from Lawyers and Clients

- One of the most common complaints
- Three letters/correspondences without response from a lawyer will normally generate a complaint to the LSS
 - This is especially critical with correspondence from the LSS

6. Report Promptly to Clients

- Report promptly when matters progress on the client's file
- Report regularly to your client (even if it's just to say there's nothing to report), especially when involved in lengthy matters

7. Do the Work

- Failure to do so results in LSS complaints and insurance claims
 - Get help if you need it
 - Don't ignore the problem.
- Don't skip/fudge work in order to save money/time on a file
- Accept responsibility and meet commitments to make things right

8. Keep Copious Notes

- Keep notes of everything!
- Every communication and attempted communication with the client should be recorded, even just a date and time notation
- Instructions and advice given should always be recorded in detail

9. Choose Your Clients Carefully (And know when and how to end the relationship if you have made a bad choice)

- Be alert for "red flags" at all times
- Know when to fold 'em
- Familiarize yourself with the rules around Withdrawal

10. KNOW YOUR CODE

- Best to read in full – current version on Law Society Website
- Detailed information about Confidentiality requirements, Conflicts, Communications, Competence, etc...

Client Intake Decision-Making Checklist

The purpose of this checklist is to provide some suggested guidelines for use when deciding whether to agree to take on a new client. These are not intended to be prescriptive or exhaustive.

The following is a list of questions you may wish to ask a potential client when you are initially approached to perform legal services on their behalf. Included as well are questions you may wish to consider after initially interviewing a potential client, to determine whether further enquiry is needed and/or whether you wish to take on the potential client's matter. Relevant sections of *The Code of Professional Conduct* ("the Code") have been provided, where applicable.

Preliminary Consideration: Conflict of Interest

Prior even to the consideration of what information you need to obtain from the client in order to determine whether you will take on their matter, you must determine whether you are in any potential Conflict of Interest:

- 1) Standard collection of party names and conflict searching requirements should be followed (see s. 2.04 of the *Code*)
- 2) If there is a potential Conflict of Interest, is there any possibility of gaining the consent of the appropriate parties to you acting in spite of the conflict? Is this something worth examining? (see s. 2.04(2) of the *Code*)

Conflict-Free or Potential Conflicts Addressed: Now What?

After it has been established that there are no conflicts which will prevent you from taking on the client's matter, you should consider the following questions, likely during and/or immediately following the initial interview with the client:

- 1) Have they had previous lawyers(s) work on this file?
 - a) Why are they changing lawyers?
 - b) Do they have their client file or are there solicitor's lien issues to be considered? (see ss. 2.07 (9) and (10) of the *Code*)
- 2) What are their expectations with respect to the timing of the matter?
 - a) Are there any pending Limitation Periods of which you should be aware? Are you able to complete the necessary work in time to meet a pending Limitation Period expiry?
 - b) Are their expectations realistic? You should have a conversation regarding how long matters typically take to resolve, and possible delaying factors.
 - c) Are their expectations realistic with regard to how much time you are able to dedicate to their matter? You should consider having a conversation about how quickly you will be able to move through their matter, including discussions as to how quickly they may expect to hear back from you after an email or voicemail is received.

- 3) What do they expect you to accomplish in regard to their matter?
 - a) Are their expectations realistic, given your experience and availability?
 - b) Are their expectations realistic, given what you know about the facts, the law, the court process, and the available remedies?
 - c) Do you have the capacity and/or competence to perform the type of work which is required? (see s. 2.01(2) and 2.02(1) of the *Code*)

- 4) Are they aware of how much the matter will cost them, financially? (see s. 2.06(1) of the *Code*)
 - a) Any discussions or estimates provided with regard to cost should include consideration of anticipated court fees, lawyers' fees, taxes and disbursements, plus potential costs awards made against them (if applicable).
 - b) Are they prepared to provide a retainer?
 - c) Do they have a plan for how they are going to pay for the costs of the matter?
 - d) Are they aware of any requirements you have with regard to timing of payment in relation to the issuance of invoices? For example, do you bill at regular intervals and expect bills to be paid as issued? If they cease to make a payment when requested, will you cease working for them?
 - e) Should you be considering a Contingency Fee Agreement (see s. 2.06(2) of the *Code*) or a Retainer Agreement/Engagement Letter?

- 5) Is there more than one person that is going to be providing instructions (i.e.: husband and wife mirror Wills, vendor and purchaser in a commercial transaction)?
 - a) Would this be a "joint retainer" client relationship; if so, are you prepared to meet the *Code* requirements in relation to such retainers? (see ss. 2.04(5)-(9) of the *Code*)
 - b) What is the potential for conflict to arise between the clients; ought you to consider sending one or more of them out to another lawyer, or for Independent Legal Advice? (see, for example, sections 2.04(6) of the *Code*)
 - c) Does the person who is purporting to instruct you on behalf of another party or organization have proper authority to allow them to do so?
 - d) Do you need to talk about who you represent and who you don't? (i.e: Corporation v. Shareholder)

- 6) Are there any potential capacity or circumstantial issues which may require preliminary work to address and/or may increase the anticipated cost and commitment involved?
 - a) Include in your consideration factors such as language barriers (and the potential necessity to retain interpreter assistance), social and cultural sensitivities and requirements, your own biases or potential personal conflicts
 - b) The existence of a capacity issue does not necessarily mean that you cannot assist the client (see s. 2.02(9) of the *Code*)

After discussing these questions with the potential client, and giving the answers due consideration, you may determine that you are going to refuse to take on the new matter. If this is the case, you should confirm to the potential client, in writing, that you are not going to be acting on their behalf, will be performing no work (or further work) on their matter, and they should seek alternate counsel. You may provide recommendations for alternate counsel, if you wish. If Limitation Period deadlines are imminent, you should ensure that this issue is emphasized for the potential client.