



Communication

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PRACTICE ADVISOR WEBINAR SERIES PART II

COMMUNICATION

As is often the case when a complaint is made against a lawyer to the Law Society of Saskatchewan (“LSS”) the professional conduct of the lawyer is an issue. As Practice Advisors, we will review the complaint (and do a Law Office Management Review) and the lawyer’s conduct. Civility, whether that be with the client, other lawyers or the Courts has been many times found to be lacking. This paper will attempt to address the matter of civility in lawyer’s communications.

On February 10, 2012 the Benchers of the LSS adopted the model Code of Professional Conduct with it to take effect July 1, 2012. All lawyers were required to take Code of Professional Conduct training. This new Code considerably expands the obligations on lawyers in all respects.

Chapter I of the prior Code of Conduct (which was adopted September 26, 1991, and made effective October 1, 1991) was in relation to Integrity. The Rule stated as follows:

“The lawyer shall discharge with integrity all duties owed to the clients, the Court, other members of the profession and the public.”

Chapter XVI of the old Code under Responsibility to Lawyers Individually the Rule stated:

“The lawyer’s conduct toward other lawyers should be characterized by courtesy and good faith.”

Chapter XIX of said Code of Avoiding Questionable Conduct provided the following Rule:

“The lawyer should observe the rules of professional conduct set out in the Code in the spirit as well as in the letter.

In the commentary under point 10 of Chapter XIX it states as follows:

“The lawyer should try at all times to observe a standard of conduct that reflects credit on the legal profession and the administration of justice generally and inspires the confidence, respect and trust of both clients and the community.”

These Rules under the old Code were the basis for lawyers to conduct themselves and communicate with courtesy and civility.

The new Code has to a large extent expanded obligations and requirements on lawyers in terms of their conduct and communication. Chapter 4, and in particular Rule 4.01(5) states:

“A lawyer must be courteous and civil and act in good faith to the tribunal and all persons to whom the lawyer has dealings.”

That is the obligation on a lawyer when appearing before the Court Tribunals or other quasi-judicial bodies.

The new Code also in Chapter 6, 6.02 under “Responsibility to Lawyers and Others” in sub(1) states as follows:

“A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.”

In paragraph 2 of the Commentary under said Rule is the following:

“. . . personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.”

Rule 6.02(4) extends professionalism to communication:

“A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.”

In Rule 6.03(i) and 6.04 extends professionalism to outside interests and public office:

“A lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer’s professional integrity, independence or competence.”

“A lawyer who holds a public office must, in the discharge of official duties, adhere to the standards of conduct as high as those required of a lawyer engaged in the practice of law.”

As you can see, the scope of conduct has been somewhat expanded and as indicated, professionalism, integrity and civility are required in all conduct and communication by lawyers.

As Practice Advisors we have seen a number of situations where complaints are lodged with respect to the lawyer's conduct when terminating the solicitor/client relationship. A deteriorating solicitor/client relationship can easily result in tempers becoming inflamed and comments made that are inappropriate and unacceptable. The new Code of Professional Conduct in Rule 2.07(2) on Optional Withdrawal states:

“If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.”

The commentary below states as follows:

“A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if a lawyer is deceived by a client, the client refuses to accept and act upon the lawyer's advice on a significant point, the client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. . .”

All too often the solicitor/client relationship may deteriorate to the point where a lawyer should withdraw but attempts to maintain the relationship. A lawyer should recognize when a relationship has become irreparable and provided ample notice is given should withdraw. Moreover, there is no need to do so in a discourteous manner lacking professionalism and civility.

Aside from the Codes of Professional Conduct that have governed lawyers, the practice of law has evolved significantly over the last thirty-five years plus. There was a time when it appeared necessary for lawyers to shout and to put on demonstrations of anger or be aggrieved so as to, for lack of a better expression, put on a show for the client. One prominent legal counsel summed up such behavior and attitude by stating “it is a lawyer’s duty to tell someone to “f” off once a day and if not, you were not doing your job”. This type of conduct is generally not acceptable in any fashion whatsoever and should not be condoned nor replicated.

The key to conduct and communication is professionalism and civility. There are all too often times where one has received correspondence or an email or some other type of message from a fellow practitioner and anger is the first reaction. To simply reply immediately is not necessarily the best method to address the situation. Taking a deep breath and holding the communication for a day and reviewing the next with sober second thought is a good practice to follow. Stepping back and reflecting will more than likely avoid an escalation of the situation and help to avoid being the subject of a formal complaint.

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