

# Ethics and the Code:

*Focus on Small Firms and Solo Practitioners*



Law Society  
of Saskatchewan

Valerie Payne

Director of Professional Responsibility



# *Code of Professional Conduct*

Focus on Small Firms and Solo Practitioners





# Conflicts of Interest

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## Duty to Avoid Conflicts of Interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.





# Conflicts of Interest

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Commentary:

Examples of Areas where Conflicts of Interest may Occur:

6. Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute.

- The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.



# Conflicts of Interest

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- Need for sufficient client tracking and conflict checking systems
- Business interests do not outweigh duty to avoid conflicts





# Confidential Information

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3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

- (a) expressly or impliedly authorized by the client;
- (b) required by law or a court to do so;
- (c) required to deliver the information to the Law Society, or
- (d) otherwise permitted by this rule.





# Confidential Information

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## Commentary:

[7] Sole practitioners who practise in association with other lawyers in cost-sharing, space-sharing or other arrangements should be mindful of the risk of advertent or inadvertent disclosure of confidential information, even if the lawyers institute systems and procedures that are designed to insulate their respective practices.

The issue may be heightened if a lawyer in the association represents a client on the other side of a dispute with the client of another lawyer in the association. Apart from conflict of interest issues such a situation may raise, the risk of such disclosure may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.





# Marketing of Professional Services

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4.2-1 A lawyer may market professional services, provided that the marketing is:

- (a) demonstrably true, accurate and verifiable;
- (b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive;
- (c) in the best interests of the public and consistent with a high standard of professionalism.





# Marketing of Professional Services

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- Delicate balance between need to bring in new business and meeting the obligations of the Code
- Marketing strategies that have caused problems for practitioners in the past:
  - Incentives/referral fees (s. 3.6-7)
  - Inaccuracy regarding size/ability of firm (s. 4.2-1(a))
  - Inappropriate claims of “expert” or “specialist” designation (s. 4.3-1)
  - Targeting vulnerable populations (s. 4.1-2)



# Marketing of Professional Services

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1000 SKLSPC 23

The use of “and company” in a firm’s name is improper for a sole practitioner.



# Communications from the Society

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7.1-1 A lawyer must reply promptly and completely to any communication from the Society.



# Disqualified from the Practice of Law

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- 1612(1) The Executive Director may disqualify a member from the practice of law who is in breach of Rule 1602, 1604, 1609, or 1606.
  - (2) The Executive Director may notify the member that the member will be disqualified within 30 days or such further period as may be determined by the Executive Director.
  - (3) A member who has been disqualified from the practice of law pursuant to subrule (1), may apply to the Executive Director for reinstatement by;
    - (a) complying with Rules 1602, 1604, 1609 or 1606; and
    - (b) paying to the Society any fees, assessments, fines, costs, arrears or other amounts owing to the Society pursuant to this Part.



## Rules 1602, 1604 ,1609, and 1606

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- Filing of Report on Commencement of Practice
- Filing of Annual Reports
- Late Filing of Reports (Fee Payments)
- Monthly Reports





# Areas of General Concern

For Solo Practitioners and Small Firms





# Retainer Agreements/Engagement Letters

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- Explain what the client can expect in terms of:
  - communication, including expectations regarding the use of electronic communications such as text messages and social media
  - the scope of the retainer, including the steps that you will and will not be taking in their matter
  - timing of the work to be completed
  - ethical duties respecting confidentiality and solicitor-client privilege
  - Billing arrangements and payment expectations
  - Termination of the relationship





# Non-Engagement Letters

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- Explain to the client/non-client:
  - That there are parts (or all) of their legal concerns that you will not be assisting them on
  - Options for how they may need to/wish to deal with those matters in another way
  - Clarify that you will not be taking any further steps
  - Note that there are/may be limitation periods at play (specify if known), and clarify that you will not be diarizing the matter to ensure that limitation periods are met



## Lack of Supports

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- Financial
- Mentorship
- Colleagues to “bounce-off”
- Health issues (physical, mental) interfering with practice and no safety net in colleagues who can take over or assist
- Difficulties in finding a Successor
  - Difference between immediate and long-term needs in relation to a successor arrangement



# Loss of Objectivity

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- Becoming personally or emotionally invested in clients' matters
- Letting the clients “run the show”, feeling a loss of control over the file or the client relationship
- Loss of objectivity and lack of control can result in Civility concerns



# File Transfer issues

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- At the beginning of a new practice, or when a lawyer leaves a practice to go to another firm, conflict often arises between leaving lawyer and old firm
  - Bencher's Digest Article – *When Lawyers Leave*
  - Template Joint Letter for when a lawyer leaves a firm
- Materials provided
- Clients needs to take priority over either firm's or transferring lawyer's business interests, or personal conflict between the two. If client interests are harmed or endangered through a delay in notification and/or transfer of file, business cases and interpersonal conflict will not be an appropriate defence.





# Assistance is Available

Prevention is Preferred!





# Practice Advisor Program

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- Available for any members who need help working through practice management issues
- No cost to the member
- Confidential, in that the practice advisor will not send a formal report to the Law Society. Practice Advisors are periodically asked to report general demographic information (urban/rural, small/large firm) and a general overview of the issues they are contacted in relation to
- Duty to Report *proviso*





# Practice Advisor Program

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- Jeff Scott, Q.C. – (306) 546-4728
- Brent Gough, Q.C. – (306) 653-5150
- Sheila Denysiuk, Q.C. – (306) 653-5150





# Informal Ethics Opinions

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- Professional Responsibility Counsel are available and happy to discuss difficult Ethics related issues that may arise
- Informal Opinions are offered, but if a more formal response is required, you may make a Request for Ruling from the Ethics Committee
- Records are maintained regarding IEO conversations (Member names, client names, advice sought and given). This is for future reference should a complaint arise from the situation, and to assist with consistency of the advice we provide. This does not form a part of your “complaints record”

# Requests for Ruling

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- Generally arise from a conflict between two members over the “correct” interpretation or application of the Code
- When a Request for Ruling is made:
  - Both “sides” of the conflict will be asked to provide their description of the relevant facts and their position in relation to the Code/Ethical issue
  - The matter will be placed on the next Ethics Committee Agenda for consideration and (ideally) Ruling by the Committee
  - Will result in a “Lawyer X” Ruling and be posted on the LSS Ethics Decision Database for the general guidance of the profession

# Professional Responsibility Counsel

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Call Law Society of Saskatchewan:

1-306-569-8242

1-833-733-0133



Choose Option "0"

- Valerie Payne, [valerie.payne@lawsociety.sk.ca](mailto:valerie.payne@lawsociety.sk.ca)
- Jenna Bailey, [jenna.bailey@lawsociety.sk.ca](mailto:jenna.bailey@lawsociety.sk.ca)
- Michelle Owolagba, [michelle.owolagba@lawsociety.sk.ca](mailto:michelle.owolagba@lawsociety.sk.ca)

