

Law Society of Upper Canada
Practice Management Guidelines

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1. Executive Summary

1.1 Purpose

The *Practice Management Guidelines* [*Guidelines*] are practical tools to assist lawyers in assessing, maintaining and enhancing their quality of service. They provide a general framework for conducting various aspects of legal work. The *Guidelines* focus on eight practice management issues.

1.2 How to Use the Guidelines

The *Guidelines* are available in electronic form. They link directly to The Law Society of Upper Canada's sources and resources. Lawyers may download some or all of the component parts of the *Guidelines* for their personal use appropriate to individual needs. Each document, when printed, contains space to accommodate notations and amendments.

The *Guidelines* may be used as a tool within individual client files, for personal use or by a firm's management team. For example, lawyers may insert a copy of the *Client Service and Communication Guideline* on the inside cover of a file to act as a reminder of client service issues to be addressed with the client. Lawyers may use the *Professional Management Guideline* as a reference tool in career or firm strategic planning. Law firm managers may use the *Financial Management Guideline* as a basis for drafting firm policies relating to billing, record keeping or the handling of trust funds. Junior members of the bar may use the *Guidelines* as learning tools; senior members as tools to refresh or review existing practices.

Not every *Guideline* will be relevant or useful for all practitioners. The nature of the practice and/or individual file will determine which provisions may be assistive or mandatory. The *Guidelines* are a flexible tool to be used as required according to lawyers' particular circumstances.

1.3 Terminology

Certain aspects of the *Guidelines* are mandatory and others are not.

The term "shall" is used in those instances where compliance is mandated by either the By-Laws made pursuant to the Law Society Act or the *Rules of Professional Conduct*.

The term "should" and the phrase "should consider" connote a recommendation. These terms refer to those practices or policies that are considered to be a reasonable goal for maintaining or enhancing practice management or client service.

The term "may" and the phrase "may consider" convey discretion. Lawyers may or may not pursue these suggested policies or practices depending upon the lawyers' particular circumstances, areas of practice or clientele.

1.4 Living Document

By their very nature the *Guidelines* are not static: professional requirements, standards, techniques and practices change. The *Guidelines* will be reviewed regularly and revised where necessary to reflect the evolving practice of law. The *Guidelines* will also be continually enhanced with the addition of practical tools, precedents and sample documentation available on line or by requesting a paper copy.

To request a paper copy of sections of the *Guidelines* lawyers should contact The Law Society of Upper Canada's Resource Centre at 1-800-668-7380 ext 3315.

2. 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.

2.1 Introduction

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.

2.2 Initial Contact Between Lawyer and Client

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

- determine who is or who are the clients
- identify and verify the identity of the client and third parties, where necessary, in compliance with Part III of By-law 7.1
- ascertain the client's objectives, and
- obtain relevant information about the matter.

The lawyer should only receive instructions from the client or clients.

2.3 Clients

2.3.1 Institutional Clients

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.

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. 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*]

2.3.2 Clients Under Disabilities and Their Lawful Representatives

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. 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*.

2.4 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*.

2.4.1 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*.

2.4.2 Acting for Transferor and Transferee, Exceptions

An individual lawyer shall not act for both the transferor and the transferee in a transfer or title to real property, unless at least one of the exceptions in Rule 2.04.1 of the *Rules of Professional Conduct* applies and the lawyer is able to comply with Rule 2.04 regarding conflicts of interest.

2.5 Client Identification and Verification

When retained to provide professional services to a client(s) lawyers shall comply with governing identification and verification requirements outlined in Part III of By-Law 7.1

When retained to provide professional services, unless an exemption applies, lawyers shall identify the client and/or third parties and keep a record of the information obtained as set out in By-Law 7.1.

When lawyers are engaged in or give instructions regarding the receipt, payment or transfer of funds, unless an exemption applies, lawyers shall verify the identity of the client(s) and/or third parties and keep a record of the information obtained as set out in By-Law 7.1.

2.6 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.

2.7 Engagement Letters and Retainer Agreements

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

Essential terms of the engagement may be confirmed by way of

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

2.8 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 consider whether to confirm the non-engagement in writing immediately and advise of any limitation periods.

2.9 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.

2.10 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*.

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

2.11 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.

2.12 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.

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.

2.13 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.

2.14 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.

2.15 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.

2.16 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
- if the lawyer does not have support staff, the lawyer should ensure that any firm notices or voice mail messages indicate to the caller when a response may be expected and
- 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.

2.17 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.

2.18 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
- **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.

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
- should 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*]
- should advise client about arrangements for storage and retrieval of file contents
- should 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*].

Resources

- [Additional Resources \(PDF\)](#)
- [By-Law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [Client Communications & Quality of Service \(PDF\)](#)
- [Establishing the Retainer \(PDF\)](#)
- [File Retention \(PDF\)](#)
- [File Transfer on Termination of Retainer \(PDF\)](#)
- [Flat Fee Disbursement Billings \(PDF\)](#)
- [Great Expectations: A Lawyer-Client Handbook \(PDF\)](#), Canadian Bar Association and Canadian Bar Insurance Association
- [Keeping Clients Satisfied - Tips \(PDF\)](#)
- [Law Society Act, s. 41](#)
- [Managing Client Relationships - An Overview \(PDF\)](#)
- [Managing the Lawyer/Client Relationship, Practice PRO](#)
- [Non-Engagement Letter - Checklist \(PDF\)](#)
- [Non-Engagement Letter - Sample \(PDF\)](#)
- [Real Estate, Joint Retainers, Conflicts of Interest, Prohibition Against Acting for Borrower and Lender \(PDF\)](#)
- [Rules of Professional Conduct, Rule 2.01](#)
- [Sample Client Memorandum: Billing Information \(PDF\)](#)
- [Seven Keys to Great Client Service \(PDF\)](#), Canadian Bar Association and the Canadian Bar Insurance Association
- [Solicitor's Liens \(PDF\)](#)
- [Withdrawal of Services \(PDF\)](#)

3. File Management

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.

3.1 Introduction

Effective file management provides the basis or infrastructure for timely, effective client service and appropriate management of client matters. The *File Management Guideline* sets out essential features of systems to manage client matters to ensure compliance with regulatory requirements relating to matters such as the preservation of client confidentiality and avoiding conflicts. It offers practical suggestions for effective file opening and closing procedures, conflicts checking and storage systems and considerations relating to the retention and disposal of closed client files.

3.2 Terminology

The *File Management Guideline* uses the phrase “file management” in its broad sense to denote the general management of a client matter.

A component of client matter management is the handling or management of “files”. Historically, the term “file” referred to the physical paper folders which house the physical documents related to the matter.

Computer technologies enable some or all client information to be stored in electronic form.

In the electronic or computer environment, the equivalent of the physical paper folder, the “file”, is referred to as a “folder “ or “directory” and the corollary of a single paper document, is referred to as a “file” or “document”.

The principles in this *Guideline* are meant to be adaptable and flexible enough to support most law practices, regardless of the level of computerization.

Accordingly, unless specified otherwise, references to

- “files” or “sub files” include both physical or electronic repositories of client information
- “documents” include documents in electronic form
- “systems” includes electronic and manual systems.

3.3 Essential Requirements

It is important that lawyers have and employ systems to

- store and easily retrieve key information regarding all firm clients and opposing parties
- open and maintain active client files
- check for conflicts
- check for limitation periods
- close, retain, and dispose of closed files
- review and if necessary change management systems to ensure they meet changing standards, techniques, or practices

- identify clients' property and place in safekeeping
- comply with The Law Society of Upper Canada's record and bookkeeping requirements.

3.4 Optional Requirements

Lawyers may also consider employing systems to

- manage documents
- ensure undertakings are satisfied
- manage experts or other third party service providers.

3.5 Systems to Store and Retrieve Key Client Information

Lawyers should consider maintaining

- databanks of key information regarding current and former clients including
 - client's names, aliases, former names
 - date the file was opened and closed
 - subject matter of the file
- information regarding conflicting or adverse parties including
 - names of persons related, or associated with a client, former client or the names of persons relevant to client or former client matters
 - cross references to the client or former client file name, file number, and matter reference
- information regarding accounting and billing
- information regarding key dates, a tickler or time management system.

3.6 Opening and Maintaining Active Client Files

Opening and maintaining active client files requires the lawyer to

- follow appropriate file opening procedures
- organize file contents
- properly store files.

3.6.1 File Opening Procedures

a) Determining When to Open a File

Lawyers should open a file when retained to provide legal services for any new matter for

- new clients
- current clients
- former clients.

At the initial contact, whether or not the case is accepted, lawyers should consider immediately noting a limitation period, diarising it and advising the client if it is imminent. Lawyers should consider opening a

file and preparing a memorandum when a person initially contacts the firm (usually by telephone) to obtain legal services.

b) Naming And Coding Active Client Files

Lawyers should consider having a method for obtaining information about the client and the opposing party(ies), usually at the initial interview or when the retainer is established. A file opening checklist is recommended.

Lawyers should assign a distinct file name and number to each file. The file name should include

- name of the client(s)
- reference or matter number.

3.6.2 Organization of File Contents

To enable efficient retrieval of file contents or information, lawyers should maintain organized file contents.

Organization of client files may include placing contents into sub-files according to class or type of documents. Each client file may contain sub-files for

- communications, including: correspondence; memorandums to file or notes of conversations; meetings; or telephone calls arranged chronologically
- substantive memorandums and investigations
- original documents
- retainer letter
- firm accounts and billing information
- legal research
- undertakings to be satisfied
- others, as appropriate to the file.

3.6.3 Storage Of Active Client Files

Lawyers should consider storing active client files (including electronic files or client information stored on diskettes), when not in use

- in a location separate from where closed files are stored
- in a secure or locked cabinet or location, filed in an orderly fashion for easy retrieval.

Lawyers should store all documentation related to the client matter in the client file.

Law firms may wish to consider implementing training for all professional and office personnel focusing on the importance of client confidentiality and the inherent risks of leaving files or diskettes containing client information on a desk or in an office unattended.

Electronic files should be organized with cross references to paper documents or files and vice versa.

3.7 Preservation of Client's Property

Rule 2.07 of the *Rules of Professional Conduct* requires that a lawyer shall care for a client's property as a careful and prudent owner would when dealing with like property.

A lawyer shall clearly label and identify the client's property and place it in safekeeping distinguishable from the lawyer's own property.

Lawyers should store in a secure or locked fire proof cabinet or location

- original wills
- powers of attorney
- valuable client property, such as title deeds and securities.

3.8 Conflicts Checking Systems

Rule 2.04 of the *Rules of Professional Conduct* requires that lawyers manage potential and actual conflicts of interest. Lawyers should implement a system that allows the lawyer to check for conflicts

- at the initial contact when the potential client first contacts the firm, usually by phone
- after the first interview with the client or when additional information is available
- any time a new party or person is added to the matter
- when a lawyer is considered for employment by the firm.

Prior to searching for conflicts, the lawyer should determine who is the client(s) in situations including

- where the matter is a joint retainer
- client is a minor and requires a guardian, litigation guardian or trustee
- lawyer is acting for both sides
- matter involves the preparation of a power of attorney for the grantor
- matter involves an estate
- matter involves legal services for a institutional client such as a corporation or government
- legal fees are paid by a third party.

The lawyer should also determine

- identity of any other persons involved in or associated with the client in the matter
- identity of the opposing party or parties
- identity of any other person relevant to the matter.

The lawyer should consider preparing a list of potential business conflicts which, while not amounting to actual conflicts, should be considered before accepting the retainer. Examples of these types of conflicts might include a personal financial interest in a business or being a Director on a corporate Board.

When a potential client contacts the firm, the lawyer (or firm staff) should check the potential client's name, and any other conflict or adverse party name provided by the potential client against the names in the firm data banks (data banks that contain the names of clients; former clients; adverse parties, related and associated persons).

If there is a match, the lawyer shall review the information and shall determine whether or not there is or is likely to be a conflict of interest.

If the lawyer determines that there is or is likely to be a conflict of interest the lawyer shall comply with Rule 2.04 of the *Rules of Professional Conduct*.

If the lawyer cannot act for the client because of a conflict, the lawyer shall, in accordance with the *Rules of Professional Conduct*

- advise the client forthwith of the lawyer's inability to take on or continue with the retainer, and
- confirm the non-engagement in writing.

3.9 Managing Documents

Lawyers should consider implementing and employing systems to

- document every meeting, conversation or telephone communication, including telephone messages left and received, by way of dated file notation or memo to file
- organize, identify and trace information, documents, evidence and property relating to each file or client matter.

In cases involving a substantial amount of documents or exhibits the lawyer may wish to consider the use of an electronic document management system.

Lawyers may wish to consider implementing a firm policy requiring that all files not in immediate use be filed away.

3.10 Managing Undertakings

Lawyers should implement systems to ensure that every undertaking is

- clear
- confirmed in writing
- recorded in the lawyer's time management system
- satisfied according to its terms, and
- in accordance with Rules 4.01(7) and 6.03(10) of the *Rules of Professional Conduct*.

Lawyers should consider filing undertakings in a sub file to ensure the undertaking is dealt properly

3.11 Managing Experts or Other Professionals

If appropriate to the lawyer's practice, the lawyer should consider implementing a system to manage the use of experts or third party service providers for client matters.

The information on the system may include a requirement that the lawyer

- reach a consensus with the client and third party service provider and confirm in writing
 - approximate cost of the services
 - who shall pay for the services and ensure that the experts or third party service providers know who to invoice for payment of their account
 - in the event of default of payment, detail who shall be liable to the third party provider for the cost of the services
 - instructions and note the acceptance of the instructions
- review the report or opinions of the third party(ies) to ensure they provide the information sought
- make a follow up notation in the lawyer's time management system in the event notice requirements for serving a report must be met.

3.12 Closing, Retaining and Disposing of Client Files

3.12.1 File Closing System

Lawyers should have a client file closing procedure that

- ensures the title is reviewed before closing
- provides for the storage of closed client files separate and apart from active client files
- ensures that client file contents are distributed or disposed of properly
- assigns a new closed client file code to the file
- provides for the destruction of the closed client file at the appropriate time.

3.12.2 When to Close Files

Lawyers should only close files after all matters related to the file have been completed and, in particular, after all undertakings have been satisfied.

3.12.3 Distributing and Disposing of File Contents

Prior to closing the file, lawyers should remove any unnecessary documents from the file.

The lawyer should provide to the client

- client's original documents
- opposing party documents
- reports, asset and/or liability statements or other documents related to the issues in the matter
- any other court or legal documents not already provided to the client in the course of the retainer such as pleadings, affidavits, transfers, mortgages or similar documents.

The lawyer may consider having the client sign an acknowledgment indicating receipt of the documents.

The lawyer may consider destroying or disposing of any documents that may be obtained from court, land title office or other government registry, provided that the lawyer does not anticipate he or she will require the information for purposes of his or her own defence.

Client files that should be retained and the length of retention will be determined by the particular circumstances taking into account

- whether other sources are available to obtain information contained in the file such as information stored in Registry Offices or court records
- a lawyer's potential liability for errors and omissions
- any applicable limitation periods.

The lawyer should keep in closed client files

- correspondence including e-mail, memos or notes relating to communications
- file notes
- drafts and final version of any agreements as evidence of instructions.

The lawyer should consider retaining

- legal research

- case law, or a list of case law
- documents to serve as precedents.

The lawyer should assign a closed client file code.

The lawyer should send the closed paper files to a storage location.

3.12.4 Storage

Lawyers should store closed files in secure cabinets or locations

- separate or apart from active files
- to protect the files from destruction or damage
- to maintain client confidentiality
- filed in an orderly fashion for easy retrieval.

If the lawyer stores closed client files in an off-site storage location, the lawyer shall ensure that client confidentiality is protected and maintained.

3.12.5 Retrieval of Closed Files

In the event the file is transferred to the client or other counsel, the lawyer should discuss with the client

- 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.

3.12.6 Retrieval of Electronic Files

The lawyer should ensure that closed electronic files are stored or saved in a form or format that will be retrievable in the future.

3.12.7 Destroying Client Files

Lawyers should consider whether the client file should be retained indefinitely or whether it will eventually be destroyed.

If the client file is to be destroyed, the lawyer should determine

- date the file is to be destroyed taking into consideration
 - any legal or regulatory requirements to maintain certain file contents
 - limitation periods relating to the lawyer's potential liability for malpractice, or misconduct
- manner of file destruction to preserve confidentiality.

Lawyers shall maintain client confidentiality when client files are destroyed.

3.12.8 Reviewing File Management Systems

Lawyers may consider drafting and maintaining a current office manual setting out the systems and procedures for the lawyer's practice.

Lawyers may also consider reviewing and, if necessary, updating as required

- all practice management systems
- firm checklists, substantive and procedural
- precedents.

Lawyers should consider training for firm personnel in the proper use of office systems and implementation of procedures.

Resources

- [Additional Resources \(PDF\)](#)
- [By-Law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [Conflicting Duties \(PDF\)](#)
- [File Destruction](#)
- [File Retention \(PDF\)](#)
- [File Transfer on Termination of Retainer \(PDF\)](#)
- [Law Society Act, s. 41](#)
- [Managing Your Law Firm](#), Continuing Legal Education Society of British Columbia, Vancouver (1996) updated June 2000, Chapters 16 and 17
- [Rules of Professional Conduct, Rule 2.01](#)
- [Sample Client Memorandum: Closed File \(PDF\)](#)
- [Selecting a Conflict Checking System \(PDF\)](#)
- [Undertakings](#)

4. Financial Management

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.

4.1 Introduction

The financial management of a law practice requires attention to sound business practices and adherence to governing regulatory provisions. The *Financial Management Guideline* summarizes both mandatory and recommended practices relating to the financial management of a law practice. This includes billing practices, the handling of money and other property, the use of credit cards, professional liability insurance requirements and record keeping requirements. The *Financial Management Guideline* offers a list of internal control procedures to assist lawyers in managing risk.

It is important for lawyers to implement fees and billings procedures that focus on

- keeping the client informed as to the anticipated costs of legal services in a particular matter
- maintaining cash flow
- compliance with the *Rules of Professional Conduct* and By-Laws pursuant to the *Law Society Act*.

4.2 Billing Methods and Charges

Although some billing methods are more common than others, lawyers should consider adopting procedures which are most appropriate to their particular circumstances. Common billing methods include

- hourly rate, charging for the actual time expended on the client matter
- fixed or flat fee, charging a fixed rate regardless of the time expended on the matter
- fees by stages, charging for a matter which is broken down into stages, and an estimate is given as to the fee for each stage or step in the matter.

4.2.1 Charges Must be Fair and Reasonable

In determining the amounts to be charged for legal fees or disbursements, lawyers shall ensure that the charges are fair and reasonable. [Rule 2.08(1) of the *Rules of Professional Conduct*]

In determining what is fair and reasonable, lawyers should consider the following factors

- time required and spent
- effort required and spent
- difficulty of the matter
- importance of the matter
- whether special skill is required and provided
- whether special service is required and provided
- amount of money or other assets involved
- value of the subject matter

- results obtained
- any fees authorized by statute or regulation
- special circumstances such as
 - loss of other retainers in order to accommodate the particular retainer
 - postponement of payment by the client
 - uncertainty of reward
 - urgency of the matter.

4.2.2 Disclose the Amounts Charged for Fees and Disbursements

Lawyers should, at the earliest possible opportunity, indicate and explain to the client what the anticipated charges will be for fees and disbursements.

4.2.3 Timely Disclosure of Charges

At a minimum, charges for fees or disbursements shall be disclosed to the client in a timely fashion. What constitutes disclosure in a timely fashion will vary depending on the particular circumstances. [Rule 2.08 (1) of the *Rules of Professional Conduct*]

4.2.4 Estimates

Where possible to do so, lawyers should provide the client with a fair estimate of fees and disbursements, pointing out any uncertainties involved, in order to enable the client to make an informed decision. [Commentary to Rule 2.08(2) of the *Rules of Professional Conduct*]

Lawyers should advise the client of any circumstance that is likely to, or has, changed the nature of the work on the file. Lawyers should inform the client of the impact of that change on the estimate of fees and disbursements, discuss next steps, and revisit the estimate.

4.2.5 Joint Retainers

Lawyers acting for two or more clients in a matter shall, unless the clients otherwise agree, divide the fees and disbursements equitably between them. [Rule 2.08(5) of the *Rules of Professional Conduct*]

4.2.6 Money Retainers

If practicable, lawyers may obtain a money retainer from the client at the outset and ask that the money retainer be replenished as the matter proceeds and interim accounts are rendered.

In determining the frequency and amount of the money retainers required of clients, lawyers should consider their obligation to continue to represent clients in certain circumstances, despite non-payment of fees.

Lawyers may not withdraw from representing a non-paying client if serious prejudice to the client would result. [Rule 2.09 (3) and Rule 2.09(4) of the *Rules of Professional Conduct*]

4.2.7 Written Confirmation

If practicable, lawyers should consider confirming their billing policy in writing for both fees and disbursements. Lawyers may wish to consider confirming their billing policies by

- written retainer agreement executed by the client
- engagement letter from the lawyer
- confirming memo to the client by mail or e-mail.

4.3 Interim Billing, Work in Progress, or Account Status Reports

Lawyers may periodically send clients work in progress, account status reports or reminder letters to

- keep clients apprised of the expense or cost of the matter to date
- to request payment of any outstanding amounts.

If practicable and appropriate in the circumstances of the particular retainer, lawyers may consider

- implementing a firm policy that requires matters to be billed on a regular basis (fees and disbursement), usually on a monthly basis
- insist that clients pay for disbursements before they are incurred.

Lawyers shall ensure that all Statements of Accounts delivered to clients clearly and separately detail the amounts charged as fees and as disbursements. [Rule 2.08 (4) of the *Rules of Professional Conduct*]

4.4 Financial Obligations

4.4.1 Meeting Obligations

Lawyers shall promptly meet financial obligations in relation to their practice. [Rule 6.01(2) of the *Rules of Professional Conduct*]

4.4.2 Obligations to Third Parties

Prior to retaining third parties such as consultants, experts or other professionals, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided and the person responsible for payment. [Commentary to Rule 6.01(2) of the *Rules of Professional Conduct*]

If the lawyer is not responsible for the payment of the fees, the lawyer should assist in making satisfactory arrangements for payment if reasonably possible to do so.

If there is a change of lawyer, the lawyer who originally retained the third party should advise the third party about the change and provide information about the new lawyer including

- name
- address
- telephone number
- facsimile number
- e-mail address.

4.5 Changes to Costs Estimates

If circumstances arise that may substantially affect the amount of a fee or disbursement, the lawyer should forestall misunderstandings or disputes by giving the client an immediate explanation. [Commentary to Rule 2.08 (2) of the *Rules of Professional Conduct*]

4.6 Restricted Practices

4.6.1 Hidden Fees

Lawyers may only take fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to employment from

- the client
- someone other than the client, but only with full disclosure to and with the consent of the client, or
- in cases where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or personal representative, with the consent of such agency or other person. [Commentary to Rule 2.08(2) of the *Rules of Professional Conduct*]

The consent of the client, other person or agency shall be either in writing or reduced to writing. [Rule 1.02 of the *Rules of Professional Conduct*]

4.6.2 Contingent Fees and Contingent Fee Agreements

Lawyers shall not enter into contingent fee arrangements with clients except in accordance with the provisions of Rules 2.08(1)(3) of the *Rules of Professional Conduct*.

4.7 Fee Arrangements With Other Lawyers

4.7.1 Division of Fees

Lawyers may divide fees with other lawyers who are not in the same firm only if all of the following conditions are met

- fee division, splitting or sharing is with a person who is a lawyer
- client consents in writing
- fee is divided in proportion to the work done and the responsibilities assumed. [Rule 2.08 (6) and Rule 2.08 (8)(a) of the *Rules of Professional Conduct*]

4.7.2 Referral Fees

Lawyers may accept referral fees and lawyers may pay referral fees to the referring lawyer only if all of the following conditions are met

- financial or other reward for the referral of the client or client matters is given to a person who is a lawyer
- referral is because of the expertise and ability of the other lawyer to handle the matter
- referral is not because of a conflict of interest
- referral fee is reasonable and does not increase the total amount of the fees charged to the client; and

- client is informed and consents in writing. [Rule 1.02 and Rule 2.08 (7) and Rule 2.08 (8)(b) of the *Rules of Professional Conduct*]

4.7.3 Exceptions

Lawyers in multi-disciplinary practices may divide fees and may accept from and pay referral fees to non-lawyer partners, provided that the conditions set out in Rule 2.08(9) of the *Rules of Professional Conduct*, are met.

Lawyers who are members of inter-provincial law firms or in law partnerships with Ontario and non-Canadian lawyers may divide fees, and may accept from and pay referral fees to their non-Canadian lawyer colleagues, provided that the conditions set out in Rule 2.08(9) of the *Rules of Professional Conduct*, are met.

Affiliations are not subject to the exception for multi-discipline practices and inter-provincial and international law firms. [Commentary to Rule 2.08(9) of the *Rules of Professional Conduct*]

4.8 Appropriation of Client Funds

Lawyers shall not appropriate any funds of the client held in trust or otherwise under the lawyer's control for or on account of fees except as permitted by the By-Laws of the *Law Society Act*. [Rule 2.08 (10) of the *Rules of Professional Conduct*]

4.9 Handling of Money and Other Property

4.9.1 Prohibited Cash Transactions in Client Files

When a lawyer engages in, or gives instructions with respect to the following activities

- receives or pays funds
- purchases or sells securities, real properties or business assets or entities
- transfers funds by any means

the lawyer shall not receive or accept from a person cash in an aggregate amount of \$7500 or more in Canadian dollars in respect of any one client file.

4.9.2 Exceptions

This prohibition does not apply where the lawyer receives cash

- from a public body and certain entities as described in By-Law 9, s. 6
- from a peace officer, law enforcement agency or other agent of the Crown, acting in an official capacity
- pursuant to an order of the tribunal
- to pay a fine or penalty
- for fees, disbursements, expenses or bail, provided that any refunds out of such receipts are also made in cash [By-Law 9, s. 4 to 6]

4.9.3 Trust Accounts

a) Money Paid Into Trust Account

A lawyer who receives money in trust for a client shall immediately pay the money into a bank or other institution.

Pursuant to By-Law 9, s. 7(2), a lawyer receives money in trust for a client if the lawyer receives the following from a person

- money belonging in whole or in part to the client
- money held on behalf of a client
- money held on a client's direction or order
- money advanced as a retainer for fees not yet rendered
- money advanced as a retainer for disbursements not yet made
- money paid to a lawyer that belongs in part to a client, in part to the lawyer, where it is not practicable to split the payment of the money
- money that, by inadvertence, has been inappropriately drawn from a trust account, not in accordance with By-Law 9, s. 9. [see below]

b) Money Not to be Paid Into Trust Account

Lawyers are not required to pay into a trust account money received in trust for a client if

- client so requests in writing
- lawyer pays the money into an account to be kept
 - in the name of the client
 - a person named by the client
 - an agent of the client
- lawyer pays the money to a person on behalf of the client immediately upon receiving it from the client, in accordance with ordinary business practices.

Although not required to pay these funds into a trust account, lawyers shall include all handling of such money in the lawyer's records in accordance with By-Law 9, Part V.

Lawyers shall not pay into a trust account

- money that belongs entirely to the lawyer or to another member of the lawyer's firm
- money that is received by a lawyer
 - as payment for fees for services for which a billing has been delivered
 - as payment for fees for services already performed for which a billing will be delivered immediately after the money is received
 - as reimbursement for disbursements made or expenses incurred on behalf of the client.

4.9.4 Withdrawal of Money from Trust Account

a) Money That May Be Withdrawn

Lawyers shall only withdraw the following from a trust account

- money properly required for payment to a client or to a person on behalf of a client
- money to reimburse the lawyer for money properly expended, or incurred on behalf of a client
- money required for, or toward, payment of fees for services performed for which a billing has been delivered
- money directly transferred into another trust account and held on behalf of a client
- money that should not have been paid into a trust account but was inadvertently paid into a trust account
- other money if authorized to do so by The Law Society of Upper Canada.

b) Manner of Withdrawal of Certain Money

When transferring trust monies properly due from their clients, lawyers shall only

- withdraw money from a trust account by cheque drawn in favour of the lawyer
- transfer to a bank account kept in the name of the lawyer and is not a trust account
- electronically transfer according to the procedure set out in By-Law 9, s. 12.

4.9.5 Withdrawal by Cheque

Lawyers shall ensure that cheques drawn on a trust account shall not be

- made payable to either cash or to bearer
- signed by a person who is not a lawyer, except in exceptional circumstances and if conditions exist as set out in By-Law 9, Part IV.

4.9.6 Withdrawal by Electronic Transfer

Lawyers shall only withdraw money from a trust account by electronic transfer if the conditions in By-Law 9, Part IV are met. Conditions to be met include

- electronic system requirements
- timely production of confirmation of certain information relating to the electronic transfer
- use of electronic transfer requisition, Form 9A.

4.9.7 Automatic Withdrawals from Trust Accounts

Lawyers may authorize Teranet to withdraw from a trust account certain funds required to pay document registration fees and land transfer tax, provided that all the conditions set out in By-Law 9, Part IV are met.

4.10 Use of Credit Cards

Lawyers may enter into agreements with financial institutions that offer credit card services provided that certain conditions are met

- all service charges, discounts and other fees payable by the lawyer to the financial institution are deducted from the general account and not the trust account
- credit card payments for retainers shall only be deposited directly into trust accounts and credit card payments for payments on account shall only be deposited directly into the general account
- client confidentiality is maintained - the sales slip shall not indicate the nature of the legal services only the words “legal services” plus a file number and dollar amount
- amount of the charge is inserted at the time the client signs the slip
- the words “trust account” appear on the original credit card slip
- sales slip is presented for deposit in the appropriate trust account in accordance with the By-Laws
- credit card company’s discount or fee is not charged to the client.

4.11 Records

Lawyers shall maintain financial records for all money and other property received and disbursed in connection with the lawyer’s practice, in the form and for the period of time set out below, in accordance with By-Law 9, Part V.

4.11.1 Maintain For Ten Years [By-Law 9, s. 23(2)]

The following records shall be maintained for at least the 10 year period immediately preceding the lawyer’s most recent fiscal year end:

- 1) Trust Receipt Book of Original Entry [By-Law 9, s. 18 p.1] identifying
 - each date on which money is received in trust for a client
 - the method by which money is received
 - person from whom money is received
 - amount of money received
 - client for whom the money is received in trust.
- 2) Trust Cash Disbursements Book of Original Entry [By-Law 9, s. 18 p.2] showing all disbursements paid out of money held in trust for a client and identifying
 - each date on which money is disbursed
 - method by which money is disbursed, including the number or similar identifier of any document used to disburse money
 - person to whom money is disbursed
 - amount of money disbursed
 - client on whose behalf the money is disbursed.
- 3) Clients’ Trust Ledger [By-Law 9, s. 18 p.3] showing separately for each client for whom money is received in trust
 - all money received

- all money disbursed
 - any unexpected balance.
- 4) Record of Monthly Comparisons of Trust Liabilities and Trust Bank Reconciliations [By-Law 9, s. 18 p.8] showing
 - monthly comparison of the total balances held in trust account(s) and the total of all unexpected balances held in trust for clients as they appear from the financial records
 - reasons for any differences between the totals
 - records to support the monthly comparisons, including
 - detailed monthly listing showing the amount of money held in trust for each client and identifying each client
 - detailed monthly reconciliation of each trust bank account.
 - 5) Record of Property Held in Trust [By-Law 9, s. 18 p.9] showing all property other than money held in trust for clients, describing each property and identifying
 - date on which the lawyer took possession of each property
 - person who had possession of each property immediately before the lawyer took possession
 - value of each property
 - client for whom each property is held in trust
 - date on which possession of each property is given away
 - person to whom possession of each property is given.
 - 6) Banking Documents For all Trust and General Accounts [By-Law 9, s. 18 p.10], in particular
 - bank statements
 - pass books
 - cashed cheques
 - detailed duplicate deposit slips.
 - 7) Electronic Trust Transfer Documents [By-Law 9, s. 18 p.11], in particular
 - signed electronic trust transfer requisitions
 - signed printed confirmations of electronic transfers of trust funds.

4.11.2 Maintain For Six Years [By-Law 9, s. 23(1)]

The following records shall be maintained for at least the 6 year period immediately preceding the lawyer's most recent fiscal year end:

- 1) Book of Duplicate Receipts with each receipt [By-Law 9, s. 19(1)] identifying
 - date on which cash is received
 - person from whom cash is received
 - amount of cash received
 - client for whom cash is received
 - any file number in respect of which cash is received and containing the signature of:
 - the lawyer or person authorized by the lawyer to receive cash, and

- the person from whom cash is received

The lawyer shall make reasonable efforts to obtain the signature of the person from whom cash is received.

- 2) Record of Trust Transfers [By-Law 9, s. 18 p.4] showing all transfers of money
 - between clients' trust ledger accounts
 - explaining the purpose for which each transfer was made.
- 3) General Cash Receipts Book of Original Entry [By-Law 9, s. 18 p.5] showing all money received, other than money received in trust for a client and identifying
 - each date on which the money is received
 - method by which money is received
 - person from whom the money is received
 - amount of money received.
- 4) General Cash Disbursements Book of Original Entry [By-Law 9, s. 18 p.6] showing all money disbursed, other than money held in trust for a client, and identifying
 - each date on which money is disbursed
 - method by which the money is disbursed
 - amount of money disbursed
 - person to whom money is disbursed.
- 5) Fees Book or Chronological File of Copies of Billings [By-Law 9, s. 18 p.7] showing
 - all fees charged and other billings made to clients
 - the dates on which fees are charged and other billings made to clients
 - identification of clients charged and billed.
- 6) Teranet Withdrawal Documents [By-Law 9, s. 18 p.12], in particular
 - signed authorizations of withdrawals by Teranet
 - signed paper copies of confirmations of withdrawals by Teranet.

4.12 Form of Records to be Maintained

In accordance with By-Law 9, s. 21 and 22, lawyers shall ensure that all financial records

- are permanent
- if they are posted by hand, they shall be entered and posted in ink
- may be produced in paper copy promptly on request of The Law Society of Upper Canada
- are current, and in the case of the lawyer's Record of Monthly Comparisons of Trust Liabilities and Trust Bank Reconciliations, created within 25 days after the last day of the month in respect of which it is being created.

4.13 Records Relating to Mortgages or Charges

Lawyers who hold mortgages or other charges in trust for clients shall comply with the record keeping requirements in By-Law 9, Part V.

4.14 Internal Controls

Although a lack of internal controls does not necessarily constitute a breach of the *Rules of Professional Conduct* or By-Laws, lawyers may consider implementing internal controls to assist in their efforts to comply. The following are suggested internal controls. Not all suggestions are practicable for all lawyers. Depending on their particular circumstance, lawyers may choose to adopt some or all or create their own self-assessing internal controls.

4.14.1 Cash, Client Files Involving Financial Transactions

Consider the following suggestions when dealing with files relating to financial transactions

- Implement a 'no cash' policy, the firm will not receive or accept cash, or implement a procedure to ensure that the \$7500 limit per client file is not exceeded
- No cash will be accepted by the firm unless the person from whom cash is received and the lawyer receiving cash first sign receipts in duplicate

4.14.2 Cheques

Consider the following suggestions when dealing with trust accounts. Lawyers may wish to adopt similar controls for general accounts:

a) Cheque Requisitions

- all cheque requests are accompanied by a signed cheque requisition evidencing approval
- only certain designated lawyers may authorize trust account payments
- only certain designated individuals may authorize general account payments
- firm personnel responsible for preparing cheques are instructed not to prepare cheques unless the requisition includes a signature of approval
- supporting documentation (such as an original invoice, reporting letter, statement of receipts or disbursements) accompanies the cheque requisition, where possible
- original copy of the invoice is stamped paid (to prevent an individual from using an invoice more than once to obtain funds)
- photocopies of invoices are not generally accepted as support for cheque requisitions.

b) Cheque Signing Policies

- cheques in excess of a threshold amount require the signatures of two partners
- cheques are never to be signed in blank
- cheques made payable to financial institutions include details of the transaction
- cheques are in numbered order and the sequence is checked
- at least one of the individuals signing the cheques always reviews the request for payment to determine if the request relates to trust funds and reviews the client file, to determine
 - validity of the request for payment
 - reasonableness of the amount requested
 - if sufficient funds are available to pay the amount of the cheque

- to ensure that an accounting to the client for receipts and disbursements is completed.

4.14.3 Trust Records

Consider the following suggestions:

- monthly reconciliations and adjustments are reviewed and signed by someone other than the individual who prepared the reconciliation
- reviewer of the reconciliation ensures that
 - reconciliations are prepared on time
 - reconciled items are cleared promptly
 - all unusual items are questioned and an adequate explanation is given for the unusual nature of the item and noted in the firm records and client file
 - list of trust balances is periodically reviewed for closed or completed matters including trust balances that have not changed in the past twelve months
- trust transfer requisition is prepared to transfer funds from one client's trust ledger account to another trust ledger account
 - written authorization from the client to transfer funds to another trust ledger is always obtained prior to the trust transfer
 - trust transfer requisition is signed by the responsible lawyer and an explanation is provided
 - accounting department, or personnel responsible for accounting, has been instructed only to process trust transfer requisitions only if the criteria for signatures and explanations has been met
- senior partner or office manager periodically reviews the client's trust ledger accounts for unusual items
- blank trust cheques should be kept in a secure manner.

4.14.4 Clients' Valuable Property

- proper inventory of valuable items held on behalf of the client(s) is maintained
- physical existence of these items is periodically tested.

4.14.5 Staffing Policies

- firm has a policy respecting an individual's need to take regular holidays
- firm conducts periodic reviews of lawyers' work
- be aware of indicators of potential problems which may result in inappropriate activities or conduct, including
 - lawyer is consistently too busy to take holidays
 - lawyer appears to be living beyond his or her means
 - sudden and significant increases in advances for entertainment expenditures
 - large increases in unbilled disbursements
 - lawyer's production has fallen off for no apparent reason
 - lawyer appears withdrawn or nervous
 - lawyer continually makes last minute requests for funds

- periodic reviews of client files are conducted by a senior partner or office manager to ensure
 - client receives an accounting for trust receipts and disbursements
 - details of the accounting to the client match with the trust ledger
 - file is maintained in an orderly fashion
- lawyers consider whether their outside interests may put them in a conflict of interest situation.

4.14.6 Segregation of Duties

Lawyers should segregate firm duties so that the same individual does not have complete control over the management of funds. Some suggestions include

- individual who opens the mail is different from the individual responsible for preparing a listing of all cash and cheques received
- all cheques received are stamped “deposit only”
- firm issues receipts for all cash or cheques received to
 - provide client with proof of payment
 - help prevent funds from being redirected to another client’s account
- numerical sequence of receipts are checked to ensure that all funds receipted are also recorded in accounting records and deposited into the bank.

4.15 Computer Controls

Lawyers should consider controls and systems appropriate for their circumstances to ensure information maintained in their computers is secure and only accessible by designated firm members as required.

4.16 LAWPRO

Lawyers should ensure that they have sufficient professional liability insurance coverage appropriate to their particular circumstances and practice arrangement. Lawyers may consider assessing their insurance by reviewing LAWPRO’s Insurance Types and the lawyer’s Practice Type.

4.16.1 Insurance Types

- standard program
- run-off insurance
- optional insurance coverage to increase coverage limits including
 - innocent party
 - excess
 - run-off buy up.

4.16.2 Practice Types

- private practice including lawyers
 - on temporary leaves
 - in MDPs

- in professional corporations
- retired lawyers, judges and other lawyers no longer practising law
- in-house corporate counsel
- government lawyers, educators and other lawyers not in active practice
- new calls to the profession.

4.17 Planning For Death, Disability and Business Interruptions

Lawyers may consider implementing a plan to deal with death, disability, or business interruptions. The purposes of planning for business interruptions for death or disability are to

- preserve the practice
 - for the disabled lawyer, during the lawyer’s disability, or if the disability is permanent, for wind up or sale
 - on the lawyer’s death, for wind up or sale on behalf of the estate
- enable another lawyer to step into the practice for continuation, winding up or sale, with relative ease
- maintain client confidentiality
- have financial resources in place to preserve the practice.

Lawyers may consider adopting the following to assist in the event of their disability

- ensure the practice is organized and that all information is recorded and easily accessible for the successor lawyer
- purchase insurance
 - life insurance to pay for the wind up or sale of the practice
 - disability/business interruption insurance to pay the successor lawyer to continue the practice and to provide a source of disability income for the disabled lawyer
- have a power of attorney granting a successor lawyer the ability to access trust and general accounts and continue with the practice.

The lawyer may consider having a will that addresses issues related to the practice in the event of death. Consider appointing a lawyer as co-estate administrator or executor to deal with the law practice.

4.18 Disaster Plans

Lawyers should consider planning for disasters which stop normal office processes as a result of either routine or dramatic events, such as

- extreme weather conditions
- prolonged power or communications failure
- robbery or other criminal activity
- civil unrest
- terrorist acts.

In devising a disaster plan, lawyers may wish to consider the following

- set out a plan to protect firm members

- have an evacuation plan
- have frequent scheduled and unscheduled drills
- keep emergency exits clear
- maintain emergency equipment on sight
- train staff in CPR and first aid
- preserve assets and critical information such as critical dates and deadlines
- duplicate paper files in electronic form and store in a secure location off site
- ensure viability of the firm operations, including steps for business recovery and resumption
- deal with succession issues in cases where key firm members are either killed or permanently disabled.

Resources

- [Additional Resources \(PDF\)](#)
- [Business Plan Outline \(PDF\)](#), Practice PRO
- [By-Law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [Establishing the Retainer \(PDF\)](#)
- [Flat Fee Disbursement Billings \(PDF\)](#)
- [Great Expectations: A Lawyer-Client Handbook \(PDF\)](#), Canadian Bar Association and Canadian Bar Insurance Association
- [Law Society Act, s. 41](#)
- [Litigation Cost Estimate Template \(PDF\)](#)
- [Managing Practice Interruptions \(PDF\)](#), Practice PRO
- [Managing the Finances of Your Practice \(PDF\)](#), Practice PRO
- [Managing the Lawyer/Client Relationship](#), Practice PRO
- [Qs and As - Preventing Money Laundering](#)
- [Real Estate, Joint Retainers, Conflicts of Interest, Prohibition Against Acting for Borrower and Lender \(PDF\)](#)
- [Rules of Professional Conduct, Rules 2.01 and 2.08](#)
- [Sample Associate Agreement \(PDF\)](#), Practice PRO
- [Sample Budget \(PDF\)](#), Practice PRO
- [Sample Client Memorandum: Billing Information \(PDF\)](#)
- [Seven Keys to Great Client Service \(PDF\)](#), Canadian Bar Association and Canadian Bar Insurance Association
- [Trust Account FAQs](#)
- [Use of Credit Cards in the Legal Practice \(PDF\)](#)

5. Technology

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.

5.1 Introduction

Technology has rapidly altered the manner in which legal knowledge is gathered and distributed and has increased the speed with which information is exchanged.¹ Lawyers must determine when the use of information technologies is necessary for the maintenance and enhancement of their practices. The *Technology Guideline* outlines the circumstances in which the use of information technology is mandatory, as in the case of electronic registration. It also outlines the circumstances when information technologies are recommended. The *Guideline* invites the practitioner to consider the use of technologies to support client service expectations and practice management and reminds lawyers to address concerns respecting security, disaster management and technological obsolescence.

5.2 Mandatory Use of Technology

These *Guidelines* incorporate sections of The Law Society of Upper Canada *Ethical Considerations and Technology*² which were provided for information only to Convocation in March 2001.

Lawyers should ensure that they comply with any mandatory requirements relating to the use of information technologies in their law practices, including but not limited to

- electronic registration of real property
- mandatory electronic filing requirements or processes of courts or other tribunals

Lawyers should have knowledge of relevant legal or regulatory provisions governing or relating to information technologies. In particular, and if relevant to a lawyer’s area of practice, lawyers should familiarize themselves with statutory or other provisions relating to the legal status of electronic documents or electronic signatures.

5.3 Systems to Support Client Service

Lawyers should consider the use of information technologies to enable them to perform all client service functions conscientiously, diligently, and in a timely and cost-effective manner. [Rule 2.01(1)(e) and Rule 2.01(2) of the *Rules of Professional Conduct*]

Lawyers may wish to consider the use of the following information technologies:

1 Barker, “The Effective Use of Technology in the Practice of Law”, Canada Law Book Inc., 1998.
Eisen, “Technology in Practice Second Edition”, Thomson Professional Publishing Canada, 1991.

2 These *Guidelines* were adapted for Ontario from the *Ethical Considerations and Technology* developed by the Law Society of Alberta and disseminated by the Federation of Law Societies of Canada. The Law Society of Upper Canada gratefully acknowledges their work in formulating these *Guidelines*.

5.3.1 Electronic Legal Research Methods

Lawyers should consider whether their legal research skills include and make use of [Rule 2.01(1)(c)(i) of the *Rules of Professional Conduct*]

- on-line legal research facilities such as CanLII or Quicklaw
- Internet based legal research
- CD ROM databases.

5.3.2 Electronic Document Management Systems or Services

Lawyers should consider the use of electronic document management systems such as

- case management or litigation support software for litigation matters
- document assembly software to create legal forms and documents.

5.3.3 Analysis Support Software

Lawyers should consider the use of information technologies that support their analytical skills and functions including spreadsheet software and on-screen calculators. [Rule 2.01(1) (c)(ii) of the *Rules of Professional Conduct*]

5.3.4 Word Processing

Lawyers should consider the use of electronic word processing or voice recognition software to ensure that writing and drafting is accomplished in a timely and cost-effective manner. [Rule 2.01(1)(e) and Rule 2.01(2) of the *Rules of Professional Conduct*]

5.3.5 Communications Technologies

Lawyers should consider the use of information technologies to communicate with the client in a timely and effective manner appropriate to the abilities and expectations of the client. Lawyers may consider the use of all or some of the following systems [Rule 2.01(1)(d) and 2.01(2) of the *Rules of Professional Conduct*]

- voice mail
- e-mail over the internet
- facsimile transmission
- video or telephone conferencing.

5.4 Systems to Support Practice Management

Lawyers should consider the use of the following information technologies to assist in complying with the *Rules of Professional Conduct* and By-Laws made pursuant to the Law Society Act [Rule 2.01(1)(g) and Rule 2.01(2) of the *Rules of Professional Conduct*]:

5.4.1 Database Management Systems

Lawyers should consider using database management software systems for

- conflicts checking to support compliance with Rule 2.04 of the *Rules of Professional Conduct*

- maintaining client information or file lists to effectively manage their practice. [Rule 2.01(1)(i) and Rule 2.01(2) of the *Rules of Professional Conduct*]

5.4.2 Calendaring and Scheduling Systems

Lawyers should consider the use of calendaring and scheduling technologies to

- perform client service and practice management functions in a timely manner [Rule 2.01(1)(e) and 2.01(2) of the *Rules of Professional Conduct*]
- implement an effective tickler system.

5.4.3 Legal Accounting and Time Billing Systems

Lawyers should consider using electronic accounting and billing systems to assist in complying with record keeping and accounting requirements. [By-Law 9 and Rule 2.08 of the *Rules of Professional Conduct*]

5.5 Competent Use of Information Technologies

Lawyers should have a reasonable understanding of the technologies used in their practice or should have access to someone who has such understanding.

5.6 Delivery of Legal Services Through the Internet

5.6.1 Uphold Law of Other Jurisdiction

Ontario lawyers practising law in other jurisdictions through the provision of legal services on the Internet should

- respect and uphold the law of the other jurisdiction
- not engage in the unauthorized practice of law.

5.6.2 Conflicts of Interest

To avoid conflicts of interest when delivering legal services through the Internet or e-mail, lawyers should take reasonable steps to determine the actual identity of the parties with whom the lawyer is dealing.

5.6.3 Capacity in Which Lawyer is Acting

A lawyer who communicates with others in chat rooms, discussion groups or through electronic media shall ensure that the capacity in which the lawyer is acting is made as clear as possible to anyone with whom the lawyer deals.

In particular, a lawyer should advise when he or she is or is not providing legal advice or services.

5.7 Confidentiality

Lawyers using electronic means of communications shall ensure that they comply with the legal requirements of confidentiality or privilege. [Rule 2.03 of the *Rules of Professional Conduct*]

When using electronic means to communicate in confidence with clients or to transmit confidential messages regarding a client, a lawyer should

- develop and maintain an awareness of how to minimize the risks of disclosure, discovery or interception of such communications
- use reasonably appropriate technical means to minimize such risks
- when the information is extraordinarily sensitive, use and advise clients to use encryption software to assist in maintaining solicitor and client communications
- develop and maintain law office management practices that offer reasonable protection against inadvertent discovery or disclosure of electronically transmitted confidential messages.

5.8 Marketing and Making Legal Services Available

5.8.1 Rules of Professional Conduct Apply

Advertising by lawyers in various forms of electronic media, including web sites, network bulletin boards, and direct e-mail, are governed by the *Rules of Professional Conduct*, Rule 3.01 Making Legal Services Available, Rule 3.02 Marketing, and Rule 3.03 Advertising Nature of Practice.

5.8.2 Identification of Lawyer in Electronic Media

Lawyers making representations in generally accessible electronic media should include the name, law firm mailing address, licensed jurisdiction of practice, and e-mail address of at least one lawyer responsible for the communication.

5.8.3 Multi-Jurisdictional Advertising

Where a lawyer is entitled to practice in more than one jurisdiction, and these jurisdictions are identified in representations on electronic media, the lawyer shall ensure that the advertisement complies with the rules governing legal advertising in each of those jurisdictions.

5.8.4 Restrictions on Distribution

Lawyers may offer their services to potential clients subject to certain restrictions on contacting potential clients who, for example, are recovering or are vulnerable as a result of a traumatic experience. [Rule 3.01(2) of the *Rules of Professional Conduct*]

Interactions with the public that are not compatible with the public interest, the best interests of the profession or the administration of justice, include

- advertisement of professional services using electronic media where the advertisement is directly and indiscriminately distributed to a substantial number of newsgroups or electronic mail addresses
- posting of electronic messages to newsgroups, listservs or bulletin boards where the topic of the posting does not represent what is being advertised in the body of the posting.

5.8.5 Controlling Misuse of Electronic Communications

Lawyers should consider implementing and enforcing firm policies for the acceptable use of electronic communications to ensure that discriminatory content is not disseminated. Policies may include

- restrictions against downloading, viewing, or circulating within the office or to outside recipients electronic material of a discriminatory nature
- mandatory deletion of such material if received in an unsolicited manner from third parties.

5.9 Preventing Software Piracy

Lawyers should guard against intentional or accidental software piracy. Lawyers, not office personnel exclusively, have the ultimate responsibility for the management and organization of, and compliance with, license agreements for all software used by a firm.

Lawyers should guard against accidental software piracy by carefully reviewing the provisions of software licensing agreements used in their practice.

5.10 Security Measures

Lawyers should be familiar with the security risks inherent in any of the information technologies used in their practices including

- unauthorized copying of electronic data
- computer viruses which may destroy electronic information and hardware
- hackers gaining access to lawyers' electronic files
- power failures and electronic storms resulting in damage to hardware or electronic information
- theft of vast amounts of electronic information stored in stolen hardware.

Lawyers should adopt adequate measures to protect against security threats and, if necessary, to replace hardware and reconstruct electronic information.

5.11 Back-up and Disaster Management

Lawyers should have back-up and disaster recovery plans for information technologies. Lawyers may consider implementing some or all of the following policies and procedures

- performing regular back-up of data
- storing back-up disks or tapes in a secure off-site location
- performing routine checks to ensure data can be restored
- having insurance in place to cover the costs of recovering lost hardware or electronic information.

5.12 Obsolescence

Lawyers should ensure that information in electronic form will be accessible in the future. Lawyers should consider whether crucial information should be stored in paper or electronic form.

Resources

- [Additional Resources \(PDF\)](#)
- [By-Law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [CanLII](#)
- [Data Encryption – Slip Sliding Away \(PDF\)](#)
- [Guidelines for Practising Ethically With New Information Technologies \(PDF\)](#)
- [Law Society Act, s. 41](#)
- [Legal Software and Other Resources for your Practice \(PDF\)](#)

- [Managing Practice Interruptions \(PDF\)](#), Practice PRO
- [Managing the Security and Privacy of Electronic Data in a Law Office](#), Practice PRO
- *Rules of Professional Conduct*, [Rule 2.01](#)
- [Technology Resources](#), Practice PRO
- [Top Ten Technology Tools \(PDF\)](#), Practice PRO

6. Professional Management

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.

6.1 Introduction

As the pace of change and complexity of the legal environment increases, the need to develop, maintain and adapt to changing professional standards is crucial. The *Professional Management Guideline* highlights the broad range of activities, initiatives and policies lawyers should consider to ensure professionalism. For example, lawyers must comply with regulatory requirements governing various practice arrangements, their relationship to students, employees or others. Lawyers may consider a variety of individual or firm wide professional development initiatives. The *Professional Management Guideline* is useful in planning or reviewing existing professional management initiatives.

6.2 Professional Development

Lawyers should regularly assess their competence to determine if there are or may be potential deficiencies in

- knowledge, skill, or judgment
- attention to client interests
- records, systems, or procedures of their practices, or
- any other aspect of their practices such that the deficiencies may give rise to reasonable apprehension that the quality of service to clients may be adversely affected.

Lawyers may refer to the following *Guidelines* for assistance: Client Service and Communication, File Management, Financial Management, Personal Management, Time Management, Technology, Closing Down Your Practice.

Lawyers must take steps or undertake activities or initiatives to ensure that their activities meet the minimum standards of professionalism and competence.

6.3 Implementing Professional Development, Education and Training Initiatives

6.3.1 Professional Development for Lawyers

To maintain and enhance professional competence and professionalism, lawyers may wish to consider undertaking, on a regular basis, professional development, education or training activities or initiatives

- for themselves
- if practicing with others, for all professional members of the firm including partners, firm associates and articling students.

Depending on their particular circumstances or practice areas, lawyers may consider undertaking professional development, education or training to enhance

- knowledge of general legal principles and procedures

- knowledge of the substantive law and procedure for the areas of law in which they practise or intend to practise
- interviewing skills and techniques for interviewing clients and witnesses
- legal research skills and methods including paper, computer or internet based research
- problem solving skills, analysis and ability
- skill in applying the law to relevant facts
- writing and drafting skills so as to improve accuracy and clarity of expression
- negotiation skills
- knowledge of, and skill in, alternative dispute resolution
- skill in investigation of facts
- advocacy skills
- client service and communications skills
- practice management skills and procedures, including
 - time management
 - file management
 - financial management
- ability to personally manage their physical, emotional and mental health
- ability to manage stress
- knowledge and use of technology in the practice
- knowledge of professional responsibility requirements contained in the *Rules of Professional Conduct*

6.4 Education and Training for Non-lawyer Personnel

Lawyers may consider implementing education and training programs for non-professional law firm personnel such as administrators, secretaries and law clerks to support lawyers' efforts to meet changing professional requirements, standards, techniques and practices. Lawyers may offer development, education or training to non-lawyer firm personnel to enhance their knowledge of

- procedural requirements in the area of law practised by the firm or by the lawyer
- the use of technology
- client service and communications skills
- time management
- financial management
- office procedures.

6.5 Self-study and Continuing Legal Education

Lawyers may consider a broad range of professional development, education and training activities depending on their particular circumstances and requirements.

Activities related to lawyers' work and directed at enhancing competence may include both self-study and Continuing Legal Education [CLE] components:

6.5.1 Self-study

- reading or conducting case specific or work related research from
 - legal journals
 - case law
 - statutes and regulations
 - relevant interdisciplinary material
 - CLE materials
 - on-line sources
 - texts
- listening to CLE and other inter-disciplinary audio tapes
- watching CLE program videotapes (not in a group setting).

6.5.2 Continuing Legal Education Activities and Programs

- live CLE programs, workshops, conferences, in-house programs
- telephone CLE
- interactive on-line CLE
- video replay programs in a group setting
- discussion groups
- participation in post-LL.B. degree programs
- preparation for and teaching in CLE, Licensing Process, or law school programs as adjunct faculty
- writing or publishing texts, articles, or CLE materials.

Lawyers should, in accordance with Minimum Expectation for Professional Development, track the number of hours they devote to professional development, education or training through self-study and CLE activities.

Lawyers should consider implementing professional development, education and training initiatives that consist of, at a minimum

- 50 hours per year of self-study
- 12 hours per year of CLE.

6.6 Memberships in Professional Organizations

Lawyers may consider membership in various professional organizations which offer legal education and training programs and a variety of initiatives which may assist in their professional development and allow for networking and camaraderie amongst members of the local law association.

6.7 Access to Research Facilities

If lawyers have in-house libraries, they should maintain up-to-date library materials.

If lawyers do not have in-house libraries, they should consider either a membership in the local law association to enable access to current legal material or on-line research available through various legal service providers.

6.8 Practice Management and Maintaining Professionalism in a Changing Environment

Lawyers may wish to assess and consider, depending on the size of the practice or the lawyer's individual circumstances, whether they have effective leadership and planning in place to adapt to changing legal or economic environments.

6.8.1 Leadership

Depending on the size of the practice or the lawyer's individual circumstances, lawyers may consider activities which assist in

- building trust among firm member
- building pride
- demonstrating leadership character
- leading results oriented meetings
- overcoming common roadblocks to conflict resolution
- sharing authority and responsibility
- clarifying roles
- building support networks through firm teams.

6.8.2 Planning

To enable lawyers to manage change and plan for the future, lawyers may wish to enhance their knowledge and make use of

- standard planning principles related to the business of law
- strategic planning to chart the future of the practice
- business plans to realize and enhance profitability
- budget planning from both a fiscal and strategic perspective
- project planning to manage firm and practice initiatives.

6.8.3 Coaching and Mentoring

In circumstances where lawyers may be responsible for the performance or productivity of others, lawyers may consider strategies to enhance their coaching or mentoring responsibilities and initiatives. Coaching strategies may include

- modeling excellence
- celebrating success

- generous encouragement
- use of effective praise
- constructive criticism.

6.9 Firm Meetings

Lawyers should consider holding regular meetings with colleagues and firm personnel to

- keep abreast of developments in the firm
- monitor the emotional health and satisfaction level of firm members
- explore the need for professional development or career advancement for firm members
- promote congeniality among colleagues.

Depending on their circumstances, lawyers may wish to consider the use of regular partnership meetings

- staff meetings
- firm retreats
- social gatherings for all members.

Sole practitioners or smaller firms may consider meeting regularly with other comparable small firms on a formal or informal basis to

- keep abreast of developments in the legal community
- monitor the emotional health of fellow colleagues in other firms
- explore the need for professional development initiatives for smaller firms promote congeniality among lawyers in the local legal community

6.10 Compliance With Rule 3 The Practice of Law

Lawyers shall ensure that their practice complies with Rule 3 of the *Rules of Professional Conduct*.

In particular lawyers shall ensure that

- legal services provided are made available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the profession in accordance with Rule 3.01
- marketing of legal services complies with Rule 3.01 , Rule 3.02 and Rule 3.03.

6.11 Fees, Records, Insurance and Trust Accounts

Lawyers shall ensure that they comply with all legal and regulatory requirements. In particular, lawyers must

- maintain current fee paying, record keeping and filing requirements including payment of The Law Society of Upper Canada annual fees in accordance with By-Law 5
- filing of forms including the Member's Annual Report in accordance with By-Law 8
- keep records in accordance with By-Law 9, Part V
- maintain a trust account, if they receive money in trust or other property from clients, in accordance with By-Law 9, Part IV
- preserve client property in accordance with Rule 2.07 of the *Rules of Professional Conduct*.

- a lawyer shall care for a client’s property as a careful and prudent owner would when dealing with like property and shall observe all relevant rules and law about the preservation of a client’s property entrusted to a lawyer in accordance with Rule 2.07
- ensure that they maintain professional liability insurance in accordance with By-Law 6.

6.12 Practice Arrangements

In addition to the legal and regulatory requirements applicable to all lawyers individually, lawyers shall ensure that they also comply with regulatory and legal requirements specific to their practice arrangement.

Lawyers may include in firm partnership agreements, shareholder agreements or employment contracts, terms to ensure that professionalism, courtesy and good faith are maintained in accordance with Rule 6.01 of the *Rules of Professional Conduct* particularly respecting client matters when

- practice arrangements change
- practice is dissolved
- there is misconduct by a firm member
- firm member leaves firm.

The following additional considerations will apply to various practice arrangements:

6.12.1 Sole Practitioners Shared Arrangements

Lawyers practising in various space and or cost sharing arrangements

- must maintain separate trust accounts
- absent client waiver, must maintain client confidentiality, within the shared premises
- must identify and manage potential or actual conflicts of interest arising from the office or expense arrangements.

6.12.2 Sole Practitioners Employing Associates

Sole practitioners who employ associates may wish to consider reducing the employment contract to writing.

6.12.3 Partnerships and Limited Liability Partnerships

Lawyers practising with other lawyers in partnerships may wish to consider reducing to writing the terms of the partnership by way of partnership agreement.

If the partnership is a limited liability partnership, lawyers shall comply with all applicable legal and regulatory requirements, and in particular By-Law 7, Part I.

6.12.4 Professional Corporations

Lawyers practising in a professional corporation shall ensure compliance with all applicable legal and regulatory requirements and, in particular, By-Law 7, Part II. Lawyers may wish to consider entering into a written shareholder agreement.

6.12.5 Multi-Disciplinary Practices or Partnerships

A member may, in connection with the member's practice of law (or in partnership or association), provide to a client only the services of an individual who is not a member who practices a profession, trade or occupation, that supports or supplements the practice of law. [By-Law 7, s. 17]

In the event lawyers' practices are multi-disciplinary they shall ensure that

- pursuant to Rule 2.04 (13) of the *Rules of Professional Conduct*, non-lawyer partners and associates observe Rule 2.04 Avoidance of Conflicts of Interest in relation to the legal practice and any other business or professional undertakings carried on by them outside the legal practice
- they comply with By-Law 7, Part III Multi-Discipline Practices

6.12.6 Affiliations

An affiliated entity is any person or group of persons other than a person or group authorized to practise law in or outside Ontario. Rule 1.02 of the *Rules of Professional Conduct*.

An affiliation is the joining on a regular basis of a lawyer or group of lawyers with an affiliated entity in the delivery or promotion and delivery of the legal services of the lawyer or group of lawyers and the non-legal services of the affiliated entity.

In the event lawyers enter into an affiliation as defined by the *Rules of Professional Conduct*, lawyers shall comply with

- Rule 2.04 (10.1) of the *Rules of Professional Conduct* and
- By-Law 7, Part IV Affiliations.

6.12.7 Inter-provincial Practices

Lawyers practising in interprovincial law firms shall ensure that they comply with By-Law 4, Part VII.

6.13 Relationship to Students, Employees and Others

6.13.1 Articling and Summer Students

If lawyers employ summer law students or articling students they

- shall comply with Rule 5: Relationship to Students, Employees, and Others, including
 - **Rule 5.01(2)** Direct Supervision which requires that a lawyer shall assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants to whom particular tasks and functions are delegated, in accordance with Part I of By-Law 7.1.
 - **Rule 5.02(1)** Recruitment Procedures requiring that a lawyer observe the procedures of The Law Society of Upper Canada respecting recruitment of articling students and the engagement of summer students
 - **Rule 5.02(2)** Duties of Principal requiring that a lawyer acting as a principal to a student shall provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession

6.13.2 Supervision of Staff and Assistants

In accordance with the *Rules of Professional Conduct* and Part I of By-Law 7.1, lawyers shall

- assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants [Rule 5.01(2)]
- not permit a non-lawyer to do the functions listed within Rule 5.01(3)(4)(5) and section 4 of By-Law 7.1.
- only permit the non-lawyer to do the functions outlined in section 5 of By-Law 7.1 after providing the non-lawyer with prior express instruction and authorization to do so
- not send out collection letters over the signature of a lawyer, unless the letter is on the lawyer's letterhead, prepared under the lawyer's supervision, and sent from the lawyer's office [By-Law 7.1, Part I, s. 7]
- not delegate to the affiliated entity or the affiliated entity's staff any tasks in connection with the provision of legal services without obtaining the client's informed consent. [By-Law 7.1, Part I, s. 3(2)]

Resources

- [Additional Resources \(PDF\)](#)
- [Business Development Workshop](#), Practice PRO
- [By-Law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [Continuing Legal Education](#)
- [Law Society Act, s. 41](#)
- [Managing a Mentoring Relationship](#), Practice PRO
- [Practice Management Workshop](#), Practice PRO
- [Practice PRO - Online Coaching Centre](#)
- [Report to Convocation \(PDF\)](#), January 24, 2002 at 5, *Professional Development & Competence Committee*
- *Rules of Professional Conduct*, [Rule 2.01](#)

7. Time Management

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7.1 Introduction

Timeliness is the cornerstone of client service. Lawyers who are effective time managers are more productive and more likely to meet a client's need for timely service. The *Time Management Guideline* summarizes the essential features of effective time management systems. It offers suggestions on how to organize and make effective use of the time allocated to lawyers' practices and outlines the basic features of time planning, reminder and docketing systems.

7.2 Essential Features

Lawyers should implement and maintain the following systems

- time planning systems
- reminder systems
- time docketing or recording system

7.3 Time Allocated to Practice

Lawyers should organize the time allocated to their law practice.

Lawyers should consider maintaining regular office hours, allocating time to complete tasks in an efficient, timely and cost-effective manner.

Lawyers may consider specifically allocating blocks of time **each day**, depending on the nature of their practice, to

- plan for that day to determine what must be accomplished
- return phone calls and e-mails, particularly from clients
- address and deal with correspondence
- ensure docket entries are recorded or assigned to client files
- address urgent or priority matters

each day, week or month, depending on the nature of their practice, to

- plan for that week, month or longer period
- meet with clients
- work uninterrupted on client files including
 - drafting
 - researching
 - reviewing documentation

- schedule out-of-office attendances such as
 - client meetings
 - examinations
 - court and tribunal appearances
 - closings
- meet with firm personnel or colleagues
- attend to administration or business aspects of the practice
- attend to accounting, book keeping and filings requirements, pursuant to the *Law Society Act*, *By-Laws* or *Rules of Professional Conduct*
- conduct periodic, usually monthly, reviews of all open client files

each month or year, to

- attend continuing education relating to professional development.

7.4 Effective Use of Time

Lawyers should develop skills and adopt policies and procedures to enable them to make efficient use of the time allocated to their law practice.

Lawyers may consider the following methods to improve efficiency:

7.4.1 Control interruptions

by accepting telephone or office contacts (unless urgent) at specific times of the work day and limiting “open door” policies, particularly during the most productive hours and when meeting with clients or other lawyers

7.4.2 Focus on one task at a time

trying to complete each task without interruption

7.4.3 Delegate

by assigning work to firm personnel or other professionals, ensuring proper supervision in accordance with Rule 5.01 of the *Rules of Professional Conduct*

7.4.4 Cultivate effective time management skills

- by learning to overcome or manage procrastination
- by learning to place limits on or refuse unreasonable requests whether from potential clients, existing clients, or colleagues

7.4.5 Keep time records

for individual client matters and also consider keeping a personal time log of all activities, billable and non-billable, to determine what activities are non-productive or inefficient

7.4.6 Adopt procedures to eliminate inefficiencies

- by avoiding meetings unless necessary, making use of telephone conferences and having and following meeting agendas
- by keeping a record of what work was accomplished to avoid duplication of work
- by keeping files organized and, when not in use, returning files to their proper cabinet or location to allow for easy and efficient access and to prevent loss
- by ensuring that all documents are promptly dealt with and filed away, perhaps implementing a “never touch a document more than once” rule
- by standardizing and systematizing routine tasks.

7.5 Time Planning and Reminder Systems

Lawyers should consider maintaining all of the following systems:

7.5.1 To Do Lists

- setting out what must be accomplished, daily or otherwise organized in order of importance

7.5.2 Desk Diaries or Calendars

- to plan their time on a daily, weekly, monthly and yearly basis
- to act as reminders for
 - appointments
 - court, tribunal, closings or other attendances relating to client matters
 - crucial dates including
 - limitation periods
 - The Law Society of Upper Canada filing requirements.

7.6 Centralized Tickler or Reminder Systems

These systems should assist in

- flagging limitation periods and deadlines
- follow up, to ensure lawyers respond to reminder notices on time
- reminding lawyers of steps to be taken in particular files.

Lawyers should assume or assign, usually to their secretaries or administrative assistants, responsibility for

- diarising key dates in time management systems
- ensuring compliance with deadlines.

Ultimate responsibility for meeting deadlines and limitation periods rests with lawyers.

Lawyers should conduct periodic, usually monthly, reviews of all open client files to ensure that work on all files is being completed in a timely and cost-effective manner.

7.6.1 Time Docketing or Recording Systems

Lawyers should record or docket all the time, billable and non-billable, on each client file or matter. For each client, lawyers should specifically record

- client name
- matter or file reference and code
- activity or work performed, including all telephone attendances and correspondence
- time spent on the activity or work.

Lawyers should use manual or electronic daily time sheets to

- docket immediately after the activity or work is complete
- ensure that docket entries are recorded or assigned to client files daily.

Lawyers should consider implementing time recording or time docketing systems that

- explain services to be performed
- accumulate the total time expended on the file by each lawyer
- permit the recording of billable and non-billable time
- produce interim and final statements of accounts for services rendered to clients
- produce time data for monthly, quarterly and annual reports to assist in management of the law firm.

Resources

- [Additional Resources \(PDF\)](#)
- [By-law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [Law Society Act, s. 41](#)
- [Manual Limitation Reminder or Tickler Systems \(PDF\)](#)
- [Overcoming Procrastination Workshop](#), Practice PRO
- [Rules of Professional Conduct, Rule 2.01](#)

8. Personal Management

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

8.1 Introduction

The talent and knowledge of individual lawyers may be among a firm's most valuable business asset(s). Lawyers determine the quantity and quality of legal services. Preserving, enhancing, and investing in the lawyers' well being is a necessary component of a risk management plan and a key factor in the business success of a law practice.

In the current legal environment, some lawyers are particularly vulnerable to stress related ailments which compromise their performance and service to clients. The *Personal Management Guideline* assists lawyers in recognizing the sources and indicia of emotional or mental dysfunction and provides basic suggestions, strategies and resources to manage personal well being.

8.2 Risks of Emotional or Mental Disturbances or Substance Abuse

It is important that the lawyer recognize that members of the legal profession may be at greater risk than the general population for

- alcoholism
- drug addiction
- depression
- suicide

and that improper conduct may arise from emotional, mental or family disturbances, or substance abuse.

8.3 Recognizing Sources of Stress in Legal Profession

Lawyers should be aware of and recognize common sources of stress in the legal profession generally, and particularly, in their own lives. Sources of may stress include³

- excessive work hours
- the burden of responsibility for other people, their money, family, or freedom
- high public expectation of performance and standards coupled with lower public tolerance or understanding
- increased adversarial nature of the practice and of other lawyers
- increased competition among lawyers for clients or legal work
- increased complexity of law
- undertaking work that may be uninteresting or monotonous to survive financially
- isolation from supportive colleagues

3 Taken from D. Kozich, "Stress: What Is It?", in J. Tamminen, ed., *Living With the Law, Strategies to Avoid Burnout and Create Balance*, (Chicago: American Bar Association, 1997)¹ at 2.

- taking on work outside area of expertise
- taking on too much work
- putting off difficult tasks.

8.4 Recognizing Symptoms of Dysfunction

It is important that the lawyer recognize the symptoms or signs of emotional or mental dysfunction⁴

- physical exhaustion
- feelings of helplessness or hopelessness
- being emotionally drained
- having a negative attitude toward work, other people or life in general
- having a negative self image
- feelings of guilt and or shame
- feeling overly suspicious
- having a sense of omnipotence or indispensability, making it difficult to cut back on workload or responsibilities
- experiencing progressive loss of idealism
- treating colleagues, staff, clients and adversaries in a detached, dehumanizing way
- being frequently absent from and/or late for work
- frequently delaying meetings with others and/or missing deadlines
- experiencing increased rigidity
- deteriorating quality of work
- feeling anxious
- feeling irritable or angry, overreacting or angry outbursts
- experiencing ulcers, headaches, backaches and or high blood pressure
- experiencing increased marital or family conflicts or conflicts with close friends
- engaging in compulsive behaviours such as overeating or overspending
- engaging in substance abuse
- difficulty sleeping or excessive sleeping.

8.5 Reducing or Managing Stress

Lawyers should attempt to adopt strategies, attitudes and skills to reduce, eliminate, or manage dysfunctional stress, by managing their physical health and well-being and managing their personal and emotional lives.

4 List is taken in part from S. Gilmore, “Balance or Burnout: Which Way are You Headed?”, in J. Simmons, ed., *Life, Law and the Pursuit of Balance*, (U.S.A.: Maricopa County Bar Association, 1997) 16.

8.6 Managing Physical Health and Well Being

Lawyers may wish to consider adopting lifestyle habits and strategies to enhance physical well being, such as

- eating a well balanced diet
- not skipping meals
- maintaining a healthy weight
- engaging in regular aerobic activity
- having an interest and/or hobby outside of the law
- practicing relaxation techniques such as meditation and deep diaphragmatic breathing
- reducing or eliminating the use of abuse of alcohol, tobacco/nicotine or caffeine
- monitoring the use of prescribed drugs to guard against either physical or psychological dependence or addiction. Three main classes or types of drugs that potentially cause dependency or addiction are
 - narcotics, used to control pain
 - stimulants, prescribed to control behaviour
 - depressants, to treat insomnia, minor pain and convulsions
- getting sufficient sleep and rest to allow the body to recuperate
- having a support structure in place, such as family and friends.

8.7 Managing Personal and Emotional Life

Lawyers should attempt to organize their work and professional life in an effort to allow time to

- take regular vacations
- interact with families and friends so that strong social supports may be developed
- pursue hobbies
- pursue activities to enhance physical well being.

If necessary, lawyers may wish to consider pursuing skills training to assist in achieving balance in their personal and professional lives. Depending on the individual, lawyers may consider training in

- time management
- goal setting
- overcoming procrastination.

To assist in establishing a balanced lifestyle lawyers may consider developing and maintaining support groups within their law firm. Lawyers in sole practice should consider establishing connections with other lawyers as a means of recognizing and dealing with stress and dysfunction. Support groups should be geared to reducing isolation and providing a forum for sharing concerns with other members of the profession or co-workers. The lawyer may wish to consider

- scheduling regular partnership or firm meetings
- scheduling social gatherings for all members of the firm, professional and non-professional
- maintaining membership in, and participating in, local law association social activities and events

8.8 Seeking Assistance

Lawyers suffering from emotional, mental, or family disturbances or substance abuse should seek assistance as early as possible.

Lawyers who are aware of colleagues suffering from similar disturbances and substance abuse should encourage their colleagues to seek assistance as early as possible.

Sources of assistance for Ontario lawyers

- The Ontario Lawyers' Assistance Program (OLAP) 1-800-576-6227
- Legal Profession Assistance Conference (LPAC) 1-800-667-5722

In accordance with Rule 6.01(3)(d) of the *Rules of Professional Conduct*, lawyers must report to The Law Society of Upper Canada, unless to do so would be unlawful or would involve a breach of solicitor-client privilege, the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced.

Resources

- [Additional Resources \(PDF\)](#)
- [By-law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [Emotional Intelligence Workshop](#), Practice PRO
- [Getting Stress Hardy Workshop](#), Practice PRO
- *Law Society Act*, s. 41
- [LPAC](#) (Legal Profession Assistance Conference)
- [OLAP](#) (Ontario Lawyers' Assistance Program)
- [Overcoming Procrastination Workshop](#), Practice PRO
- *Rules of Professional Conduct*, [Rule 2.01](#)
- [Wellness and Balance Resources](#), Practice PRO

9. Closing Down Your Practice

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.

9.1 Introduction

Lawyers leaving the practice of law must address client interests and regulatory requirements at the time of closing the practice and for sometime thereafter. The *Closing Down Your Law Practice Guideline* provides direction on the appropriate management in active client matters and property, disposal and storage of files and records, trust accounting and banking issues and suggestions relating to personnel and office matters.

9.2 Active Client Files, Notification to Clients

Lawyers should give notice to existing clients with active ongoing matters

- that the lawyer is leaving the law practice
- name of the lawyer or law firm that will have or has the file
- that clients may direct their files to a lawyer of their choice, if they prefer or
- that the client may attend at the office to pick up the file.

Where the client cannot be located, notice to the client should be in writing delivered to the client's last known address.

9.3 Withdrawal From Representation

Pursuant to Rule 2.09 of the *Rules of Professional Conduct* a lawyer must not withdraw from representation of a client except for good cause and upon appropriate notice to the client.

Any lawyer who has outstanding client matters that will not be completed prior to closing down the practice must comply with the notice provisions of Rule 2.09.

In accordance with the Commentary to Rule 2.09(1), appropriate notice will vary with the circumstances. Lawyers should ensure that

- governing statutory provisions or rules of court or tribunal are followed, if applicable
- client's interests are protected to the best of the lawyer's ability
- client is not deserted at a critical stage of the matter or at a time when withdrawal would put the client in a position of disadvantage or peril.

9.4 Tribunals, Notice of Change of Representation

Lawyers should, in accordance with relevant statutory provisions or rules of procedure, change or remove their names as "solicitors of record" in outstanding tribunal matters.

Depending on the circumstances and the relevant statutory provisions or rules of procedure relating to the particular tribunal, lawyers may be removed as "solicitor of record"

- by Notice of Change of Solicitors appointing a new lawyer to whom the file has been transferred

- by Order removing the lawyer as solicitor of record
- by the client filing a Notice of Intention to Act in Person.

9.5 Undertakings

Pursuant to Rule 6.03(10) of *Rules of Professional Conduct* lawyers must fulfill every undertaking given. The Commentary to Rule 6.03(10) provides that the person to whom the undertaking is given is entitled to expect that the lawyer giving the undertaking will honour it personally.

Before closing or transferring their practices lawyers should

- complete all undertakings given, or
- obtain a commitment in writing from the lawyer taking over the file(s) to satisfy the outstanding undertaking(s), and
- provide written notice of the commitment to the person to whom the original undertaking was given to ensure that the commitment is acceptable and sufficient to relieve the original lawyer from the undertaking obligations.

9.6 Reporting Letters

Lawyers must have professional liability insurance coverage if they render legal advice. In instances where the practice is winding up, the lawyer must ensure that all outstanding reporting letters are completed while mandatory professional liability insurance coverage is in effect.

If the lawyer intends to complete outstanding reporting letters himself or herself, they should be completed

- prior to closing down the practice, or
- after closing down the practice, but only if the lawyer maintains professional liability insurance coverage.

If the lawyer does not intend to complete the letters and the file is being transferred to another lawyer, the matter of outstanding reporting letters should be brought to the attention of the new lawyer.

9.7 Legal Aid Matters

For completed matters lawyers should submit their final accounts to the Legal Aid office.

For matters that remain outstanding lawyers should submit a final account for legal services that have been completed and

- advise the Legal Aid Area Director, in writing, that the practice is closing
- notify the client that the client must apply for a change of solicitors with the legal aid office , or
- with the approval of the area Legal Aid Director, transfer the file to another lawyer as directed by the client.

For further information lawyers should contact their Legal Aid Area Director or Legal Aid Ontario.

9.8 Disposal and Storage of Files and Records

9.8.1 Books and Records

Lawyers must retain certain accounting books and records in accordance with legal and regulatory requirements, in particular

- pursuant to The Law Society of Upper Canada requirements in By-Law 9, s. 23
- general account records are to be preserved for six (6) years
- trust account records are to be preserved for ten (10) years
- pursuant to the Income Tax Act of Canada, requirements as provided for in that Act and its regulations, including ss. 230(4) to (7) of the Act, Part 5800 of the Regulations and Information Circular 78-10R3.

9.8.2 Closed Client Files

As part of closing down a practice, the lawyer must determine how to deal with closed client files. Central to that determination is whether closed client files contain documents or property belonging to the client.

Only documents that belong to the lawyer need remain in closed client files

- copies of correspondence including e-mail, memos or notes relating to communications
- file notes
- if applicable, copies of drafts and final versions of agreements as evidence of client instructions
- copies of bills to the client and trust statements.

If closed files contain valuable client documents or property, before disposing of client files as part of the closing down of their practices, lawyers must comply with Rule 2.07 Preservation of Client's Property of the *Rules of Professional Conduct*.

9.8.3 Retaining or Disposing of Files

It is important for the lawyer to retain closed client files if he or she anticipates that the file may be required for later reference. An example would include the need to defend against potential allegations of misconduct or malpractice.

Client files that should be retained and the length of retention will be determined by the particular circumstances taking into account

- whether other sources are available to obtain information contained in the file such as information stored in Registry Offices or court records
- lawyer's potential liability for errors and omissions, and any applicable limitation periods.

If the lawyer chooses to destroy client files he or she must ensure that client confidentiality is maintained during destruction or disposal. The lawyer should consider shredding closed client files on site.

Lawyers may choose not to destroy client files and to retain client files indefinitely despite the winding up of their practices or retirement from the practice of law.

9.8.4 Delivering Files to Clients

Assuming former clients can be located, lawyers may deliver closed client files to their client. It is important for lawyers to determine whether it is prudent to do so taking into consideration

- lawyer will have no record (except perhaps a photocopy of the file) in the event of a negligence claim or some other dispute or question concerning the file
- file may contain personal notations by the lawyer that may stimulate unintended controversy.

9.8.5 Transferring Files to Other Lawyer

Subject to Rule 2.07 of the, *Rules of Professional Conduct* the lawyer may transfer custody of closed files to another lawyer for storage and safe keeping.

9.9 Client's Property

9.9.1 Preservation of Client's Property

If a lawyer holds client property at the time of closing down his or her practice, in accordance with Rule 2.07(1) of the *Rules of Professional Conduct*, the lawyer must

- continue to care for the client's property as a careful and prudent owner would when dealing with like property
- observe all relevant rules and law about the preservation of the client's property.
- use their best efforts to return client property to the client.

If the client cannot be located to return valuable client property, then

- in the event a new lawyer has agreed to maintain custody of the client's property for safe keeping, and subject to any legal requirements to the contrary, the lawyer may transfer client property to the new lawyer who shall treat the property as client property entrusted to his or her care in accordance with Rule 2.07, or
- in the event the lawyer is unsure of the proper person to receive client property, then in accordance with Rule 2.07(6), the lawyer shall apply to a tribunal of competent jurisdiction for direction and comply with the tribunal's order, or
- the lawyer may retain custody of the client property in compliance with Rule 2.07, and
- the lawyer must notify the Administrative Compliance Department of The Law Society of Upper Canada, in writing, to advise where clients may retrieve their property, and,
- the lawyer must send a letter to the client's last known address advising the client of the arrangements for storage of their property in light of the practice closing down.

9.10 Wills

Lawyers who have custody of client (testator) wills and are able to locate clients or former clients should, in writing:

- advise clients that the practice is closing down or being sold
- if the practice is being sold or transferred, should advise the client of the name(s), address, and telephone number of the lawyer(s) who will take over the practice, and
- ask for the client's instructions as to whether the will is to be transferred to the new lawyer taking over the practice, to another lawyer as directed by the client, or to be returned to the client.

If the will is to be delivered to a new lawyer or third party, the lawyer should obtain the client's executed direction as to whom the will is to be delivered.

Lawyers who have custody of client wills and are unable to obtain client instructions or directions, as in cases where the client cannot be located, should

- in the event a new lawyer has agreed to take custody of the will, and subject to any legal requirements to the contrary, transfer the wills to the new lawyer who shall preserve client wills in accordance with Rule 2.07, or
- in the event the lawyer is unsure of the proper person to receive a client's will, then in accordance with Rule 2.07(6), the lawyer shall apply to a tribunal of competent jurisdiction for direction and comply with the tribunal's order, or
- the lawyer may retain custody of the clients' wills in compliance with Rule 2.07, and
- the lawyer must notify the Administrative Compliance Department of The Law Society of Upper Canada, in writing, to advise as to the location of client wills, and
- send a letter to the client's last known address advising the client where their will is to be located in light of the practice closing down.

Lawyers should not deliver original wills to a client's last known address unless the lawyer is certain that the client is present to accept it.

Notification of the location of original client wills should be made to the Administrative Compliance Department of The Law Society of Upper Canada at 416-947-3366 or toll free 1-800-668-7380 x3366.

9.11 Corporate Books, Seals and Records

Lawyers shall ensure that they comply with any legal requirements respecting the custody and storage of corporate books, seals and records.

In the event lawyers are unsure of the proper person to receive corporate documents and seals, the lawyer should apply to a tribunal of competent jurisdiction for direction in accordance with Rule 2.07(6).

9.12 Accounting and Banking Issues

9.12.1 Trust Accounts

Lawyers with trust funds on deposit as of the date the practice is closed or sold should

- if fees and disbursements remain outstanding, for which an account has been delivered to the client in accordance with By-Law 9, Part IV, and barring any other claim or right to the funds, apply the funds to the outstanding amount owing, or
- return the funds to the client, or
- on written direction from the client, deliver the funds to the client's new lawyer.

Where the client does not claim trust funds, does not provide a direction for transfer of the funds to a third party, or cannot be located, then the lawyer must either

- retain the funds in his or her trust account in accordance with the requirements for preservation of the client's property set out in Rule 2.07 and any applicable legal or regulatory requirements, or
- make application to deliver the unclaimed funds to The Law Society of Upper Canada's Unclaimed Trust Fund, via 416-947-3312 or 1-800-668-7380.

Lawyers who maintain balances in their trust accounts after their practice has been closed shall continue to comply with The Law Society of Upper Canada's trust accounting filing requirements.

Lawyers may only close trust accounts when all trust funds have been accounted for and the balance is zero. Once a trust account has been closed, the lawyer must notify the Law Foundation of Ontario of the closure, via the prescribed form.

9.12.2 General Accounts

If accounts receivable remain outstanding lawyers may wish to continue to operate general firm accounts for a period of time after the practice is closed.

9.12.3 Annual Filing

A lawyer closing down his or her practice is required to comply with all The Law Society of Upper Canada filing requirements.

9.12.4 Collecting Accounts Receivable

Lawyers may continue to collect accounts receivable or sell the accounts receivable if the practice is sold or transferred to another lawyer(s).

9.13 Personnel and Office Matters

9.13.1 Employees

Lawyers shall prepare, deliver and file all documentation and deliver remittances as required in law relating to firm personnel, including

- Records of Employment for each employee
- Income Tax withheld
- Canada Pension Plan and Employment Insurance payments withheld
- employer contributions to be paid.

9.13.2 Office Premises

It is important for lawyers to review any leases relating to firm premises to determine terms of cancellation, assignment, or if necessary, subletting.

9.13.3 Telephone

It is important for lawyers to consider how to dispose of firm telephone systems including

- transfer or sale of telephone system and or telephone number
- cancellation of telephone service by notice to service provide
- cancellation of advertisement in yellow pages or other advertising directories
- cancellation of listing in telephone or address directories such as
 - Yellow Pages
 - Martindale and Hubbell

- Ontario Lawyers Phone Book
- Canada Law List.

9.13.4 Lease Equipment

It is important for lawyers to make arrangements to dispose of leased equipment in accordance with the terms of the lease. Typical leased equipment may include

- computer systems
- dictation equipment
- paper shredders
- photocopiers
- facsimile machines
- phone systems.

9.13.5 Used Furniture and Office Equipment

Lawyers may wish to consider selling their office furniture to used furniture and equipment dealers.

9.13.6 Law Library

Lawyers may wish to sell their law library to used book companies or by private sale to others.

9.13.7 Building Directory and Signs

It is important for lawyers to consider the removal of their names from any building directory and firm signs.

9.14 Notices of Change

9.14.1 LAWPRO

Lawyers may wish to notify **LAWPRO** to advise that the law practice is to be wound up, ideally sixty (60) days prior to the closing. Lawyers should assess insurance coverage needs once the practice has been closed.

Lawyers may wish to consider whether, in the circumstances, they should purchase additional run-off coverage to protect against any potential claims that may arise after the practice has been closed.

Lawyers should contact **LAWPRO** to review insurance options at 416- 598-5899 or toll free 1-800-410-1013.

9.14.2 Notification to The Law Society of Upper Canada

Shortly before closing down his or her practice, the lawyer should, in writing, notify The Law Society of Upper Canada of the winding down of the practice, the reason for the closing and where future correspondence may be sent.

Pursuant to By-Law 5, lawyers over 65 years of age may apply to continue their membership in The Law Society of Upper Canada without payment of an annual fee.

9.14.3 Boxes at Registry Offices, Court Houses, Document Exchanges

It is important for lawyers to arrange to free up document boxes at registry offices, courthouses or document exchange centres and to provide a forwarding address.

9.14.4 Subscriptions and Publications

Lawyers should consider whether to cancel subscriptions and notify publishers of any address change.

9.14.5 Posting of Notice

Lawyers may wish to prepare a short notice to advise of the disposition of the law practice and post it in appropriate physical or electronic notice boards in

- office building lobby directory
- office door
- Sheriff's Office
- Registry and Land Titles Offices
- all Court Offices in the area of practice
- County Law Association Law Library
- Local Registrar's office
- Appeal Court office
- electronic bulletin boards
- web sites and links
- local newspapers.

9.14.6 Mail and E-mail Redirection

Lawyers may wish to leave a forwarding address for deliveries with the post office, the superintendent of the building and neighbouring offices.

Lawyers may consider maintaining e-mail services for a short period of time that are automatically programmed to respond and advise of the closing.

9.14.7 Memberships

Lawyers may wish to consider whether memberships in professional organizations should be terminated or the member status changed.

9.15 Miscellaneous

9.15.1 Powers of Attorney

Lawyers appointed as attorneys pursuant to a power of attorney should understand that, subject to the specific provisions of the power of attorney, these appointments remain in full force and effect whether or not the lawyer continues to practice law.

Lawyers who do not wish to continue as attorneys pursuant to a power of attorney should contact the clients concerned and obtain the client's instructions on how to proceed.

9.15.2 Notary Public and Commissioner of Oaths

It is important for lawyers to review the relevant statutes relating to commissioners of oaths and notaries, namely *Commissioners for Taking Affidavits Act*, R.S.O. 1990 c. C.17 and *Notaries Act*, R.S.O. 1990 c.N6.

Lawyers who cease to practise law should not provide legal advice when acting as commissioner of oaths or notaries.

A lawyer who no longer practises law may be able to continue to act as notary pursuant to the *Notaries Act* as long as the lawyer's licence to practice law has not ceased (i.e., been suspended, surrendered or revoked) and is not in abeyance. The lawyer must determine the ability to act as notary by reference to the Act.

In accordance with the *Commissioners Act*, lawyers are ex-officio commissioners provided that they are entitled to practise law in Ontario. Lawyers who no longer practise law may be able to act as commissioners of oaths provided that no legal advice is given and the commissioning is done on an occasional basis as a public service.

Resources

- [By-Law 11, Regulation of Conduct, Capacity and Professional Competence](#)
- [File Destruction](#)
- [File Retention \(PDF\)](#)
- [File Transfer](#)
- [Law Society Act, s. 41](#)
- [Law Foundation of Ontario](#)
- [LawPRO \(Lawyers' Professional Indemnity Company\)](#)
- [Membership Services](#)
- [Rules of Professional Conduct, Rule 2.01](#)
- [Solicitor's Liens \(PDF\)](#)
- [Spot Audit Q & A's](#)
- [Undertakings](#)
- [Withdrawal of Services \(PDF\)](#)