



NOVA SCOTIA BARRISTERS' SOCIETY

GUIDELINES FOR SUSPENDED OR DISBARRED MEMBERS AND THOSE WHO ARE PERMITTED TO RESIGN¹

Section 37(1) of the *Legal Profession Act*, S.N.S. 2004, c. 28, provides as follows:

The Complaints Investigation Committee may, by resolution, where in its opinion it is in the public interest to do so,

- a) suspend a practising certificate; or
- b) impose restrictions or conditions on a practising certificate, during or following an investigation until the suspension, restrictions or conditions are rescinded or amended by the Complaints Investigation Committee or a hearing panel.

Effective from the date of suspension, resignation or disbarment, and subject to the duties of a Receiver appointed to take control of a member's practice under Section 51(1) of the Act, or a Custodian appointed under Section 53(1):

1 - YOU MAY:

- a) See clients only for the limited purpose of assisting them in transferring their past or present legal work to another lawyer;
- b) Collect accounts receivable;
- c) Render accounts for work completed on or before the date of your suspension, resignation or disbarment;
- d) Provide services to the public as an agent where permitted by statute (such as Small Claims Court) on the specific condition that the principal(s) has been advised, in writing, that you are not acting as a lawyer and that your representation will not afford them the protection of the Lawyers' Insurance Association of Nova Scotia in the event of your negligence or the protection of Lawyers' Fund for Client Compensation in the event of dishonesty or fraud. In addition, any Court, administrative tribunal or other adjudicative body, as well as all other parties involved must be informed that you are appearing as an agent and not as a lawyer.

2 - YOU SHALL NOT:

Carry on the practice of law in any way, nor, represent or hold yourself out as a lawyer in any way. Except on the terms set out above and without limiting the generality of the following, you shall not:

- a) Accept any new clients;
- b) Accept new legal work for existing clients;
- c) Give legal advice to any client, other individual, corporation or other entity;
- d) Provide advice and/or opinion to any successor lawyer on client files subsequent to the date of

¹ Adapted from the Guidelines for Suspended Members' from the Law Society of Upper Canada

suspension or disbarment, other than to explain to successor counsel why strategic decisions were made or steps were taken with respect to a file where such reasons may not be apparent from the file itself, as long as in so doing it does not constitute the practice of law;

- e) Continue, commence, carry on or defend any lawsuit or proceeding for any client, other individual, corporation or other entity, with or without fee, except in accordance with the provisions of 1(d);
- f) Appear in court for any purpose other than in your personal capacity to represent yourself as a party and/or as a witness, except in accordance with the provisions of 1(d);
- g) Draft or revise legal documents of any type, and/or execute documents of any type which require or permit execution by a lawyer;
- h) Notarize documents or swear affidavits pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28, or any other applicable legislation;
- i) Report to or communicate with clients, other than to: 1) inform them that you are not practising law; and/or 2) deliver an account for services rendered prior to your suspension, resignation or disbarment (for the preparation of client reporting letters see 3(b) below);
- j) Certify, or give any opinions on, title to property;
- k) Draft and/or send a demand letter threatening or intimating that legal proceedings of any form will be taken on behalf of a third party, with or without fee, except in accordance with the provisions of 1(d);
- l) Act as a lawyer for the estate of a deceased person or party under a "disability" as defined by the Civil Procedure Rules;
- m) Prepare wills or have anything to do with the administration, distribution or completion of estates, other than in your capacity as an executor;
- n) Give to another lawyer or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
- o) Hold yourself out as a lawyer;
- p) Occupy or share office space with a lawyer;
- q) Provide services to a lawyer, in relation to that individual's practice of law. Chapter 19, Commentary 19.2 of the Handbook provides AA lawyer has a duty not to employ in any capacity having to do with the practice of law, without the approval of the Society, a lawyer who is under suspension as a result of disciplinary proceedings or one who has been disbarred as a lawyer or has been permitted by Council to resign.
- r) Act as a principal to an articled clerk;
- s) Accept any referrals from the Lawyer Referral Service of the Legal Information Society of Nova Scotia.
- t) Exert a solicitor's lien over any client files or materials. As you are no longer entitled to hold any client files, you cannot exert a lien over the materials. You are encouraged to provide your account for services rendered to the client on the file up to the date of suspension or disbarment. You may ask a client to sign a promissory note or a direction to pay before releasing the file materials to the client, but this cannot be a precondition to releasing the file. Following your release of the file, you may pursue your accounts receivable and avail yourself of any appropriate civil remedies.

In transferring carriage of a file to successor counsel, you should turn your mind to arrangements for payment of your account, and should clearly set out the basis for your account and any expectations you have concerning payment for the work which you have done. You may make arrangements with successor counsel for payment of monies owed to you on a file when there is an expectation that the fees will only be payable when the matter is concluded, except in circumstances where there is a Society appointed Receiver/Custodian.

3 - Subject to the duties of a Receiver or Custodian appointed under Sections 51(1) or 53(1) of the Act, YOU MUST:

Fulfill the requirements of all paragraphs below and confirm, in writing, to the Society, **within 30 days of your suspension, resignation or disbarment**, that you have done so.

- a) Arrange immediately to inform all clients in active matters that they should take their files to a solicitor of their choice. You may, in this capacity, suggest a referral to a particular lawyer. The ultimate choice of who is retained rests with the client and not with you;
- b) Assign any and all outstanding reporting letters to another lawyer in good standing for completion. You may prepare a draft report for the lawyer of your choice, but that lawyer must review the file completely and send any reporting letter out to the client on their letterhead. You may make personal arrangements with the lawyer for their remuneration. You may advise successor counsel why strategic decisions were made or steps were taken with respect to a file where such reasons may not be readily apparent from the file itself, as long as in so doing it does not constitute the practice of law;
- c) Employ a lawyer or agent to complete all undertakings given by and accepted by you prior to your suspension or disbarment;
- d) Return original wills and documents to clients or arrange to transfer this part of your practice to another lawyer, and inform your clients who has been given possession of their wills, documents and files;
- e) Provide the Society with written confirmation of the location of all active and closed files and the names of any individuals who will have access to those files during the period of suspension;
- f) Remove any sign from your door, building, premises, window, building directory or property designating it as a "law office" or designating you to be a "barrister", "solicitor", "lawyer", "Q.C.", "notary public" and/or "commissioner of oaths", in English or any other language. The above words must also be removed or crossed out from all stationery, letterhead, business cards, forms, stamps, accounts and any publications bearing your name;
- g) Telephone/fax:
 - (1) Either disconnect the lines or arrange for a voice message to advise callers that your law practice is closed and provide callers with the name and number of another lawyer to call for information regarding their files. Members under a definite suspension can leave a message advising when the office will reopen;
 - (2) Contact your telephone company and directory advertisers instructing them to remove from the next printing of the white and yellow pages of the telephone directory any words or abbreviations for "barrister", "solicitor", "lawyer", "Q.C.", "notary public" and/or "commissioner of oaths", in English or any other language, and to delete from Directory Assistance your law office listings and;
 - (3) Have your name deleted from the listing of lawyers under your law firm's name;
- h) Trust Account(s):

Have all trust funds on deposit balanced to client liabilities as of the date of your suspension resignation or disbarment, and turn funds over to:

 - (1) clients; or
 - (2) successor lawyer, in trust, by direction of client; or
 - (3) successor lawyer of your choice, in trust, if clients decline to claim or direct; and
 - (4) close the account(s), unless successor lawyer is a member of the firm with signing authority, and provide written confirmation from you and your financial institution that the account(s) have

been closed, and;

(5) provide the Society with a record of the outstanding trust balances as of date of account(s) closure which were transferred to other lawyers, and the names of those lawyers; and

(6) provide written confirmation from any lawyers receiving those funds that they are prepared to accept responsibility for the trust obligations in relation to those funds;

- i) Finalize your accounting books and records to the latest of the date of your suspension, resignation or disbarment and the closure of your trust account. Submit your annual filings within three months of the closure of your trust account, as required by the Regulations.
- j) Locate another member of the profession who will act as the articling principal to your current or incoming clerks and arrange for the orderly assignment or transfer of articles under the direction of the Director, Admissions & Professional Development at the Society.

Enquiries regarding these guidelines and compliance should be directed to the Society at 902-422-1491.

Approved by the Executive Committee March 7, 2003.

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Revised January 6, 2006

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