

## Practice Rules Compliance Committee

### Disclosure of Conflicting Interest - Practice Standard

#### *Code of Professional Conduct (2013) - Chapter 3, Section 3.4 Conflicts*

#### *Duty to Avoid Conflicts of Interest*

##### **rule 3.4-1**

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

#### **Joint Retainers**

##### **rule 3.4-5**

*Before a lawyer acts in a matter or transaction for more than one client, the lawyer must advise each of the clients that:*

- (a) the lawyer has been asked to act for both or all of them;*
- (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and*
- (c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.*

##### **rule 3.4-6**

*If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.*

##### **rule 3.4-7**

*When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.*

#### **Commentary**

**[1]** *Consent in writing, or a record of the consent in a separate written communication to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that a contentious issue will arise between them or their interests, rights or obligations will diverge as the matter progresses.*

The Practice Rules Compliance Committee has been informed that members' files do not always contain written documentation to substantiate the individual client's consent where members are representing multiple parties. Specifically, the lawyer, before accepting employment from more than one client in the same matter, must advise all potential clients and obtain their consent in writing or record the consent in separate letters to each client.

The Practice Rules Compliance Committee reminds members that failure to document written consent in the client file is offensive to rule 3.4-7, commentary [1] of the Code of Professional Conduct, 2013. Specifically, when representing multiple parties, members are required to obtain the client's written consent or confirm the client's consent in writing.

Members are directed to adhere to the practice standard prescribed by the Code of Professional Conduct (2013).