

CLIENT FILE MANAGEMENT REGULATION



icccrc
IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL
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CONSEIL DE RÉGLEMENTATION DES
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1. AUTHORITY

- 1.1 This Regulation is enacted pursuant to section 3.1 of the *By-law* of the Council.
- 1.2 In the event of any conflict between the English version and the French version of this Regulation, or between this Regulation and the Council's *By-law*, the English version of the *By-law* shall govern.

2. PURPOSE

- 2.1 The purpose of managing Client Files is to ensure that a Member manages Client matters in an effective and timely manner. In addition, maintaining Client Files helps ensure Client Property is kept safe and distinguished from Member's Property.

3. DEFINITIONS

- 3.1 In this Regulation, capitalized terms, unless otherwise defined herein, have the same meaning as they do in the *By-law*.
- 3.2 In this Regulation:
 - a) **"Active File"** means a Client File that is not completed and closed, pursuant to section 7.1 of this Regulation.
 - b) **"Actual File Destruction Date"** means the date a Client File is destroyed.
 - c) **"Authorized Representative"** means an individual who can offer immigration/citizenship advice and/or service for a fee or other consideration. An Authorized Representative includes a member in good standing with a Canadian provincial or territorial law society (including paralegals within their authorized scope of practice), the Chambre des notaires du Québec or ICCRC.
 - d) **"Client"** means a person or Entity whose interests the Member undertakes to represent, for a fee or other consideration, or *Pro bono* regarding a proceeding or application, or potential proceeding or application, under the *Immigration and Refugee Protection Act* or the *Citizenship Act*.
 - e) **"Client File"** means the physical paper folder containing the physical documents and/or the electronic folder or directory containing the electronic files, data or information related to the Initial Consultation Agreement and/or the Retainer Agreement for a particular Client (also referred to as "File" in this Regulation). A Client File contains Client Records, Client Property and Member Property.
 - f) **"Client Property"** means original documents and documents prepared for the Client's benefit which the Member has been retained by the Client to prepare. Client Property includes, but is not limited to, all original documentation belonging to the Client; all documents, information, and data provided to the Member, or to the Member's Agent, by the Client, or his/her Designate, prior to or after the signing of the Retainer Agreement;

the Retainer Agreement; the Initial Consultation Agreement; documents produced by the government or any other third party (e.g. letters) in connection with the Retainer Agreement; and all documents or other property the Member was retained to prepare in connection with the Retainer Agreement.

- g) **“Client Records”** mean documents that provide evidence of activities performed, events occurred, results achieved, or statements made as a result of the Initial Consultation Agreement and/or the Retainer Agreement.
- h) **“Closed File”** means a Client File that is completed, pursuant to section 7.1 of this Regulation.
- i) **“Designate”** means an individual who has been given authority, in writing, by the Client to act on his/her behalf in dealings with the Member. The Client shall specify what duties are being conferred to the Designate and the duration of the authority. A Designate shall not be compensated by the Client or the Member, for acting in the capacity as Designate.
- j) **“Entity”** means a company, business, corporation, partnership, institution, or any other organization that has a separately identifiable existence and which is distinguished from individuals.
- k) **“File Closing Date”** means the date a Client File is completed, pursuant to section 7.1 of this Regulation.
- l) **“Initial Consultation Agreement”** means a Client assessment and/or advice service agreement between a Member and his/her Client, or the Client’s Designate, which provides a written record of the purpose, fee, and date of said advice, and which is signed by both parties. A written Initial Consultation Agreement is only required when a consultation is given for a fee paid by the Client in advance.
- m) **“Joint Retainer Agreement”** means a Retainer Agreement where more than one Member is identified and/or where more than one Client is identified.
- n) **“Member Property”** means the documents a Member has prepared for his/her own benefit. A Member shall keep such documents as part of the Client File (e.g. original correspondence from the Client, or his/her Designate; instructions from the Client, or his/her Designate; copies of correspondence sent to the Client, or his/her Designate; working notes and summaries; inter-office memoranda; time entries and logs; Client Account records; notes and other documents prepared for the Member’s own benefit or protection, all documents or other property the Member was retained to prepare in connection with the Retainer Agreement, etc.).
- o) **“Projected File Destruction Date”** means the established date upon which the Client File may be destroyed.
- p) **“Pro bono”** means immigration/citizenship service or advice that is donated to or free for the Client.

- q) “**Retainer Agreement**” means the contract between the Member and the Client that sets out the terms of the business arrangement between them.

4. EXPECTATIONS

- 4.1 A Member engaged in *Pro bono* service shall comply with this Regulation.
- 4.2 Every Member shall maintain accurate and up-to-date Client Records for each Client with whom the Member has signed an Initial Consultation Agreement and/or Retainer Agreement.
- 4.3 A Member performing any function on a Retainer Agreement signed by another Authorized Representative shall independently maintain accurate and up-to-date Client Records on the matter or contribute to the Authorized Representative’s shared Client File.
- 4.4 A Member shall employ a clear and coherent system to:
- a) Open and maintain Active Files;
 - b) Label and identify Client Property;
 - c) Store and easily retrieve Active Files and Closed Files;
 - d) Place Client Property in safekeeping; and
 - e) Close, retain, destroy, and dispose of Closed Files.

5. OPENING AND MAINTAINING A CLIENT FILE

- 5.1 A Member shall open a File at the time of signing the Retainer Agreement with the Client.
- 5.2 A Member shall maintain a Client File that contains at a minimum:
- a) A copy of the Retainer Agreement and a copy of all other relevant agreements, such as but not limited to the Initial Consultation Agreement, and any Joint Retainer Agreement;
 - b) Copies of all supporting documents to the immigration application (e.g. police clearance, marriage certificate, academic transcripts, certified translation of documents, etc.);
 - c) Copies of correspondence between/about the Client, or his/her Designate, and the Member;
 - d) Copies of Client Property;
 - e) Copies of billing documents (e.g. invoices, receipts, etc.);
 - f) A copy of the Client’s written authorization of Designate, where applicable;

- g) Copies of draft documents; and
- h) Copies of immigration/citizenship applications or submissions on behalf of a Client.

5.3 A Member shall ensure each File has a record (paper or electronic) that includes:

- a) A brief description of all Client Property, other than money (which is accounted for through the Detailed Client Account Reconciliation Statement and Client List);
- b) The date the Client Property was received by the Member and the date the Client Property was returned to the Client, or his/her Designate; and
- c) Acknowledgement (e.g. signature, e-mail, etc.) by the Client, or his/her Designate, that the returned Client Property was received by the Client or his/her Designate. Where acknowledgement is not received by the Member from the Client the Member shall document all efforts made to meet this requirement.

5.4 A Member shall store Active Files separately from Closed Files.

6. STORING CLIENT RECORDS

6.1 Client Records shall be stored in a physically secure manner to maintain Client confidentiality and to protect against damage or loss.

6.2 A Member who has an Agent shall ensure the Agent provides him/her with the Client Records within the timeframe specified in the Agent Agreement.

7. CLOSING A CLIENT FILE

7.1 A Member shall only close a File and consider the File complete when:

- a) All outstanding fees or refunds have been settled between the Member and the Client, or his/her Designate;
- b) The Client Property has been returned to the Client, or his/her Designate; and
- c) The Client, or his/her Designate, has been notified in writing that the Retainer Agreement has been terminated and that all documents and property belonging to the Client has been returned to the Client, or his/her Designate.

7.2 A Client File shall be retained in a secure and accessible location for a minimum of six (6) years after the File has been closed.

7.3 A Member shall maintain a list of Closed Files including the date that the File was closed.

7.4 Upon closing the Client File, a Member shall establish a Projected File Destruction Date and record this date in the File.

8. STORING AND RETURNING CLIENT PROPERTY

- 8.1 A Member shall keep Client Property that is in a Member's possession in connection with a File distinguishable from the Member's own property.
- 8.2 A Member shall, upon request, account for Client Property within fourteen (14) calendar days and deliver it to the Client, or his/her Designate, within thirty (30) calendar days. In situations where the timeframe is deemed unreasonable, the Member shall negotiate a reasonable timeframe with the Client, or his/her Designate.
- 8.3 A Member shall return Client Property to the Client, or his/her Designate, in a secure and confidential manner after the Retainer Agreement has been terminated.

9. TRANSFERRING A CLIENT FILE

- 9.1 In the event of withdrawal of service or representation, a Member shall return to the Client, or his/her Designate, all Client Property and co-operate with the successor, pursuant to Article 11.5 of the *Code of Professional Ethics*.

10. DESTROYING CLIENT FILES

- 10.1 A Member shall maintain a record of destroyed files. When destroying the File, a Member shall record at a minimum:
- a) The Client's name and address;
 - b) A brief description of the service provided;
 - c) The File Closing Date; and
 - d) The Actual File Destruction Date.
- 10.2 Further to section 7.2 of this Regulation, when destroying a Client File, a Member shall ensure that Client confidentiality is maintained.

11. CONFIDENTIALITY

- 11.1 Pursuant to Articles 8.1 to 8.4 inclusive of the *Code of Professional Ethics*, a Member shall ensure that Client confidentiality is maintained at all times.
- 11.2 A Member shall ensure that the Client's personal information and documentation is protected.

12. PENALTY FOR BREACH OF REGULATION

- 12.1 A Member who breaches this Regulation shall be subject to the following penalties:
- a) For a first offence, a written warning with direction to correct deficiency within thirty (30) calendar days.

- b) For a second or subsequent offence, \$100.00 per incident.
- c) Failure to correct deficiencies within thirty (30) calendar days or pay fines is subject to suspension and ultimately revocation.