

PLANNED OR UNPLANNED ABSENCE FROM IMMIGRATION/CITIZENSHIP CONSULTING PRACTICE REGULATION



icccrc
IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL
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CONSEIL DE RÉGLEMENTATION DES
CONSULTANTS EN IMMIGRATION DU CANADA

Version: 2016-001

Approved Board of Directors: May 13, 2016

Table of Contents

1. AUTHORITY	4
2. PURPOSE	4
3. DEFINITIONS.....	4
4. EXPECTATIONS.....	6
5. VOLUNTARY CLOSURE OF CONSULTING PRACTICE	8
6. SUSPENSION.....	8
7. LEAVE OF ABSENCE OR EXTENDED TRAVEL.....	9
8. RETAINER AGREEMENT.....	9
9. CLIENT PROPERTY AND FILE.....	9
10. AGENTS AGREEMENT.....	9
11. PENALTY FOR BREACH OF REGULATION.....	10
12. IMPLEMENTATION OF THIS REGULATION	10

1. AUTHORITY

- 1.1 This Regulation is enacted pursuant to section 3.1 and 42.1 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.
- 1.3 For convenience this Regulation may be cited as the *Planned or Unplanned Absence Regulation*.

2. PURPOSE

- 2.1 The purpose of this Regulation is to outline the requirements for Members to implement for a Planned or Unplanned Absence from their immigration/citizenship consulting practice so as not to prejudice their Clients.

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) **"Agent Agreement"** means the contract between a Member and an Agent that sets out the terms of the business arrangement between them.
 - b) **"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.
 - c) **"Business Continuity Plan"** means a written set of procedures that would enable a Member to respond to routine or dramatic events (e.g., natural disasters, extreme weather conditions, prolonged power or communication failure, robbery or criminal activity, civil unrest, terrorist acts, etc.) that would threaten to hinder or stop normal office processes.
 - 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 Account"** means a savings or chequing account opened by a Member at a Financial Institution in which account the Member holds funds received from or on behalf of one or more Clients and which is designated in the Member's records as a Client Account.

- f) **“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”). A Client File contains Client Records, Client Property and Member Property.
- g) **“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 a 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.
- h) **“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.
- i) **“Closed File”** means a Client File that is completed, pursuant to section 7.1 of the *Client File Management Regulation*.
- j) **“Contingency Plan”** means a written set of instructions that details what steps will be taken either by the Member, and/or by the Member’s Authorized Representative(s), and/or by the Member’s Responsible Person, in the event of a Planned or Unplanned Absence, which would allow for the maintenance or winding down of the Member’s consulting practice.
- k) **“Designation of an Authorized Representative or Responsible Person Form”** means a declaration that a particular individual has agreed to serve as the primary contact for the Client and the Council in the event the Member is unable to do so himself/herself.
- l) **“Incapacity”** means the Member becomes incapable of discharging the usual duties of his/her immigration/citizenship consulting practice and meeting his/her obligations under the *By-law*, Regulations or the *Code of Professional Ethics*, by reason of physical or mental illness, condition or disorder, following determination of the Review Committee.
- m) **“Member Property”** means the documents a Member has prepared for his/her own benefit. A Member must 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.).

- n) **“Missing Person”** means an individual who is assumed to be alive and who has been reported to, or by police, whose whereabouts are unknown despite reasonable efforts having been made to locate the person.
- o) **“Partnership”** means a legal relationship existing between two or more Members who share management and profits.
- p) **“Planned or Unplanned Absence”** means voluntary closure of practice, death, Incapacity, suspension or revocation, leave of absence, Missing Person, or extended travel outside of the country in which the Member ordinarily resides and/or works.
- q) **“Pro bono”** means immigration/citizenship service or advice that is donated to or free for the Client.
- r) **“Release Form”** means a declaration of transferring Client Files/Client Property from a Member to another Authorized Representative. The Release Form, available on the Council’s website, must be retained in the Client File when signed by all relevant parties.
- s) **“Responsible Person”** means an individual over the age of majority who has immediate access to the jurisdiction where the Member’s office is located. The Responsible Person is not an Authorized Representative and as such, must not perform tasks which may only be performed by an Authorized Representative.
- t) **“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 who owns an immigration/citizenship consulting practice (e.g., sole proprietorship, corporation, etc.) is required to adhere to this Regulation.
- 4.2 All Members are to conduct Client matters in accordance with the *Code of Professional Ethics* and associated Regulations and ensure that Client interests are protected in the event of a Planned or Unplanned Absence from the consulting practice.
- 4.3 A Member working as a salaried employee is not required to adhere to this Regulation.
- 4.4 A Member shall create and maintain a Contingency Plan to address what will occur with his/her practice in the event of a Planned or Unplanned Absence. The Contingency Plan must include:
 - a) a system to address emergencies that may arise on Client Files in the event of a Planned or Unplanned Absence from the consulting practice,
 - b) accurate and up-to-date information on office procedures (e.g. how Client Files are created/stored/closed/destroyed, what reminder systems are used, methods of communicating with Clients, billing processes, etc.),

- c) accurate and up-to-date information on the consulting practice (e.g. location of and access to: active and closed Client Files, current list of active Clients, bookkeeping records such as current client liability account and client list, important contacts such as accountant and landlord, software and technology used, etc.),
 - d) steps taken to facilitate the stepping in of the Authorized Representative(s) and/or Responsible Person, as required (e.g. created a checklist for maintaining the operation of the consulting practice, confirmed the financial institution's requirements for allowing an Authorized Representative to access the client account, ensured that sufficient funds are available to cover office expenses for a period of time, etc.),
 - e) a process to appropriately notify the Council in the event of the incapacitation or other medical condition(s) of the Member so an appropriate leave of absence from practice may be sought. Such process shall include notifying the Registrar of the contact information (including the name, primary and secondary address, telephone number and e-mail address) of the Authorized Representative and/or Responsible Person, and
 - f) a process to appropriately notify the Council in the event of the death of the Member or the declaration of the Member as a Missing Person. Such process shall include notifying the Registrar of the contact information (including the name, primary and secondary address, telephone number and e-mail address) of the Authorized Representative and/or Responsible Person.
- 4.5 A Member shall designate one or more Authorized Representative(s) and/or a Responsible Person, as required, who will be the primary contact for the Client and the Council in the event of a Planned or Unplanned Absence.
- 4.6 A Member shall provide the Registrar with a Designation of an Authorized Representative or Responsible Person Form (Designation Form), which is dated and signed by both parties, containing the contact information (including the name, primary and secondary address, telephone number and e-mail address) of the Member and the appointed Authorized Representative or Responsible Person by January 1, 2018. The Member will confirm this information annually thereafter when submitting his/her compliance audit on July 1. A separate Designation Form must be completed with each appointed Authorized Representative and Responsible Person.
- 4.7 A new Member shall provide the Registrar with a completed and signed Designation Form, containing the contact information (including the name, primary and secondary address, telephone number and e-mail address) of the Member and the appointed Authorized Representative or Responsible Person within ninety (90) calendar days of being registered as an RCIC with the Council. A separate Designation Form must be completed with each appointed Authorized Representative and Responsible Person.
- 4.8 Further to sections 4.6 and 4.7 of this Regulation, the Contingency Plan must be shared with the Authorized Representative(s) and/or Responsible Person prior to signing the Designation Form.

- 4.9 A Member shall update the Registrar within fifteen (15) calendar days if there are any changes to the contact information of the Authorized Representative(s) and/or Responsible Person.
- 4.10 A Member shall develop a Business Continuity Plan to deal with events that would stop normal office processes as a result of either routine or dramatic events such as, natural disasters, extreme weather conditions, prolonged power or communication failure, robbery or criminal activity, civil unrest, terrorist acts, etc.

5. VOLUNTARY CLOSURE OF CONSULTING PRACTICE

- 5.1 Further to sections 4.1(c), 4.1(d) and 4.1(e) of the *RCIC Resignation Regulation*, a Member voluntarily closing his/her practice shall close all Client Files according to Section 7 of the *Client File Management Regulation* or designate one or more Authorized Representative(s) who will assume the responsibility of the practice.
- 5.2 A Member shall notify the Registrar, at the time of submitting the final resignation statutory declaration, of the name, primary and secondary address, telephone number and e-mail address of the Authorized Representative(s), if applicable.
- 5.3 A Member designating one or more Authorized Representative(s) to his/her Clients to assume further service shall provide a mutually agreed upon commitment in writing, which outlines how the Authorized Representative will take over the Client File(s) and satisfy the outstanding undertaking(s). The Member must ensure that the Authorized Representative(s) is (are) competent in the area(s) of immigration/citizenship to take over the Client File(s).
- 5.4 A Member must advise the Client to remove or change the Member's name promptly in order not to prejudice the Client and provide to the relevant authority the Client's contact information regarding any outstanding matters.
- 5.5 A Member must complete a Release Form with the Client prior to transferring the Client File or any Client Property to the Authorized Representative. The Release Form, available on the Council's website, must be retained in the Client File when signed by all relevant parties.

6. SUSPENSION

- 6.1 A Member who is suspended by the Council shall designate an Authorized Representative who will assume the responsibility of the practice for the duration of the suspension period.
- 6.2 A Member shall comply with the requirements of the Notice of Suspension sent by the Registrar.
- 6.3 A Member must complete, and retain a copy of, a Release Form with the Client prior to transferring the Client File or any Client Property to the Authorized Representative. A copy of the completed Release Form will also be provided to the Client and the Authorized Representative receiving the Client File.

- 6.4 A Member must promptly notify the relevant authorities, such as but not limited to, IRCC, IRB and relevant PNP office, to remove the Member as the Authorized Representative of record on all Client Files.

7. LEAVE OF ABSENCE OR EXTENDED TRAVEL

- 7.1 A Member who is on an official leave of absence or travelling outside of the country in which he/she ordinarily resides and/or works for a period of more than thirty (30) consecutive days, during which the Member does not intend to discharge the usual duties of his/her consulting practice, shall designate one or more Authorized Representative(s) who will assume the responsibility of the practice while the Member is on leave or travelling. This designation must be clearly communicated to Clients and potential Clients.
- 7.2 Further to section 7.1 of this Regulation, a Member must complete and retain a copy of a Release Form with the Client prior to transferring the Client File or any Client Property to the Authorized Representative. A copy of the completed Release Form will also be provided to the Client and the Authorized Representative receiving the Client File.

8. RETAINER AGREEMENT

- 8.1 A Member shall include in the Retainer Agreement a clause stating that in the event the Client is unable to contact the Member and has reason to believe the Member may be dead, incapacitated, etc., the Client should contact ICCRC.

9. CLIENT PROPERTY AND FILE

- 9.1 A Member shall notify the Authorized Representative(s) and/or Responsible Person of the obligations under the *Client File Management Regulation*.
- 9.2 A Member must complete a Release Form with the Client prior to transferring the Client File or any Client Property to the Authorized Representative. In the event of the death or incapacity of the Member, the designated Authorized Representative or Responsible Person must complete a Release Form with the Client prior to transferring the Client File or any Client Property, including but not limited any unearned monies belonging to the Client that are deposited to the Member's Client Account.

10. AGENTS AGREEMENT

- 10.1 A Member who has an Agent shall include in the Agent Agreement the contact information of the Authorized Representative(s) and/or Responsible Person, as required, who will take over the Client Files, how Client Records and/or Client Property will be transferred, how any outstanding fees for services will be paid, and how the Agent Agreement will be terminated, in the event of a Planned or Unplanned Absence from the immigration/citizenship consulting practice.

11. PENALTY FOR BREACH OF REGULATION

11.1 A Member who breaches this Regulation shall be subject to the following penalties:

- a) For a first offence, written warning with direction to correct deficiency within thirty (30) calendar days.
- b) For a second offence 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.

12. IMPLEMENTATION OF THIS REGULATION

12.1 This Regulation comes into force as of January 1, 2018.