

CHECKLIST FOR AVOIDING PHANTOM CLIENTS

(Adapted from the Canadian Bar Association Task Force on Conflicts of Interest)

Take the following steps to avoid acquiring a “phantom” or “ghost” client:

- Be careful giving advice to prospective clients over the phone. A better approach is to screen prospects initially for potential conflicts, then invite them to come to your office and complete a client intake form. Using the intake information, conduct a more thorough conflicts search.
- Avoid giving legal advice at social gatherings. Encourage prospects to schedule an appointment to come into your office where you can discuss the matter confidentially and give them your undivided attention.
- In cases where you think doubt may exist, or it is otherwise important to disavow a lawyer-client relationship, send a nonengagement letter or e-mail. If circumstances warrant, you may wish to have the non-client sign and return an acknowledgement of your nonengagement.
- For “consult only” meetings where no ongoing representation is contemplated, consider confirming the limitations and qualifications of your advice in writing.
- When a current client asks about a new matter, clarify whether the client wants you to act or represent her on the new matter and, if so, conduct a thorough conflicts check and open a new file.
- Treat work you do for friends, family, or on a volunteer basis with the same formality as other work (including doing a full conflicts check and opening a file), even if you intend to charge such clients a reduced fee, or no fee at all.
- Whom do you represent? Be very clear in your engagement letter, file opening documentation, and ongoing correspondence with the client(s) whether you represent a legal entity, such as a corporation, a partnership, or unincorporated association, as opposed to other affiliated or related persons, such as officers, shareholders, or members. (If necessary, send nonengagement letters to affiliated or related persons.) Joint or dual representation issues can also arise in family law, estate planning, or in cases involving elderly clients or minors.
- Avoid undermining the statement that you don’t represent someone with phrases like “but if you have questions, get back to me.”
- Record the names of everyone (individuals and entities) you see, whether you accept them as a client or not, and include rejected clients’ names in your conflict system. This ensures that all names necessary for checking conflicts of interest are entered into the firm’s list of past, current, and rejected clients.
- Consider including a warning your outgoing voicemail greeting informing callers who are not currently clients of the firm
- On your firm’s website, include terms of use and disclaimers statements that warn site visitors that unsolicited information or materials sent to the firm or left on voicemail will not be guaranteed confidentiality, and that access to or use of the site or firm voicemail does not create a lawyer-client relationship.

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