

CLIENT WITH MENTAL HEALTH ISSUES - TIPS

1. Don't feel compelled to accept every retainer.
2. Guard against becoming involved in advancing frivolous proceedings.
3. If you do decide to accept the retainer - DOCUMENT, DOCUMENT, DOCUMENT!
4. Eccentric ≠ Incompetent
5. BEWARE - Different levels of capacity are required for different matters-determine first whether your client is competent to instruct counsel.
6. If you have concerns about your client's capacity to instruct, consider whether a capacity assessment is required.
7. Employ qualified capacity assessors, or qualified medical professionals to assist you in assessing your client's capacity.
8. Explain to the client the reason a capacity assessment is needed, i.e. to protect a transaction from future challenge.
9. Don't lose sight of who your client is, and of your duty to maintain his or her confidentiality.
10. Remember your role - guard against becoming personally involved in the client's situation.
11. Attempt to obtain the client's consent to discuss your concerns with family members, or health care providers.
12. Attempt to ensure that powers of attorney are in place for later use if incapacity is likely to occur during the course of the retainer.
13. If a declaration of incapacity has already been made, take steps to have a litigation guardian appointed, if litigation is contemplated or already proceeding.
14. Know when to withdraw your services.



*Legal information and support
designed for you*

Please note that this information is not a substitute for the member's own research, analysis and judgment. The Law Society of Upper Canada does not provide substantive legal advice or opinions.

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