

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2013: No. 1 March

### Highlights

**Legal Profession Act:** The *Family Law Act*, given Royal Assent in November 2011 and proclaimed in effect on March 18, 2013, includes a minor amendment to section 67(3) (Restrictions on contingent fee agreements) of the *Legal Profession Act* (p. 44).

**Law Society Rules:** Non-practising and retired lawyers may act as designated paralegals (Rule 2-4.2: p. 32); effective March 18, 2013, new requirements are established for lawyers acting as family law arbitrators, mediators and/or parenting coordinators, as recommended by the Family Law Task Force and in anticipation of the new *Family Law Act* (Rules 3-18.6, 3-20 and 3-20.1 to 3-20.3: pp. 70.01-70.03); costs of credentials hearings are now covered in the tariff (Rule 5-9 and Schedule 4: pp. 114 and 134); the Table of Contents is updated (pp. 1-10).

**Code of Professional Conduct:** Effective March 18, 2013, new requirements are established for lawyers acting as family law arbitrators, mediators and/or parenting coordinators, as recommended by the Family Law Task Force and in anticipation of the new *Family Law Act* (Appendix B: pp. 101-102.2).

**Filing:** File the enclosed sheet in your *Member's Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
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Law Society Rules	1 – 10 31 – 32 70.01 – 70.02 113 – 114 133 – 134	1 – 10 31 – 32 70.01 – 70.04 113 – 114 133 – 134
Code of Professional Conduct	101 – 102	101 – 102, 102.1 – 102.2

After filing, insert this sheet at the front of the *Manual* for reference.

**Updates:** This amendment package updates the *Member's Manual* to **March 4, 2013**. The previous amendment package was 2012: No. 4 December.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the back of this filing page. If you have further questions about updating your *Manual*, contact Sherry Sarnowsky in the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email [communications@lsbc.org](mailto:communications@lsbc.org).

**Website:** The *Legal Profession Act*, Law Society Rules and the *Code of Professional Conduct* can be accessed in the Publications and Resources section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca) in both HTML (for online use) and in PDF (for printout, including printout of *Member's Manual* replacement pages).

Refer to the Law Society website for the most current versions of the Act, Rules and Code.

## MEMBER'S MANUAL CONTENTS CHECKLIST

*Updated to March 4, 2013*

The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

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## PART 8 – LAWYERS’ FEES

- (2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:
  - (a) limit the amount that lawyers or law firms may charge for services provided under contingent fee agreements;
  - (b) regulate the form and content of contingent fee agreements;
  - (c) set conditions to be met by lawyers and law firms making contingent fee agreements.
- (3) Rules under subsection (2) apply only to contingent fee agreements made after the rules come into force and, if those rules are amended, the amendments apply only to contingent fee agreements made after the amendments come into force.
- (4) A contingent fee agreement that exceeds the limits established by the rules is void unless approved by the court under subsection (6).
- (5) If a contingent fee agreement is void under subsection (4), the lawyer may charge the fees that could have been charged had there been no contingent fee agreement, but only if the event that would have allowed payment under the void agreement occurs.
- (6) A lawyer may apply to the court for approval of a fee higher than the rule permits, only
  - (a) before entering into a contingent fee agreement, and
  - (b) after serving the client with at least 5 days’ written notice.
- (7) The court may approve an application under subsection (6) if
  - (a) the lawyer and the client agree on the amount of the lawyer’s proposed fee, and
  - (b) the court is satisfied that the proposed fee is reasonable.
- (8) The following rules apply to an application under subsection (6) to preserve solicitor client privilege:
  - (a) the hearing must be held in private;
  - (b) the style of proceeding must not disclose the identity of the lawyer or the client;
  - (c) if the lawyer or the client requests that the court records relating to the application be kept confidential,
    - (i) the records must be kept confidential, and
    - (ii) no person other than the lawyer or the client or a person authorized by either of them may search the records unless the court otherwise orders.
- (9) Despite subsection (8), reasons for judgment relating to an application under subsection (6) may be published if the names of the lawyer and client are not disclosed and any information that may identify the lawyer or the client is not disclosed.

[2010-6-69; 2012-16-42]

**Restrictions on contingent fee agreements**

- 67** (1) This section does not apply to contingent fee agreements entered into before June 1, 1988.
- (2) A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.
- (3) A contingent fee agreement for services relating to a child guardianship or custody matter, or a matter respecting parenting time of, contact with or access to a child, is void.
- (4) A contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court.
- (5) A lawyer may apply to the court for approval of a contingent fee agreement for services relating to a matrimonial dispute and section 66 (7) to (9) applies.

[2011-25-400]

**Examination of an agreement**

- 68** (1) This section does not apply to agreements entered into before June 1, 1988.
- (2) A person who has entered into an agreement with a lawyer or law firm may apply to the registrar to have the agreement examined.
- (3) An application under subsection (2) may only be made within 3 months after
- (a) the agreement was made, or
  - (b) the termination of the solicitor client relationship.
- (4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.
- (5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.
- (6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.
- (7) If an agreement is cancelled under subsection (6), a registrar
- (a) may require the lawyer to prepare a bill for review, and
  - (b) must review the fees, charges and disbursements for the services provided as though there were no agreement.
- (8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.

[2012-16-43]

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## **PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW**

### **Division 1 – Practice of Law**

#### **Members**

##### **Categories of membership**

**2-1** The following are the categories of members of the Society:

- (a) practising lawyers, as defined in section 1 of the Act;
- (b) retired members;
- (c) non-practising members;
- (d) Canadian legal advisor.

[amended effective 07/2010]

##### **Member in good standing**

**2-2** Subject to Rules 3-13(7) and 4-4.2(2), a member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.

[amended 10/2006; 07/2008; 03/2010; 06/2012]

##### **Non-practising members**

**2-3** (1) Any member of the Society in good standing may become a non-practising member by

- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
- (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.

(2) Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.

[(2) amended 07/2004]

##### **Retired members**

**2-4** (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:

- (a) reached the age of 55 years;
- (b) been a member of the Society in good standing for 20 of the previous 25 years;
- (c) engaged in the full-time active practice of law for 20 of the previous 25 years.

(2) A lawyer who qualifies under subrule (1) may become a retired member by

- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
- (b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.

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- (3) Retired members must pay the annual fee specified in Schedule 1 by the preceding November 30.
- (4) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

[(1) and (3) amended, (4) added 07/2004]

### **Release from undertaking**

- 2-4.1** (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 or 2-4 by delivering to the Executive Director an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society.
- (2) The Executive Director must not grant a release from undertaking under this Rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

[added 06/2006]

### **Legal services by non-practising and retired members**

- 2-4.2** Despite an undertaking given under Rule 2-3(1)(a) or 2-4(2)(a), a non-practising or retired member may
- (a) provide pro bono legal services, or
  - (b) act as a designated paralegal under Rule 2-9.2.

[added 06/2012; heading and rule amended 01/2013]

### **Transition**

- 2-4.3** A retired or non-practising member who has provided pro bono legal services between May 14, 2012 and June 16, 2012 is deemed not to be in breach of section 15 nor the undertaking given under Rule 2-3(1)(a) or 2-4(2)(a) for that reason alone.

[added 06/2012]

### **Certificates and permits**

- 2-5** The Executive Director may approve the form of
- (a) practising certificate issued under section 23 of the Act,
  - (b) retired membership certificate issued under Rule 2-4,
  - (c) non-practising membership certificate issued under Rule 2-3,
  - (d) practitioner of foreign law permit issued under Rule 2-18,
  - (e) inter-jurisdictional practice permit issued under Rule 2-12, and
  - (f) Canadian legal advisor certificate issued under Rule 2-51.

[amended 11/1999; amended effective 07/2010]

## PART 3 – PROTECTION OF THE PUBLIC

- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
  - (a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (b) pays the late reporting fee specified in Schedule 1.

[added 07/2008; (1) amended, (3) added 12/2011]

### **Failure to complete professional development**

- 3-18.5** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-18.3 by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-18.3.
- (2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that
    - (a) the lawyer not be suspended under subrule (1), or
    - (b) a suspension under subrule (1) be delayed for a specified period of time.
  - (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
    - (a) the date on which the suspension will take effect;
    - (b) the reasons for the suspension;
    - (c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 07/2008]

## **Division 3 – Specialization and Restricted Practice**

### **Definitions**

**3-18.6** In this division

**“course of study”** means an educational program consisting of activities approved by the Executive Director for the purpose of qualifying as a family law mediator, arbitrator or parenting coordinator;

**“professional development”** means activities approved by the Executive Director for credit as professional development for family law mediators, arbitrators or parenting coordinators.

[added 01/2013, effective March 18, 2013]

**Advertising**

**3-19** A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct*, section 4.3.

[amended effective 01/2013]

**Family law mediators**

**3-20** (1) A lawyer may act as a family law mediator only if the lawyer

- (a) [rescinded]
- (a.1) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a mediator in a fair and competent manner,
- (b) has completed a course of study in family law mediation approved by the Credentials Committee, and
- (c) is in compliance with Rule 3-20.3(3).

(2) [rescinded]

(3) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.

(4) The Credentials Committee may allow a lawyer previously accredited by the Society as a family law mediator time in which to comply with any changes to the requirements under subrule (1)(b).

[(3) added 05/2009; heading and (1) amended, (2) rescinded and (4) added 01/2013, effective March 18, 2013]

**Family law arbitrators**

**3-20.1** (1) A lawyer may act as a family law arbitrator only if the lawyer

- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of an arbitrator in a fair and competent manner,
- (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge or master,
- (c) has completed a course of study in family law arbitration approved by the Credentials Committee, and
- (d) is in compliance with Rule 3-20.3(3).

(2) A lawyer who has been accredited by the Society as a family law arbitrator may so state in any marketing activity.

(3) The Credentials Committee may allow a lawyer who has previously acted as a family law arbitrator time in which to comply with any changes to the requirements under subrule (1)(c).

[added 01/2013, effective March 18, 2013]

**Parenting coordinators**

- 3-20.2** (1) A lawyer may act as a parenting coordinator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a parenting coordinator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge or master, including considerable family law experience dealing with high conflict families with children,
  - (c) has completed a course of study in parenting coordination approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-20.3(3).
- (2) A lawyer who has been accredited by the Society as a parenting coordinator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a parenting coordinator time in which to comply with any changes to the requirements under subrule (1)(c).

[added 01/2013, effective March 18, 2013]

**Professional development for family law mediators, arbitrators and parenting coordinators**

- 3-20.3** (1) The Credentials Committee may determine the minimum number of hours of professional development that is required of a family law mediator, arbitrator or parenting coordinator in each calendar year.
- (2) The requirements under subrule (1) may be different for each of family law mediators, arbitrators or parenting coordinators.
- (3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must
- (a) complete the required professional development, and
  - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the required professional development.
- (4) Professional development completed under this rule may also be reported under Rule 3-18.3 if it meets the requirements of that rule.
- (5) Despite subrule (3), a family law mediator, arbitrator or parenting coordinator need not complete the required professional development in a calendar year in which the lawyer has successfully completed the course of study required under Rules 3-20 to 3-20.2.

[added 01/2013, effective March 18, 2013]

## **Division 4 – Professional Liability Insurance**

### **Compulsory liability insurance**

- 3-21** (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-22, unless the lawyer is exempt or ineligible under Rule 3-25.
- (2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).
- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to compulsory professional liability insurance under this Division that affects the limits of liability or scope of coverage.

[ (3) added 11/1999; (2) amended 07/2012 ]

### **Annual insurance fee**

- 3-22** (1) The insurance fee to be paid under section 23(1)(c) of the Act is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
  - (b) any surcharge for which the lawyer is liable under Rule 3-26; minus
  - (c) any credit to which the lawyer is entitled under Rule 3-24.
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.

## PART 5 – HEARINGS AND APPEALS

- (4) All witnesses, including a respondent ordered to give evidence under section 41(2)(a) of the Act,
  - (a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and
  - (b) are subject to cross-examination.
- (5) The panel may make inquiries of a witness as it considers desirable.
- (6) The hearing panel may accept any of the following as evidence:
  - (a) an agreed statement of facts;
    - (a.1) oral evidence;
    - (a.2) affidavit evidence;
  - (b) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;
  - (c) any other evidence it considers appropriate.

[(6) amended 04/2009; (2) and (6) amended 10/2010]

### Public hearing

- 5-6** (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.
- (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:
    - (a) an order that specific information not be disclosed;
    - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).
  - (3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.
  - (4) Except as required under Rule 5-7, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.
  - (5) When a panel or review board makes an order under this Rule or declines to make an order on an application, the panel or review board must give written reasons for its decision.

[(2) amended, (4) added 05/2003; (5) added 06/2012; (1), (2), (4) and (5) amended effective 01/2013]

### Transcript and exhibits

- 5-7** (1) All proceedings at a hearing must be recorded by a court reporter and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.

- (2) Subject to solicitor-client privilege or an order under Rule 5-6(2), any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

[heading amended, (2) added 05/2003]

#### **Decision**

- 5-8** (1) A decision of a hearing panel is made by majority vote.
- (2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.
- (3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

[(2) and (3) amended 05/2003]

#### **Costs of hearings**

- 5-9** (0.1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1, and may set a time for payment.
- (0.2) A review board may order that an applicant or respondent pay the costs of a review under section 47 of the Act, and may set a time for payment.
- (1) [rescinded]
- (1.1) Subject to subrule (1.2), the panel or review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by an applicant, a respondent or the Society in respect of a hearing on an application or a citation or a review of a decision in a hearing on an application or a citation.
- (1.2) If, in the judgment of the panel or review board, it is reasonable and appropriate for the Society, an applicant or a respondent to recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4, the panel or review board may so order.
- (1.3) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
- (1.4) In the tariff in Schedule 4,
- (a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and
  - (b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units or amount payable applies.
- (2) [rescinded]
- (3) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

[(1.1), (1.2) and (1.4) amended 03/2013]

## SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

Item no.	Description	Number of units
<b>Citation hearing</b>		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 39 and Rule 4-17 and any application to rescind or vary an order under Rule 4-19, for each day of hearing	30
3.	Disclosure under Rule 4-25	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 4-26	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-29 <ul style="list-style-type: none"> <li>• if made more than 14 days prior to the scheduled hearing date</li> <li>• if made less than 14 days prior to the scheduled hearing date</li> </ul>	1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts <ul style="list-style-type: none"> <li>• if signed more than 21 days prior to hearing date</li> <li>• if signed less than 21 days prior to hearing date</li> <li>• delivered to Respondent and not signed</li> </ul>	Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
10.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
11.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
12.	Preparation for interlocutory or preliminary motion, per day of hearing	20
13.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
14.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15

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Item no.	Description	Number of units
<b>S. 47 review</b>		
15.	Giving or receiving notice under Rule 5-15, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
16.	Preparation and settlement of hearing record under Rule 5-17	Minimum 5 Maximum 10
17.	Pre-review conference	Minimum 1 Maximum 5
18.	Application to adjourn under Rule 5-19 <ul style="list-style-type: none"> <li>• If made more than 14 days prior to the scheduled hearing date</li> <li>• If made less than 14 days prior to the scheduled hearing date</li> </ul>	1 3
19.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-19(2), per day of hearing	10
20.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
21.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
<b>Summary hearings</b>		
22.	Each day of hearing	\$2,000
<b>Hearings under Rule 4-22</b>		
23.	Complete hearing, based on the following factors: <ul style="list-style-type: none"> <li>(a) complexity of matter;</li> <li>(b) number and nature of allegations; and</li> <li>(c) the time at which respondent elected to make conditional admission relative to scheduled hearing and amount of pre-hearing preparation required.</li> </ul>	\$1,000 to \$3,500
<b>Credentials hearings</b>		
24.	Each day of hearing	\$2,000

**Value of units:**

Scale A, for matters of ordinary difficulty: \$100 per unit  
Scale B, for matters of more than ordinary difficulty: \$150 per unit

## Appendix B – Family Law Mediation, Arbitration and Parenting Coordination

### Definitions

#### 1. In this Appendix:

**“dispute resolution process”** means the process of family law mediation, family law arbitration or parenting coordination;

**“family law arbitration”** means a process by which participants submit issues relating to their marriage, cohabitation, separation or divorce to an impartial person (the family law arbitrator) for decision;

**“family law mediation”**

- (a) means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children or finances, including division of assets, and
- (b) includes, without limiting the generality of the foregoing, one or more of the following acts when performed by a lawyer acting as a family law mediator:
  - (i) informing the participants of and otherwise advising them on the legal issues involved,
  - (ii) advising the participants of a court’s probable disposition of the issue,
  - (iii) preparing any agreement between the participants other than a memorandum recording the results of the family law mediation;

**“parenting coordination”** means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

**“participant”** means a person with issues relating to marriage, cohabitation, separation or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

[amended 01/2013, effective March 18, 2013]

## **Disqualifications**

2. (a) If a lawyer or a partner, associate or employee of that lawyer has previously acted or is currently acting for any of the participants to a dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the dispute resolution process, that lawyer may not act as a family law mediator or arbitrator or parenting coordinator for any of the participants;
- (b) If a lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant;
- (c) If a lawyer or a partner, associate or employee of that lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor a partner, associate or employee of that lawyer may act for or against any person if to do so might require the lawyer to disclose or make use of confidential information given in the course of the dispute resolution process.

[amended 01/2013, effective March 18, 2013]

## **Obligations of family law mediator or arbitrator or parenting coordinator when participants unrepresented**

3. A lawyer who acts as a family law mediator or arbitrator or parenting coordinator for participants who are unrepresented must:
  - (a) urge each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the dispute resolution process and at any stage before an agreement between the participants is executed;
  - (b) take care to see that the unrepresented participant is not proceeding under the impression that the lawyer will protect his or her interests;
  - (c) make it clear to the unrepresented participant that the lawyer is acting exclusively in a neutral capacity, and not as counsel for either participant; and
  - (d) explain the lawyer's role in the dispute resolution process, including the scope and duration of the lawyer's powers.

[amended 01/2013, effective March 18, 2013]

**Obligations of family law mediator or parenting coordinator**

4. Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

- (a) an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;
- (b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;
- (c) an agreement that, subject to rule 3.3-3, the family law mediation or parenting coordination is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator or parenting coordinator will be “without prejudice” so that no participant will attempt:
  - (i) to introduce evidence of the communications in any legal proceedings, or
  - (ii) to call the family law mediator or parenting coordinator as a witness in any legal proceedings;
- (d) an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law mediation or parenting coordination in which the lawyer has reasonable grounds to believe that a child is in need of protection;
- (e) an agreement as to the lawyer’s rate of remuneration and terms of payment;
- (f) an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

[amended 01/2013, effective March 18, 2013]

**Obligations of family law arbitrator**

5. A lawyer who acts as a family law arbitrator and the participants must, before the lawyer begins his or her duties as family law arbitrator, enter into a written agreement that includes at least the following provisions:

- (a) an agreement that the lawyer, throughout the family law arbitration, is not acting as legal counsel for any participant;
- (b) an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law arbitration in which the lawyer has reasonable grounds to believe that a child is in need of protection;
- (c) an agreement as to the lawyer’s rate of remuneration and terms of payment.

[added 01/2013, effective March 18, 2013]

**Lawyer with dual role**

6. A lawyer who is empowered to act as both family law mediator and family law arbitrator in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

[added 01/2013, effective March 18, 2013]

7. A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

[added 01/2013, effective March 18, 2013]