



National Discipline Standards

Implementation Guide

This guide is intended to be a tool for law societies in implementing the National Discipline Standards that were approved by Council of the Federation in April, 2014.

The standards were developed by the Discipline Standards Project Steering Committee. Between April 2012 and April, 2014, the standards were tested through a two-year pilot project to ensure that they were measurable, meaningful and worthwhile. The pilot phase resulted in a number of changes to the standards. By gathering compliance data, but also by gathering commentary and analysis from those charged with implementing the standards, we have developed a set of meaningful standards that can be used to measure law society performance in the discipline area.

The National Discipline Standards are intended to be aspirational. It is recognized that not all law societies will be able to meet all of the standards. A new Standing Committee on National Discipline Standards (the “Standing Committee”) will be charged with monitoring implementation of and compliance with the standards. It will also identify refinements to the standards that may prove necessary as law societies gain additional experience with them.

June 2014

National Discipline Standards

(As approved by the Federation Council April 3, 2014*)

** The standards were modified in May, 2014 to include the participation of the Chambre des notaires du Québec and to provide a more accurate title for standards 20 and 21.*

Timeliness

1. Telephone inquiries:

75% of telephone inquiries are acknowledged within one business day and 100% within two business days.

Commentary: This standard measures how quickly we respond to first contact discipline inquiries. This is not intended to record how quickly we return general phone calls or subsequent calls from the same complainant.

This standard requires you to record when a message is received from a complainant and when you first attempted to return that call, even if you are not successful in reaching the person at that time. You will need to record those times and calculate how long each call took to return.

The standard does not allow for flexibility during busy times or when people are away for illness or vacation, which may make it difficult to meet for some law societies.

2. Written complaints:

100% of written complaints are acknowledged in writing within three business days.

Commentary: This standard does not require that the complaint be resolved, just acknowledged. Record when you receive a written complaint and when you send out a written acknowledgement. Calculate how many business days that took and record that.

3. Timeline to resolve or refer complaint:

80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.

Commentary: This is intended to measure how long most investigations take, with a goal to have 90% of them over within less than a year and a half.

Please measure the time from when the complaint is received until the time the investigative phase is concluded. We all have different processes but whether the investigation ends with referral for charging, a remedial resolution or dismissal, the measurement period ends with the conclusion of the investigative phase.

For those that have an appeal or review process, do not include the time it takes to deal with the appeal or review. Once the initial decision is made the timeframe in this standard is at an end.

Any informal processes that precede the investigation are included however. The clock starts when the complaint is received.

4. Contact with complainant:

For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.

5. Contact with lawyer or Québec notary:

For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.

Commentary: Standards 4 and 5 may require some law societies to institute a new procedure, sending status reports regularly to the complainant and the lawyer or Québec notary. There is no standard for what the content of that contact needs to be as the main purpose of this standard is to measure how well we keep in touch.

You will need keep a record on the file (a copy of the letters for example), to assess if the standard has been met and to record performance as against this standard on each file.

Please note that the standard only applies once the lawyer or Québec notary has been notified of the complaint. Contact should be every 90 days after that.

Contact can be by any reasonable means you choose: email, regular mail, phone etc.

Hearings

6. 75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.

95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.

Commentary: Each law society has a slightly different method of authorizing charges, but in all cases the timeframe begins to run when the decision is made to charge the lawyer or Québec notary, and ends when the lawyer or Québec notary is served with the initiating document (a citation or notice of hearing).

7. 75% of all hearings commence within 9 months of authorization.

90% of all hearings commence within 12 months of authorization.

Commentary: A hearing commences when the adjudicative body first convenes to hear evidence or preliminary motions. Preliminary appearances do not constitute commencement of the hearing unless they are for the purpose of hearing preliminary motions. A good rule of thumb is whether the appearance is before the panel that will hear the substantial matter.

The goal of this standard is to provide access to timely justice, avoiding delays in the formal process and balancing this with the need to be thorough and protect the public.

8. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.

Commentary: This is a standard that will require some delicacy to achieve. We generally stay away from trying to influence any part of the decision-making process. The hope is that by establishing this standard and making it known to adjudicators as part of their orientation and training, we will encourage them to strive to meet it.

The ninety (90) day standard is for receipt of the reasons for the decision (if written reasons are to follow an oral decision). Count all cases including those where reasons are delivered orally (those should be easy to report), and decisions in relation to both hearings on the merits and sentencing hearings.

9. Each law society will report annually to its governing body on the status of standards 3, 4 and 5. For standards 6, 7 and 8, each law society will report quarterly to its governing body on the status of the standards.

Commentary: We recognize most of us currently do not inform our governing bodies as to the progress of hearings in this way. We also recognize that we cannot compel a hearing panel to meet Discipline Standard 8. We hope that this standard will be included in the training and orientation of potential hearing panel members and that they will embrace it as an appropriate part of ensuring transparency and fair treatment of the parties.

Standards 3 through 5 are highly operational and it does not make sense to report on those as frequently as the hearing decisions, standards 6 through 8.

Public Participation

10. There is public participation at every stage of discipline, i.e. on all hearing panels of three or more, at least one public representative; on the charging committee, at least one public representative.

Commentary: This standard will be challenging for some jurisdictions with a limited number of public representatives to call upon. In jurisdictions where charging decisions are made by one individual and not by committee, the standard does not apply to that part of the process.

11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Commentary: A public representative can include a lawyer or Québec notary if appointed by an outside body, or a lay benchner.

This commentary is intended to confirm that the process currently used by the Barreau, in which lawyers appointed externally are used to review these kinds of complaints, would meet the standard. The use of lay benchners for this process would also meet the standard.

Transparency

12. Hearings are open to the public.

Commentary: You will not be in breach of this standard if a hearing is closed periodically on the application of one of the parties (see standard 13).

13. Reasons are provided for any decision to close hearings.

Commentary: The reasons do not need to be in writing (they can be delivered orally).

14. Notices of charge or citation are published promptly after a date for the hearing has been set.

15. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.

Commentary: The rationale for this standard is to ensure that the public (and the media) can easily find out about upcoming hearings and attend them if they wish.

It is understood that currently not everyone can meet this standard. There is no standard for the form of publication, but the advertising of hearings is not required. Notices on your website will meet the standard; however simply responding to inquiries about upcoming hearings will not.

16. There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.

Commentary: This standard is intended to assess whether we have the capacity to ensure that all law societies of which a lawyer or Québec notary under investigation is a member, are made aware at an early stage that there may be a problem. It gives two options for compliance. A law society either has the ability to share this information, or, a requirement that the lawyer or Québec notary under investigation inform all other law societies where he/she is a member.

The standard requires that we have the ability to report, and that we are able to do so in a manner that protects privilege.

You are not required to monitor or provide data on actual reporting to other law societies. You must simply determine whether you have the ability to report, or, as an alternative, whether the lawyer or Québec notary is required to report.

17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

Commentary: This standard does not measure whether you actually report to police but whether you have the ability to do it and also, if you can do it in a way that protects privilege.

Note that the standard does not require that the reporting be mandatory nor does it prescribe a time frame for that reporting.

Accessibility

18. A complaints help form is available to complainants.

Commentary: This requires that you have available some tool to assist complainants in making their complaints. There is no specific format for this form and it can be on-line or on paper.

This standard does not test the use of the form, only if a form is available.

19. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.

Commentary: Discipline history means any finding by the ultimate decision making body, after an adjudicative process or by consent, that a lawyer has committed conduct deserving of sanction.

This standard is intended to permit the public to determine easily if a lawyer or Québec notary has a discipline history. The commentary defines what that means. We are not talking about charges or matters that are dealt with informally.

The directory need not be on-line but there does need to be a directory that contains this information. Merely responding to individual inquiries will not satisfy this standard.

Qualification of Adjudicators and Volunteers

20. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.

Commentary: There is currently no national curriculum available. It has been suggested that this might be a useful product and discussions are underway at the Federation to determine when this might be undertaken. In the meantime, that part of the standard is moot, but you must conduct training of adjudicators with refreshers at least once per year.

21. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.

This standard applies to jurisdictions that use volunteers (benchers and others) to conduct investigations and/or on charging bodies. All such volunteers must receive an orientation. While the content is not specified, it should be sufficient to ensure they have the knowledge and skills to do the job. We will not be asking you to report on whether the orientation does that, only on whether it exists for all volunteers involved in those processes.