



Professional Services Questionnaire and Instructions:

By Burke Files

This questionnaire is designed for a comprehensive Due Diligence Background Check on professionals such as investment advisors, trust officers, attorneys, accountants, estate planners and some insurance professionals

“Nihilism is best done by professionals.”

Iggy Pop

Professional Services Questionnaire and Instructions

The Professional Services Questionnaire is for professionals that are providing more than just basic services to their clients. Professionals such as investment advisors, trust officers, attorneys, accountants, estate planners and some insurance professionals can benefit through the use of this questionnaire.

I understand that asking a high-net-worth client to fill out a questionnaire is likely to elicit a less than pleasant reaction □ and sometimes there will be good reasons to be more discreet in how you seek the information. In these cases I can suggest that the Professional's questions be asked verbally. The question and answer session should than be summarized in a letter to the client for their acknowledgement. The objective is to memorialize the client's positions for your records.

The recognition that you need to grill some clients a bit more rigorously is not a new insight, what is new are the sanctions and license revocation proceedings for a failure to do so. The foundation of this questionnaire goes back to before the first edition of this book in 1996. Its origins began with an attorney who is a very near and dear friend of mine. It seems he had a client who lied to him. Imagine that! What was stunning is that the bankruptcy court held him, as the attorney representing the liar, responsible for all court costs and fees. The story goes as follows:

The client owned a business, sold the business, and carried a note on the balance of the sale price. He then sold the note to his mother and declared Chapter 7 bankruptcy, representing no assets □ including the note.

There was only one problem, he did not sell the note to his mother. He was using a lie and a ruse to protect the note from his creditors.

The bankruptcy trustee and one of the opposing attorneys learned of this when the mother, unbeknownst to her son, filed bankruptcy, and listed no note from the sale of her son's business. In her deposition, she stated that she knew nothing about a "note" and that she hadn't purchased anything from her son. She knew better than that!

The bankruptcy quickly turned ugly when opposing counsel informed my friend of his client's misdeeds. He withdrew from the case as soon as possible, but the opposing attorney and trustee pursued him, demanding attorney's fees and sanctions. They won a judgment over \$150,000. This was done under the legal theory that he, the attorney, could have and should have known what his client

was doing □ and thus, the legal assistance given to the client constituted assistance to a fraud upon the creditors.

There was no amount of due diligence from public records that could prove the client was lying. Even though he received an "Affidavit of Facts and Representations" from his client, the judge ruled that he could and should have known the truth. A no-asset bankruptcy taken for a few thousand dollars in legal fees turned into a several year battle and a \$150,000 liability.

Clients

Clients come from all walks of life, and all have unique histories and goals. You cannot assume that you "know" your client without spending a lot of time with them, or by doing your homework.

A client asked me if I did asset searches for a "piece of the action." I had done some work on this basis, and was always interested in a good deal □ what did she have to offer? The client was a developer and had sold a custom home. She had carried a second mortgage to help with the closing on the property. After three years the buyer defaulted on the mortgage and disappeared. The developer wanted me to find the buyer and "get the money." The case had good definition, a contract, the scope was clear, and most importantly, it was clear how I was to get paid. I took the case on contingency. I found the buyer living in a large home a couple of states away. His fortunes had improved substantially. He was ripe to be garnished.

I contacted the client and let her know that I had found the debtor and their attorney could begin garnishing wages and assets. The developer refused to hire an attorney to domesticate the judgment in another state or to spend one \$#@ dime on attorneys. According to the client, since I knew where the assets were it was my job to go and get them. I declined. I didn't want to go to jail for theft. She also refused to assign the judgment to me so that I could hire an attorney. I really did not see this one coming.*

This client was a developer that lived on action, and could not be bothered by the legal technicalities. I spent several weeks trying to resurrect the arrangement or to work out some form of relationship where I could garnish the assets. The client would not cooperate if it involved an attorney.

If I had spent a little amount of time investigating the client I would have found that this wasn't the first time she had done this. There were several lawsuits in Superior Court where the developer had failed to pay attorneys.

Agendas

I've had many conversations with attorneys, consultants and accountants about "client agendas." Many times a client will come into their office and state that they want to do

X, claiming they are aware of what they are doing, and understand the consequences. The client may do better with other options □ only a professional will know □ so to gain a foundation, the professional needs to ask questions.

Consider the earlier example of the bankruptcy case. The client really just wanted to keep the note from the business he had sold. He chose to file a chapter 7 bankruptcy, a full liquidation of assets, but a chapter 13 bankruptcy, a consolidation of debt and reorganization, may have allowed him to keep the note and pay his creditors. He may not have lost the note in a chapter 13 bankruptcy. He did lose the note as a result of his fraud (and then some). Here, the client's real agenda was to protect, at almost extraordinary lengths, the note from the sale of his business. This is an example of agendas differing from actual and stated goals. The attorney got caught in the crossfire.

People Lie

I would be out of business, and most attorneys would be out of business, if people did not lie and engage in improper conduct.

We were asked to review a limited partnership that, by all accounts, should have been making money, but year after year the business just broke even. The general partner regularly complained to the investors about the real-estate market and the cost of repairs.

The real problem for the limited partnership was that the general partner had been building a summer home and charging his costs back to the limited partnership as repairs to the apartment complexes the limited partners owned.

The summer home project got a little out of hand. The general partner faced a dilemma; if he quit building the limited partnership would suddenly have a substantial positive cash flow that would have to be explained. To resolve this, every year he had another project at his summer home to drain the cash out of the limited partnership. After 10 years of doing this he had a multimillion-dollar home with an Olympic-size heated swimming pool, tennis courts and a five-car garage. It is worth noting that the pool was open year round in northern Michigan. Not to worry, the limited partners paid the gas bill too.

When the facts were revealed as a result of our investigation, his defense was that it couldn't possibly be true. All of the partnerships had audited financial statements. He was correct, they did! He had duped the auditors. The receipts for the work on the property were altered, changing the address from his summer home to one of the rental buildings. The accounting firm was added as an additional defendant in the limited partners' lawsuit.

I have a bundle of these stories. Some are more complex, and some are simpler. There are plenty of stories. Any professional with just a few years of experience will have many stories. It is best, if you accumulate your stories as an observer. Do not be taken in by a nice face, a large wallet or a good pedigree. Good breeding, white teeth, tailored clothes, and a slight foreign accent are not reasons to believe in your client. Check your

clients out; the prevention is cheaper than the cure. To paraphrase J.K. Galbraith, do not confuse good manners and good tailoring with integrity and intelligence.

Guilt by Association □ aka Reputational Risk

Many firms have had unpopular clients or high-profile clients that have embarrassed them. It's a part of living, learning and doing.

A more complex problem arises from working with, or having an association with bad people, and not being aware of it. The definition of a "red-faced moment" is a trust professional who finds out one of his clients is a multinational fraudster from the morning's *Financial Times*. It's only a matter of time before people ask, "How is it you didn't know?" or "When did you find out?" The litigation will revolve around the question, "When should you have known?"

This may sound a bit dramatic, but when it happens, it is traumatic. I assure you, it does happen. It happened to me back in the early 1980s when a client our broker/dealer chose to underwrite appeared in the "Heard on the Street" column of *The Wall Street Journal*. The story painted a very disturbing pattern of bad behavior. We were fortunate that we were not further along in our relationship, but it still cost our underwriting firm many thousands of dollars in legal bills explaining to regulators why we didn't know until the article was published. In our defense, we addressed the issue immediately and terminated the relationship that afternoon. We acted as soon as we became aware of the issues.

I have met many people who will refuse to do business with a firm based upon "stories" they've heard from their friends. People enjoy gossip, and they will tell their stories to everyone that will listen □ and the professional-services provider may never know. Conversely I have seen many clients brag about a deal they did with a famous so-and-so, or how they were involved in a big international transaction. Do not be swayed by gossip or bragging rights □ be persuaded by facts developed from your due diligence.

If you associate yourself with people you shouldn't, you may pay the price and never know what the costs are. Once reputational damage is done, you'll never know how many potential clients never contact you □ you'll be off the list. Check your clients out. The prevention is far cheaper than the cure.

I. BACKGROUND INFORMATION

1. General Information. When investigating a person, you need to have as much basic information as possible. Basic information is a full name, including middle name, and a date of birth. If you are investigating someone with a common name, you will need both the middle name and date of birth to disambiguate that person from the others with similar names. If you're interested in how common your name, or any name is, visit www.howmanyofme.com and enter the name for a statistical analysis.

Social Security numbers were never designed as a national identification number. In fact, the law specifically stated the number would not be used as identification. However, during the intervening years the number has become a de facto national identification number. Most information in public databases is cross-referenced by names, date of birth, and Social Security number. Without the Social Security number, you may be unable to locate all available information.

The driver's license and the driver's license numbers are a key form of personal and commercial identification. When asked for identification, the driver's license is the most common form of ID presented. Because the driver's license is the most common form of ID, it is generally the method used by private firms to record check fraud.

You need enough general information to be confident you know who this person is, that you would be able to contact them if necessary, and you could disambiguate them from others with the same name when doing research.

1.a. Education. A person's educational background will give you some idea what level of communication is required (or possible). If you are describing complex legal terminology or sophisticated financial concepts to a person whose education ended at high school, you may have communication issues. While profession specific speech and jargon provide an economy to those who understand the terms, it will sound like a foreign language to those who do not understand it.

1.b. Employment. Employment information and employment history will provide some information about a person's sophistication, responsibility and the trust other people place in them. A work history will give you some idea how this person got their current position. If they are the son-in-law of the owner, and have no independent training, there is an increased probability that their decisions may be second guessed, or even reversed.

1.c. Business Experience. We all have a unique bundle of job, business and life experiences. The breadth and depth of these experiences will provide clues about the background and ability of the individual with whom you are about to contract.

1.d. Outside Directorships. While outside experience and service adds to a person's base of experience, it can also increase their exposure to liability.

1.e. Trade Organizations. Trade organizations are usually the first place that industry information is recognized, disclosed and discussed. It is usually a benefit when people participate in trade groups within their specialty.

1.f. Control. If motivated, does this person possess the ability to sway, move, cajole or vote a company in the direction the person desires? It's important to know. If not, you may not be dealing with the key decision-maker.

1.g. Affiliations. This person may have worked for several different companies, all owned by the same company. This pattern is common when management is grooming an employee for an upper-management position. It represents an expanded base of experience.

1.h. Similar Activities. Similar activities performed with more than one company or group may represent a conflict of interest, which should be addressed and disclosed.

1.i. Future Similar Activities. Future activities, similar in nature, with other companies or groups that may represent a conflict of interest. Plans should be addressed and disclosed, as well as any non-compete agreements currently in force.

2. Residential History. This information will provide some indication of their geographic experience and stability. The information will usually indicate whether they rented or owned, and how transient they are.

2.a. Professional Licenses. Many professions currently require some form of licensure or registration. It's not just doctors and lawyers any longer, all sorts of professions and jobs require some form of licensure. Examples include, massage therapists, X-ray technicians, private investigators, accountants, day care operators, auto mechanics, barbers, manicurists, and food handlers -- and the list is expanding. Check with your local government to see if the subject of the questionnaire requires a license. If so, the license application will provide useful information on the individual. Application information usually includes all of the basic information found on a job application, including education, employment, and professional history.

II. Legal Proceedings

The purpose of this section is to perform a broad-based exam of the individual's legal experience. When answered correctly, it should provide you, the professional, with a good idea of what the person has been up to.

III. Purpose of Engagement

1. Purpose. This section provides your client with the opportunity to state their clear purpose in engaging you and your firm.

2. Preparations. The client will need to prepare documentation and records for your use and review. What preparations have been made by the prospective client in anticipation of this engagement? This will help you determine the scope of your work.

3. Selection. Have the client tell you why you were selected for this engagement and what were the key factors in making that determination. The key factors indicate what is important to the client, and what they will expect in the performance of your services.

4. Material Factors. Why is this person or company using an outside source, and not handling the matter internally? If it's because they lack the expertise, have never experienced the need before, or require a third-party presentation, that's normal. But, it could also be that they need a scapegoat if things go wrong, and want an outside person to "help" them. It's always easier to point a finger at an outsider than to accept responsibility. Consider their motivations in light of the particular project and potential liabilities.

5. History. This section prompts the client to begin the process of supplying you with the necessary information not contained in "document" form.

6. Documents. This prompts the client to organize and supply you with the necessary documentation you will need to perform your function.

IV. Affirmation

This certifies that the information and representations provided to you are true and correct. This is important if you are performing any type of service that requires your third party impartiality or professional assurances. It is also important if the engagement has a "change of scope" as there will necessarily be changes made on both sides, and they will need to be justified.

Professional Services Questionnaire

I. Background Information

1. GENERAL INFORMATION

a. Personal information

Name – first, middle, last – include any other names used, including aliases, nicknames and maiden names.

Age, date and place of birth

Social Security number

Driver's license number

Address, state and ZIP code

Citizenship

Passport number

Second citizenship

Passport number

Work permit / Green cards held

Marital status

Name of spouse first, middle, last include any other names used, including aliases, nicknames and maiden names.

Spouse's age, date and place of birth

Spouse's Social Security number

Spouse's driver's license number

Spouse's address, state and ZIP code

Spouse's citizenship

Spouse's passport number

Spouse's second citizenship

Spouse's passport number

Spouse's work permit / Green cards held

Children's names, addresses and current employment

Residential address, street, city, state, ZIP code

Business address, street, city, state, ZIP code

Home telephone number

Business telephone number

Cell phone number(s)

Voice over Internet Protocol (VoIP) number (s)

b. Education:

Provide for each institution you have attended, from high school onward including college, university, trade schools, professional and technical certifications, etc.

Institution

Field of study

Months / Years attended

Degree or certification, state if none.

c. Please state your current position with the company and the length of time you have held that position.

d. Please describe your business experience, with dates, up to the present time. Include your principal occupations and employment during all periods, and include the name and principal business of any corporation or other organization in which such occupations and employment were or are being conducted. If you were or are an officer of the company, describe the nature of the responsibilities undertaken by you in those positions including, where applicable, the size of the operation, the number of personnel, and annual budget supervised. Please complete on a separate sheet. Include principal occupation, name and principal

business of employer, period of service, and an explanation of the duties and postings held.

- e. List the name of each company in which you currently serve as a director. Please indicate whether (i) the company has a compensation committee of its board; (ii) you serve as a member of the compensation committee, if any; and (iii) if the company is publicly held.
 - f. Please list all business, trade, or other organizations to which you belong, including any offices or other positions held in each.
2. Residential History. Provide all addresses for the last 10 years, starting with your current address, and specify street, city, state, ZIP code and time of residence.
 3. Licenses, Credentials, Awards & Significant Achievements. Please provide a list of all designations you have, whether by achievement, membership, license, award, or other event, and include a list of any publications including dates for all.

II. Legal Proceedings

Please detail all legal proceedings or administrative processes you have been involved in, are contemplating, or may currently be threatened with.

III Purpose of Engagement

1. Please state the purpose for the engagement of this firm's professional staff.
2. Please discuss what preparations you have made to assist this firm in its provision of services.
3. Please discuss all of the material factors you considered in making the decision to seek this firm's professional help.
4. Please discuss all of the material factors involving yourself or your business that require the assistance of our firm's professional staff.
5. Please assemble for our staff a brief narrative history of yourself and/or your company, and all relevant information and representations necessary for us to provide the services you are requesting.
6. Please assemble for this firm's staff all of the necessary documents needed for this firm to provide its services. Attach these documents or exhibits to the questionnaire, and identify any that you will be providing at a later date.

IV. Affirmation

The answers I have supplied to the foregoing questions are true, complete and correct, to the best of my information and belief. I understand that material misstatements or the omission of material facts may give rise to civil and criminal liabilities to myself and or the company. I will notify you and your firm of any misstatements of a material fact in the questionnaire or any amendment thereto. To my knowledge my answers to the foregoing questions are correct.

Dated: _____

Signed

Typed or printed name of signee

THE INFORMATION PROVIDED ON THIS FORM IS COMPLETE AND ACCURATE. I AUTHORIZE VERIFICATION OF THIS INFORMATION VIA A BACKGROUND INVESTIGATION AND I AUTHORIZE A FULL CREDIT AND PUBLIC RECORDS INVESTIGATION.

Signature

Date

****THIS FORM MUST BE NOTARIZED***

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 20____, before me, _____ the undersigned officer, personally appeared _____ to me personally known and known to me to be the same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notary Public)

(Notary Seal)

My commission expires: _____