

LEGAL PROFESSION ACT
(CHAPTER 161, SECTION 71)

LEGAL PROFESSION
(PROFESSIONAL CONDUCT) RULES

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[1st June 1998]

Citation

1. These Rules may be cited as the Legal Profession (Professional Conduct) Rules.

PART I

PRELIMINARY

Application

2. —(1) These Rules shall apply to every advocate and solicitor who has in force a practising certificate.

(2) In the interpretation of these Rules, regard shall be had to the principle that an advocate and solicitor shall not in the conduct of his practice do any act which would compromise or hinder the following obligations:

- (a) to maintain the Rule of Law and assist in the administration of justice;
- (b) to maintain the independence and integrity of the profession;
- (c) to act in the best interests of his client and to charge fairly for work done; and

(d) to facilitate access to justice by members of the public.

(3) These Rules shall, to the extent of any inconsistency, prevail over the Practice Directions and Rulings 1989 issued by the Law Society or any additions or amendments thereto.

Definitions

3. In these Rules, unless the context otherwise requires —

"Court" means any court, tribunal, board or committee where an advocate and solicitor appears as a representative of another person, whether or not for a fee;

"law firm" means a firm of advocates and solicitors and includes a sole-proprietorship and partnership of 2 or more advocates and solicitors;

"Judge" means a Judge of the Supreme Court, a District Judge, Magistrate, Coroner or any person presiding over a court or statutory tribunal.

PART II

PRACTICE

Description

4. An advocate and solicitor shall not describe himself in connection with his profession as other than as an advocate and solicitor, lawyer, legal consultant (if qualified), or such other description as may be approved by the Council from time to time and where so appointed, as a Commissioner for Oaths or Notary Public.

Practice in one law firm or law corporation only

5. An advocate and solicitor shall not practise either as a consultant or a member of more than one law firm or law corporation.

Professional stationery and signs, etc.

6. An advocate and solicitor shall comply with all directions of the Society regarding professional stationery or signs, signboards and name plates.

Arrangements during absence

7. An advocate and solicitor shall make suitable arrangements for the running of his practice during any period of his absence.

Supervision of employees and staff

8. An advocate and solicitor shall exercise proper supervision over his employees and other staff.

Sharing premises

9. An advocate and solicitor shall not share, occupy or use premises jointly with any unqualified person unless prior written approval of the Council is obtained.

Business, trade or calling

10. An advocate and solicitor shall not engage in any business, trade or calling which —

(a) derogates from the dignity of the legal profession;

(b) is likely to lead to the attraction of professional business unfairly; or

(c) is in any way prohibited by the Act or any subsidiary legislation made thereunder.

Executive appointment

11. An advocate and solicitor shall not accept any executive appointment in any company.

Touting and referrals

11A.—(1) An advocate and solicitor, a law firm or a law corporation shall not tout for business or do anything which is likely to lead to the reasonable inference that it is done for the purpose of touting.

(2) Without prejudice to the generality of paragraph (1), where there is reason to believe that a client is referred to an advocate and solicitor, a law firm or a law corporation by a third party, the advocate and solicitor, law firm or law corporation, as the case may be, shall —

(a) maintain the independence and integrity of the profession and not permit the referror to undermine the professional independence of the advocate and solicitor, law firm or law corporation;

(b) not reward the referror by the payment of commission or any other form of consideration;

(c) not allow the referral in any way to affect the advice given to such client;

(d) advise the clients impartially and independently and ensure that the wish to avoid offending the referror does not in any way affect the advice given to such clients;

(e) ensure that the referror does not in any way influence any decision taken in relation to the nature, style or extent of the practice of the advocate and solicitor, law firm or law corporation; and

(f) communicate directly with the client to obtain or confirm instructions in the process of providing advice and at all appropriate stages of the transaction.

Agreement for referrals

11B.—(1) In addition to rule 11A, when an advocate and solicitor, a law firm or a law corporation enters into agreements for referrals of conveyancing services, the advocate and solicitor, law firm or law corporation, as the case may be, shall ensure that the agreement is made in writing and contains the following terms:

(a) the referror undertakes in such an agreement to comply with these Rules and the Legal Profession (Publicity) Rules (R 13);

(b) the advocate and solicitor, law firm or law corporation shall be entitled to terminate the agreement forthwith if there is reason to believe that the referror is in breach of any of the terms of the agreement;

(c) any publicity of the referror (whether written or otherwise), which makes reference to any service that may be provided by the advocate and solicitor, law firm or law corporation, must not suggest any of the following:

(i) that the conveyancing service is free;

(ii) that different charges for the conveyancing services would be made according to

whether or not the client instructs the particular advocate and solicitor, law firm or law corporation; or

(iii) that the availability or price of other services offered by the referrer or any party related to the referrer are conditional on the client instructing the advocate and solicitor, law firm or law corporation; and

(d) the referrer must not do anything to impair the right of the client not to appoint the advocate and solicitor, law firm or law corporation or in any way influence the right of the client to appoint the advocate and solicitor, law firm or law corporation of his choice.

(2) The advocate and solicitor, law firm or law corporation, as the case may be, must forthwith terminate the agreement if the referrer is in breach of any term referred to in paragraph (1) or if there is reason to believe that the advocate and solicitor, law firm or law corporation is in breach of such term.

(3) Where the advocate and solicitor, law firm or law corporation has terminated an agreement under paragraph (2), the advocate and solicitor, law firm or law corporation, as the case may be, may continue to act in matters the advocate and solicitor, law firm or law corporation was instructed prior to the termination but should not accept any further referrals from the referrer.

PART III

RELATIONSHIP AND DEALINGS WITH CLIENTS

Diligence and competence

12. An advocate and solicitor shall use all reasonably available legal means consistent with the agreement pursuant to which he is retained to advance his clients' interest.

Improper costs

13. An advocate and solicitor shall not undertake work in such a manner as to unnecessarily or improperly escalate his costs that are payable to him.

Complete work in reasonable time

14. —(1) An advocate and solicitor shall at all times use his best endeavours to complete any work on behalf of a client as soon as is reasonably possible.

(2) If it becomes apparent to the advocate and solicitor that he cannot do the work within a reasonable time, he should so inform the client.

Inadequate time

15. An advocate and solicitor shall not accept instructions if, having regard to his other professional commitments, he will not be able to discharge or carry out such instructions diligently and expeditiously.

Competence

16. An advocate and solicitor shall not accept instructions in a field of practice in which he possesses insufficient knowledge, skill or experience to provide competent representation to the client unless —

(a) the advocate and solicitor is able, without undue delay and cost to the client, or unless the client is agreeable to bear any further cost necessarily incurred, to obtain such knowledge and skill either through study and research or through the association with him of another lawyer (whether within or outside the same jurisdiction) of established

competence in that field; or

(b) where access to the relevant body of knowledge or to a lawyer of competence in the field is not readily available, the advocate and solicitor informs the client of those facts and of the likely delay and cost in acquiring the requisite knowledge and skill and the client voluntarily consents to the advocate and solicitor acting in the matter.

Keeping client informed

17. An advocate and solicitor shall keep the client reasonably informed of the progress of the client's matter.

Receipt of client's moneys or securities

18. An advocate and solicitor shall notify his client promptly of the receipt by him of moneys or securities on behalf of that client.

Statement of accounts

19. An advocate and solicitor shall expeditiously render statements of accounts if requested by the client.

Responding to clients

20. An advocate and solicitor shall where possible —

(a) promptly respond to the client's telephone calls; and

(b) keep appointments made with the client,

unless there are good and sufficient reasons why this cannot be done.

Explanation to client

21. —(1) An advocate and solicitor shall explain in a clear manner, proposals of settlement, other offers or positions taken by other parties which affect the client.

(2) Where the client is not English speaking, the advocate and solicitor shall ensure that any offers or proposals of settlement are explained to the client in the language or dialect that he understands.

No advice for illegal purpose

22. An advocate and solicitor shall not tender advice to a client when the advocate and solicitor knows or has reasonable grounds to believe that the client is requesting the advice to advance an illegal purpose.

Authority of client's agent

23. An advocate and solicitor shall ensure that an agent giving instructions on behalf of a client has the required authority to do so and, in the absence of evidence of such authority, the advocate and solicitor shall, within a reasonable time thereof, confirm the instructions with the client.

Confidentiality

24. —(1) An advocate and solicitor shall not in any way, directly or indirectly —

(a) disclose any confidential information which the advocate and solicitor receives as a result of the retainer; or

(b) disclose the contents of the papers recording such instructions,

unless with the consent of the client or is required by law or order of court.

(2) Notwithstanding paragraph (1), an advocate and solicitor may use the confidential information to reply or defend any charge or complaint as to his conduct or professional behaviour brought against him whether in Court or before a disciplinary tribunal of the Society.

Conflict of interest

25. During the course of a retainer, an advocate and solicitor shall advance the client's interest unaffected by —

(a) any interest of the advocate and solicitor;

(aa) where the advocate and solicitor is a director or an employee of a law corporation, any interest of the law corporation;

(b) any interest of any other person; or

(c) the advocate and solicitor's perception of the public interest except where accepting the instructions may make it difficult for him to maintain his professional independence or would make it incompatible with the best interests of the administration of justice.

Disclosure of interest

26. In any case where the advocate and solicitor or any member of his family or any law corporation of which the advocate and solicitor is a director or an employee has an interest in any matter entrusted to him by a client, the advocate and solicitor shall —

(a) make a full and frank disclosure of such interest to the client; or

(b) if, on the grounds of confidentiality or for any other reason, the advocate and solicitor is unable to make such disclosure, decline to represent or withdraw from representing that client.

Adverse interest

27. Where the interest of the advocate and solicitor or any member of his family or where the interest of any law corporation, of which the advocate and solicitor is a director or an employee, or of any of its directors or employees is adverse to the interest of the client, the advocate and solicitor shall decline to represent or withdraw from representing the client, unless the client having been fully informed, and advised that he should seek independent legal advice, consents to the advocate and solicitor acting or continuing to act on his behalf.

Potential conflict of interests

28. When accepting instructions to act for more than one party in any commercial or conveyancing transaction where a diversity of interests exists between the parties, an advocate and solicitor shall advise each party of the potential conflict of interests and of the advocate and solicitor's duty if such conflict arises.

Not to act for both parties in dispute

29. —(1) When an advocate and solicitor or any member of his firm has acted for more than one party in the preparation of a document creating rights and obligations between them and a dispute in relation to the matter has arisen between them where the enforceability of the document is in dispute, or where the dispute is such that the advocate and solicitor is likely to be in conflict, the advocate and solicitor or any member of his firm shall not act for any party to the transaction in relation to that dispute.

(2) Where an advocate and solicitor or any solicitor practising in the same law corporation as the advocate and solicitor has acted for more than one party in the preparation of a document creating rights and obligations between them and a dispute in relation to the matter has arisen between them where the enforceability of the document is in dispute, or where the dispute is such that the advocate and solicitor is likely to be in conflict, the advocate and solicitor or any solicitor practising in the same law corporation shall not act for any party to the transaction in relation to that dispute.

Not to act against client's interests

30. —(1) An advocate and solicitor or any member of his law firm or any director or employee of the law corporation of which the advocate and solicitor is a director or an employee shall decline to advise a person whose interests are opposed to that of a client he is representing on any matter and shall inform such person to obtain independent legal advice.

(2) If the person does not obtain such independent legal advice, the advocate and solicitor is under a duty to ensure that the person is not under an impression that his interests are protected by the advocate and solicitor.

Not to act against client

31. —(1) An advocate and solicitor who has acted for a client in a matter shall not thereafter act against the client (or against persons who were involved in or associated with the client in that matter) in the same or any related matter.

(2) For the purposes of paragraph (1) —

(a) the term “client” includes a client of the law firm or law corporation of which the advocate and solicitor is a partner, an associate or an employee whether or not he handles the client's work; and

(3) Paragraph (1) shall apply even where the advocate and solicitor concerned becomes a member of a different law firm or law corporation.

(4) Nothing herein shall preclude a law firm or law corporation from acting against a party in a matter provided that —

(a) the law firm or law corporation has not previously acted for the party (or for persons who were involved in or associated with the party in that matter) in the same or any related matter; and

(b) any advocate and solicitor of the law firm or law corporation who has previously acted for the party in the same or related matter neither acts nor is involved in that matter or related matter in any way whatsoever and does not otherwise disclose any confidential information relating to the matter or the party to any other member of the law firm or law corporation.

Definitions for purposes of rules 33 and 34

32. For the purposes of rules 33 and 34 —

"associated party" includes —

(a) any member of the immediate family of the advocate and solicitor or of his partner or partners or of his employees or, in the case of a law corporation, of any of its directors or employees; and

(b) any corporation, partnership, syndicate, joint-venture or trust in which the advocate and solicitor or any member of his immediate family or any member of the immediate family of his partner or employee has or have any beneficial interest whether vested or contingent;

"client" includes —

(a) any person who has an existing relationship of solicitor and client with the advocate and solicitor;

(b) any person defined as client in the Act; and

(c) any person seeking to invest money through an advocate and solicitor or approached by or on behalf of an advocate and solicitor for that purpose;

"excepted person" means any licensed or authorised banks, finance companies or any other similar corporation whose business includes lending money to members of the public;

"full disclosure" means such disclosure in writing by the advocate and solicitor as would be necessary if the transaction were a trustee transaction;

"immediate family" means a spouse, child, grandchild, sibling, sibling's children, parent or grandparent;

"independent advice" means advice by an advocate and solicitor not being a party to the transaction nor representing any associated party and where the advocate and solicitor certified in writing that he has given such advice;

"prohibited borrowing transaction" means any transaction under or by virtue of which money or valuable security is borrowed (directly or indirectly and whether with or without security) by an advocate and solicitor from his client or by an associated party from that client unless the client is an excepted person.

Prohibited borrowing transaction

33. Subject to rule 34, an advocate and solicitor shall not —

(a) enter into a prohibited borrowing transaction;

(b) instruct, procure, secure or arrange for an associated party to enter into a prohibited borrowing transaction; or

(c) knowingly allow an associated party to enter into a prohibited borrowing transaction if it is within his power to prevent it.

Exempted borrowing transaction

34. Rule 33 shall not apply to any transaction in respect of which —

(a) all parties thereto, other than the advocate and solicitor or the associated party, have received independent advice and the certificate referred to in the definition of "independent advice" in rule 32 as to that advice has been given prior to the transaction being entered into; and the advocate and solicitor has made full disclosure of any interest of the advocate and solicitor and of any associated party;

(b) the advocate and solicitor does not act for the client in relation to the transaction but the client is represented by an independent advocate and solicitor; or

(c) the Council determines (either before or after the transaction is entered into) that it shall not apply to that particular transaction.

Fees

35. An advocate and solicitor shall inform the client of —

(a) the basis on which fees for professional services will be charged and the manner in which it is expected that those fees and disbursements, if any, shall be paid by the client;

(b) other reasonably foreseeable payments the client may have to make either to the advocate and solicitor or to a third party and the stages at which the payments are likely to be required;

(c) the estimates of the fees and other payments, which shall not vary substantially from the final amount, unless the client has been informed of the changed circumstances in writing;

(d) the fees may be subject to a limit which may be incurred without further reference and where the limit imposed on the fees is insufficient, the advocate and solicitor shall obtain the client's instructions as to whether to continue with the matter; and

(e) the approximate amount of the costs to date in every 6 months whether or not a limit has been set or deliver an interim bill in appropriate cases.

Fees in contentious matters

36. An advocate and solicitor shall, at the outset of a contentious matter and at appropriate stages thereafter, explain to the client the following:

(a) that in any event the client shall be personally responsible for payment of his own solicitor and client bill of costs in full regardless of any order for costs made against the opponent;

(b) that in the event the client loses, he will have to pay his opponent's costs as well as his own; and

(c) that even if the client wins, his opponent may not be ordered to pay the full amount of the client's own costs and may not be capable of paying what has been ordered.

Contingency fees prohibited

37. An advocate and solicitor shall not enter into any negotiations with a client —

(a) for an interest in the subject matter of litigation; or

(b) except to the extent permitted by any scale of costs which may be applicable, for remuneration proportionate to the amount which may be recovered by the client in the proceedings.

Gross overcharging

38. An advocate and solicitor shall not render a bill (whether the bill is subject to taxation or otherwise) which amounts to such gross overcharging that will affect the integrity of the profession.

Unauthorised persons

39. An advocate and solicitor shall not share his fees with or pay a commission to any unauthorised person for any legal work performed.

Evaluation

40. An advocate and solicitor shall in appropriate cases evaluate with a client whether the consequence of a matter justifies the expense or the risk involved.

Termination of retainer

41. An advocate and solicitor shall —

- (a) permit a client to change his legal adviser at any time; and
- (b) in the case where the outstanding fees are not agreed or paid, release all documents and offer any such assistance as may be necessary to enable any other advocate and solicitor instructed to take over the matter upon receiving an undertaking to protect his lien upon such documents.

Withdrawal

42. —(1) Subject to rule 41, an advocate and solicitor may withdraw from representing a client —

- (a) at any time and for any reason if the withdrawal will cause no significant harm to the client's interest and the client is fully informed of the consequences of withdrawal and voluntarily assents to it;
- (b) if the advocate and solicitor reasonably believes that continued engagement in the case or matter would be likely to have a serious adverse effect upon his health;
- (c) if a client breaches an agreement with the advocate and solicitor regarding fees or expenses to be paid by the client or regarding the client's conduct;
- (d) if a client makes material misrepresentations about the facts of the case or matter to the advocate and solicitor;
- (e) if an advocate and solicitor has an interest in any case or matter in which the advocate and solicitor is concerned for the client which is adverse to that of the client;
- (f) where such action is necessary to avoid a contravention by the advocate and solicitor of the Act or these Rules or any other subsidiary legislation made under the Act; or
- (g) where any other good cause exists.

(2) Where an advocate and solicitor withdraws from representing a client, he shall take reasonable care to avoid foreseeable harm to the client, including —

- (a) giving due notice to the client;
- (b) allowing reasonable time for substitution of a new advocate and solicitor;
- (c) co-operating with the new advocate and solicitor; and
- (d) subject to the satisfaction of any lien the advocate and solicitor may have, promptly paying to the client any moneys and handing over all papers and property to which the

client is entitled.

Fees chargeable in conflict situation

43. Where through conflict of interest, an advocate and solicitor has recommended to a client that the client seek alternative legal representation, the advocate and solicitor may charge only for those items which clearly need not be duplicated by the alternative advocate and solicitor.

Dissolution of law firm or law corporation

44. —(1) When a law firm or law corporation is dissolved, the solicitor and client relationship between the client and the advocate and solicitor in charge of his matter shall terminate.

(2) The final decision of which advocate and solicitor shall be appointed to take over the matter shall rest with the client.

Purchases from client

45. —(1) Subject to the law on fiduciary relationship, an advocate and solicitor may purchase goods and assets from a client only if the purchase is at the prevailing market price or at such price as is reasonable.

(2) Where practicable, the advocate and solicitor shall obtain an independent valuation of such goods and assets.

Gift by will or inter vivos from client

46. Where a client intends to make a significant gift by will or inter vivos, or in any other manner, to —

- (a) an advocate and solicitor acting for him;
- (b) any member of the law firm of the advocate and solicitor;
- (c) any member, director or employee of the law corporation of the advocate and solicitor;
or
- (d) any member of the family of the advocate and solicitor,

the advocate and solicitor shall not act for the client and shall advise the client to be independently advised in respect of the gift.

Relationship with other advocates and solicitors

47. An advocate and solicitor shall treat his professional colleagues with courtesy and fairness.

No communication with represented clients

48. —(1) An advocate and solicitor shall not, directly or indirectly, communicate with a client of another advocate and solicitor in the same transaction, except —

- (a) with the express approval of such other advocate and solicitor;
- (b) where it is not reasonably practicable to communicate with the other advocate and solicitor; or
- (c) where the interests of the advocate and solicitor's client will be severely prejudiced if the communication is delayed.

(2) In the case of paragraph (1) (b) or (c), the other advocate and solicitor must be informed as

soon as possible.

Second opinion

49. An advocate and solicitor may give a second opinion with or without the knowledge of the first advocate and solicitor except that the second solicitor shall not improperly seek to influence the client to determine the first advocate and solicitor's retainer.

Taking over brief

50. An advocate and solicitor who finds, on receiving instructions, that acceptance of the instructions would amount to his replacing another advocate and solicitor who has previously been instructed in the same matter, shall inform the other advocate and solicitor that instructions have been given to him and advise the client to pay the outstanding costs, if any, of the other advocate and solicitor before accepting the brief.

Professional undertaking

51. An advocate and solicitor shall honour the terms of a professional undertaking given to another advocate and solicitor, a court of law, tribunal, client or any other person.

Responsibility for fees

52. —(1) Except where otherwise agreed, an advocate and solicitor, a law firm or a law corporation, as the case may be, who instructs another advocate and solicitor, law firm or law corporation shall be responsible for the payment of the latter's fees.

(2) This rule shall also apply where the advocate and solicitor, law firm or law corporation instructs a lawyer in such other jurisdiction which recognises a reciprocal responsibility for the payment of the fees of an advocate and solicitor, a law firm or a law corporation.

Communications with other solicitors

53. An advocate and solicitor shall not voluntarily disclose to the Court any discussions between himself and the advocate and solicitor acting for another party without the consent of the other advocate and solicitor.

Relations with third parties

53A. An advocate and solicitor shall not take unfair advantage of any person or act towards anyone in a way which is fraudulent, deceitful or otherwise contrary to his position as advocate and solicitor or officer of the Court.

PART IV

CONDUCT OF PROCEEDINGS

Conduct of proceedings in client's interest

54. Subject to these Rules, an advocate and solicitor shall conduct each case in such a manner as he considers will be most advantageous to the client so long as it does not conflict with the interests of justice, public interest and professional ethics.

Duty to Court

55. An advocate and solicitor shall at all times —

(a) act with due courtesy to the Court before which he is appearing;

(b) use his best endeavours to avoid unnecessary adjournments, expense and waste of the Court's time; and

(c) assist the Court in ensuring a speedy and efficient trial and in arriving at a just decision.

Not to mislead or deceive Court

56. An advocate and solicitor shall not knowingly deceive or mislead the Court, any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings.

Client's perjury or fraud

57. If at any time before judgment is delivered in any case, an advocate and solicitor becomes aware that his client has committed perjury or has otherwise been guilty of fraud upon the Court, the advocate and solicitor —

(a) may apply for a discharge from acting further in the case; or

(b) if required to continue, shall conduct the case in such a manner that it would not perpetuate the perjury or fraud.

Duty to cease to act

58. An advocate and solicitor shall cease to act for a client if —

(a) the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make;

(b) the advocate and solicitor having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery, the client fails forthwith to disclose it; or

(c) having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it, he would thereby be embarrassed in the discharge of his duties by the knowledge of the contents of the document.

Facts, arguments and allegations

59. An advocate and solicitor shall not contrive facts which will assist his client's case or draft any originating process, pleading, affidavit, witness statement or notice or grounds of appeal containing —

(a) any statement of fact or contention (as the case may be) which is not supported by his client or instructions;

(b) any allegation of fraud unless he has clear instructions to make such allegation and has before him reasonable credible material which as it stands establishes a prima facie case of fraud; or

(c) in the case of an affidavit or witness statement, any statement of fact other than the evidence which in substance according to his instructions the advocate and solicitor reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given orally.

Conduct of Court proceedings

60. An advocate and solicitor when conducting proceedings in Court —

(a) shall be personally responsible for the conduct and presentation of his case and shall

exercise personal judgment upon the substance and purpose of statements made and questions asked;

(b) shall not express his personal opinion of his client's guilt or allow his personal feelings to affect his professional assessment of the facts or the law or to affect his duty to the Court;

(c) shall inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues;

(d) shall bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;

(e) shall not advance submissions, opinions or propositions which to his knowledge is contrary to the law;

(f) shall not concoct evidence or contrive facts which will assist in advancing his client's case;

(g) shall not by assertion in a speech make an allegation against a witness whom he had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation; or

(h) shall not suggest that a witness or other person is guilty of any crime, fraud or misconduct or attribute to another person the crime or conduct of which his client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to his client's case and which appear to him to be supported by reasonable grounds.

Scandalous or annoying statements or questions

61. In all cases, an advocate and solicitor shall —

(a) not make statements or ask questions which are scandalous or intended to insult or calculated only to vilify insult or annoy either the witness or any other person or otherwise an abuse of the function of the advocate and solicitor; and

(b) exercise his own judgment both as to the substance and the form of the questions put or statements made.

No communication with witness under cross-examination

62. —(1) An advocate and solicitor shall not interview or discuss with a witness, whom the advocate and solicitor has called, his evidence or the evidence of the other witness while such witness is under cross-examination.

(2) Paragraph (1) shall not prevent the advocate and solicitor from communicating with his client for any purpose necessary to the proper management of the matter being handled by him or his law firm or a law corporation of which he is a director or an employee.

Communication with Court

63. —(1) An advocate and solicitor representing an interested party shall not initiate communication with the Court about the facts, issues or any other matter in a case that the advocate and solicitor knows is pending or likely to be pending before the Court unless the advocate and solicitor has first informed the persons acting for all other interested parties of the

nature of the matters he wishes to communicate with the Court and has given them an opportunity to be present or to reply.

(2) If an advocate and solicitor has communicated with the Court regarding the issues in a case in the absence of the person acting for the other party, the advocate and solicitor shall fully inform that person of such discussion at the earliest opportunity.

Solicitor not to act if he is a witness

64. —(1) An advocate and solicitor shall not accept instructions in a case in which the advocate and solicitor has reason to believe that he is likely to be a witness on a material question of fact.

(2) An advocate and solicitor shall discharge himself from representing a client if it becomes apparent to the advocate and solicitor that he is likely to be a witness on a material question of fact.

(3) In discharging himself, the advocate and solicitor shall take all reasonable steps to ensure that his client's interest is not in any way jeopardised.

Relationship with client or Court

65. An advocate and solicitor shall not appear before a Court in a matter where —

(a) by reason of his relationship with the client it would be difficult for the advocate and solicitor to maintain his professional independence; or

(b) by reason of his relationship with the Court or a member thereof the impartial administration of justice might appear to be prejudiced.

Interviewing of witnesses

66. Subject to rule 63, an advocate and solicitor may interview and take statements from any witness or prospective witness at any stage in the proceedings, whether or not that witness has been interviewed or called as a witness by another party to the proceedings except that if the advocate and solicitor is aware that the witness has been called or issued a subpoena to appear in Court by the other party to the proceedings, he shall inform the advocate and solicitor of the other party or the prosecution in criminal proceeding, as the case may be, of his intention to interview or take statements from the witness.

Statements to press or media

67. An advocate and solicitor shall not give a statement to the press or media whether on behalf of the client or otherwise, which may amount to contempt of Court or which is calculated to interfere with the fair trial of a case which has not been concluded.

Payments to witnesses

68. An advocate and solicitor shall not make or offer to make payments (other than the allowable disbursements and expenses the witness is entitled to under the law) to the witness contingent upon the nature of the evidence given or upon the outcome of a case.

Letter of demand

69. An advocate and solicitor shall not, in his letter of demand, demand anything other than that recoverable by due process of law.

Entering judgment by default

70. —(1) An advocate and solicitor shall not enter judgment by default pursuant to the Rules of Court (Cap. 322, R5) against any other party who is on record represented by another advocate and solicitor, or take any advantage of any delay in filing pleadings unless written notice of his

intention to do so has been given to the other advocate and solicitor and 2 working days have elapsed after service of such notice.

(2) Any notice under paragraph (1) given on a working day after 4.00 p.m. or on a day other than a working day shall be deemed to have been given on the next working day.

(3) This Rule shall not operate to extend the time stipulated by any Order of Court for any action or step to be taken and no notice need to be given under this Rule before any action or step is taken upon any failure to comply with any such Order of Court.

(4) In this rule, “working day” means any day other than a Saturday, Sunday or public holiday.

Allegations against another solicitor

71.—(1) An advocate and solicitor whose client has given instructions to include in an affidavit to be sworn whether by the client or his witness, an allegation made against another advocate and solicitor, shall give the other advocate and solicitor an opportunity to answer the intended allegations.

(2) In such a case, the answer of the other advocate and solicitor shall be included in the affidavit before the same is deposed to, filed and served.

PART V

DEFENDING ACCUSED PERSONS

Defending accused regardless of personal opinion

72. Subject to these Rules, an advocate and solicitor shall defend any person on whose behalf he is instructed on a criminal charge irrespective of any opinion which the advocate and solicitor may have formed as to the guilt or innocence of that person.

Duty of defence counsel

73. When defending a client on a criminal charge, an advocate and solicitor shall endeavour to protect the client from being convicted except by a competent Court and upon legal evidence sufficient to support a conviction for the offence with which the client is charged.

Confession by client

74. An advocate and solicitor to whom a clear confession of guilt has been made by a client —

(a) may, if the confession is made before the proceedings have commenced; or

(b) should, if the confession is made during the proceedings,

continue to act but shall not set up an affirmative case inconsistent with the confession by, for example, asserting or suggesting that some other person committed the offence charged or calling evidence in support of an alibi.

Advising client to plead

75. An advocate and solicitor may advise a client to plead guilty to a criminal charge but the client must be allowed complete freedom of choice whether to plead guilty or not guilty.

Absence from criminal trial

76. An advocate and solicitor appearing for a client on a criminal charge shall not absent himself from a trial unless —

(a) there are exceptional circumstances which the advocate and solicitor could not reasonably have foreseen;

(b) he obtains the consent of his client; and

(c) a competent assisting counsel, who is well informed about the case and able to deal with any question which might reasonably be expected to arise, takes over the conduct of the case from the advocate and solicitor.

Continuing to act if accused absconds

77. If during the course of a criminal trial and prior to final sentence, the accused absconds, the advocate and solicitor may continue to act and, if he does so, the advocate and solicitor shall conduct the case on the basis of the instructions he has received as if the client is still present in Court but had decided not to give evidence.

Disclosure of previous convictions

78. Where a client who has a record of previous convictions is convicted of an offence and the prosecution —

(a) does not put the record before the Court;

(b) puts only part of the record before the Court; or

(c) puts before the Court a record containing errors that favour the client,

the advocate and solicitor acting for that client is under no duty to make any disclosure to the Court if the disclosure would be to his client's detriment, except that the advocate and solicitor shall not lend himself to any assertion that the client has no convictions nor ask a prosecution witness whether there are previous convictions against the client in the hope of receiving a negative answer.

Evidence from accused

79. An advocate and solicitor may advise a client about giving evidence in his own defence but the client must be allowed complete freedom of choice whether to give evidence or not.

Mitigation plea

80. An advocate and solicitor shall not in a plea in mitigation make an allegation that is scandalous or calculated to vilify or insult any person.

Acting after conviction and sentence

81. An advocate and solicitor shall continue to reasonably assist his client after conviction and sentence.

Bail

82. An advocate and solicitor shall not post bail for the client in a case where he is personally conducting the defence on behalf of the client.

PART VI

CONDUCT OF CRIMINAL PROSECUTIONS BY PRACTISING SOLICITOR

Presentation of case

83. A prosecuting advocate and solicitor shall present to the Court or tribunal, fairly and

impartially, the whole of the facts which comprise the case for the prosecution or the case which the defendant has to meet.

Potential witnesses

84. A prosecuting advocate and solicitor shall, prior to the trial and within a reasonable time, inform the defence of the identity and location (if known) of any person who he knows may be able to give evidence relevant to a case but who is not proposed to be called by the prosecution.

Conflicting statements

85. A prosecuting advocate and solicitor shall within a reasonable time inform the defence where a witness called by the prosecution gives evidence on a material issue in substantial conflict with a prior statement made by the witness.

Duty to assist Court

86. A prosecuting advocate and solicitor shall assist the Court at all times before the conclusion of the trial, by drawing attention to any apparent errors or omissions of fact or law or procedural irregularities which in his opinion ought to be corrected.

Unrepresented accused

87. If the accused person is unrepresented, the prosecuting advocate and solicitor shall inform the Court of any mitigating circumstances as to which he is instructed or knows.

Pending proceedings against accused

88. A prosecuting advocate and solicitor shall not disclose to the Court the act that there are proceedings pending against the accused person except —

(a) on an application for an adjournment or remand where the fact of pending proceedings is relevant to whether an adjournment or remand should be granted, the length of the adjournment or remand, or any proposed condition of the adjournment or remand;

(b) in relation to an application for bail;

(c) in answer to an allegation by or on behalf of an accused person that there are no criminal matters pending against him; or

(d) where such evidence would otherwise be admissible as a result of any law or rules.

Savings

89. These Rules shall not limit or restrict any duty or obligation of an advocate and solicitor or any right or remedy of any person which otherwise exists or may arise.

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