THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 7.4.3

[Formerly PDR 2013, para 65]

WARRANT TO ACT, LETTER OF ENGAGEMENT AND REFERRALS FROM THIRD PARTIES

A. Warrant to Act to be Signed by Each Crew Member in Maritime Wage Claims

[Formerly PDR 1989, chap 1, para 49]

When acting for clients such as ship's crew in wage claims, a legal practitioner shall obtain a Warrant to Act signed by each crew member before or as soon as practicable after the issue of an Admiralty Writ in Rem.

B. Inserting Reservation of Rights in Warrant to Act

[Formerly PDR 1989, chap 1, para 8(b)]

Any difficulty to a legal practitioner seeking to terminate his/her retainer may well be averted by inserting an appropriate reservation of right in his/her client's Warrant to Act. This reservation could be to the effect that the legal practitioner may at any time discharge himself/herself based on the grounds set out in rule 26(5) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), while observing the obligation in rule 26(6) of the PCR 2015 to take reasonable care to avoid foreseeable harm to the client.

Without a suitable reservation of right, a legal practitioner who obtains his/her discharge may well expose himself/herself to a claim for damages in the event his/her withdrawal leads to the dismissal of his/her client's claim or the recovery of judgment against his/her client when there is a valid defence.

C. Request for Written Warrants to Act

[Formerly RUL/1/1992]

A law practice (*A*) must accept another law practice's (*B*) written representation that the latter is authorised to act for a particular client on the face value of the representation made, unless there are good reasons for suspecting that the representation has been falsely made.

Should *A* insist that *B* disclose its Warrant to Act despite having received a written representation from *B* that it has authority to act for the particular client, *A* should provide its reasons to *B* for suspecting that the representation has been falsely made.

A legal practitioner (*X*) who receives a request from another legal practitioner (*Y*) to disclose his/her Warrant to Act is entitled to ask *Y* to provide his/her reasons for suspecting that the representation is false. After *Y* has provided his/her reasons for suspecting that the representation is false, *X* should, as a matter of course, disclose his/her Warrant to Act. Where an action has been commenced in court, no privilege attaches *ipso facto* to a Warrant to Act.

D. Code of Practice in Non-injury and Personal Injury Motor Accident Cases

[Formerly Council's Practice Direction 6 of 2009]

Part D of this Practice Direction sets out a code of practice for legal practitioners concerned with the making or commencement of any claim or action (for damages or otherwise) in non-injury and personal injury motor accident cases, and in respect of the negotiation, compromise, settlement or conduct of that claim or action. Part D of this Practice Direction:

(a) consolidates and highlights certain ethical obligations on Warrants to Act and providing generally applicable to all legal practitioners in contentious matters;

(b) establishes the ethical parameters of agreements entered into by legal practitioners with third parties for referral of work in non-injury and personal injury motor accident cases; and

(c) complements the existing legislative regime under the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and the PCR 2015.

1. Warrants to act verifying identity of the client before acting

The legal practitioner or law practice must comply with the requirements for the verification of the identity of the client or the principal client set out in the Council's Practice Direction on the Prevention of Money Laundering and Financing of Terrorism (Practice Direction 3.2.1).

(a) Accepting instructions from the client to act

After a legal practitioner or a law practice has properly verified the identity of the client or the principal client, the legal practitioner or law practice may accept instructions from the client or an agent on behalf of a principal client to act in the matter. In the latter case, the legal practitioner must ensure that the agent has the required authority to give instructions on behalf of the principal client and, in the absence of evidence of such authority, the legal practitioner must, within a reasonable time thereof, confirm the instructions with the principal client: rule 5(5) of the PCR 2015.

It is in the interests of both the solicitor (as defined by the subsidiary legislation) and the client that the solicitor or the law practice should obtain written instructions of the client or his/her agent to act in the matter. If a solicitor or a law practice has received oral instructions from the client or his/her agent to act in the matter, the solicitor or law practice must confirm the oral instructions subsequently in a written Warrant to Act: Order 64, rule 7(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ('RoC'). The absence of such a Warrant to Act is, if the solicitor's authority to act is disputed, *prima facie* evidence that he/she has not been authorised to represent such party: Order 64, rule 7(2) of the RoC.

In the context of a third party referring a client to a legal practitioner or a law practice, the legal practitioner or law practice, as the case may be, must comply with all the requirements in rule 39(2) of the PCR 2015. In particular, the legal practitioner or law practice must "communicate directly with the client to obtain or confirm instructions when providing advice and at all appropriate stages of the transaction": rule 39(2)(*g*) of the PCR 2015. The legal practitioner or law practice must not accept instructions from the third party to act in the matter.

(b) Execution of the Warrant to Act by the client

It is in the interests of the legal practitioner to explain properly the nature, contents and scope of the Warrant to Act directly to his/her client, and not to delegate this duty to a staff of his/her law practice. Failure to provide the client with a proper explanation may result in disputes over what the client knew or was told when the Warrant to Act was executed, which may attract allegations of misconduct. Further, the terms of any contentious fee agreement between the legal practitioner and the client could be deemed unfair or unreasonable and such an agreement may be declared void: section 113(4) of the LPA. As a matter of precaution and prudence, it is in the interests of the legal practitioner to maintain comprehensive and contemporaneous attendance notes of the legal practitioner's explanation to the client when the Warrant to Act is executed.

In the context of a third party referring a client to a legal practitioner or a law practice, the legal practitioner or law practice, as the case may be, is prohibited from leaving blank forms of Warrants to Act with the third party or allowing the third party to secure a client's signature to a Warrant to Act The arrangements for the explanation and execution of a Warrant to Act must be made directly by the legal practitioner or the law practice with the client: rule 39(2)(*g*) of the PCR 2015. For the reasons stated in the immediate paragraph above, it is in the interests of the legal practitioner to ensure that the Warrant to Act is executed by the client in the legal practitioner's presence.

(c) Disclosure of the Warrant to Act to a third party

In the interests of efficacy, requests for disclosure should not be made unnecessarily. A law practice must accept another law practice's written representation that the latter is authorised to act for a particular client on the face value of the representation made, unless there are good reasons for suspecting that the representation has been falsely made: see Part C of this Practice Direction on "Request for Written Warrants to Act".

2. Agreements with third parties for referral of work

For referral of a client by a third party to a legal practitioner or a law practice, the legal practitioner or law practice, as the case may be, must comply with all the requirements in rule 39(2) of the PCR 2015.

In addition, the Council is of the view that the ethical requirements stipulated in rule 40 of the PCR 2015 for agreements for referrals of conveyancing services should similarly apply to agreements entered into by a legal practitioner or a law practice with third parties for referral of non-injury motor accident or personal injury motor accident work. For such agreements, the legal practitioner or law practice, 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 the PCR 2015;

(b) the legal practitioner or law practice shall not:

  (i) accept from the referror the payment of commission, referral fee or any other form of consideration; or

  (ii) reward the referror by the payment of commission, referral fee or any other form of consideration;

(c) the legal practitioner or law practice must be entitled to terminate the agreement immediately if there is reason to believe that the referror is in breach of any of the terms of the agreement;

(d) any publicity of the referror (whether written or otherwise), which makes reference to any service that may be provided by the legal practitioner or law practice must not suggest any of the following:

  (i) that the service is free;

  (ii) that different charges for the service would be made according to whether or not the client instructs the particular legal practitioner or law practice; or

(iii) that the availability or price of other services offered by the referror or any party related to the referror are conditional on the client instructing the legal practitioner or law practice; and

(e) the referror must not do anything to impair the right of the client not to appoint the legal practitioner or law practice or in any way influence the right of the client to appoint the legal practitioner or law practice of his/her choice.

The legal practitioner or law practice must terminate the agreement immediately if the referror is in breach of any term referred to in the immediate paragraph above or if there is reason to believe that the legal practitioner or law practice is in breach of such term.

If the legal practitioner or law practice is satisfied that the referror has inflated the claim or was complicit in a staged accident or otherwise committed any fraud, dishonesty, crime or illegal conduct, the legal practitioner or law practice has a duty to advise the client of the same and the legal consequences of misleading the court. The legal practitioner or law practice should also advise the client to require the referror to make the appropriate rectification or take other corrective action. If the client refuses to accept the advice or if the referror refuses to make the appropriate rectification or take other corrective action, the legal practitioner or law practice, as the case may be, must terminate the agreement immediately and cease to act in the matter. When advising the client, the legal practitioner must not knowingly assist in or encourage any fraud, dishonesty, crime or illegal conduct. The legal practitioner must also, at all times, comply with his/her ethical obligations not to knowingly mislead or attempt to mislead the court or tribunal: see rule 9 of the PCR 2015.

Where the legal practitioner or law practice has terminated the agreement, the legal practitioner or law practice, as the case may be, may continue to act in matters the legal practitioner or law practice was instructed before the termination but should not accept any further referrals from the referror.

3. Providing welfare assistance to clients

Legal practitioners should bear in mind "Providing Welfare Assistance to Clients" (Guidance Note 7.4.2), where Council advised that lending moneys by a law practice to clients will put a legal practitioner in a position of personal conflict of interest as the legal practitioner will have a creditor/debtor relationship with his/her client and the debt would be repaid only if the client's case was either settled or paid. Council also advised that if the client's case was pending litigation, allegations of maintenance and champerty could be made against the law practice. Law practices should direct clients who are foreign workers to appropriate organisations that can provide welfare assistance to them.

E. Compliance with Rule 17 of the PCR 2015

Although a legal practitioner is not required to advise his/her client in writing of the matters stated in rule 17 of the PCR 2015, the Law Society recommends that legal practitioner draw up a letter of engagement to incorporate the advice required to be given under these rules. c

F. Warrant to Act Containing Privileged Material

[Ethics Committee Guidance: 10 March 2008]

Where the Warrant to Act contains privileged material, it may nevertheless be disclosed by expunging that material before disclosure. Alternatively, the solicitor should obtain a further brief warrant that does not contain such material for purposes of disclosure: *Tung Hui Mannequin Industries v Tenet Insurance Co Ltd and others* [2005] 3 SLR(R) 184.

[Note: It is therefore good practice to keep the Warrant to Act a separate document from the fee agreement, so that it can be readily furnished without having to disclose confidential information about fee arrangements.]

G. Client Engaging Two Law Practices
[Ethics Committee Guidance: 12 December 2008]

There is nothing in the LPA, PCR 2015 or the Society's Practice Directions that prohibits a client from engaging two law practices to act in a matter. If both law practices have properly advised the client on their terms of engagement, including their respective costs for acting in the matter, and the client consents to these terms, both law practices may then proceed to act for the client in the matter. Each law practice would have to comply with their ethical obligations under their respective retainers with the client, including the confidentiality requirements set out in rule 6 of the PCR 2015 and all rules relating to conflict of interest.

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THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE