

SCHEDULE**CODE OF PROFESSIONAL CONDUCT***(Section 16(5))***CODE OF PROFESSIONAL CONDUCT****Short title**

1. These Rules may be cited as the Legal Profession Code of Professional Conduct.

Definitions

2. In this Code, the expression “court” includes any court or tribunal, or any other person or body of persons before whom an Attorney appears as an advocate.
3. In this Code the word “Attorney” means an Attorney admitted to practice in accordance with the provisions of section 4 of the Legal Profession Ordinance.

Integrity

4. An Attorney must discharge his duties to the court, his client, members of the public and his fellow members of the profession with integrity and in accordance with this Code. In the performance of his duties an Attorney shall not act with inexcusable or undue delay, negligence or neglect.

Duties

5. It is the duty of every Attorney—

- (i) to comply with the provisions of this Code;
- (ii) not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession of an Attorney into disrepute, or which is prejudicial to the administration of justice;
- (iii) to observe the ethics and etiquette of his profession;
- (iv) to be competent, diligent and efficient in all his professional activities.

6. An Attorney has a duty to uphold the interest of his client without regard to his own interest or to any consequences to himself or to other persons, subject always to his primary duty to the court and to the law.

Advising clients

7. An Attorney must be both candid and honest when advising clients and give his clients a competent opinion based on the known facts and the law applicable thereto.

8. An Attorney should advise and encourage a client to settle a dispute whenever such a course appears to be advantageous for the client.

9. An Attorney must never knowingly assist or encourage any dishonesty, fraud, crime or illegal conduct nor advise his client as to how to violate the law.

10. An Attorney must immediately inform a client of any mistake he has made which may damage the client's interest. He should do his best to rectify the mistake at no additional expense to such client. If it is in the client's interest he should advise the client to seek promptly the advice of another Attorney.

11. An Attorney shall deal with his client's business with all due expedition and shall, whenever reasonably so required by the client, provide him with full information as to the progress of the client's business.

12. It is improper for an Attorney to accept instructions in any matter unless he can handle it without undue delay.

13. An Attorney shall reply promptly to letters from other Attorneys making inquiries on behalf of their clients.

Confidential information

14. An Attorney shall hold in strict confidence all information acquired in the course of his professional relationship with his client, and he must not divulge such information unless he is expressly or impliedly authorized to do so by his client or is so required by the law. He may, however, unless expressly forbidden by the client, disclose such information to other members of his firm and to such employees of the firm as may be necessary.

15. An Attorney shall not disclose to one client the confidential information concerning or received from another client and he must decline employment which might require him to do so.

16. Notwithstanding the above paragraphs an Attorney may be obliged to reveal information about a client's affairs in order—

- (i) to establish or collect his fees;
- (ii) to defend himself, an associate or an employee in any civil, criminal or disciplinary proceedings;
- (iii) to prevent the commission of a crime; or
- (iv) to obey an order of a court.

Impartiality and conflict of interest

17. An Attorney or firm of Attorneys must neither advise nor represent both sides to a dispute. An Attorney or the firm should not act or continue to act in a matter when there is or there is likely to be a conflict of interest.

18. An Attorney shall at the time of retainer disclose to his client all the circumstances of his relations to the parties and his interest in or connection with the controversy (if any) which might influence the client in his selection of an Attorney.

19. An Attorney may appear for more than one party in a trial provided he satisfies himself that there is not and is not likely to be any conflict of interest.

20. An Attorney shall not act for an opponent of a client, or of a former client, in any case in which his knowledge of the affairs of such client or former client may give him an unfair advantage.

21. An Attorney shall not invest or advise the investment of any funds belonging to a client or in which a client has a beneficial interest, in any company, business or other activity in which the Attorney has a beneficial interest without full and complete disclosure of his interest.

22. Before an Attorney or firm of Attorneys accepts employment for more than one client in any matter he or the firm must advise the clients concerned that he or the firm has been asked to act for both or all of them, that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and that if a conflict develops which cannot be resolved, he or the firm cannot continue to act for both or all of them and may have to withdraw completely.

23. An Attorney may not appear as counsel in a matter in which he himself is a party or has a significant pecuniary interest, except where claiming for his or his firm's professional fees and disbursements.

Outside interests

24. An Attorney who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize his professional integrity, independence or competence.

25. It is the duty of an Attorney to ensure, when he is involved in an interest outside his legal practice, that every client for whom he acts who might be affected by such interest is made aware of the Attorney's interest.

Conduct at court

26. An Attorney must at all times act with due courtesy to the court before which he is appearing and to opposing counsel. He must in every case use his best endeavours to avoid unnecessary expense and waste of the court's time.

27. Subject to the provisions of this Code, an Attorney should conduct cases in such a manner as in his discretion he thinks will be most to the advantage of his client.

28. An Attorney instructed to settle a pleading is under responsibilities to the court as well as to his client. He may not make any allegation unsupported by his instructions.

29. In an appeal either to the Supreme Court or to the Court of Appeal, an Attorney should not settle grounds of appeal unless he considers that the proposed appeal is properly arguable.

30. An Attorney shall not—

- (i) knowingly assist or permit his client to do anything which the Attorney considers to be vexatious, dishonest or dishonourable;
- (ii) appear before a court when he or his associates have business or personal relationships with a member of the court which give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the court;
- (iii) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a court or any of its officials;
- (iv) knowingly attempt to deceive a court or influence the course of justice by offering false evidence, mis-stating facts or law, presenting or relying upon a false or deceptive affidavit; suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime or illegal conduct;
- (v) knowingly mis-state the contents of a document, the testimony of a witness, the substance of an argument or any provision of the law or any case that he cites or refers to;
- (vi) dissuade a material witness from giving evidence or advise such a witness to absent himself;
- (vii) needlessly abuse, hector, harass or inconvenience a witness.

31. In both civil and criminal cases, an Attorney must ensure that the court and opposing counsel are informed of any relevant decision on a point of law or any legislative provision whether it be for or against his contention.

32. Except with the consent of the client or in unavoidable circumstances, an Attorney may not hand over the conduct of the main trial of an action or prosecution to another Attorney as if the latter Attorney had himself been instructed.

33. An Attorney shall not in any proceedings in which he is appearing as an advocate express his personal opinion or beliefs as to facts or suggest as a fact anything of which there is no evidence before the court.

34. An Attorney shall endeavour always to maintain his position as an advocate and shall not either in argument to the court or in address to the jury, assert his personal belief in his client's innocence, or in the justice of his cause or his personal knowledge as to any of the facts involved in the matter under investigation.

Dress in court

35. (1) The dress of Attorneys appearing in Court should be unobtrusive and compatible with the wearing of robes.

(2) Suits and dresses should be of dark colour. Dresses or blouses should be long-sleeved and high to the neck. Shirts and blouses should be predominantly white or of other unemphatic appearance. Collars should be white and shoes black.

(3) No conspicuous jewellery ornaments should be worn.

Duties when prosecuting a person accused of a crime

36. When engaged as a prosecutor, the Attorney's prime duty is to see that justice is done through a fair trial upon the merits and not primarily to seek a conviction. And to that end he shall not withhold facts tending to prove either guilt or innocence of the accused. The prosecutor must act fairly and dispassionately. He should make timely disclosure to the accused or his Attorney (or to the court if the accused is not represented) of all relevant facts and witnesses known to him, whether tending towards guilt or innocence. Where prosecuting counsel has in his possession statements from persons he does not propose to call as witnesses, he should regard it as normal practice to show such statements to the defence.

Duties when defending a person accused of a crime

37. When defending a client on a criminal charge, an Attorney must endeavour to protect his client from being convicted except by a competent court and upon legal evidence sufficient to support a conviction for the offence with which his client is charged.

38. Admissions made by the accused to his Attorney may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits the factual and mental elements necessary to constitute the offence, the Attorney, even if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, or to the form of the indictment, or to the admissibility or sufficiency of the evidence, but he must not suggest that some other persons committed the offence or call any evidence which, by reason of the admissions, he believes to be false. Nor may he set up an affirmative case inconsistent with such admissions. The defence is entitled to test the evidence given by each individual witness for the prosecution and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged.

Withdrawal of service

39. An Attorney shall not withdraw his services from a client except for good cause and upon notice appropriate in the circumstances.

40. An Attorney is required to withdraw his services from a client if—

- (i) to continue his services will require him to act in a manner inconsistent with his duty to the court or with the professional conduct expected of him; or
- (ii) a client is guilty of dishonest or dishonourable conduct in relation to the matter in respect of which the Attorney is appearing or acting; or
- (iii) a client wishes to proceed solely to harass or maliciously injure another person; or
- (iv) a client insists on giving evidence either orally or by affidavit which the Attorney is satisfied that the client knows to be false in a material respect.

41. An Attorney may withdraw his services from a client if—

- (i) he is satisfied that a client has lost confidence in him or when a client does not accept his advice; or
- (ii) his fees are not paid within a reasonable time of being demanded;

but he may not withdraw his services at a time that will prejudice his client as for instance, shortly before a trial when there is inadequate time for another Attorney to be briefed properly, except with the leave of the Court.

42. Upon his discharge or withdrawal an Attorney should—

- (i) subject to any proper lien he may have on them, deliver to or to the order of the client, all papers and property to which the client is entitled;
- (ii) give the client all information he may require in connection with any outstanding business he has with the client;
- (iii) account for all the funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during his employment;
- (iv) promptly render his account for outstanding fees and disbursements; and
- (v) co-operate with any Attorney who succeeds him.

43. An Attorney shall not enforce his lien on the papers and property of a client if such a course will materially prejudice the client's position in any pending legal proceedings.

Making legal services available

44. An Attorney shall make his services available to members of the public in an efficient and convenient manner and by means which are compatible with the integrity, independence and effectiveness of the profession.

45. An Attorney should not refuse to act for a person merely because that person is unpopular or notorious or because he is espousing an unpopular cause or because he is charged with a particular criminal offence; nor should he be affected by the fact that powerful interests may be involved in the matter in respect of which he is asked to act.

46. An Attorney should decline to act for a prospective client if he is not adequately qualified in the field of law in respect of which he is asked to act.

Advertising

47. An Attorney may not do, or cause or allow to be done on his behalf, anything for the purpose of touting, whether directly or indirectly, or which is likely to lead to the reasonable inference that it was done for that purpose.

48. An Attorney shall not endeavour by direct or indirect means to attract the clients of another Attorney.

49. An Attorney may not do, or cause or allow to be done on his behalf, anything with the primary motive of personal advertisement or anything likely to lead to the reasonable inference that it was so motivated.

50. An Attorney may—

- (i) publish in legal directories details of himself or his firm including his or the firm's name, address, telecommunications information, and a brief description of the practice of the Attorney or the firm;
- (ii) publish in legal directories, journals or newspapers and circulate amongst his or his firm's regular clients notice of the admission to or retirement of a partner or partners from the practice, the establishment or amalgamation of a firm or firms and notification of change of address of the practice of an Attorney or his firm.

51. An Attorney may not write for publication, broadcast by radio or television, publish in a film or otherwise cause or permit to be published any particulars of any matters on which he has been or is currently engaged as counsel, unless he can do so without disclosing confidential information and without giving publicity to his own part in the matter.

Fees

52. An Attorney shall not—

- (i) stipulate for, charge or accept any fee which is not fair and reasonable;
- (ii) appropriate any funds of his client held in trust or otherwise under his control for or on account of his fees without the express authority of his client, except as permitted by law;

- (iii) where a fee is laid down in any provision of the law as the proper fee, charge more than that fee.

53. An Attorney may reduce or waive fees in cases where payment of his usual fees would involve a client in hardship. An Attorney may not reduce his fees in order to attract more clients.

54. The right of an Attorney to ask for a retainer or to demand payment of out-of-pocket expenses and commitments, failing payment of which he may withdraw from the case or refuse to handle it, shall not be exercised where the client may be unable to find other assistance in time to prevent irreparable damage being done.

55. An Attorney should, if requested, give his client a fair estimate of the fees and disbursements that are likely if he acts for the client pointing out when necessary where there may be an increase in such fees and disbursements.

Public office

56. An Attorney who holds an office of a public nature should in the discharge of his official duties adhere to standards of conduct as high as those which this code requires in the practice of law.

Respect for administration of justice

57. An Attorney shall encourage public respect for and shall try to improve the administration of justice.

Responsibility to profession

58. An Attorney shall assist in maintaining the integrity and reputation of the profession.

59. An Attorney shall report to the Bar Council breaches of this Code which come to his knowledge and which he considers to be serious.

Unauthorized practice of the law

60. An Attorney shall assist in preventing the unauthorized practice of the law.

61. An Attorney has professional responsibility for all business entrusted to him. He must maintain direct supervision over any of his staff who are not Attorneys. He should ensure that all matters requiring an Attorney's professional skill and judgment are dealt with by an Attorney.

Relationship between Attorneys

62. An Attorney shall act with good faith and courtesy in relationship with other Attorneys.

63. An Attorney shall give no undertaking he cannot fulfill and he must fulfill every undertaking he gives. Undertakings should be written or confirmed in writing and they should be absolutely unambiguous in their terms. If an Attorney giving an undertaking does not intend to accept personal responsibility, he should state this in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given should be deemed to expect that the Attorney giving it will honour it personally.

64. An Attorney shall not communicate upon or attempt to negotiate or compromise a matter directly with any party who is to the Attorney's knowledge represented by an Attorney except through or with the consent of that Attorney.

65. (1) An Attorney shall neither in response to the enquiry of a member of the public nor gratuitously criticize the competence, conduct, advice or charges of other Attorneys.

(2) An Attorney should, however, be prepared when requested by a member of the public to do so, to advise and represent such a person in any complaint or proposed court action against another Attorney.

66. (1) An Attorney should accede to reasonable requests concerning trial dates, adjournments, waiver or procedural formalities and similar matters which do not prejudice the rights of his client.

(2) Where an Attorney knows that another Attorney is concerned in a case, he should not proceed by default without enquiry and warning.

(3) An Attorney shall not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of another Attorney not going to the merits or involving the sacrifice of the client's rights.

Rules to be observed in the spirit

67. An Attorney shall observe these rules in the spirit as well as to the letter.

68. Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

69. An Attorney shall reply promptly to any letter received from the Bar Council relating to his professional conduct.

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