

COMMISSION FOR THE ADMINISTRATION OF JUSTICE

CODE OF ETHICS AND CONDUCT FOR ADVOCATES

This code defines the requirements of professional conduct for advocates. The purpose of this Code is to ensure that advocates do not act abusively or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such manner as could seriously affect the trust conferred on them.

PART ONE

GENERAL PRINCIPLES

CHAPTER I

CONDUCT OF ADVOCATES

Rule 1

An advocate shall in the exercise of his profession safeguard both in his own actions and in the actions of those who act on his or her behalf, the following values:

- a) the advocate's independence or integrity;
- b) a person's freedom to instruct an advocate of his or her choice;
- c) the advocate's duty to act in the best interests of the client;
- d) the good repute of the advocate or of the advocates' profession;
- e) the advocate's proper standard of work;
- f) the advocate's duty to the Court.

Rule 2

An advocate is an officer of the Court, and should conduct himself or herself accordingly.

Rule 3

In all that is entrusted to him, an advocate has the duty to:

- a) properly administer as a *bonus paterfamilias*;
- b) refrain from deriving any personal benefit therefrom;
- c) give due account thereof when so requested.

Rule 4

An advocate shall be in breach of this Code of Ethics and Conduct if he conducts himself abusively or negligently or in a manner repugnant to the decorum, dignity or honour of his profession, or in such manner as could seriously affect the trust conferred on him by his profession.

PART TWO RELATIONSHIP WITH THE CLIENT

CHAPTER I OBTAINING INSTRUCTIONS

Rule 1

It is fundamental to the relationship which exists between advocate and client that an advocate should be able to give objective and frank advice to the client free from any external or adverse pressures or interests which would destroy or weaken the advocate's professional independence or the fiduciary relationship with the client.

Rule 2

Advocates shall not in any manner publicise their practices or permit other persons to do so on their behalf or in their interest. The Chamber of Advocates shall from time to time, either on its own motion or at the request of any member, issue guidelines and interpretations as to what does not constitute publicity for the purposes of this Rule.

Rule 3

Advocates shall not directly or indirectly employ or accept the services of any tout. In this Rule "tout" means any person who undertakes in return for a fee, reward or remuneration, whether in cash or in kind or for any consideration, to find clients for a advocate.

Rule 4

Advocates shall not enter into any agreement with any other professional not being another advocate, e.g. a legal procurator or notary, or with any person to give or to receive any share of the fees or other remuneration earned by him in respect of professional work.

Rule 5

Advocates shall not use a firm name, letterhead or other professional designation of description which contains misleading information.

Rule 6

Advocates shall not use a firm name, letterhead or other professional designation of description which indicates a partnership or association with persons other than other advocates. However, the fact that the name of a legal procurator is included on a letterhead is not considered as a breach of this rule if the said name of the legal procurator is not part of the name of the firm or list of associated advocates.

Rule 7

Subject to Rule 2, Rule 3 and Rule 4, advocates may accept introductions and referrals from other persons and may make introductions and referrals to other persons.

CHAPTER II

TAKING INSTRUCTIONS

Rule 1

An advocate is generally free to decide whether to accept instructions from any particular client.

Rule 2

An advocate must not act, or where relevant, must cease acting further where the instructions would involve the advocate in a breach of the law or a breach of this Code of Ethics and Conduct unless the client is prepared to change his or her instructions appropriately.

Rule 3

An advocate must not act or continue to act in circumstances where the client cannot be represented with competence or diligence.

Rule 4

An advocate must not accept instructions where he or she suspects that those instructions have been given by a client under duress or undue influence.

Rule 5

An advocate must not accept instructions knowing that a third party has stipulated that the advocate must act.

Rule 6

Where instructions are received not from a client but from a third party (not being a member of the legal profession) purporting to represent that client, an advocate should seek direct confirmation from the client as soon as possible. In case of doubt, the advocate must meet with the client or take the necessary steps to confirm the

instructions as soon as possible.

Rule 7

An advocate must not act, or must decline to act further, where there is a conflict of interests between:

- a) the advocate and the client or prospective client;
- b) two existing or prospective clients;
- c) an existing client, a prospective client or between prospective clients.

In this regard an advocate is bound to observe the rules in Chapter 5 of this Part.

Rule 8

An advocate must decline to act where he or she, his or her partner, employer, employee, spouse, ascendant or descendant in the direct line hold some office or appointment which may lead to a conflict of interests. Nor may an advocate give the impression that he or she is able to make use of any connection for the advantage of the client.

Rule 9

An advocate should not normally accept instructions to act as a advocate for a client if it is clear that he or she or a member of his or her firm will be called as a witness, unless his or her evidence is purely formal.

Rule 10

An advocate must not accept instructions to act in a matter where another advocate is acting for the client in respect of the same matter, unless he is sure that the first advocate has remunerated according to law on termination of the brief. Notwithstanding the above, the second advocate may act in urgent exceptional circumstances where the interests of the client would otherwise be seriously prejudiced, in which case he must inform the first lawyer. In any case, the Chamber of

Advocates may, if it deems proper, authorise the second advocate to act.

CHAPTER III

DUTIES OWED TO CLIENT DURING A BRIEF

Rule 1

An advocate who has accepted instructions on behalf of a client is bound to carry out those instructions with diligence and must exercise all possible care and skill.

Rule 2

An advocate must keep his or her client's business and affairs confidential. In this regard an advocate is bound to observe the rules in Chapter 6 of this Part.

Rule 3

It is an implied term of the brief that an advocate is under a duty to observe this Code of Ethics and Conduct.

Rule 4

An advocate is under a duty to comply from time to time with reasonable requests from the client for information concerning the brief.

Rule 5

An advocate must not terminate his or her retainer with the client without giving reasonable notice in the circumstances.

Rule 6

On termination of the brief an advocate should, subject to any privilege and/or right of retention, deliver to the client all papers and property to which the client is entitled and account for all funds of the client then held by the advocate.

CHAPTER IV

PROFESSIONAL FEES

Rule 1

An advocate may, at the outset of the brief and at reasonable times prior to the termination of the same, require the client to make a payment or payments on account of fees, costs and disbursements to be incurred.

Rule 2

An advocate's fee shall be reasonable and may be established either by the advocate himself or by agreement between the advocate and the client. The factors to be considered in determining the reasonableness of a fee (whether agreed or otherwise) include the following:

- a) the time required, the novelty and difficulty of the issues involved, and the dedication requisite to perform the legal service properly;
- b) the responsibility undertaken, with particular reference to the amount involved;
- c) the time limitations imposed by the client or the circumstances;
- d) the nature and length of the professional relationship with the client;
- e) the experience, reputation and ability of the advocate performing the services;
- f) in litigation matters, the fees recoverable from the other party;
- g) the likelihood that the acceptance of the particular brief will preclude the acceptance of other briefs by the advocate.

Rule 3

An advocate shall not, either directly or indirectly, enter into any agreement or stipulation *quotae litis*.

Rule 4

An advocate shall not share or agree to share his or her professional fees with any person except:

- a) a practising advocate;
- b) a retired partner or predecessor of the advocate or the dependents of personal representatives of a deceased partner or predecessor.

Rule 5

An advocate shall not enter into any professional partnership or other professional arrangement, other than arrangements specifically allowed by law, with any person other than an advocate.

Rule 6

Advocates shall not by themselves or with any other person set up, operate, actively participate in or control any business, which offers any of the following services:

- a) advocacy before any court, tribunal or inquiry;
- b) acting as executor;
- c) drafting any contract, including the memorandum and articles of association of companies;
- d) drafting any will;
- e) giving legal advice;
- f) drafting legal documents other than those comprised in the above paragraphs;
- g) any other activity reserved to advocates by law or usually performed by advocates.

Rule 7

An advocate should normally render a bill of costs to a client within a reasonable time of concluding the matter to which the bill relates.

Rule 8

An advocate's bill of costs should contain sufficient information to identify the matter to which it relates and when the services were rendered.

CHAPTER V CONFLICT OF INTERESTS

Rule 1

An advocate should not accept instructions to act for two or more clients where there is a conflict or likelihood of a conflict between the interests of those clients whether the client is a personal client or a client of the firm or association.

An advocate should not accept a brief without the consent of his client when there is a possible or real conflict of interests with a client represented by a partner in the same firm.

Rule 2

If an advocate has acquired relevant knowledge concerning a former client during the course of acting for that client, the advocate must not accept instructions to act against the client.

Rule 3

An advocate must not continue to act for two or more clients where a conflict of interest exists between those clients.

Rule 4

An advocate must not act where his or her interests conflict with the interests of a client.

Rule 5

An advocate who holds a power of attorney from a client must not use that power to gain a benefit which, if acting as a professional adviser to that client, he or she would not be prepared to allow to an independent third party.

CHAPTER VI CONFIDENTIALITY

Rule 1

Besides being bound by professional secrecy, an advocate is under a duty to keep confidential the affairs of clients and to ensure that his or her staff do the same.

Rule 2

The duty to keep confidential information about a client and his or her affairs applies irrespective of the source of the information.

Rule 3

The duty to keep confidential a client's business continues until the client permits disclosure or waives the confidentiality.

Rule 4

The duty to keep a client's matters confidential, as opposed to what applies to the duty of professional secrecy, can be overridden in certain exceptional circumstances and shall include those cases in which an advocate is required to disclose confidential information in terms of law; and those cases in which such disclosure is essential for an advocate to defend himself in any proceedings taken against him by or on the

complaint of a client or a former client in which event the disclosure shall be limited to what is indispensable for the advocate to defend himself.

Rule 5

An advocate must not disclose a client's address when expressly prohibited from so doing by his client or when he has reasonable grounds to assume that such disclosure would be prejudicial to his client.

Rule 6

An advocate must not make any profit by the use of confidential information obtained in the exercise of his or her profession for his or her own purposes or the purposes of third parties.

PART THREE OBLIGATIONS TO OTHERS

CHAPTER I RELATIONS WITH THIRD PARTIES

Rule 1

Advocates must not act, whether in their professional capacity or otherwise, towards anyone in any way which is fraudulent, deceitful or otherwise contrary to the proper exercise of the profession as advocates. Nor must advocates use their position as advocates to take unfair advantage either for themselves or another person.

Rule 2

If an advocate discovers that another party is represented by an unqualified person, the advocate must decline to communicate with the unqualified person, this without prejudicing the interests of his client.

Rule 3

When writing a letter before action, an advocate must not demand anything other than that recoverable according to law.

CHAPTER II RELATIONS WITH OTHER ADVOCATES

Rule 1

An advocate must act towards other advocates with courtesy, frankness and good faith consistent with his or her principal duty to the client.

Rule 2

An advocate should not interview or otherwise communicate with any party who to the advocate's knowledge has retained an advocate to act in the matter except with that other advocate's consent, provided that if an advocate has sought to communicate with a party through that party's advocate and such advocate does not respond within a reasonable period of time, the advocate may, without that other advocate's consent, write directly to the party.

Rule 3

An advocate is under a duty to report to the Chamber of Advocates any serious breach of conduct on the part of another advocate. The advocate may, if he deems it necessary, obtains his client's consent thereto.

PART FOUR PARTICULAR AREAS OF PRACTICE

CHAPTER I LITIGATION AND ADVOCACY

Rule 1

Advocates who act in litigation, whilst under a duty to do their best for their client, must never deceive or mislead the court.

Rule 2

An advocate must not comment upon the merits of the case with a judge, magistrate or other adjudicator before whom a case is pending or may be heard, except in open Court or in the presence of the other party's advocate or of the said other party and when so requested by the person who has to judge.

Rule 3

It is permissible for an advocate to interview and take statements from anyone but not to:

- a) interview the other party without the consent or presence of his or her lawyer;
- b) interview witnesses when the search for truth may be compromised.

In any case an advocate must not speak to a witness indicated as such by the other party when the Court has prohibited it to the advocate's own client.

Rule 4

When an advocate becomes aware of the fact that his client intends to perjure himself so as to deceive the Court, the advocate should refrain from continuing to render his service if the client remains determined to do so.

Rule 5

An advocate must comply with any proper order of the Court and is bound to honour an undertaking given to any court.

Rule 6

An advocate should not stand bail for a client or his mandatory.

Rule 7

An advocate should always be suitable attired in Court.

Rule 8

An advocate who on the client's instructions gives a statement to the press must not publish any statement which interferes with the fair trial of a case which has not been concluded.

Rule 9

An advocate prosecuting a criminal case must ensure his case presented dispassionately and with scrupulous attention to detail.

Rule 10

An advocate who appears in court for the defence in a criminal case is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client possessed the requisite skill, knowledge and legal training. The advocate has a concurrent duty to ensure that the prosecution discharges the onus placed upon it by law to prove the guilt of the accused.

Rule 11

An advocate who appears in court or in chambers in civil proceedings is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client were allowed to plead for himself or herself and possessed the requisite skill, knowledge and legal training.

Rule 12

Where parties to civil proceedings enter into out-of-court, without prejudice negotiations for the settlement of the dispute before or during the proceedings, the advocates acting for such parties shall not, except by agreement, make use in Court or any tribunal of the contents of such negotiations.

CHAPTER II
ADVOCATE IN EMPLOYMENT

Rule 1

An advocate in employment is bound by the norms of professional conduct in the same manner as an advocate in private practice.

Rule 2

An advocate in the employment of a non-advocate must not, as part of his employment, carry out briefs or render professional services to third parties.

Rule 3

An advocate in employment, whether of a lawyer or of a non-lawyer may practise his profession privately if allowed to do so by his conditions of employment, provided that this is in no way intended to evade the provisions of the previous Rule.

PART FIVE
LAW FIRMS AND ASSOCIATIONS

CHAPTER I
DEFINITIONS AND APPLICATIONS

Rule 1

In this Code of Ethics and Conduct:

"association" means any association between advocates in the exercise of the profession and includes a cost sharing arrangement;

"firm" means a partnership between advocates and includes an advocate who is sole practitioner;

"partnership" means a civil partnership made up of lawyers whether or not properly constituted.

Rule 2

This Code of Ethics and Conduct applies *mutatis mutandis* to a firm of lawyers as explained in Rule 1 of this Chapter.