

立法會

Legislative Council

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檔號：CB2/BC/7/08

《2009年法律執業者(修訂)條例草案》 背景資料簡介

目的

本文件旨在闡述《2009年法律執業者(修訂)條例草案》的背景，並簡述司法及法律事務委員會(下稱"事務委員會")曾就賦予律師較高級法院出庭發言權的立法建議所作的討論。

背景

法律專業

2. 香港的法律專業劃分為兩系，即大律師及律師，而在其中一系執業的律師不得同時在另一系執業。兩系法律專業的培訓和資格大致相同，但準大律師須跟隨另一大律師實習，而準律師則須接受見習訓練。

3. 大律師專職負責訟辯及顧問工作。根據一般規則，他們不得未受律師延聘而直接為當事人辦事。他們是獨營執業者，有時一人經營，但傳統上多會與其他大律師共用一個大律師事務所。他們不得與其他大律師合夥經營。所有大律師在任何法院均享有不受限制的出庭發言權，即他們可在任何法院的法律程序中代表訴訟方。

4. 律師可直接與公眾接洽，他們大多從事一般事務。律師可以合夥經營。他們在裁判法院和區域法院，以及在原訟法庭和上訴法庭的內庭聆訊中享有出庭發言權。

《法律服務諮詢文件》

5. 在1995年3月，當時的律政署發表了一份《法律服務諮詢文件》以諮詢公眾，諮詢文件提出的其中一項建議是——

"..... 律師應可根據與英格蘭及威爾斯法例相若的法例條文取得任何法院的出庭發言權。"(譯文)

6. 雖然回應諮詢文件的大部分意見書普遍支持擴大律師出庭發言權的建議，但香港大律師公會(下稱"大律師公會")卻有異議。鑒於大律師公會提出反對，政府當局進一步研究在律師可取得全面出庭發言權的其他普通法司法管轄區，其大律師的執業情況。政府當局亦委聘香港城市大學就給予律師出庭發言權一事進行意見調查。調查結果顯示大部分受訪者贊同擴大律師的出庭發言權。

7. 《公眾對於擴大律師出庭發言權的意見調查》報告書及《各英聯邦司法管轄區的大律師執業情況》報告書於1996年7月8日的會議席上提交事務委員會。就大律師公會對擴大律師出庭發言權的建議可能會對大律師造成負面影響的憂慮，當時事務委員會有部分委員亦有同感。他們又認為在英格蘭取得出庭發言權的訟辯律師為數不多，以英格蘭的經驗作結論，是言之過早。儘管大律師公會及事務委員會部分委員表示有保留，而立法局當時正審議《1996年法律服務立法(雜項修訂)條例草案》，政府當局曾考慮對條例草案提出委員會審議階段修正案，擴大律師的出庭發言權。不過，立法局主席其後裁定修訂建議超逾條例草案的範圍，不得向條例草案提出。

律師出庭發言權工作小組

8. 終審法院首席法官於2004年6月成立律師出庭發言權工作小組(下稱"工作小組")，由終審法院常任法官包致金擔任主席。其他成員包括4名法官、一名律政司的法律專員、兩名大律師、兩名律師及一名非從事法律工作的人士。工作小組的職權範圍為考慮目前律師的出庭發言權應否擴大，如認為應該，考慮應如何訂定機制，將擴大的出庭發言權賦予律師。

9. 工作小組於2006年6月7日發出《律師出庭發言權工作小組諮詢文件》，以諮詢公眾。對諮詢文件作出的回應中，絕大部分贊同將較高級法院出庭發言權賦予具合適資格的律師。工作小組的最終報告書(下稱"最終報告書")在2007年10月發表。工作小組建議制訂法例，訂立賦予律師較高級法院出庭發言權所需的法律框

架。終審法院首席法官接納了工作小組的建議，並要求政府當局制訂適當法例，以推展此事。

事務委員會的討論

10. 事務委員會在2007年12月13日及2008年12月16日的會議上，分別聽取了有關最終報告書及落實當中建議的立法建議的簡介。事務委員會察悉，賦予律師較高級法院出庭發言權的建議獲兩系法律專業支持。

11. 事務委員會察悉，有人就有關立法建議對法庭上訟辯水平的影響表示關注。就此方面，委員獲悉，當局將成立一個較高級法院出庭發言權評核委員會，由一名資深法官擔任主席，負責審核較高級法院出庭發言權的申請。委員察悉，根據有關建議，律師必須在取得專業資格後執業滿5年，方可申請較高級法院出庭發言權，而在英國則只要求申請人執業滿3年。當局亦告知委員，有關賦予律師較大出庭發言權處理機制的行政細則，會由附屬法例規管，而該等附屬法例會於相關的主體法例通過成為法律後制定。

12. 就規管訟辯律師的操守與紀律方面，當局告知事務委員會，律師會理事會會在諮詢大律師公會及司法機構後，擬定一套行為守則。部分委員認為當局應在將主體法例提交立法會時，一併提交該行為守則，供立法會研究。應事務委員會要求，律師會已於2008年12月16日的會議上，向事務委員會提交以英格蘭及威爾斯律師規管局擬備的代訟人守則為藍本擬備的訟辯律師行為守則擬稿以供考慮。律師會於2008年12月提交的行為守則擬稿載於**附錄I**，供委員參考。

13. 有委員關注到立法建議對大律師專業發展的影響，因為按此安排，新入行人士及法律學生在決定加入哪一系法律專業時，大律師行業的吸引力會相對較低。該委員亦關注到，在擴大律師出庭發言權的同時，卻並無相應建議擴展大律師可承辦的工作範疇。大律師公會主席告知事務委員會，大律師公會承認，若賦予律師較高級別法院出庭發言權，許多法律畢業生確有可能會選擇當律師而非大律師，但為公眾利益着想，該公會原則上支持該建議。大律師公會亦認為，為維持大律師對訟辯工作的專業性，大律師不應參與其他範疇的工作。大律師公會希望看見新入行人士是基於對工作的抱負而加入該專業。事務委員會亦察悉，大律師公會正研究方法提高公眾對已完成實習的大律師的信心，例如要求他們通過考試或取得認許資格等，以期加強其資歷淺會員的競爭力。

14. 至於該建議會否降低訟費的問題，大律師公會主席告知事務委員會，訟費多少將視乎案件的複雜程度，因此賦予合資格律師較高級法院出庭發言權未必會令訟費降低。對於只涉及數次法庭聆訊的案件，交由訟辯律師處理可能較延聘大律師節省訟費，但賦予合資格律師較高級法院出庭發言權會增加訟辯人的數目，讓市民有較多選擇。律師會的代表亦有同感。但他們指出，大幅節省訟費的例子亦有不少，而根據《律師專業操守指引》，律師亦有責任告知其當事人不同方案所涉及的費用。

相關文件

15. **附錄II**載有相關文件一覽表。該等文件可於立法會網站 (<http://www.legco.gov.hk>)取覽。

立法會秘書處
議會事務部2
2009年7月14日



THE

LAW SOCIETY

OF HONG KONG

香港律師會

Appendix I

Practitioners Affairs

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2 December 2008

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Ms. Flora Tai
Clerk to Panel
Legislative Council
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Ms. Tai,

**Re: Panel Meeting on the Administration of Justice and Legal Services
16 December 2008 - Item VI: Solicitors' Rights of Audience**

I refer to your letter dated 26 November 2008 in connection with the captioned matter. The Law Society has prepared its draft Code of Conduct for Solicitor-Advocates which has been *adapted* from the Code prepared by the Solicitors Regulation Authority of England and Wales. This document has been sent to the Chief Justice and to the Chairman of the Bar Association for review in August 2008. The Law Society has not received any adverse comments on the draft. A copy has also been sent to the Department of Justice.

Please place the draft Code and the English version on the agenda of the Panel on Administration of Justice and Legal Services.

Yours sincerely,

Joyce Wong
Director of Practitioners Affairs
e-mail: dpa@hklawsoc.org.hk

Encl.



DRAFT

The Law Society's Code of Advocacy

Professional Ethics

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The Law Society's Code for Advocacy

PART I -- Introduction

1.1 For the purpose of maintaining the proper and efficient administration of justice this Code sets out the principles and standards to be observed by all solicitor advocates when acting as such. These obligations are in addition to and do not replace those imposed by law or required by other Law Society rules, and the *Hong Kong Solicitors' Guide to Professional Conduct*.

1.2 In this Code except where otherwise indicated:

“LPO” means the Legal Practitioners Ordinance and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

“advocate” means an authorised advocate as defined in Section [] of the LPO;

“brief” means instructions to an advocate to appear in person at or before a court;

“client” means the lay client and also (in the case of an advocate with a professional intermediary) the professional client and where the context permits includes a prospective client;

“court” means Court of First Instance, Court of Appeal and the Court of Final Appeal.

“solicitor advocate” means a solicitor of the High Court providing advocacy services as defined in Section [] of the LPO.

PART II -- Fundamental principles

2.1 Advocates must not:

- (a) engage in conduct whether in pursuit of their profession or otherwise which is:
 - (i) dishonest or otherwise discreditable to an advocate;
 - (ii) prejudicial to the administration of justice; or
 - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- (b) engage directly or indirectly in any occupation if their association with that occupation may adversely affect the reputation of advocates or prejudice their ability to attend properly to the interests of clients.

2.2 Advocates have an overriding duty to the court to ensure in the public interest the proper and efficient administration of justice is achieved: they must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court.

2.3 Advocates:

- (a) must promote and protect fearlessly and by all proper and lawful means the clients' best interests and do so without regard to their own interests or to any consequences to themselves or to any other person(including professional clients or fellow advocates or members of the legal profession);
- (b) subject only to compliance with specific provisions of the Legal Aid Regulations owe their primary duty:
 - (i) as between their lay client and their professional client; and
 - (ii) as between the legal aid authorities and the lay client.

to the lay client and must not permit the legal aid authorities or professional clients to limit their discretion as to how the interests of the lay client can best be served;

- (c) must act towards clients at all times in good faith.

2.4.1 Advocates must not in relation to any other person (including a client or another advocate) on grounds of race, ethnic origin, gender religion, sexual orientation or political persuasion treat that person for any purpose less favourably than they would treat other such persons.

2.4.2 Advocates must not decline to accept instructions to act as such:

- (a) on grounds relating to the race, colour, ethnic or national origins, creed, gender or sexual orientation of the client;
- (b) on the grounds that the nature of the case is objectionable to the advocate or to any section of the public;
- (c) on the grounds that the conduct, opinions or beliefs of the client are unacceptable to the advocate or to any section of the public;
- (d) on any ground relating to the source of any financial support which may properly be given to the client for the proceedings in question (for example on the grounds that such support will be available under the Legal Aid Ordinance (Cap. 91)).

2.5 Nothing in this Code is to be taken as requiring an advocate to accept instructions if there are reasonable grounds for the advocate to consider that having regard to:

- (i) the circumstances of the case;
- (ii) the nature of the advocate's practice; or
- (iii) the advocate's experience and standing

the advocate is not being offered a proper fee.

2.6 Advocates must not:

- (a) permit their absolute independence and freedom from external pressures to be compromised;
- (b) do anything (for example accept a present) in such circumstances as may lead to any inference that their independence may be compromised;
- (c) compromise their professional standards in order to please their clients, the court or a third party.

2.7 Advocates are individually and personally responsible for their own conduct and for professional work: they must exercise their own personal judgment in all their professional activities and must not delegate such responsibility to another advocate.

PART III – Organisation of the advocate’s practice

3.1 Advocate must have or have ready access to library facilities which are adequate having regard to the nature of their practice.

3.2 Advocates must take all steps which it is reasonable in the circumstances to take to ensure that:

- (a) their practices are administered competently and efficiently and properly staffed having regard to the nature of the practice;
- (b) proper records are kept;
- (c) all employees and staff in the practice:
 - (i) carry out their duties in a correct and efficient manner; and
 - (ii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties.

3.3 Advocates may engage in any advertising or promotion in connection with their practice which conforms to the *Solicitors’ Practice Promotion Code*.

PART IV -- The decision to appear

4.1 Advocates must not accept any brief if to do so would cause them to be professionally embarrassed and for this purpose advocates will be professionally embarrassed:

- (a) in the case of extended rights of audience in the higher courts, if they do not hold the appropriate qualification and are not competent to appear before the relevant court;
- (b) if they lack sufficient experience or competence to handle the matter, or if their experience of advocacy in the relevant court or proceedings has been so infrequent or so remote in time as to prejudice their competence;

- (c) if having regard to their other professional commitments they will be unable to do or will not have adequate time and opportunity to prepare that which they are required to do;
- (d) if the brief seeks to limit the ordinary authority of discretion of an advocate in the conduct of proceedings in court or to impose on an advocate an obligation to act otherwise than in conformity with the provisions of this Code;
- (e) if the matter is one in which they have reason to believe that they are likely to be witnesses or in which, whether by reason of any connection of the advocate (or of any partner or other associate of the advocate) with the client or with the court or a member of it or otherwise, it will be difficult for them to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (f) if they have been responsible for deciding on a course of action and the legality of that action is in dispute in the proceedings; if they are company directors and the company is a party to the proceedings;
- (g) if there is or appears to be some conflict or a significant risk of some conflict either between the interests of the advocate (or of any partner or other associate of the advocate) and some other person or between the interests of any one or more of their clients;
- (h) if the matter is one in which there is a risk of a breach of confidences entrusted to them (or to any partner or other associate) by another client or where the knowledge which they possess of the affairs of another client would give an undue advantage to the new client.

4.2 Advocates (whether they are instructed on their own or with another advocate) must in the case of each brief consider whether consistently with the proper and efficient administration to justice and having regard to:

- (i) the circumstances including the gravity, complexity and likely cost of the case;
- (ii) the nature of their practice;
- (iii) their ability, experience and seniority;
- (iv) their relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct them in that matter.

4.2.1 Where more than one advocate is instructed in any matter each advocate must in particular consider whether the best interests of the client would be served by:

- (a) the advocate representing the client together with the other advocate or advocates; or
- (b) the advocate representing the client without the other advocate or advocates; or

- (c) the client instructing only the other advocate or advocates; or
- (d) the client instructing some other advocate.

4.2.2 If they consider that the best interests of the client would not be served by their continuing to represent the client (together with any other advocate instructed with them) advocates must immediately advise the lay client accordingly.

PART V – Withdrawal from a case

5.1 Advocates must cease to act and return any brief:

- (a) if continuing to act would cause them to be professionally embarrassed within the meaning of paragraph 4.1 provided that if they would be professionally embarrassed only because it appears to them that they are likely to be witnesses on a material question of fact they may retire or withdraw only if they can do so without jeopardising the clients' interests;
- (b) if having accepted a brief on behalf of more than one client there is or appears to be:
 - (i) a conflict or a significant risk of a conflict between the interests of any one or more of such clients; or
 - (ii) a risk of a breach of confidence;

and the clients do not all consent to them continuing to act;

- (c) if in any legally aided case (whether civil or criminal) it has become apparent to them that legal aid has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client;
- (d) if the circumstances set out in Regulation 21 of the Legal Aid Regulations (Cap.91) arise;
- (e) if the client refuses to authorise them to make some disclosure to the court which their duty to the court requires them to make;
- (f) if 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;
- (g) if 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 before they realise that it ought to have been returned unread to the person entitled to possession of it they would thereby be embarrassed in the discharge of their duties by their knowledge of the contents of the document provided

that they may retire or withdraw only if they can do so without jeopardising the client's interests.

5.2 Advocates may withdraw from a case where they are satisfied that:

- (a) the brief has been withdrawn or their retainer terminated;
- (b) their professional conduct is being impugned; or
- (c) there is some other substantial reason for so doing.

5.3 Advocates must not:

- (a) cease to act or return a brief without having first explained to their client their reasons for doing so;
- (b) return a brief to another advocate without the consent of the client;
- (c) return a brief which they have accepted and for which a fixed date has been obtained or (except with the consent of the client and where appropriate the court) break any other professional engagement so as to enable them to attend a social or non-professional engagement;
- (d) save as provided above return any brief or withdraw from a case in such a way or in such circumstances that their client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

PART VI – Conduct of work: the client

6.1 Advocates:

- (a) must in all their professional activities be courteous and act promptly, conscientiously, diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time and to ensure that professional engagements are fulfilled;
- (b) must not undertake any task which:
 - (i) they know or ought to know they are not competent to handle;
 - (ii) they do not have adequate time and opportunity to prepare for or perform; or
 - (iii) they cannot discharge within a reasonable time having regard to the pressure of other work;
- (c) must read all briefs delivered to them expeditiously;
- (d) must have regard to any relevant written standards adopted by the Law Society for the conduct of professional work;

- (e) must inform the client forthwith:
 - (i) if it becomes apparent that they will not be able to do the work within a reasonable time after receipt of instructions;
 - (ii) if there is an appreciable risk that they may not be able to undertake a brief or fulfil any other professional engagement which they have accepted.

- 6.2 Whether or not the relation of advocate and client continues, advocates must preserve the confidentiality of their clients' affairs and must not without the prior consent of the client or as permitted by law lend or reveal the contents of the papers in any brief to or communicate to any third person outside their firm information which has been entrusted to them in confidence or use such information to their clients' detriment or to their own or another client's advantage.

- 6.3 Advocates must not in relation to any current matter in which they are or have been briefed offer their personal views or opinions to or in any news or current affairs media upon the facts of or the issues arising in that matter.

- 6.4 Advocates who form the view that there is a conflict of interest between their lay client and their professional client must advise that it would be in the lay client's interest to instruct another professional adviser and such advice must be given either in writing or at a conference at which both the professional client and the lay client are present.

- 6.5 Advocates must not when interviewing a witness out of court:
 - (a) place witnesses who are being interviewed under any pressure to provide other than a truthful account of their evidence;
 - (b) rehearse, practise or coach witnesses in relation to their evidence or the way in which they should give it.

- 6.6 Advocates must not devise facts which will assist in advancing their client's case and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:
 - (a) any statement of fact or contention (as the case may be) which is not supported by the client or by their brief or instructions;
 - (b) any contention which they do not consider to be properly arguable;
 - (c) any allegation of fraud unless they have clear instructions to make such allegation and have before them reasonably credible material which as it stands establishes a prima facie case of fraud;
 - (d) in the case of an affidavit or witness statement any statement of fact other than the evidence which in substance according to their instructions the advocate reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given viva voce;

provided that nothing in this paragraph shall prevent an advocate drafting a pleading, affidavit or witness statement containing specific facts, matters or contentions included by the advocate subject to the client's confirmation as to their accuracy.

PART VII – Conduct of work: the court

7.1 Advocates when conducting proceedings at court:

- (a) are personally responsible for the conduct and presentation of their case and must exercise personal judgment upon the substance and purpose of statements made and questions asked;
- (b) must not unless invited to do so by the court or when appearing before a tribunal where it is their duty to do so assert a personal opinion on the facts or the law;
- (c) must ensure that the court is informed of all relevant decisions and legislative provisions of which they are aware whether the effect is favourable or unfavourable towards the contention for which they argue and must bring any procedural irregularity to the attention of the court during the hearing and not reserve such matter to be raised on appeal;
- (d) must not adduce evidence obtained otherwise than from or through their client or devise facts which will assist in advancing their client's case;
- (e) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person;
- (f) must if possible avoid the naming in open court of third parties whose character would thereby be impugned;
- (g) must not by assertion in a speech impugn a witness whom they have had an opportunity to cross-examine unless in cross-examination they have given the witness an opportunity to answer the allegation;
- (h) must not suggest that a witness or other person is guilty of crime, fraud or misconduct or attribute to another person the crime or conduct of which their client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to their client's case and which appear to them to be supported by reasonable grounds.

PART VIII – Communications with clients

8.1 Advocates must have proper lines of communications. When instructed by a solicitor they are normally entitled to rely on the solicitor to communicate with the client.

When instructed direct by a representative of the client who is not a solicitor, they should ensure that the representative is properly authorised.

- 8.2 Where there is any reason to doubt the propriety of any action or proposed course of action, advocates should satisfy themselves that the client has received and understood any warnings or advice which it may be appropriate to offer. Where the client is a public or corporate body, this duty may include ensuring that the council, the board of directors, the governing body or others in positions of like authority have received the warnings or advice and that consequent instructions have their approval.

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The Law Society's Code for Advocacy

Professional Ethics

Last amended 13 January 2003

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The Law Society's Code for Advocacy

Last amended 13 January 2003

Code dated 8th December 1993 made by the Council of the Law Society with the concurrence of the Master of the Rolls under rule 16A of the Solicitors' Practice Rules 1990 and rule 1(4) of the Solicitors' Overseas Practice Rules 1990, regulating advocacy in England and Wales by solicitors and registered European lawyers.

PART I – Introduction

1.1 For the purpose of maintaining the proper and efficient administration of justice this Code sets out the principles and standards to be observed by all solicitor advocates when acting as such. These obligations are in addition to and do not replace those imposed by law or required by other Law Society rules.

1.2 In this Code except where otherwise indicated:

"the Act" means the Courts and Legal Services Act 1990 and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

"advocate" means an authorised advocate as defined in Section 119 of the Act;

"brief" means instructions to an advocate to appear in person at or before a court;

"client" means the lay client and also (in the case of an advocate with a professional intermediary) the professional client and where the context permits includes a prospective client;

"court" means:

- (i) any court of record (the House of Lords, the Court of Appeal, the High Court, the Crown Court, county courts, magistrates' courts, coroners' courts, the Employment Appeals Tribunal, the Solicitors' Disciplinary Tribunal);
- (ii) any tribunal which the Council on Tribunals is under a duty to keep under review;
- (iii) any court martial; and
- (iv) a statutory inquiry within the meaning of Section 16 of the Tribunals and Inquiries Act 1992;

"litigator" means an authorised litigator as defined in Section 119 of the Act;

"recognised body" means a body corporate for the time being recognised by the Council under the Solicitors' Incorporated Practice Rules;

"registered European lawyer" means an individual registered with the Law Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000;

"solicitor advocate" means a solicitor of the Supreme Court or registered European lawyer providing advocacy services as defined in Section 119 of the Act.

PART II – Fundamental principles

2.1 Advocates must not:

- (a) engage in conduct whether in pursuit of their profession or otherwise which is:
 - (i) dishonest or otherwise discreditable to an advocate;
 - (ii) prejudicial to the administration of justice; or
 - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- (b) engage directly or indirectly in any occupation if their association with that occupation may adversely affect the reputation of advocates or prejudice their ability to attend properly to the interests of clients.

2.2 Advocates have an overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved: they must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court.

2.3 Advocates:

- (a) must promote and protect fearlessly and by all proper and lawful means the clients' best interests and do so without regard to their own interests or to any consequences to themselves or to any other person (including professional clients or fellow advocates or members of the legal profession);
- (b) subject only to compliance with the specific provisions of Legal Aid Regulations owe their primary duty:
 - (i) as between their lay client and their professional client; and
 - (ii) as between the legal aid authorities and the lay client:
to the lay client and must not permit the legal aid authorities or professional clients to limit their discretion as to how the interests of the lay client can best be served;
- (c) must act towards clients at all times in good faith.

2.4.1 Advocates must not in relation to any other person (including a client or another advocate) on grounds of race, ethnic origin, gender, religion, sexual orientation or political persuasion treat that person for any purpose less favourably than they would treat other such persons.

2.4.2 Advocates must not decline to accept instructions to act as such:

- (a) on grounds relating to the race, colour, ethnic or national origins, creed, gender or sexual orientation of the client;
- (b) on the grounds that the nature of the case is objectionable to the advocate or to any section of the public;
- (c) on the grounds that the conduct, opinions or beliefs of the client are unacceptable to the advocate or to any section of the public;
- (d) on any ground relating to the source of any financial support which may properly be given to the client for the proceedings in question (for example on the grounds that such support will be available under the Legal Aid Act 1988).

- 2.5 Nothing in this Code is to be taken as requiring an advocate to accept instructions if there are reasonable grounds for the advocate to consider that having regard to:
- (i) the circumstances of the case;
 - (ii) the nature of the advocate's practice; or
 - (iii) the advocate's experience and standing
- the advocate is not being offered a proper fee.
- 2.6 Advocates must not:
- (a) permit their absolute independence and freedom from external pressures to be compromised;
 - (b) do anything (for example accept a present) in such circumstances as may lead to any inference that their independence may be compromised;
 - (c) compromise their professional standards in order to please their clients, the court or a third party;
 - (d) except as permitted by the Act, accept a brief on terms that payment of fees shall depend upon or be related to or postponed on account of the outcome of the case or of any hearing.
- 2.7 Advocates are individually and personally responsible for their own conduct and for professional work: they must exercise their own personal judgment in all their professional activities and must not delegate such responsibility to another advocate.
- 2.8 Without prejudice to paragraph 2.7, a registered European lawyer must not exercise any right of audience unless:
- (a) the right of audience is one for the exercise of which a solicitor of the Supreme Court would require a higher courts qualification, and the registered European lawyer has an appropriate higher courts qualification and is instructed with, and acts in conjunction with, a solicitor of the Supreme Court who has an appropriate higher courts qualification or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (b) the right of audience is one which a solicitor of the Supreme Court could exercise without a higher courts qualification, and the registered European lawyer is instructed with, and acts in conjunction with, a solicitor of the Supreme Court or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (c) the registered European lawyer is exercising the right of audience as an employee, and the same right of audience could be exercised by an unqualified employee; or
 - (d) the right of audience is not reserved by law to any category of persons but is open to any individual; or
 - (e) the right of audience is an immigration service which could have been provided by an individual who is neither a lawyer nor a legal executive but is registered with the Office of the Immigration Services Commissioner.

PART III – Organisation of the advocate’s practice

- 3.1 Advocates must have or have ready access to library facilities which are adequate having regard to the nature of their practice.
- 3.2 Advocates must take all steps which it is reasonable in the circumstances to take to ensure that:
- (a) their practices are administered competently and efficiently and properly staffed having regard to the nature of the practice;
 - (b) proper records are kept;
 - (c) all employees and staff in the practice:
 - (i) carry out their duties in a correct and efficient manner; and
 - (ii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties.
- 3.3 Advocates may engage in any advertising or promotion in connection with their practice which conforms to the Solicitors' Publicity Code (and such advertising or promotion may include photographs or other illustrations of the advocate, statements of rates and methods of charging, statements about the nature and extent of the advocate's services and with that client's express written consent the name of any client) but advertising or promotion must not:
- (a) be inaccurate or likely to mislead;
 - (b) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
 - (c) make comparison with or criticisms of other advocates;
 - (d) include statements about the advocate's success rate;
 - (e) indicate or imply any willingness to accept a brief, or any intention to restrict the persons from whom a brief may be accepted, otherwise than in accordance with this Code;
 - (f) be so frequent or obtrusive as to cause justifiable annoyance to those to whom it is directed.

PART IV – The decision to appear

- 4.1 Advocates must not accept any brief if to do so would cause them to be professionally embarrassed and for this purpose advocates will be professionally embarrassed:
- (aa) in the case of extended rights of audience in the higher courts, if they do not hold the appropriate qualification and are not competent to appear before the relevant court;
 - (a) if they lack sufficient experience or competence to handle the matter, or if their experience of advocacy in the relevant court or proceedings has been so infrequent or so remote in time as to prejudice their competence;
 - (b) if having regard to their other professional commitments they will be unable to do or will not have adequate time and opportunity to prepare that which they are required to do;

- (c) if the brief seeks to limit the ordinary authority of discretion of an advocate in the conduct of proceedings in court or to impose on an advocate an obligation to act otherwise than in conformity with the provisions of this Code;
- (d) if the matter is one in which they have reason to believe that they are likely to be witnesses or in which, whether by reason of any connection of the advocate (or of any partner or other associate of the advocate) with the client or with the court or a member of it or otherwise, it will be difficult for them to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (e) if they have been responsible for deciding on a course of action and the legality of that action is in dispute in the proceedings; if they are company directors and the company is a party to the proceedings;
- (f) if there is or appears to be some conflict or a significant risk of some conflict either between the interests of the advocate (or of any partner or other associate of the advocate) and some other person or between the interests of any one or more of their clients;
- (g) if the matter is one in which there is a risk of a breach of confidences entrusted to them (or to any partner or other associate) by another client or where the knowledge which they possess of the affairs of another client would give an undue advantage to the new client.

4.2 Queen's Counsel are not obliged to accept a brief to act without a junior if they consider that the interests of the lay client require that a junior should also be instructed.

4.3.1 Advocates (whether or not they are also litigators and whether they are instructed on their own or with another advocate) must in the case of each brief consider whether consistently with the proper and efficient administration of justice and having regard to:

- (i) the circumstances including the gravity, complexity and likely cost of the case;
- (ii) the nature of their practice;
- (iii) their ability, experience and seniority;
- (iv) their relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct them in that matter.

4.3.2 Where more than one advocate is instructed in any matter each advocate must in particular consider whether the best interests of the client would be served by:

- (a) the advocate representing the client together with the other advocate or advocates; or
- (b) the advocate representing the client without the other advocate or advocates; or
- (c) the client instructing only the other advocate or advocates; or
- (d) the client instructing some other advocate.

4.3.3 If they consider that the best interests of the client would not be served by their continuing to represent the client (together with any other advocate instructed with them) advocates must immediately advise the lay client accordingly.

PART V – Withdrawal from a case

5.1 Advocates must cease to act and return any brief:

- (a) if continuing to act would cause them to be professionally embarrassed within the meaning of paragraph 4.1 provided that if they would be professionally embarrassed only because it appears to them that they are likely to be witnesses on a material question of fact they may retire or withdraw only if they can do so without jeopardising the clients' interests;
- (b) if having accepted a brief on behalf of more than one client there is or appears to be:
 - (i) a conflict or a significant risk of a conflict between the interests of any one or more of such clients; or
 - (ii) a risk of a breach of confidence;and the clients do not all consent to them continuing to act;
- (c) if in any legally aided case (whether civil or criminal) it has become apparent to them that legal aid has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client;
- (d) if the circumstances set out in Regulation 67 of the Civil Legal Aid (General) Regulations 1989 arise at a time when it is impracticable for the Area Committee to meet in time to prevent an abuse of the Legal Aid Fund;
- (e) if the client refuses to authorise them to make some disclosure to the court which their duty to the court requires them to make;
- (f) if 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;
- (g) if 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 before they realise that it ought to have been returned unread to the person entitled to possession of it they would thereby be embarrassed in the discharge of their duties by their knowledge of the contents of the document provided that they may retire or withdraw only if they can do so without jeopardising the client's interests.

5.2 Advocates may withdraw from a case where they are satisfied that:

- (a) the brief has been withdrawn or their retainer terminated;
- (b) their professional conduct is being impugned; or
- (c) there is some other substantial reason for so doing.

5.3 Advocates must not:

- (a) cease to act or return a brief without having first explained to their client their reasons for doing so:

- (b) return a brief to another advocate without the consent of the client;
- (c) return a brief which they have accepted and for which a fixed date has been obtained or (except with the consent of the client and where appropriate the court) break any other professional engagement so as to enable them to attend a social or non-professional engagement;
- (d) save as provided above return any brief or withdraw from a case in such a way or in such circumstances that their client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

PART VI – Conduct of work: the client

6.1 Advocates:

- (a) must in all their professional activities be courteous and act promptly, conscientiously, diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time and to ensure that professional engagements are fulfilled;
- (b) must not undertake any task which:
 - (i) they know or ought to know they are not competent to handle;
 - (ii) they do not have adequate time and opportunity to prepare for or perform; or
 - (iii) they cannot discharge within a reasonable time having regard to the pressure of other work;
- (c) must read all briefs delivered to them expeditiously;
- (d) must have regard to any relevant written standards adopted by the Law Society for the conduct of professional work;
- (e) must inform the client forthwith:
 - (i) if it becomes apparent that they will not be able to do the work within a reasonable time after receipt of instructions;
 - (ii) if there is an appreciable risk that they may not be able to undertake a brief or fulfil any other professional engagement which they have accepted.

6.2 Whether or not the relation of advocate and client continues, advocates must preserve the confidentiality of their clients' affairs and must not without the prior consent of the client or as permitted by law lend or reveal the contents of the papers in any brief to or communicate to any third person (other than an associate or any of the staff in their practice who need to know it for the performance of their duties) information which has been entrusted to them in confidence or use such information to their clients' detriment or to their own or another client's advantage.

6.3 Advocates must not in relation to any current matter in which they are or have been briefed offer their personal views or opinions to or in any news or current affairs media upon the facts of or the issues arising in that matter.

- 6.4 Advocates who form the view that there is a conflict of interest between their lay client and their professional client must advise that it would be in the lay client's interest to instruct another professional adviser and such advice must be given either in writing or at a conference at which both the professional client and the lay client are present.
- 6.5 Advocates must not when interviewing a witness out of court:
- (a) place witnesses who are being interviewed under any pressure to provide other than a truthful account of their evidence;
 - (b) rehearse, practise or coach witnesses in relation to their evidence or the way in which they should give it.
- 6.6 Advocates must not devise facts which will assist in advancing their client's case and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:
- (a) any statement of fact or contention (as the case may be) which is not supported by the client or by their brief or instructions;
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 - (c) must ensure that the court is informed of all relevant decisions and legislative provisions of which they are aware whether the effect is favourable or unfavourable towards the contention for which they argue and must bring any procedural irregularity to the attention of the court during the hearing and not reserve such matter to be raised on appeal;
 - (d) must not adduce evidence obtained otherwise than from or through their client or devise facts which will assist in advancing their client's case;

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- (f) must if possible avoid the naming in open court of third parties whose character would thereby be impugned;
- (g) must not by assertion in a speech impugn a witness whom they have had an opportunity to cross-examine unless in cross-examination they have given the witness an opportunity to answer the allegation;
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律師的出庭發言權

相關文件

會議	會議日期	文件
司法及法律事務委員會	1996年7月8日	會議紀要 [立法會CB(2)1991/95-96號文件]
	2006年6月26日	終審法院首席法官成立的律師出庭發言權工作小組擬備的諮詢文件 [立法會CB(2)2312/05-06(01)號文件]
	2007年12月13日	立法會秘書處就"律師的出庭發言權"擬備的背景資料簡介 [立法會CB(2)559/07-08(06)號文件] 律師出庭發言權工作小組最終報告書 [立法會CB(2)464/07-08(01)號文件] 關於最終報告書的新聞稿 [立法會CB(2)464/07-08(02)號文件] 司法機構政務處就"律師出庭發言權工作小組最終報告書"提供的文件 [立法會CB(2)559/07-08(07)號文件] 會議紀要 [立法會CB(2)927/08-09號文件]
	—	政府當局對落實律師出庭發言權工作小組最終報告書建議的立法時間表所作的回覆 [立法會CB(2)878/07-08(01)號文件]
	2008年12月16日	政府當局就"律師出庭發言權"提供的文件 [立法會CB(2)438/08-09(09)號文件]

會議	會議日期	文件
		<p>香港律師會 2008 年 12 月 2 日的來函，隨函夾附其所擬備的訟辯律師行為守則擬稿 [立法會CB(2)393/08-09(01)號文件]</p> <p>立法會秘書處就"律師的出庭發言權"擬備的背景資料簡介 [立法會CB(2)438/08-09(10)號文件]</p> <p>會議紀要 [立法會CB(2)837/08-09號文件]</p>

立法會秘書處
 議會事務部2
 2009年7月14日