

# 立法會

## *Legislative Council*

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Ref : CB2/BC/7/08

### **Background brief for the Bills Committee on Legal Practitioners (Amendment) Bill 2009**

#### **Purpose**

This paper sets out the background of the Legal Practitioners (Amendment) Bill 2009 and gives a brief account of the discussions by the Panel on Administration of Justice and Legal Services (the Panel) on the proposed legislation to grant solicitors higher rights of audience.

#### **Background**

##### The legal profession

2. The legal profession in Hong Kong is divided into two branches - barristers and solicitors. Lawyers practising within one branch of the profession are not, at the same time, allowed to practise within the other. The training and qualifications for both branches of the profession are, however, to a large extent the same, with the exception of pupillage for prospective barristers and traineeship for prospective solicitors.

3. Barristers specialise in advocacy and consultancy work. As a general rule, they cannot act directly for a client without instructions from a solicitor. They work as sole practitioners, sometimes alone but traditionally with other barristers in offices known as sets of chambers. They are not permitted to enter into partnerships. All barristers have unlimited rights of audience before the courts, i.e. they can appear on behalf of a party to proceedings in any court.

4. Solicitors can deal directly with members of the public and are mostly engaged in general practice. Solicitors may form partnerships. They have the right of audience in the magistrates' courts and the District Court, and in chambers hearings in the Court of First Instance and the Court of Appeal.

##### Consultation Paper on Legal Services

5. In March 1995, the then Attorney General's Chambers (AGC) published the "Consultation Paper on Legal Services" for public consultation and one of the recommendations made in the Consultation Paper was -

*".....it should be possible for solicitors to acquire rights of audience in all courts under statutory provisions similar to those in England and Wales."*

6. While a vast majority of the written submissions responding to the consultation paper in general expressed support for the proposal of extending solicitors' rights of audience, the Hong Kong Bar Association (Bar Association) objected to it. In view of the Bar's objection, the Administration conducted a further study of the state of the Bar in other common law jurisdictions where solicitors could acquire full rights of audience. The Administration also commissioned the City University of Hong Kong to conduct an opinion survey on the issue of granting the rights of audience to solicitors. The survey showed that a majority of the respondents agreed to the extension of solicitors' rights of audience.

7. The Report on "Public Opinion Survey on Extension of Solicitors' Rights of Audience" and the Report on "The State of the Bar in Various Commonwealth Jurisdictions" were submitted to the Panel at its meeting on 8 July 1996. Some members of the Panel at that time shared the concern of the Bar Association about the possible negative impact of the proposed extension of solicitors' rights of audience on the Bar. They also considered that it might be too early to draw conclusion from the experience in England in view of the small number of solicitor advocates who obtained rights of audience there. Notwithstanding the reservations expressed by the Bar Association and some members of the Panel, the Administration had considered moving Committee Stage amendments to the Legal Services Legislation (Miscellaneous Amendments) Bill 1996, which was going through the legislative process of consideration by the Legislative Council (LegCo) at that time, to extend the rights of audience of solicitors. However, the President of LegCo subsequently gave a ruling that the proposed amendment exceeded the scope of the Bill and might not be proposed to the Bill.

#### Working Party on Solicitors' Rights of Audience

8. In June 2004, the Chief Justice established a Working Party on Solicitors' Rights of Audience (the Working Party) under the chairmanship of Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal. Other members of the Working Party comprised four other judges, a Law Officer from the Department of Justice, two barristers, two solicitors and a lay member not connected with the practice of law. The Working Party's terms of reference was to consider whether solicitors' existing rights of audience should be extended and if so, the mechanism for dealing with the grant of extended rights of audience to solicitors.

9. On 7 June 2006, the Working Party issued the "Consultation Paper on Solicitors' Rights of Audience" for public consultation. An overwhelming majority of the responses to the consultation paper favoured extending higher rights of audience to suitably qualified solicitors. The Final Report of the Working Party (the Final Report) was published in October 2007. The Working Party recommended that legislation should be enacted to provide the necessary framework for the granting of higher rights of audience to solicitors. The Chief Justice had accepted the Working

Party's recommendations and requested the Administration to take forward the matter by appropriate legislation.

### **Discussions of the Panel**

10. The Panel was briefed on the Final Report and the legislative proposals to implement the recommendations contained therein at its meetings on 13 December 2007 and 16 December 2008 respectively. The Panel noted that the proposed extension of higher rights of audience to solicitors was supported by both branches of the legal profession.

11. The Panel noted the concern about the impact of the legislative proposals on the standard of advocacy before the courts. In this regard, members were informed that a Higher Rights Assessment Board chaired by a senior judge would be established to consider applications for higher rights of audience. Members noted that under the proposal, applicants for higher rights of audience must have at least five years of post-qualification experience, as compared to the requirement of three years in the United Kingdom. Members were also advised that details of the administration of the mechanism for dealing with the grant of extended rights of audience to solicitors would be governed by subsidiary legislation to be made after the enactment of the relevant primary legislation.

12. On the regulation of the conduct and discipline of solicitor advocates, the Panel was informed that a code of conduct would be drawn up by the Council of the Law Society in consultation with the Bar Association and the Judiciary. Some members expressed the view that the code of conduct should be made available for LegCo's consideration at the same time as the primary legislation was introduced. At the Panel's request, the draft Code of Conduct for Solicitor Advocates, which was based on the Code of Advocacy prepared by the Solicitors Regulation Authority of England and Wales, was provided for the Panel's consideration at its meeting on 16 December 2008. A copy of the draft Code as provided by the Law Society in December 2008 is in **Appendix I** for members' reference.

13. A member expressed concern about the impact of the legislative proposals on the development of the Bar as a profession as it would make the Bar a less attractive option for fresh entrants and law students in deciding which branch of the profession they should join. Concern was also expressed that while the rights of audience for solicitors would be extended, there was no corresponding proposal to extend the scope of work which could be undertaken by barristers. The Chairman of the Bar Association advised the Panel that while the Bar Association recognized that there was a real possibility that many law graduates would choose to become solicitors rather than barristers should higher rights of audience be granted to solicitors, it supported the proposal in principle as it was in the interest of the public. The Bar Association had also come to the view that to maintain their professionalism in advocacy work, barristers should not branch into other areas of work. The Bar would like to see new comers joining the profession because of their aspiration for the work. The Panel

also noted from the Bar Association that it was considering means to enhance the public's confidence in barristers who had completed pupillage, for example, in the form of examination or accreditation, with a view to enhancing the competitiveness of junior members of the Bar.

14. On the question of whether the proposal would bring down litigation costs, the Chairman of the Bar Association advised the Panel that extending higher rights of audience to qualified solicitors would not necessarily bring down litigation costs because it would depend on the complexity of the cases involved. For cases involving only a few court hearings, there would likely be savings if they were handled by solicitor advocates instead of barristers. However, extending higher rights of audience to qualified solicitors would provide more choices to the public by enlarging the pool of advocates. Representatives of the Law Society also agreed with the view. They, however, pointed out that there were examples where significant costs were saved. Under the Solicitor's Guide to Professional Conduct, a solicitor also had the duty to advise his client of the costs of the different options.

### **Relevant papers**

15. A list of the relevant papers which are available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Council Business Division 2  
Legislative Council Secretariat  
14 July 2009



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會

Appendix I

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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;
  - (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 litigator they are normally entitled to rely on the litigator to communicate with the client. When instructed direct by a representative of the client who is not a litigator, 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.

Solicitors' rights of audience

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	8 July 1996	Minutes of meeting [LC Paper No. CB(2)1991/95-96]
	26 June 2006	Consultation paper prepared by the Chief Justice's Working Party on Solicitors' Rights of Audience [LC Paper No. CB(2)2312/05-06(01)]
	13 December 2007	Background brief prepared by the Legislative Council Secretariat on "Solicitors' rights of audience" [LC Paper No. CB(2)559/07-08(06)]
		Final Report of the Working Party on Solicitors' Rights of Audience [LC Paper No. CB(2)464/07-08(01)]
		Press release concerning the Final Report [LC Paper No. CB(2)464/07-08(02)]
	Judiciary Administration's paper on "Final Report of the Working Party on Solicitors' Rights of Audience" [LC Paper No. CB(2)559/07-08(07)]	
	Minutes of meeting [LC Paper No. CB(2)927/07-08]	
--	Administration's reply dated January 2008 on the legislative timetable to implement the recommendations of the Final Report of the Working Party on Solicitors' Rights of Audience [LC Paper No. CB(2)878/07-08(01)]	
16 December 2008	Administration's paper on "Solicitors' rights of audience" [LC Paper No. CB(2)438/08-09(09)]	

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
		<p>Law Society of Hong Kong's letter dated 2 December 2008 enclosing a copy of its draft Code of Conduct for Solicitor-Advocates <a href="#">[LC Paper No. CB(2)393/08-09(01)]</a></p> <p>Background brief on "Solicitors' rights of audience" prepared by the Legislative Council Secretariat <a href="#">[LC Paper No. CB(2)438/08-09(10)]</a></p> <p>Minutes of meeting <a href="#">[LC Paper No. CB(2)837/08-09]</a></p>

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