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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*.

Citation of local legislation and deletion of references to the English rules and European lawyers.

- 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.

Definitions localised. Deletion of references to:

- English Tribunals etc.
- “litigator”
- ‘recognised body’
- “registered European lawyer”

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)**].

Reference localised

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.

Deletion of references to conditional fees in (d) as these are not permitted in Hong Kong

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.

English Code - Paragraph 2.8 deleted as it covers "European lawyers"

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:

English Code - Paragraphs renumbered (a) to (g) from (aa) to (h).

- (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*.

Localisation of reference to the *Hong Kong 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.

English Code -Paragraph 4.2 deleted as it covers Queen's Counsel.

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;

Localisation of legislation

- (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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5.01 FREEDOM TO ACCEPT INSTRUCTIONS

A solicitor is generally free to decide whether to accept instructions from a particular client.

Commentary

1. A solicitor should not refuse to accept instructions based upon the race, colour, ethnic or national origins, sex or religious or political beliefs of a prospective client.
2. In deciding whether to represent a prospective client who is accused of a crime, a solicitor should not be influenced by his own opinion of the client's guilt.
3. A solicitor who is instructed to bring an action against his client's former solicitor should, provided he is competent and able, accept those instructions. However, he should not accept instructions to sue a colleague with whom or with any of whose partners he is on friendly terms; he should instead explain the situation and advise the prospective client to seek advice elsewhere.
4. A solicitor cannot be retained by a client who does not have a mental capacity. There is a legal presumption of capacity unless the contrary is shown. Whether a client does have capacity is a matter of law and it should be borne in mind that different levels of capacity are required for different activities. If there is doubt about a client's mental capacity it may be advisable, where possible, to seek an opinion from the client's doctor having explained to the doctor the relevant test of capacity.
5. Where instructions are declined, the party giving the instructions must be promptly informed of the solicitors' decision. The solicitor should exercise his judgment whether to give reasons for his decision.