



Australian Capital Territory

Legal Profession (Solicitors) Rules 2006 (repealed)

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made under the

Legal Profession Act 2006

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LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Professional Conduct Rules for Solicitors

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INTRODUCTION

The Rules which follow apply to legal practitioners practising as solicitors, or as barristers and solicitors. The term "practitioner" is used throughout to refer to persons practising as solicitors, or as barristers and solicitors.

The Rules are divided into six categories under the following headings.

- Relations with clients
- Duties to the Court
- Advocacy Rules
- Relations with other lawyers
- Relations with third parties
- Legal practice

The first five categories are preceded by a statement of general principle which is not intended to constitute by itself a Rule, but is intended to describe the underlying principles and objectives of the Rules which follow.

The Rules are based on the model rules developed by the Law Council of Australia. A number of provisions of the former *Guide to Professional Conduct & Etiquette* (adopted by the Council of the ACT Law Society in 1984) have been incorporated into these Rules. This document supersedes the Society's *Guide to Professional Conduct & Etiquette*.

The Rules are intended to assist practitioners in the conduct of their practices. While it may indicate to the Society's Complaints Committee or the Court the opinion of the Law Society on matters of ethics and practice, it is not a penal code. A breach of the Rules may not necessarily amount to professional misconduct or unsatisfactory professional conduct. However, practitioners should note that failure to comply can be unsatisfactory professional conduct or professional misconduct under s 585 of the *Legal Profession Act 2006*. Practitioners

should therefore abide by the terms of the Rules. If a practitioner does not do so, then the onus will be on the practitioner to justify his or her conduct.

The Supreme Court of the ACT has said, in relation to the former *Guide to Professional Conduct & Etiquette*, that the Guide was a binding Code set by solicitors and that practitioners who ignored the Guide did so at their own risk.

DEFINITIONS

- “associate” a reference to an associate of a practitioner is a reference to:
- (a) a partner, employee, or agent, of the practitioner;
 - (b) a corporation or partnership in which the practitioner has a significant beneficial interest;
 - (c) a member of the practitioner's immediate family.
- “case” means the litigation or proceedings in which the practitioner in question is retained or intending to appear, or the dispute in which the practitioner is advising, as the case may be.
- “client” includes an officer, servant or agent of a client, who is authorised to give instructions on behalf of the client.
- "compromise" includes any form of settlement of the case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.
- “costs” a reference to costs, unless the context of a rule indicates a contrary intention, includes disbursements.
- “Council” means the Council of the Law Society of the Australian Capital Territory
- “court” means any body described as such and all other tribunals exercising judicial, or quasi-judicial, functions, and includes professional disciplinary tribunals, industrial and administrative tribunals, statutory or Parliamentary

investigations and inquiries, Royal Commissions, arbitrations and mediations.

“current proceedings” means proceedings which have not been determined, including proceedings in which there is still the real possibility of an appeal or other challenge to a decision being filed, heard or decided.

“Executive Committee” has the same meaning as in the Constitution of the Law Society of the Australian Capital Territory

“forensic judgments” do not include decisions as to the commencement of proceedings, the joinder of parties, admissions or concessions of fact, amendments of pleadings or undertakings to a court, or in criminal proceedings as to a plea, but do include advice given to assist the client or the instructing practitioner to make such decisions.

“immediate family” means the spouse (which expression may include a de facto spouse or partner of the same sex), or a child, grandchild, sibling, parent or grandparent of a practitioner.

“Law Society” means the Law Society of the Australian Capital Territory

“opponent” means the practitioner appearing for the party opposed to the client, or the party opposed to the client if that party is unrepresented.

“order” includes a judgment, decision or determination.

“practitioner” means a legal practitioner who holds a current restricted or unrestricted practising certificate issued by the Law Society.

“principal” means a practitioner who is the holder of a current unrestricted practising certificate issued by the Law Society

“prosecutor” means a practitioner who appears for the complainant or Crown in criminal proceedings.

“Trust account” means a general trust bank account or a special trust bank account required by the Act to be opened and maintained.

RELATIONS WITH CLIENTS

Practitioners should serve their clients competently and diligently. They should be acutely aware of the fiduciary nature of their relationship with their clients, and always deal with their clients fairly, free of the influence of any interest which may conflict with a client's best interests. Practitioners should maintain the confidentiality of their clients' affairs, but give their clients the benefit of all information relevant to their clients' affairs of which they have knowledge. Practitioners should not, in the service of their clients, engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

- 1 . **Acceptance of Retainer -
(Instructions to Act or Provide a Legal Service)**
- 1.1 A practitioner should treat his or her client fairly and in good faith, giving due regard to the client's position of dependence upon the practitioner, his or her special training and experience and the high degree of trust which a client is entitled to place in a practitioner.
- 1.2 A practitioner must act honestly, fairly, and with competence and diligence in the service of a client, and should accept instructions, and a retainer to act for a client, only when the practitioner can reasonably expect to serve the client in that manner and attend to the work required with reasonable promptness.
- 1.3 (a) A practitioner must not accept instructions in a field of practice in which he or she possesses insufficient knowledge and skill to provide competent representation to the client unless:

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- (i) the practitioner is able, without undue delay and cost to the client, to obtain such knowledge and skill either through private study and research or through the association with him or her of another lawyer of established competence in that field; or
 - (ii) where access to the relevant body of knowledge or to a lawyer of established competence in the field is not readily available, the practitioner warns the client of those facts and of the likely delay and cost in acquiring the requisite knowledge and skill and the client voluntarily consents to the practitioner acting in the matter.
- (b) A practitioner should take such steps as are reasonably necessary to maintain and improve his or her knowledge and skill in the fields of law in which he or she practises.

2. **Confidentiality**

2.1 A practitioner must not, during, or after termination of, a retainer, disclose to any person, who is not a partner or employee of the practitioner's firm, any information, which is confidential to a client of the practitioner, and acquired by the practitioner during the currency of the retainer, unless :

- (a) the client authorises disclosure;
- (b) the practitioner is permitted or compelled by law to disclose;

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- (c) the practitioner discloses information in circumstances in which the law would probably compel its disclosure, despite a client's claim of legal professional privilege, and for the sole purpose of avoiding the probable commission or concealment of a felony; or
 - (d) necessary for replying to or defending any charge or complaint as to conduct or professional behaviour brought against the practitioner or his or her partners, associates or employees or to respond to a requirement under sub-Rule 41.2.

2.2 A practitioner's obligation to maintain the confidentiality of a client's affairs is not limited to information which might be protected by legal professional privilege, and is a duty inherent in the fiduciary relationship between the practitioner and client.

3. **Keeping the Client Informed**

3.1 A practitioner must give the client the following information in writing as soon as practicable after receipt of new instructions:

- (a) The name of the practitioner responsible for the day to day conduct of the matter and, if appropriate, the name of the principal responsible for supervising the management of the matter and the role that principal will have in the matter.
- (b) The basis on which costs will be charged and, if reasonably possible, an estimate of those costs including disbursements and counsel's fees, billing intervals and payment arrangements.

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- 3.2 Both at the outset and during the course of the matter, the practitioner should cause the client to be informed, where appropriate, as to the issues raised by the matter, the steps which are likely to be required, how long it is likely to be before it is concluded and progress from time to time, and the client's prospects of success.
- 3.3 During the course of the matter, if unexpected delay occurs, the practitioner should provide the client with an explanation of such delay including whether or not it is within the control of the person responsible for the matter to resolve such delay.
- 3.4 A practitioner need not comply with Rules 3.1 and 3.2 above in the following circumstances:
- (a) when undertaking work of a repetitive nature for the same client;
 - (b) where the client is a long standing client of the practitioner or the practitioner's firm;
 - (c) where it is not considered necessary, on reasonable grounds, by the practitioner to provide the information taking into account the knowledge and experience of the client in dealing with solicitors;
 - (d) where the practitioner reasonably anticipates that the matter will be billed and concluded within 21 days;
 - (e) where the practitioner reasonably anticipates that the amount of the bill, excluding outlays, will be less than \$500.00 or such other sum as the Council determines from time to time.

3.5 A practitioner should within a reasonable time of completion of the matter render to the client a memorandum of fees in writing sufficient to identify the general nature of the professional work or services performed.

4. **Acting Against a Former Client**

Consistent with the duty which a practitioner has to preserve the confidentiality of a client's affairs, a practitioner must not accept a retainer to act for another person in any action or proceedings against, or in opposition to, the interest of a person :

- (a) for whom the practitioner or the firm, of which the practitioner was a partner, has acted previously; and
- (b) from whom the practitioner or the practitioner's firm has thereby acquired information confidential to that person and material to the action or proceedings; and

that person might reasonably conclude that there is a real possibility the information will be used to the person's detriment.

5. **Practitioners employed otherwise than by a practitioner**

A practitioner, who is employed by a corporation or by any other person who is not a practitioner, must not, despite any contrary direction from the practitioner's employer, act as a practitioner in the performance of any legal work or service in breach of any of the provisions of the *Legal Profession Act 2006*.

6. **Termination of Retainer**

6.1 A practitioner must complete the work or legal service required by the practitioner's retainer, unless :

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- (a) the practitioner and the practitioner's client have otherwise agreed;
 - (b) the practitioner is discharged from the retainer by the client; or
 - (c) the practitioner terminates the retainer for just cause, and on reasonable notice to the client.

6.2 Despite the above Rule, a practitioner, who has accepted instructions to act for a defendant required to stand trial for a criminal offence, must not terminate the retainer and withdraw from the proceedings on the ground that the client has failed to make arrangements satisfactory to the practitioner for payment of the practitioner's costs, unless the practitioner has, at a time reasonably in advance of the date appointed for the commencement of the trial, or the commencement of the sittings of the Court in which the trial is listed :

- (a) served notice in writing on the client of the practitioner's intention to terminate the retainer and withdraw from the proceedings at the expiration of seven (7) days if the client fails, within that time, to make satisfactory arrangements for payment of the practitioner's costs; and
- (b) delivered a copy of that notice to the Registrar of the Court in which the trial is listed to commence.

6.3 Without limiting the general application of Rule 6.1, a practitioner, who is acting for a legally assisted client in any proceedings, may terminate the practitioner's retainer upon giving reasonable notice in writing to the client of the practitioner's intention so to do, if the client's grant of legal aid is withdrawn, or otherwise terminated, and the client is unable to make any other satisfactory

arrangements for payment of the practitioner's costs which would be incurred if the retainer continued.

7. Ownership of Clients' Documents - Termination of Retainer

7.1 A practitioner must retain, securely and confidentially, documents to which a client is entitled, for the duration of the practitioner's retainer and at least six years thereafter, or until such time as the practitioner gives them to the client or another person authorised by the client to receive them, or the client instructs the practitioner to deal with them in some other manner.

7.2 Upon completion or termination of a practitioner's retainer, a practitioner must, when requested so to do by the practitioner's client, give to the client, or another person authorised by the client, any documents related to the retainer to which the client is entitled, unless :

- (a) the practitioner has completed the retainer; or
- (b) the client has terminated the practitioner's retainer; or
- (c) the practitioner has terminated the retainer for just cause and on reasonable notice; and

the practitioner claims a lien over the documents for costs due to the practitioner by the client.

7.3 Despite Rule 7.2, a practitioner who claims to exercise a lien for unpaid costs over a client's documents, which are essential to the client's defence or prosecution of current proceedings, must:

- (a) deal with the documents as provided in Rule 27, if another lawyer is acting for the client; or

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- (b) upon receiving satisfactory security for the unpaid costs, deliver the documents to the client.

7.4 The documents to which a client of a practitioner should be entitled will usually include:

- (a) documents prepared by a practitioner for the client, or predominantly for the purposes of the client, and for which the client has been, or will be, charged costs by the practitioner; and
- (b) documents received by a practitioner from a third party in the course of the practitioner's retainer for or on behalf of the client or for the purposes of a client's business and intended for the use or information of the client.

8. **Acting for more than one party**

8.1 For the purposes of this Rule:

- (a) "proceedings or transaction" mean any action or claim at law or in equity, or any dealing between parties, which may affect, create, or be related to, any legal or equitable right or entitlement or interest in property of any kind.
- (b) "party" includes each one of the persons or corporations who, or which, is jointly a party to any proceedings or transaction.
- (c) "practitioner" includes a practitioner's partner or employee and a practitioner's firm.

8.2 A practitioner who intends to accept instructions from more than one party to any proceedings or transaction must be satisfied, before accepting a retainer to act, that each of the parties is

aware that the practitioner is intending to act for the others and consents to the practitioner so acting in the knowledge that the practitioner:

- (a) may be, thereby, prevented from :
 - (i) disclosing to each party all information, relevant to the proceedings or transaction, within the practitioner's knowledge; or,
 - (ii) giving advice to one party which is contrary to the interests of another; and
- (b) will cease to act for all parties if the practitioner would, otherwise, be obliged to act in a manner contrary to the interests of one or more of them.

8.3 If a practitioner, who is acting for more than one party to any proceedings or transaction, determines that the practitioner cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of them, the practitioner must thereupon cease to act for all parties.

8.4 A practitioner or a firm of practitioners must not act :

- (a) for both buyer and seller in a matter concerning the sale of land or the sale of a business in the Australian Capital Territory;
- (b) in the course of carrying on practice in the Australian Capital Territory for both buyer and seller in a matter concerning the sale of land or the sale of a business;

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- (c) for both mortgagor and mortgagee in a matter concerning the mortgage of land in the Australian Capital Territory excepting discharges of mortgages; or
 - (d) in the course of carrying on practice in the Australian Capital Territory for both mortgagor and mortgagee in a matter concerning the mortgage of land.

8.5 Notwithstanding the provisions of Rule 8.4, a practitioner or a firm of practitioners may act for both parties provided that:

- (a) the parties:
 - (i) are existing clients of the practitioner or of the firm of practitioners for whom the practitioner or the firm (as the case may be) has previously acted;
 - (ii) are related bodies corporate as defined in the Corporations Law; or
 - (iii) are related by blood, adoption or marriage (either de jure or de facto).
- (b) Rule 8.4 is brought to the knowledge of both parties; and
- (c) both parties, with knowledge of Rule 8.4, instruct the practitioner or the firm of practitioners in writing in the form of either Schedules 1 or 2 to act in the matter.

8.6 A practitioner or firm of practitioners should not act :

- (a) for lessor and lessee in a matter concerning the leasing of land in the Australian Capital Territory excepting the surrender of subleases; or

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- (b) in the course of carrying on practice in the Australian Capital Territory for both lessor and lessee in a matter concerning the leasing of land.

8.7 Notwithstanding the provisions of Rule 8.6, a practitioner or a firm of practitioners may act for both parties provided that:

- (a) Rule 8.6 is brought to the knowledge of both parties; and
- (b) both parties, with knowledge of Rule 8.6, instruct the practitioner or the firm of practitioners in writing in the form of Schedule 3 to act in the matter.

9. **Avoiding Conflict of Interest (where practitioner's own interest involved)**

9.1 A practitioner must not, in any dealings with a client :

- (a) allow the interests of the practitioner or an associate of the practitioner to conflict with those of the client.
- (b) exercise any undue influence intended to dispose the client to benefit the practitioner in excess of the practitioner's fair remuneration for the legal services provided to the client.

9.2 A practitioner must not accept instructions to act for a person in any proceedings or transaction affecting or related to any legal or equitable right or entitlement or interest in property, or continue to act for a person engaged in such proceedings or transaction when the practitioner is, or becomes, aware that the person's interest in the proceedings or transaction is, or would be, in conflict with the practitioner's own interest or the interest of an associate.

10. A Practitioner Receiving a Benefit under a Will or other Instrument

10.1 For the purposes of this Rule:

"substantial benefit" means a benefit which has a substantial value relative to the financial resources and assets of the person intending to bestow the benefit.

10.2 A practitioner who receives instructions from a person to draw a Will appointing the practitioner an Executor must inform that person in writing before the client signs the Will:

- (a) of any entitlement of the practitioner to claim commission;
- (b) of the inclusion in the Will of any provision entitling the practitioner, or the practitioner's firm, to charge professional fees in relation to the administration of the Estate; and
- (c) if the practitioner has an entitlement to claim commission, that the person could appoint as Executor a person who might make no claim for commission.

10.3 A practitioner who receives instructions from a person to:

- (a) draw a will under which the practitioner or an associate will, or may, receive a substantial benefit other than any proper entitlement to commission (if the practitioner is also to be appointed executor) and the reasonable professional fees of the practitioner or the practitioner's firm; or
- (b) draw any other instrument under which the practitioner or an associate will, or may, receive a substantial benefit in addition to the practitioner's reasonable remuneration,

including that payable under a conditional costs agreement,

must decline to act on those instructions and offer to refer the person, for advice, to another practitioner who is not an associate of the practitioner, unless the person instructing the practitioner is either:

- (c) a member of the practitioner's immediate family; or
- (d) a practitioner, or a member of the immediate family of a practitioner, who is a partner, employer, or employee, of the practitioner.

11. **Practitioner and Client - Borrowing Transactions**

11.1 A practitioner must not borrow any money, nor permit or assist an associate to borrow any money from a person :

- (a) who is currently a client of the practitioner, or the practitioner's firm;
- (b) for whom the practitioner or practitioner's firm has provided legal services, and who has indicated continuing reliance upon the advice of the practitioner, or practitioner's firm in relation to the investment of money; or
- (c) who has sought from the practitioner, or the practitioner's firm, advice in respect of the investment of any money, or the management of the person's financial affairs.

11.2 This Rule does not prevent a practitioner or an associate borrowing from a client which is recognised by the practitioner's professional association as a business entity engaged in money lending.

PRACTITIONERS' DUTIES TO THE COURT

Practitioners, in all their dealings with the courts, whether those dealings involve the obtaining and presentation of evidence, the preparation and filing of documents, instructing an advocate or appearing as an advocate, should act with competence, honesty and candour. Practitioners should be frank in their responses and disclosures to the Court, and diligent in their observance of undertakings which they give to the Court or their opponents.

12. Preparation of Affidavits

12.1 If a practitioner is:

- (a) aware that a client is withholding information required by an order or rule of a court, with the intention of misleading the court, or
- (b) informed by a client that an affidavit, of the client, filed by the practitioner, is false in a material particular,

and the client will not make the relevant information available, or allow the practitioner to correct the false evidence, the practitioner must, on reasonable notice, terminate the retainer and, without disclosing the reasons to the court, give notice of the practitioner's withdrawal from the proceedings.

12.2 A practitioner must not draw an affidavit alleging criminality, fraud, or other serious misconduct unless the practitioner believes on reasonable grounds that:

- (a) factual material already available to the practitioner provides a proper basis for the allegation;

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- (b) the allegation will be material and admissible in the case, as to an issue or as to credit; and
 - (c) the client wishes the allegation to be made after having been advised of the seriousness of the allegation.

13. Practitioner a Material Witness in Client's Case

A practitioner must not appear as an advocate and, unless there are exceptional circumstances justifying the practitioner's continuing retainer by the practitioner's client, the practitioner must not act, or continue to act, in a case in which it is known, or becomes apparent, that the practitioner will be required to give evidence material to the determination of contested issues before the court.

14. Admission of Guilt

14.1 If a practitioner's client, who is the accused or defendant in criminal proceedings, admits to the practitioner before the commencement of, or during, the proceedings, that the client is guilty of the offence charged, the practitioner must not, whether acting as instructing practitioner or advocate :

- (a) put a defence case which is inconsistent with the client's confession;
- (b) falsely claim or suggest that another person committed the offence; or
- (c) continue to act if the client insists on giving evidence denying guilt or requires the making of a statement asserting the client's innocence.

14.2 A practitioner may continue to act for a client who elects to plead "not guilty" after admitting guilt to the practitioner, and in that event, the practitioner must ensure that the prosecution is put to proof of its case, and the practitioner may argue that the evidence is insufficient to justify a conviction or that the prosecution has otherwise failed to establish the commission of the offence by the client.

15. **Admission of Perjury**

15.1 If a practitioner's client admits to the practitioner, during or after any proceedings, while judgment is reserved, that the client has given materially false evidence or tendered a false or misleading document in the proceedings, the practitioner must :

- (a) advise the client that the Court should be informed of the false evidence, and request the client's authority to inform the Court and correct the record; and
- (b) if the client refuses to provide that authority, withdraw from the proceedings immediately, and terminate the retainer.

16. **Bail**

16.1 A practitioner must not promote, or be a party to, any arrangement whereby the bail provided by a surety is obtained by using the money of the accused person, or by which the surety is given an indemnity by the accused person or a third party acting on behalf of the accused person.

16.2 A practitioner must not become the surety for the practitioner's client's bail.

ADVOCACY RULES

17. **Duty to client**

- 17.1 A practitioner must seek to advance and protect the client's interests to the best of the practitioner's skill and diligence, uninfluenced by the practitioner's personal view of the client or the client's activities, and notwithstanding any threatened unpopularity or criticism of the practitioner or any other person, and always in accordance with the law including these Rules.
- 17.2 A practitioner must seek to assist the client to understand the issues in the case and the client's possible rights and obligations, if the practitioner is instructed to give advice on any such matter, sufficiently to permit the client to give proper instructions, particularly in connection with any compromise of the case.

18. **Independence - Avoidance of Personal bias**

- 18.1 A practitioner must not act as the mere mouthpiece of the client or of the instructing practitioner and must exercise the forensic judgments called for during the case independently, after appropriate consideration of the client's and the instructing practitioner's desires where practicable.
- 18.2 A practitioner will not have breached the practitioner's duty to the client, and will not have failed to give appropriate consideration to the client's or the instructing practitioner's desires, simply by choosing, contrary to those desires, to exercise the forensic judgments called for during the case so as to:
- (a) confine any hearing to those issues which the practitioner believes to be the real issues;

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- (b) present the client's case as quickly and simply as may be consistent with its robust advancement; or
 - (c) inform the court of any persuasive authority against the client's case.
- 18.3 A practitioner must not make submissions or express views to a court on any material evidence or material issue in the case in terms which convey or appear to convey the practitioner's personal opinion on the merits of that evidence or issue.
19. **Frankness in court**
- 19.1 A practitioner must not knowingly make a misleading statement to a court on any matter.
- 19.2 A practitioner must take all necessary steps to correct any misleading statement made by the practitioner to a court as soon as possible after the practitioner becomes aware that the statement was misleading.
- 19.3 A practitioner will not have made a misleading statement to a court simply by failing to correct an error on any matter stated to the court by the opponent or any other person.
- 19.4 A practitioner seeking any interlocutory relief in an ex parte application must disclose to the court all matters which:
- (a) are within the practitioner's knowledge;
 - (b) are not protected by legal professional privilege; and
 - (c) the practitioner has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.

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- 19.5 A practitioner who has knowledge of matters which are within Rule 19.4(c):
- (a) must seek instructions for the waiver of legal professional privilege if the matters are protected by that privilege, so as to permit the practitioner to disclose those matters under Rule 19.4; and
 - (b) if the client does not waive the privilege as sought by the practitioner:
 - (i) must inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and
 - (ii) must inform the court that the practitioner cannot assure the court that all matters which should be disclosed have been disclosed to the court.
- 19.6 A practitioner must, at the appropriate time in the hearing of the case and if the court has not yet been informed of that matter, inform the court of:
- (a) any binding authority;
 - (b) any authority decided by an Australian superior court which is likely to be considered persuasive; or
 - (c) any applicable legislation,
- which the practitioner has reasonable grounds to believe to be directly on point, against the client's case.

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- 19.7 A practitioner need not inform the court of matters within Rule 19.6 at a time when the opponent tells the court that the opponent's whole case will be withdrawn or the opponent will consent to final judgment in favour of the client, unless the appropriate time for the practitioner to have informed the court of such matters in the ordinary course has already arrived or passed.
- 19.8 A practitioner who becomes aware of a matter within Rule 19.6 after judgment or decision has been reserved and while it remains pending, whether the authority or legislation came into existence before or after argument, must inform the court of that matter by:
- (a) a letter to the court, copied to the opponent, and limited to the relevant reference unless the opponent has consented beforehand to further material in the letter; or
 - (b) requesting the court to relist the case for further argument on a convenient date, after first notifying the opponent of the intended request and consulting the opponent as to the convenient date for further argument.
- 19.9 A practitioner need not inform the court of any matter otherwise within Rule 19.6 which would have rendered admissible any evidence tendered by the prosecution which the court has ruled inadmissible without calling on the defence.
- 19.10 A practitioner will not have made a misleading statement to a court simply by failing to disclose facts known to the practitioner concerning the client's character or past, when the practitioner makes other statements concerning those matters to the court, and those statements are not themselves misleading.

19.11 A practitioner who knows or suspects that the prosecution is unaware of the client's previous conviction must not ask a prosecution witness whether there are previous convictions, in the hope of a negative answer.

19.12 A practitioner must inform the court in civil proceedings of any misapprehension by the court as to the effect of an order which the court is making, as soon as the practitioner becomes aware of the misapprehension.

20. Admission by client

20.1 A practitioner whose client informs the practitioner, during a hearing or after judgment or decision is reserved and while it remains pending, that the client has lied in a material particular to the court or has procured another person to lie to the court or has falsified or procured another person to falsify in any way a document which has been tendered:

- (a) must refuse to take any further part in the case unless the client authorises the practitioner to inform the court of the lie or falsification;
- (b) must promptly inform the court of the lie or falsification upon the client authorising the practitioner to do so; but
- (c) must not otherwise inform the court of the lie or falsification.

20.2 A practitioner retained to appear in criminal proceedings whose client makes admissions of fact consistent with guilt to the practitioner but maintains a plea of not guilty:

- (a) may cease to act, if there is enough time for another practitioner to take over the case properly before the

hearing, and the client does not insist on the practitioner continuing to appear for the client;

- (b) in cases where the practitioner continues to act for the client:
 - (i) must not falsely suggest that some other person committed the offence charged;
 - (ii) must not set up an affirmative case inconsistent with the admission ; but
 - (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged;
 - (iv) may argue that for some reason of law the client is not guilty of the offence charged; or
 - (v) may argue that for any other reason not prohibited by (i) and (ii) the client should not be convicted of the offence charged.

20.3 A practitioner whose client informs the practitioner that the client intends to disobey a court's order must:

- (a) advise the client against that course and warn the client of its dangers;
- (b) not advise the client how to carry out or conceal that course; but
- (c) not inform the court or the opponent of the client's intention unless:

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- (i) the client has authorised the practitioner to do so beforehand; or
 - (ii) the practitioner believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety.

21. Responsible use of privilege

21.1 A practitioner must, when exercising the forensic judgments called for throughout a case, take care to ensure that decisions by the practitioner or on the practitioner's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:

- (a) are reasonably justified by the material then available to the practitioner;
- (b) are appropriate for the robust advancement of the client's case on its merits;
- (c) are not made principally in order to harass or embarrass the person; and
- (d) are not made principally in order to gain some collateral advantage for the client or the practitioner or the instructing practitioner out of court.

21.2 A practitioner must not draw or settle any court document alleging criminality, fraud or other serious misconduct unless the practitioner believes on reasonable grounds that:

- (a) factual material already available to the practitioner provides a proper basis for the allegation if it is made in a pleading;

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- (b) the evidence in which the allegation is made, if it is made in evidence, will be admissible in the case, when it is filed; and
- (c) the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client if it is not made out.
- 21.3 A practitioner must not open as a fact any allegation which the practitioner does not then believe on reasonable grounds will be capable of support by the evidence which will be available to support the client's case.
- 21.4 A practitioner must not cross-examine so as to suggest criminality, fraud or other serious misconduct on the part of any person unless:
- (a) the practitioner believes on reasonable grounds that the material already available to the practitioner provides a proper basis for the suggestion;
- (b) in cross-examination going to credit alone, the practitioner believes on reasonable grounds that affirmative answers to the suggestion would diminish the witness's credibility.
- 21.5 A practitioner may regard the opinion of the instructing practitioner that material which appears to support a suggestion within Rule 21.4 is itself credible as a reasonable ground for holding the belief required by Rule 21.4(a).
- 21.6 A practitioner must make reasonable enquiries to the extent which is practicable before the practitioner can have reasonable grounds for holding the belief required by Rule 21.4(a), unless the

practitioner has received and accepted an opinion from the instructing practitioner within Rule 21.5.

- 21.7 A practitioner must not suggest criminality, fraud or other serious misconduct against any person in the course of the practitioner's address on the evidence unless the practitioner believes on reasonable grounds that the evidence in the case provides a proper basis for the suggestion.
- 21.8 A practitioner who has instructions which justify submissions for the client in mitigation of the client's criminality and which involve allegations of serious misconduct against any other person not able to answer the allegations in the case must seek to avoid disclosing the other person's identity directly or indirectly unless the practitioner believes on reasonable grounds that such disclosure is necessary for the robust defence of the client.

22. Integrity of evidence

- 22.1 A practitioner must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.
- 22.2 A practitioner will not have breached Rule 22.1 by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a prospective witness, including drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.

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- 22.3 A practitioner must not confer with, or condone another practitioner conferring with, more than one lay witness (including a party or client) at the same time, about any issue:
- (a) as to which there are reasonable grounds for the practitioner to believe it may be contentious at a hearing; or
 - (b) which could be affected by, or may affect, evidence to be given by any of those witnesses.
- 22.4 A practitioner will not have breached Rule 22.3 by conferring with, or condoning another practitioner conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.
- 22.5 A practitioner must not confer with any witness (including a party or client) called by the practitioner on any matter related to the proceedings while that witness remains under cross-examination, unless:
- (a) the cross-examiner has consented beforehand to the practitioner doing so; or
 - (b) the practitioner:
 - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference;
 - (ii) has, if possible, informed the cross-examiner beforehand of the practitioner's intention to do so; and

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- (iii) otherwise does inform the cross-examiner as soon as possible of the practitioner having done so.

22.6 A practitioner must not take any step to prevent or discourage prospective witnesses or witnesses from conferring with the opponent or being interviewed by or on behalf of any other person involved in the proceedings.

22.7 A practitioner will not have breached Rule 22.6 simply by telling a prospective witness or a witness that the witness need not agree to confer or to be interviewed.

23. **Duty to opponent**

23.1 A practitioner must not knowingly make a false statement to the opponent in relation to the case (including its compromise).

23.2 A practitioner must take all necessary steps to correct any false statement unknowingly made by the practitioner to the opponent as soon as possible after the practitioner becomes aware that the statement was false.

23.3 A practitioner does not make a false statement to the opponent simply by failing to correct an error on any matter stated to the practitioner by the opponent.

23.4 A practitioner must not deal directly with the opponent's client unless:

- (a) the opponent has previously consented;
- (b) the practitioner believes on reasonable grounds that:
 - (i) the circumstances are so urgent as to require the practitioner to do so; and

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- (ii) the dealing would not be unfair to the opponent's client; or
 - (c) the substance of the dealing is solely to enquire whether the person is represented and, if so, by whom.
- 23.5 A practitioner must not confer with or deal directly with the party opposed to the client unless:
- (a) the party, not being indemnified by an insurer which is actively engaged in contesting the proceedings, is unrepresented and has signified willingness to that course, or
 - (b) the party, being indemnified by an insurer which is actively engaged in contesting the proceedings, is otherwise unrepresented and the practitioner:
 - (i) has no reasonable grounds to believe that any statements made by the party to the practitioner may harm the party's interests under the insurance policy; or
 - (ii) has reasonable grounds for the belief referred to in (i) but has clearly informed the party beforehand of that possibility; or
 - (c) the party, being indemnified by an insurer which is actively engaged in contesting the proceedings, is personally represented but not in the case and the practitioner:
 - (i) has notified the party's representative of the practitioner's intention to do so; and

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- (ii) has allowed enough time for the party to be advised by the party's representative.

23.6 A practitioner must not, outside an ex parte application or a hearing of which the opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless:

- (a) the court has first communicated with the practitioner in such a way as to require the practitioner to respond to the court; or
- (b) the opponent has consented beforehand to the practitioner dealing with the court in a specific manner notified to the opponent by the practitioner.

23.7 A practitioner must promptly tell the opponent what passes between the practitioner and a court in a communication referred to in Rule 23.6.

23.8 A practitioner must not raise any matter with a court in connection with current proceedings on any occasion to which the opponent has consented under Rule 23.6(b), other than the matters specifically notified by the practitioner to the opponent when seeking the opponent's consent.

24. **Prosecutor's duties**

24.1 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

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- 24.2 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 24.3 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 24.4 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 24.5 A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:
- (a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
 - (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

In the event that the prosecutor acts in accordance with subparagraphs (a) and (b), the prosecutor must facilitate communication between the defence and prospective witnesses.

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- 24.6 A prosecutor who has decided not to disclose material to the opponent under Rule 24.5 must consider whether:
- (a) the defence of the accused could suffer by reason of such nondisclosure;
 - (b) the charge against the accused to which such material is relevant should be withdrawn; and
 - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 24.7 A prosecutor must call as part of the prosecution's case all witnesses:
- (a) whose testimony is admissible and necessary for the presentation of the whole picture;
 - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
 - (c) whose testimony or statements were used in the course of any committal proceedings; and
 - (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case,
- unless:
- (e) the opponent consents to the prosecutor not calling a particular witness;

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- (f) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
 - (g) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses,

provided that:

- (h) the prosecutor is not obliged to call evidence from a particular witness, who would otherwise fall within (a)-(d), if the prosecutor believes on reasonable grounds that the testimony of that witness is plainly unreliable by reason of the witness being in the camp of the accused;
- (i) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (f), (g) and (h), together with the grounds on which the prosecutor has reached that decision; and
- (j) the prosecutor must call any witness whom the prosecutor intends not to call on the ground in (h) if the opponent requests the prosecutor to do so for the purpose of permitting the opponent to cross-examine that witness.

24.8 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

- (a) inform the opponent if the prosecutor intends to use the material;

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- (b) make available to the opponent a copy of the material if it is in documentary form; and
 - (c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.
- 24.9 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
- 24.10 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- 24.11 A prosecutor who has informed the court of matters within Rule 24.10, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
- 24.12 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
 - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
 - (c) must assist the court to avoid appealable error on the issue of sentence;

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- (d) may submit that a custodial or non-custodial sentence is appropriate; and
 - (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

24.13 A practitioner who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 24.1, 24.3 and 24.4 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 24.3.

RELATIONS WITH OTHER PRACTITIONERS

In all of their dealings with other practitioners, practitioners should act with honesty, fairness and courtesy, and adhere faithfully to their undertakings, in order to transact lawfully and competently the business which they undertake for their clients in a manner that is consistent with the public interest.

25. **Communications**

A practitioner, in all of the practitioner's dealings with other practitioners, must take all reasonable care to maintain the integrity and reputation of the legal profession by ensuring that the practitioner's communications are courteous and that the practitioner avoids offensive or provocative language or conduct.

26. **Undertakings**

26.1 A practitioner who, in the course of the practitioner's practice, communicates with another practitioner orally, or in writing, in terms which expressly, or by necessary implication, constitute an undertaking on the part of the practitioner, to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the other practitioner will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised, or, if no precise time limit is specified, within a reasonable time.

26.2 A practitioner must not give to another practitioner an undertaking compliance with which requires the co-operation of a third party, who is not a party to the undertaking, and whose co-operation cannot be guaranteed by the practitioner.

26.3 A practitioner must not, in the course of the practitioner's practice, seek from another practitioner or that practitioner's employee, an

undertaking, compliance with which would require the co-operation of a third party who is not a party to the undertaking, and whose co-operation could not be guaranteed by the practitioner or employee asked to give the undertaking.

27. Taking over a Matter from Another Practitioner

- 27.1 Where a practitioner's retainer is terminated before the completion of the client's business to which it relates, and the client instructs another practitioner to take over the conduct of the client's business, the following rules will apply, subject to any orders which may be, made by a court of competent jurisdiction in respect of the delivery of the client's documents.
- 27.2 The first practitioner must promptly, on receipt of a direction in writing from the client, deliver to the second practitioner all relevant documents to which the client is entitled and any information which is necessary for the proper conduct of the client's business, unless the first practitioner claims a lien over the documents for unpaid costs.
- 27.3 If the client has terminated the first practitioner's retainer, the first practitioner may retain possession of the documents until the practitioner's costs are paid, or their payment to the practitioner is satisfactorily secured.
- 27.4 If the first practitioner has terminated the retainer and the client's documents are essential to the defence or prosecution of proceedings which are continuing before a Court, the practitioner must surrender possession of the documents to the client, upon the terms prescribed in Rule 7.3 or to the second practitioner, if so directed by the client, and, provided that the second practitioner :

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- (a) holds the documents subject to the first practitioner's lien, if that is practicable, and provides reasonable security for the payment of the first practitioner's costs; or
 - (b) enters into an agreement with the client and the first practitioner to procure payment of the first practitioner's costs upon completion of the relevant proceedings.

27.5 A practitioner who receives a client's documents from another practitioner pursuant to an agreement between the client and both practitioners, providing that the practitioner receiving the documents will pay the first practitioner's costs from money recovered on the client's behalf in respect of the business or proceedings to which the documents relate, must do all things which are reasonably practicable on the practitioner's part to ensure compliance with the agreement.

28. **Transfer of a Practitioner's Practice**

28.1 When a practitioner intends to transfer to another practitioner the whole or part of the practitioner's practice, including clients' work in progress, and to put the other practitioner in possession of the documents held by the practitioner on behalf of clients, the practitioner must give to each client, fourteen (14) days (or such other period as may be reasonable in the circumstances), before the practitioner delivers possession of the practice to the practitioner acquiring it, notice in writing:

- (a) of the intended transfer of documents to the practitioner acquiring the practice, unless a contrary direction is received from the client; and
- (b) of the client's right to give to the practitioner a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.

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- 28.2 The notice which is sent to any client, on whose behalf the practitioner holds money in trust or under the practitioner's control, must advise the client of:
- (a) the balance of money held on the client's behalf;
 - (b) the practitioner's intention to transfer the relevant account to the practitioner acquiring the practice, unless advised by the client to the contrary; and
 - (c) the client's right to give to the practitioner a contrary direction as to the manner in which the practitioner should deal with the account on the client's behalf.
- 28.3 The practitioner, in addition to giving notice to clients as required by paragraphs 28.1 and 28.2 must comply with all other legislative provisions applicable to the trust money or controlled money held by the practitioner.
- 28.4 Paragraphs 28.1, 28.2 and 28.3 do not apply where a new partner is admitted to a partnership which continues to conduct the practice.

29. **Communicating with Another Practitioner's Client**

- 29.1 A practitioner who is acting on behalf of a party in any proceedings or transaction must not communicate directly with any other party for whom, to the practitioner's knowledge, another practitioner is currently acting, unless:
- (a) notice of the practitioner's intention to communicate with the other party, in default of a reply from the other practitioner, has been given to that practitioner, who has failed, after a reasonable time, to reply;

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- (b) the communication is made for the sole purpose of informing the other party that the practitioner has been unable to obtain a reply from that party's practitioner, and requests that party to contact the practitioner; and
 - (c) the practitioner, thereafter, notifies the other practitioner of the communication.

29.2 A practitioner who receives notice from another practitioner that the practitioner's client has instructed or retained that practitioner may, after notifying the other practitioner, communicate with the former client for the purpose of confirming the client's instructions and arranging for the orderly transfer of the client's affairs to the other practitioner.

RELATIONS WITH THIRD PARTIES

Practitioners should, in the course of their practice, conduct their dealings with other members of the community, and the affairs of their clients which affect the rights of others, according to the same principles of honesty and fairness which are required in relations with the courts and other lawyers and in a manner that is consistent with the public interest.

30. **Contracting for Services**

A practitioner who deals with a third party for the purpose of obtaining some service on behalf of a client, must inform the third party when the service is requested, that the practitioner will accept personal liability for payment of the fees to be charged for the service or, if the practitioner is not to accept personal liability, the practitioner must inform the third party of the arrangements intended to be made for payment of the fees.

31. **Undertakings**

A practitioner who, in the course of providing legal services to a client, communicates with a third party orally, or in writing, in terms which, expressly, or by necessary implication, constitute an undertaking on the part of the practitioner to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the third party will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised (if any) or within a reasonable time.

32. **Communications**

32.1 A practitioner must not, in any communication with another person on behalf of a client:

- (a) represent to that person that anything is true which the practitioner knows, or reasonably believes, is untrue; or
- (b) make any statement that is calculated to mislead or intimidate the other person, and which grossly exceeds the legitimate assertion of the rights or entitlement of the practitioner's client; or
- (c) threaten the institution of criminal proceedings against the other person in default of the person's satisfying a concurrent civil liability to the practitioner's client.

33. **Debt Collection or Mercantile Agencies**

33.1 A practitioner must not allow the practitioner's business name or stationery to be used by a debt collection, or mercantile, agent in a manner that is likely to mislead the public, and a practitioner who receives, from a debt collection, or mercantile, agent, instructions to act for a client creditor, must ensure that:

- (a) the practitioner's relationship to the agent is fully disclosed to the client;
- (b) the information required to be disclosed to the client by any relevant legislation and these Rules is communicated to the client;
- (c) the practitioner maintains direct control and supervision of any proceedings on behalf of the client; and
- (d) that any money recovered on behalf of the client is accounted for by the practitioner.

LEGAL PRACTICE

34. Conducting Another Business

- 34.1 A practitioner who engages in the conduct of another business concurrently, but not directly in association, with the conduct of the practitioner's legal practice must ensure that the other business is not of such a nature that the practitioner's involvement in it would be likely to impair, or conflict with, the practitioner's duties to clients in the conduct of the practice, and the practitioner must:
- (a) maintain separate and independent files, records and accounts in respect of the legal practice, and the other business;
 - (b) disclose to any client of the practitioner, who, in the course of dealing with the practitioner, deals with the other business, the practitioner's financial or other interest in that business; and
 - (c) cease to act for the client if the practitioner's independent service of the client's interest is reasonably likely to be affected by the practitioner's interest in the other business.
- 34.2 For the purpose of paragraph 34.1, a practitioner will be deemed to be carrying on another business if that business, whether conducted by a company or otherwise, is carried on substantially under the practitioner's direction or control.

35. Referral Fees - Taking unfair advantage of potential clients - Commissions

35.1 In the conduct or promotion of a practitioner's practice, the practitioner must not:

- (a) accept a retainer or instructions to provide legal services to a person, who has been introduced or referred to the practitioner by a third party to whom the practitioner has given or offered to provide a fee, benefit or reward for the referral of clients or potential clients, unless the practitioner has first disclosed to the person referred the practitioner's arrangement with the third party; or
- (b) seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the practitioner at the time when the instructions are sought.

35.2 A practitioner must not act for a client in any dealing with a third party from whom the practitioner may receive, directly or indirectly, any fee, benefit or reward in respect of that dealing unless:

- (a) the practitioner is able to advise and, in fact, advises the client free of any constraint or influence which might be imposed on the practitioner by the third party;
- (b) the practitioner's advice is fair and free of any bias caused by the practitioner's relationship with the third party; and
- (c) the nature and value of any fee, benefit, or reward, which may be received by the practitioner, are fair and

reasonable, having regard to objective commercial standards, and are disclosed fully in writing to the client before the dealing is commenced.

36. Supervision

A practitioner should properly supervise all legal professional work carried out for and on the practitioner's behalf.

37. Conduct of Practice

37.1 A practitioner should ensure that his or her practice is efficiently and properly administered and should take all reasonable and practicable steps to ensure that professional engagements are fulfilled or that early notice is given if they cannot be fulfilled.

37.2 A practitioner who is the holder of a current unrestricted practising certificate must ensure that he or she or another practitioner who is the holder of a current unrestricted practising certificate is at all times in charge of and attends regularly at each address at which the practitioner carries on practice.

37.3 Where a practitioner carries on practice as a solicitor at an office other than his or her usual place of residence which is not open continuously during normal business hours:

(a) the practitioner must ensure that a notice, clearly visible outside the practitioner's place of practice, which specifies the days on which and the hours during which such place of practice is open, is affixed;

(b) such notice should also state a telephone number on which the practitioner can be contacted, and such telephone number will, during normal business hours, be

serviced personally or by a functional machine answering service;

- (c) the practitioner must notify the Law Society promptly in writing of the hours during which the said place of business is open, the said telephone number and any changes thereto; and
- (d) the provisions of this sub-Rule will not in any way limit the generality of the preceding two sub-Rules 37.1 and 37.2.

37.4 Where a practitioner who practises as a solicitor does not have an office other than at his or her place of residence and sees clients by appointment only:

- (a) the practitioner should have a telephone number on which he or she can be contacted. The telephone number should be serviced personally or by a functional machine answering service during normal business hours;
- (b) the practitioner must notify the Law Society promptly in writing of the telephone number and any changes thereto; and
- (c) the provisions of this sub-Rule will not in any way limit the generality of the preceding two sub-Rules 37.1 and 37.2.

38. **Firms**

38.1 Firm Names

A practitioner may practise under a business name that includes the name of the practitioner, a partner of the practitioner, any past

member of the firm or a firm that conducted the same practice, or any other name provided that the business name:

- (a) does not mislead or deceive, and is not likely to mislead or deceive; and
- (b) is not likely to bring the practitioner or the legal profession into disrepute; or
- (c) is approved by Council.

38.2 Professional Stationery

In this Rule “professional stationery” includes letterheads, compliment slips, business cards and any other document that identifies the practitioner’s firm.

38.3 A practitioner must place in legible form on any letterhead of the practitioner’s practice:

- (a) the name under which the practitioner practises; and
- (b) the address of the practitioner’s principal place of practice; and
- (c) the practitioner’s telephone number.

38.4 A practitioner may permit to appear on his or her professional stationery the name of any person who is:

- (a) another practitioner, being a partner of that practitioner; or
- (b) any other person employed by or associated with the firm,

provided that the use of that name does not mislead or deceive, and is not likely to mislead or deceive.

39. Attraction of Business

39.1 For the purpose of this Rule:

- (a) the expression “publication” means a book, pamphlet, brochure, newspaper, magazine, periodical, journal, gazette, directory, or other printed material;
- (b) the expression “transmission” means a radio or television transmission, a visual display communicated by electronic means or a cinematographic exhibition.

39.2 (a) A practitioner may advertise in connection with his or her practice provided that such advertising:

- (i) is not false in any material particular;
 - (ii) is not misleading or deceptive or likely to mislead or deceive;
 - (iii) is not vulgar, sensational or otherwise such as would bring or be likely to bring the practitioner or the legal profession into disrepute.
- (b) The onus would be on any practitioner who claimed that he was a specialist or an expert in a particular field of practice to prove, if required, that his claim was not false, misleading or deceptive.
- (c) The acceptance of a claim by a practitioner to be a specialist or an expert in a particular field of practice would depend on a number of factors. While an assessment of a

practitioner's claim would depend on the particular facts and circumstances, the following factors may be taken into account in judging the validity of a claim:

- (i) the academic qualifications of the practitioner;
 - (ii) the number of years of experience the practitioner has had in the field of practice;
 - (iii) the proportion of the practitioner's total working time involved in the field of practice;
 - (iv) the level of success achieved by the practitioner in the field of practice;
 - (v) the importance or significance of the matters in respect of which the practitioner has practised in the field;
 - (vi) an assessment by a number of the practitioner's peers to establish whether or not the practitioner is regarded by other practitioners as a specialist or as having special expertise in the field of practice;
 - (vii) any interstate accreditation as a specialist;
 - (viii) such other matters as are relevant in all the circumstances.
- (d) The term "specialist" and the phrase "an expert in a particular field of practice" means "a practitioner having special expertise". A practitioner will need to consider carefully any claim to be a specialist. Alternative indications such as "practising in the fields of..." or "undertaking legal work in..." may be more accurate and

satisfactory. The connotation of the term “specialist” to denote the field in which the practitioner principally practises may be more satisfactorily met by the indication of a field or fields of practice.

39.3 A practitioner may in any lecture, talk, public appearance, transmission, or publication on any subject be identified therein by his or her name, academic qualifications and the fact that he or she is a practitioner provided that:

- (a) where the subject matter or part of the subject matter thereof concerns a matter in which the practitioner is or has been professionally engaged:
 - (i) the practitioner must in all cases confine himself or herself to an objective account of the matter without giving undue publicity to his or her own part in the matter;
 - (ii) the practitioner must not participate therein if it is contrary to the interests of the client or former client so to do;
- (b) the practitioner must not therein profess to be representing the Society or the legal profession or presenting the views of the Society or the legal profession unless he or she has been expressly authorised by the Council or the Executive Committee so to do.

39.4 A practitioner may communicate with a person who is not then his or her client with a view to obtaining instructions for professional business provided that:

- (a) the content and nature of any material, whether printed, spoken or otherwise, used by the practitioner in the course

of the communication will be subject to the same restrictions as are contained in sub-Rule 39.2;

- (b) the form of the communication does not derogate from the dignity of the legal profession;
- (c) the physical, emotional and mental state of the person is such that the person is capable of exercising reasonable judgment in employing a practitioner;
- (d) the practitioner must not communicate with a person who has made known to the practitioner, directly or indirectly, that he or she does not desire to receive such communications from the practitioner or from practitioners generally; and
- (e) the communication does not involve undue influence, coercion, duress, harassment or nuisance.

39.5 Except as allowed by this Rule, a practitioner must not:

- (a) apply, directly or indirectly, to a person who is not then his or her client for instructions for professional business; or
- (b) do or permit in the carrying on of his or her practice any act or thing that may reasonably be regarded as calculated to attract business unfairly.

39.6 (a) The Council may from time to time provide for the guidance of practitioners examples of material which it considers to accord with or not to accord with the restrictions contained in the provisos to sub-Rule 39.2.

- (b) the Council may by notice in writing to a practitioner order:

-
- (i) the alteration, withdrawal or discontinuance of an advertisement;
 - (ii) the alteration or discontinuance of the use of material referred to in sub-paragraph 39.4(a);
 - (iii) the removal or alteration of a sign or brochure,

by a practitioner where the Council is of the opinion that the advertisement, material, sign or brochure contravenes the provisions of this Rule.

- (c) The Council may by notice in writing to a practitioner order him or her to cease or limit:
 - (i) communications with persons who are not his or her clients with a view to obtaining instructions for professional business;
 - (ii) the lectures, talks, public appearances, transmissions or publications in which he or she participates,

if in the opinion of the Council the practitioner is thereby contravening the provisions of this Rule.

- (d) A practitioner must forthwith comply with any order given by the Council pursuant to paragraphs (b) and (c).

40. Fees

- 40.1 A practitioner should, when accepting instructions, inform the client of the basis on which fees for professional services will be charged and the manner in which it is expected that those fees and disbursements, if any, should be paid by the client.

40.2 A practitioner should within a reasonable time after being so requested by a client render a bill of costs covering all work performed for that client to which the request relates.

40.3 A practitioner should not bargain with a client for an interest in the subject matter of litigation nor, except to the extent permitted by any scale of costs which may be applicable, for remuneration proportionate to the amount which may be recovered by the client in the proceedings.

41 **Dealings with the Law Society**

41.1 Subject only to his or her duty to the client, a practitioner should be open and frank in his or her dealings with the Law Society.

41.2 A practitioner should respond within a reasonable time and in any event within 14 days (or such extended time as the Society may allow) to any requirement of the Society for comments or information in relation to the practitioner's conduct or professional behaviour and in doing so the practitioner should furnish in writing a full and accurate account of his or her conduct in relation to the matter.

42. **Anti-Discrimination**

42.1 A practitioner should not in the course of his or her practice discriminate against a person on the ground of the person's sex, marital status, pregnancy or family responsibilities where such discrimination would be unlawful by virtue of the *Sex Discrimination Act* 1994 of the Commonwealth.

42.2 A practitioner should not in the course of his or her practice sexually harass another person where such harassment would be

unlawful by virtue of the *Sex Discrimination Act 1994* of the Commonwealth.

- 42.3 A practitioner should not in the course of his or her practice do any act involving a distinction, exclusion, restriction or preference based upon the race, colour or national or ethnic origin of a person where such an act would be unlawful by virtue of the *Racial Discrimination Act 1975* of the Commonwealth.
- 42.4 A practitioner should not in the course of his or her practice discriminate against a person on the ground of a disability of that person where such discrimination would be unlawful by virtue of the *Disability Discrimination Act 1992* of the Commonwealth.

43. **Trust Accounts**

- 43.1 For the purposes of this Rule, a “client” includes a person from whom a practitioner receives money in the course of his or her practice on the condition that the money is held by the practitioner and subsequently disbursed or otherwise dealt with by the practitioner in accordance with the directions of that person or another person.

(a) Opening of Trust Account

- (i) A principal must comply with the provisions of the Act in respect to the opening, operation and maintenance of trust accounts.
- (ii) For the purposes of section 90(1) of the *Legal Practitioners Act*, the date by which a practitioner is required to open a trust account is the next banking day following the date of receipt by the practitioner of the first amount of trust moneys after commencing practice.

(b) Signing of Trust Account Cheques

Except as allowed in this sub-Rule, every cheque drawn on a trust account must be signed personally by a principal.

(c) In isolated instances only and in circumstances which could not reasonably have been foreseen by the principal or principals, a cheque drawn on a trust account may be signed by a practitioner who is not a principal provided that:

- (i) it is in the interests of a client that the cheque be drawn without delay; and
- (ii) it is not reasonably practicable to obtain the signature of a principal to the cheque.

The principal and the practitioner must notify the Law Society in writing of any such instances within 7 days of the cheque being so drawn on the trust account furnishing full particulars of the circumstances giving rise to the signing of the cheque and the date, payee and amount for which the cheque was drawn.

(d) Delegation of Authority to Sign Trust Account Cheques

The Executive Committee may permit a principal to delegate the authority to sign trust account cheques to:

- (i) a practitioner in his or her employ; or
- (ii) another principal,

for a limited period and on such terms and conditions as may be specified by the Executive Committee.

(e) Electronic Transfer of Funds

“An electronic transfer from a trust bank account is to be effected by or under the direction or with the authority of a principal.

The principal must ensure that for each electronic funds transfer, a record is kept of the following particulars:

- (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose authority the transfer is effected.
- (b) Details identifying the ledger account debited and name of the person on whose behalf the amount is transferred.
- (c) Brief particulars of the subject-matter and purpose for which the money is transferred.
- (d) The reference number or other means of identification of the transfer.
- (e) The name or style of the bank account to which the money is paid, its number and identifying numbers of the receiving bank and its branch
- (f) The date of the transfer and the amount transferred.

43.2 Legal Aid Matters

A practitioner to whom a matter has been assigned under the *Legal Aid Act 1977* must not exercise or purport to exercise a lien over money held in the practitioner's trust account on behalf of the legally assisted person in respect of the practitioner's professional costs or disbursements of acting in that matter pursuant to the assignment except to the extent of any contribution which the legally assisted person has been directed to pay towards those costs and disbursements.

43.3 Investment of Trust Money

- (a) A practitioner, other than a principal, must not invest a client's money in his or her own name.
- (b) A principal must not undertake the investment of a client's money in his or her own name except where:
 - (i) the client has specifically requested the principal in writing to invest the money as trustee for the client in a particular investment nominated by the client in the name of the principal; and
 - (ii) the principal forms the opinion that in all of the circumstances the client's request is reasonable.

43.4 Where a principal invests money in his or her own name as a trustee for a client the principal must keep in addition to such other records as may be required to be kept by the Act a Journal entitled with the name of the principal's firm immediately followed by the words "Trust Investment Journal" in such form as may conveniently be audited.

43.5 A principal will not be required to comply with sub-Rule 43.3 or 43.4 where:

- (a) the money to be invested is paid to the practitioner as stakeholder pursuant to a contract for sale;
- (b) the money to be invested is paid to the practitioner pursuant to a Court Order which includes an order that the money be invested in the name of the practitioner; or
- (c) the Council or the Executive Committee determines, either before or after the transaction is entered into, that sub-Rules 43.3 or 43.4 (as the case may be) will not apply to that particular transaction.

43.6 A practitioner should notify his or her client promptly of the receipt by him or her of moneys or securities on behalf of that client.

43.7 Statement of Account

Subject to any rule of Court, where any moneys are received by a practitioner from any person other than the client or the agent of the client the practitioner should:

- (a) within a reasonable time of receiving a request from the client for a statement of account; and
- (b) upon completion of the matter render to the client a statement of account showing particulars of:
 - (i) all moneys received, when and from whom;
 - (ii) all moneys paid, when and to whom;
 - (iii) the balance remaining undisbursed;

in sufficient detail to enable the statement to be conveniently and properly understood.

43.8 Nothing in sub-Rule 43.7 prejudices, diminishes or affects any other right of the client to an account.

43.9 A practitioner must comply with sub-Rule 43.7 notwithstanding any waiver or direction to the contrary by the client.

44. **Practising Solicitors Serving as Part-Time Judicial Officers or Tribunal Members**

44.1 A practitioner must not appear, or undertake work on behalf of a client in relation to any proceedings before a court or statutory tribunal of which the practitioner is a member.

44.2 A practitioner must not appear in any proceedings before a court or statutory tribunal on behalf of a client if a partner, employer or employee of the practitioner is sitting as a member of the court or tribunal for the purpose of those proceedings.

44.3 A practitioner must not knowingly appear, or undertake work on behalf of a client in relation to any proceedings before a court or statutory tribunal of which a partner, employer or employee of the practitioner is a member unless the practitioner has as soon as practicable advised the client and all other parties to the proceedings that a partner, employer or employee of the practitioner is a member of the court or tribunal.

SCHEDULE 1

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Solicitor Acting for Both Buyer and Seller

Instructions to Solicitor

The Law Society of the Australian Capital Territory is opposed to the practice of the one solicitor or firm of solicitors acting for both buyer and seller in a matter concerning the sale of land or the sale of a business and has ruled that members of the Society must not so act in the Territory.

The reason for the rule is that a solicitor or firm of solicitors cannot properly fulfil their duty to both parties in circumstances where a conflict between the parties arises.

However, the Society recognises that occasions do arise where both buyer and seller desire to employ the same solicitor or firm of solicitors and in this situation is prepared to waive the rule subject to the following conditions:

1. The parties must be:
 - (a) existing clients for whom the solicitor or firm of solicitors has previously acted;
 - (b) related bodies corporate as defined in the Corporations Law; or

- (c) related by blood, adoption or marriage (either de jure or de facto).
- 2. The above rule of the Society must be brought to the notice of both buyer and seller.
- 3. Both buyer and seller must then instruct the solicitor in writing to act, such instructions to specify the matter in question.

Having read the above I, hereby
 instruct to act
 for me in the matter of my *sale to/*purchase from
 of the *property known as Block Section
 Division /*Business known as

Signed.....
 Date

* Strike out inappropriate words

SCHEDULE 2

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Solicitor Acting for Both Mortgagor and Mortgagee

Instructions to Solicitor

The Law Society of the Australian Capital Territory is opposed to the practice of the one solicitor or firm of solicitors acting for both mortgagor and mortgagee in a matter concerning the mortgage of land and has ruled that members of the Society must not so act in the Territory.

The reason for the rule is that a solicitor or firm of solicitors cannot properly fulfil their duty to both parties in circumstances where a conflict between the parties arises.

However, the Society recognises that occasions do arise where both mortgagor and mortgagee desire to employ the same solicitor or firm of solicitors and in this situation is prepared to waive the rule subject to the following conditions:

1. The parties must be:
 - (a) existing clients for whom the solicitor or firm of solicitors has previously acted;
 - (b) related bodies corporate as defined in the Corporations Law; or
 - (c) related by blood, adoption or marriage (either de jure or de facto).

-
2. The above rule of the Society must be brought to the notice of both mortgagor and mortgagee.
 3. Both mortgagor and mortgagee must then instruct the solicitor in writing to act, such instructions to specify the matter in question.

Having read the above I, hereby
instruct to act
for me in the matter of my *mortgage to/*mortgage from
of the *property known as Block Section Division

Signed.....

Date

* Strike out inappropriate words

SCHEDULE 3

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Solicitor Acting for Both Lessor and Lessee

Instructions to Solicitor

The Law Society of the Australian Capital Territory is not in favour of the practice of one solicitor or firm of solicitors acting for both lessor and lessee in any transaction for the reason that a solicitor or firm of solicitors cannot, in the opinion of the Society, properly fulfil their duty to both parties in circumstances where a conflict between the parties may arise.

The Society recognises, however, that occasions do arise when a lessor and lessee desire to employ the same solicitor or firm of solicitors and it does not object provided the fact that the solicitor proposes to accept instructions to act for both parties is drawn to the attention of each party.

I have read the above I, _____ hereby
instruct _____ to
act for me in the matter specified below acknowledging that the
*solicitor/*firm of solicitors will also be acting for the *lessor/*lessee in
the same transaction.

Details of transaction:

Signed.....

Date

* Strike out inappropriate words

Endnotes

1 Making of regulations

These rules were made as part of the Legal Profession Act 2006 (see A2006-25, s 615 and sch 1 pt 1.1).

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