

The Law Society of Jersey

Code of Conduct

This Code of Conduct replaces all earlier codes of conduct and was adopted by the Law Society of Jersey by Resolution duly passed at an Extraordinary General Meeting held on the 30th September 2005 when it came into force.

The general purpose of the Code of Conduct is to specify the standards of conduct on the part of members of the Law Society of Jersey which are appropriate in the interests of the profession and of justice. This Code of Conduct applies to all members whenever admitted to membership.

In an appropriate case the Committee of the Law Society of Jersey ('the Committee') shall have power to waive in writing, in whole or in part, conditionally or unconditionally, any of the provisions of this Code of Conduct for a particular purpose or purposes expressed in such a waiver, and to revoke such waiver, conditionally or unconditionally.

1. Professional Reputation and Exclusivity

A member shall not carry on any other profession, occupation or business, which might reflect adversely on the reputation of the legal profession in Jersey, or which might be prejudicial to the administration of justice in Jersey. A member shall not practise Jersey Law in partnership with any person other than another member.

2. Standards

It is the duty of every member at all times to uphold the dignity and high ethical and technical standards of the legal profession, and to adhere to the terms of the oath sworn before the Royal Court. A member has an overriding duty to the Court to ensure in the public interest that proper and efficient administration of justice is achieved. A member must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court.

For example:-

- (1) A member must exercise independence of judgement and promote and protect the best interests of the client.
- (2) A member shall not permit integrity or professional standards to be compromised at the instance of the client or any third party.
- (3) A member or a member's firm must not act where the member's or that firm's own interests conflict with those of the client or, subject to the last sentence of this Sub Rule (3), in any matter where a conflict of interests or duty, or a significant risk thereof, arises between two or more clients of a member's firm. Neither a member nor a member's firm may act for two or more clients in relation to matters in which there is dispute between those clients. A member must bear in mind the obligation to advise in the best interests of the client, the duty owed to each individual client and the extent to which such duty continues in respect of a former client following termination of the retainer. In non-contentious transactions, a member or a member's firm may act for more than one client only with the consent of all clients who are party to such a transaction.
- (4) A member or a member's firm may act for the adversary of a former client provided that such member or member's firm is not privy to confidential information in respect of the former client relevant to such dispute.
- (5) A member's firm shall properly manage and administer its practice and shall ensure that appropriate arrangements are in place for supervision of qualified and unqualified staff, and for making them aware of those parts of this Code of Conduct which are relevant to their respective roles in the firm.
- (6) A member shall attend to all client affairs with the same degree of diligence and shall answer all correspondence within a reasonable time.
- (7) A member shall do nothing to compromise or impair a person's freedom of choice in placing instructions for legal services, save that nothing herein shall prevent a member who is charged with administering the Legal Aid Scheme from allocating a lawyer to an applicant in the customary way.

- (8) A member shall not allow a client to require as a condition to a transaction that the other party also instruct such member or the firm of such a member.
- (9) A member shall aim to practise in such a way as to avoid discriminating against a client on grounds of race, colour, ethnic or national origin, nationality, citizenship, gender, sexual orientation, marital status, disability, religion or political persuasion.
- (10) A member shall act towards other members with frankness and good faith consistent with the overriding duty to the Court and the duty to the client. A member shall observe the requirement of good manners and courtesy towards other members and their employees even although there may be matters of bitter contention between clients. A member shall not write offensive letters to other members or to their employees.
- (11) A member shall not deceive the Committee or any member or knowingly permit a client to do so.
- (12) A member shall report to the President if convicted of any offence other than a minor road traffic offence.

3. Legal Aid

Members will discharge their obligations under their respective oaths to represent “veuves, pauvres et personnes indefendues” through the scheme adopted by a unanimous resolution of the Bar passed on the 20 August 1904, namely that members in practice for less than 15 years will represent such persons “à tour de rôle” as directed by the Bâtonnier or those acting for him in accordance with the guidelines approved by the Society from time to time or in such other way as the Society in general meeting may from time to time decide.

4. Publicity

Subject to the guidance which follows, a member's firm may seek publicity for services and products and may advertise services and products in any way provided that the image projected is consistent with that of a professional person or firm bound to high ethical and technical standards.

- (1) Advertisements shall comply with the Law and this Code of Conduct (as amended from time to time) and any directives issued by the Committee.
- (2) Advertising material may contain any factual statement the truth of which a member is able to justify but should not make disparaging references to or disparaging comparisons with the services or fee structures of others.
- (3) A member's practice shall not be publicised in the Island of Jersey by means of unsolicited visits or telephone calls.
- (4) A member's firm shall not advertise the provision of legal services in such a way as to amount to harassment of a prospective client.
- (5) The provisions of this Rule extend to professional stationery and to information issued or publicised electronically or telephonically.

5. Terms of Engagement

- (1) Upon acceptance of instructions from a new client or a client who has not previously received terms of engagement or who has not instructed the firm for over five years, a member shall advise the client in writing of the terms of engagement, including reference to the following matters:
 - (a) the relationship of the lawyer to the client including the required basis of confidentiality, and utmost good faith between lawyer and client, and the duty of the lawyer to exercise reasonable skill and care;
 - (b) names and contact details of the member with overall responsibility for that client and of any other member and assistants dealing with that matter;
 - (c) if appropriate, the terms of reference for the work instructed;

- (d) the basis on which fees and expenses are to be charged by reference either to scale or set fees, or to hourly rates and circumstances which may affect the level of fees such as:-
 - (i) the complexity and novelty of the matter;
 - (ii) the specialised legal knowledge required;
 - (iii) the monetary amount or other the value of the matter;
 - (iv) the number and length of documents;
 - (v) the urgency of the matter and the place and time of day when the work is to be carried out;
 - (vi) the importance of the matter to the client;
 - (vii) the time to be expended;
- (e) the terms of any limitation of the member's or the member's firm's liability;
- (f) the terms of payment and the time for payment, the rate of interest (if any) chargeable on late payment, the delivery of interim bills and the right of the client at any time to enquire and be informed of the fees incurred to date;
- (g) liability for costs in contentious matters including a clear statement as to the principles of recovery of costs awarded against an opposite party and a clear statement as to any likely difference between the level of costs recoverable on an award of costs against such a party and the level of costs which the member will charge to the client;
- (h) the terms upon which funds are held on behalf of the client, and their utilisation;
- (i) the right of the client to receive progress reports on request;

- (j) details of the internal complaints procedures established by the member's firm, including the name of the person to whom such complaints should be addressed, of the dispute provisions described in Rule 12 and of the existence of the professional disciplinary procedures;
 - (k) the circumstances in which the member's firm will have the right to vary the terms from time to time;
 - (l) the termination of the retainer, to include relevant details of the procedures utilised on file closure, and confirmation that notification of where documents will be held and of the date upon which the file will be destroyed will be given.
- (2) There is no objection, as a matter of conduct, to members seeking to exclude by contract their liability to clients, provided that any such limitation is in accordance with such conditions as may be set by the Committee from time to time.
- (3) A member should aim for complete understanding by the client from the outset as to the basis of the relationship.
- (4) A member shall advise an existing client for whom a new matter is undertaken of any resultant change in the above information and shall provide the appropriate details. A member may agree with an existing client that it is not necessary to provide terms of engagement in respect of every new instruction, provided that such agreement is evidenced in writing.

6. **Repealed on 7 December 2005**

7. Profits

Without the approval of the Committee a member shall not agree to share with any person not being an Advocate or Solicitor of the Royal Court the profits of the legal practice of

such member other than (a) with a former partner or the dependants of such former partner or (b) in respect of a staff bonus scheme.

8. Referral Fees

Without the approval of the Committee, a member shall not make or agree to make any payment to a third party in anticipation of, or in consideration of, that party introducing or referring clients to that member or to that member's firm except payments made in connection with agency arrangements with a legal firm practising the law of another jurisdiction where the payment does not exceed more than one third of the fee for the matter involved. For the purposes of this Rule, the term 'payment' shall be deemed to include any form of consideration or benefit, but shall not include payments made in respect of normal hospitality.

9. Changing Lawyers and Ownership and Destruction of Documents

- (1) (a) A member shall not accept instructions from a new client in relation to a continuing matter when he is aware or becomes aware that another member has previously acted for the client in question on that matter until that member has received confirmation to a written enquiry from the other member that there is not a valid objection to accepting such instructions or a reasonable time has elapsed since such enquiry. The handing over of documents (which in this Rule means letters, faxes, e-mails and other documents whether hand-written, printed or stored electronically) on the termination of a retainer with a member shall be in accordance with the provisions of paragraphs (2) to (4) of this Rule.
- (b) In the event of there being such an objection the matter shall if not resolved forthwith amicably be referred for adjudication to the Bâtonnier or the President of the Chamber of Solicitors, or for the appointment of an adjudicator who shall act as an expert and not an arbitrator. The decision of such adjudicator shall be final. Nothing herein shall prevent a member from acting on an urgent matter for a new client pending resolution of such dispute where the interests of justice so require.

- (2) Documents which belong to a client or a third party shall be dealt with in accordance with the instructions of the client or third party subject to Rule 9 (6) hereof and the firm's lien (if any).
- (3) Documents in existence before the retainer held by the member's firm as agent for and on behalf of a client or a third party belong to such client or third party.
- (4) Documents which come into existence after a member's firm is retained and for the purposes of the business to be transacted during the retainer fall into four broad categories:
 - (a) Documents prepared by a member's firm for the benefit of the client and which have been paid for by the client, either directly or indirectly, belong to the client.

Examples:

Instructions and briefs;

Most attendance notes;

Drafts;

Copies made for the client's benefit of letters received by the member;

Copies of letters written by the member to third parties if contained in the client's case file and used for the purpose of the client's business.

- (b) Documents prepared by a member's firm for the member's firm's own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to the member's firm.

Examples:

Copies of letters written to the client;

Copies made for the member's own benefit of letters received by the member;

Copies of letters written by the member to third parties if contained only in a filing system for all letters written in the office;

Tape recordings of conversations;
Inter-office Memoranda;
Entries in diaries;
Timesheets;
Computerised records;
Office journals;
Books of Account.

- (c) Documents sent to a member by the client during the retainer, the property in which was intended at the date of despatch to pass from the client to the member belong to the member.

Examples:

Letters, authorities and instructions written or given by the client.

- (d) Documents prepared by a third party during the course of the retainer and sent to a member (other than at the member's expense) belong to the client.

Examples:

Receipts and vouchers for disbursements made on behalf of the client;
Medical and witness reports;
Counsel's advice and opinions;
Letters received by a member from third parties.

- (5) Where a client on termination of retainer requests it, a member's firm upon payment of a reasonable fee for such copying shall supply copies of correspondence sent by such firm to the client, of correspondence sent by the client to such firm, of correspondence sent to third parties on behalf of the client and of the written authorities and instructions sent by the client to such firm.
- (6) Where the only record of a document is held by a member's firm electronically and if it had been held physically it would belong to the client a print-out shall be provided to the client on request.

- (7) Notwithstanding anything set out above, no files or records of any material matter, whether in physical form or held electronically where there is no physical document, shall be destroyed until after the lapse of twenty years from the last material entry therein and then only if it is reasonable to do so in the circumstances. Whether or not destruction is reasonable will depend in part on the terms agreed with or notified to the client when the instructions were received and due consideration should be given to the reasonable interests of the client. Where provision has not been made in the terms of engagement, members shall make reasonable attempts to obtain a written consent to destruction, or instruction to forward such material elsewhere, from the client or the client's personal representatives or successors, if reasonably ascertainable.

A member or a member's firm is not obliged to maintain the hardware of the computer system upon which such files or records or other material may be stored for this twenty year period.

10. Undertakings

- (1) A member who gives an undertaking to another member or the firm of another member shall be personally bound by that undertaking unless when giving the undertaking the giver makes it clear that the undertaking is not a personal undertaking and states on whose behalf it is given and has authority to give such undertaking. A member's firm shall be responsible for honouring an undertaking given by any member of staff with express or implied authority.
- (2) A firm of a member (in this Rule "P") acting for a purchaser of immovable property undertakes impliedly to the lawyer acting for the vendor that P:
- (a) either (i) has the purchase consideration or the balance due by P's client as the case may be ("the outstanding consideration") as cash in P's hands;

or (ii) is satisfied that P will have cash in P's hands on the second working day after contract has been passed ("settlement day") to pay the outstanding consideration on behalf of P's client.

In this regard, P will only have discharged the obligation to be satisfied if P has an express or implied undertaking from the firm of another member that (subject to (c) below) the requisite funds will be transmitted to P on or before the day on which they are required to be paid to the vendor's lawyer;

AND

(b) P is unaware of any circumstances which might give rise to any impediment to making such payment as referred to in (c) below;

AND

(c) subject to any order of the Royal Court which has the effect of arresting the funds in P's hands or otherwise preventing P from making the requisite payment, and subject to the contract not being nullified for any reason, P will pay to the vendor's lawyers on settlement day such of the outstanding consideration as is in P's hands pursuant to paragraph (a) of this rule;

AND

(d) will apply immediately to the Court to vary any order which has the effect of arresting the funds in P's hands or otherwise prevents P from making the requisite payment.

A similar undertaking applies as regards a contract of simple conventional hypothec substituting "lender" for "purchaser" and "borrower" for "vendor", and also in the case of exchange and counter-exchange where the party paying the "equivalent" shall be considered to be the purchaser. No such undertaking applies in relation to judicial hypothecs or leases.

11. Instructing other Firms

- (1) The firm of a member which instructs the firm of another member or a practitioner in the law of another jurisdiction shall be responsible for the payment of that other firm's or practitioner's proper fees and disbursements unless otherwise agreed.
- (2) A member shall be personally responsible for paying the proper costs of any agent or other person who is instructed on behalf of a client, unless the member and the person instructed make an express arrangement to the contrary.

12. Disputes

- (1) Without prejudice to the jurisdiction of the Courts any dispute between a client or former client and a member's firm as to costs claimed by a member's firm from such client or former client may be referred by either party to the Committee which may delegate the matter to a Sub-Committee for investigation and recommendation, and the Committee's decision shall be binding on the parties provided that they shall have agreed to accept the Committee's decision as binding. The Committee or Sub-Committee shall if appropriate set out the terms of reference and the procedure that it wishes to adopt. Both parties shall be given adequate opportunity to know the nature of the complaint and have an opportunity to respond to it.
- (2) The Committee will also be prepared to assist in the informal resolution by conciliation or mediation of any dispute between two members or between a member and a client or other third party. Members shall give due consideration to, but shall not be bound to follow, such suggestions or recommendations as the Committee may make in relation to any such dispute, provided that the Committee may require any member who does not follow such a suggestion or recommendation to give within a specified period brief written reasons for not doing so to the Committee and to the other party or parties to the dispute.

13. Communications with others' clients

The firm of a member shall not communicate directly or indirectly on a particular matter with a person represented by the firm of another member on the matter except through that

other firm or with that other firm's consent, save that there is no restriction on communicating directly with a client's neighbour in regard to a request to be party to a contract to be passed before the Royal Court.

14. Bail

A member shall not stand bail for any person for whom he or any member of his firm is acting as legal adviser except with the consent of the Committee.

15. Recording

An electronic recording of a conversation with another member or the staff of another member's firm shall not be made without prior written advice that the conversation will be recorded and the provision, if required, within a reasonable time, of a transcript thereof to the other member or the member's firm at a reasonable cost.

16. Conflicts between Firm and Client

A member shall not enter into a contract with a client, or prepare a document, by which the client confers a benefit on that member or a partner or employee of that member's firm unless:-

- (1) the client is independently advised by another member not being of the same firm;
or
- (2) the benefit so conferred is insignificant relative to the affairs or wealth of the client;
or
- (3) the recipient of such benefit is related by blood or marriage to such client;
or
- (4) the client has given informed consent.

17. Clients' Moneys

- (1) Every member who receives or holds a client's money shall without delay pay such money into a current or deposit account at a bank in the name of the firm of such

member in the title of which the word client appears ("Client Account") and no money other than clients' moneys shall be paid into a Client Account.

Client's money means money held or received by the firm of a member on account of a client for whom the firm acts in relation to such money as lawyer, agent, bailee or stakeholder, but excluding money held or received as a trustee (other than as bare trustee) and money to which the firm of a member is the only party entitled.

- (2) There may be drawn from a Client Account only money properly payable and which is forthwith paid to or on behalf of a client, or in reimbursement of monies expended on behalf of a client or costs due to the firm of such member or money paid into such account by mistake or accident.
- (3) Every member's firm at all times shall keep properly recorded in such books, records and accounts as may be necessary all monies received and expended by such firm, on behalf of clients, shall distinguish such money received, held or paid on account of each separate client, and shall distinguish such money from other money received, held or paid on any other account.
- (4) Every member's firm shall within six months of the close of the annual accounting period of such firm or on its cesser of trading deliver to the Secretary of the Society a certificate addressed to such firm issued by a member of the Jersey Association of Practising Chartered and Certified Accountants not being an employee of that firm stating that such member has complied with the foregoing sub-paragraphs of this Rule other than minor non-loss causing errors. It shall be the duty of the Secretary of the Society to keep and maintain a file for all such Annual Certificates. If any firm fails to supply a Certificate in compliance herewith the Secretary shall report the failure to the President who shall refer the matter to the Committee for appropriate action. Each firm shall supply the Secretary of the Society with the name of its accountant and shall notify the Secretary of all changes in accountant or in the date of the end of its financial year.

In the event of a change in a member's accounting period giving rise to an accounting period of more than one year a member shall provide such certificate in respect of such longer period as the Committee shall require.

(5) (a) Every member's firm shall account to its client for interest earned (less income tax where required by law to be deducted) on money it holds on a separately designated deposit account. If money is held for the client but not in such an account interest shall only be payable as set out below:

- in excess of £2,500.00 held in excess of eight weeks
- in excess of £5,000.00 held in excess of four weeks
- in excess of £10,000.00 held in excess of two weeks
- in excess of £20,000.00 held in excess of one week

Sums in excess of £40,000.00 held for less than one week give rise to an obligation to pay interest if it is fair and reasonable in all the circumstances provided that if the member's firm accounts for such sums with due despatch no interest is required to be paid.

- (b) Interest shall be payable at the rate which would have applied had such money been placed on immediate call deposit at one of the major clearing banks operating in Jersey (less income tax where required by law to be deducted) and shall be paid as soon as reasonably practicable after the moneys are paid out.
- (c) The period applicable to the interest shall be from the date of receipt of cleared funds until the date such funds leave the member's firm's bank account.
- (d) Notwithstanding the foregoing, no interest shall be payable if it amounts to less than £20.00 (net of any tax payable).
- (e) Nothing herein shall derogate from any rules of common law or statute which may apply to trust money.
- (f) The sums mentioned in paragraphs (a) and (d) are figures which were set in March 2000, subject to revision on 1 May 2003 and triennially thereafter on the basis of the percentage change in the Jersey Retail Price Index over the

period. The base index figure for the revision is that for March 2000 169.9 – old scale.

18. Malicious Proceedings, etc.

A member shall guard against instituting proceedings on behalf of a client which on good and reasonable grounds such member considers to be instituted only for the purpose of gratifying the client's anger, ill-will or malice towards another person or persons. In particular, a member shall at all times guard against asking questions in litigation, which are only intended to insult or annoy either a witness or any other person and should exercise discretion and judgement both as to the substance and the form of questions put in cross-examination which go only to the credit of the witness. A member shall not include in any pleading an allegation of fraud unless such member has possession of reasonably credible material from which a prima facie case of fraud can be established.

19. Duty to assist Court

(1) A member shall bear in mind that whilst an advocate's primary function is to present the case for a client to its best advantage, there is no requirement to win the case at all costs. The fundamental principle to guide the member is that an advocate's function is to assist the Court to reach a just decision on the facts properly adduced before it in accordance with a correct interpretation of the law.

(2) A member shall not consciously deceive the Court or state facts to the Court which the member knows to be untrue. The member shall bring to the notice of the Court every relevant legal authority which such member's researches have revealed, even although they may be adverse to the case of a client.

20. Duty as to Evidence

A member shall not invent a defence for a client nor suggest to the client or to a witness the use of words in evidence which would distort the facts.

A member shall, if reasonably possible, avoid the naming in open Court of third parties whose characters would thereby be impugned.

A member shall not by assertion in a speech impugn a witness where there has been an opportunity to cross-examine unless in such cross-examination the witness has had opportunity to answer the allegation.

21. Duty as to Criminal Cases

If a client charged with a criminal offence admits to a member the commission of the offence but insists on a plea of not guilty, the member must tell the client that such an admission will place strict limitations on the member's conduct of the case. The member shall not put the client in the witness box to protest his or her innocence or put forward any arguments suggesting that some other person has committed the offence charged. Subject to these limitations the member may properly continue the defence, may require the Crown fully to prove its case, may take any technical objections and may argue that there is insufficient evidence to justify a conviction. If the client refuses to accept these limitations, the member shall withdraw from the case.

22. Duty as to Civil Cases

When instructed by a client in a contentious matter, a member shall have a positive and continuing obligation to canvass with the client, in a fully informed manner, all available dispute resolution processes.

23. Use of Opponent's Document

- (1) A member shall not himself obtain or seek to obtain a document or knowledge of the contents of a document belonging to another party otherwise than by means of the normal and proper channels for obtaining such documents or such knowledge.
- (2) Where during the course of legal proceedings whether before, during or after a trial or hearing a member for one party receives as part of or in the course of his or her instructions, a document which appears to be a document belonging to another party (or a copy thereof) and to be privileged from discovery or otherwise to be one which

ought not to be in the possession of such member, client or instructing solicitors, then before such member makes any use of such document:

- (a) the member shall make appropriate inquiries of his or her client or instructing solicitors in order to ascertain the circumstances in which the document was obtained; and
 - (b) unless satisfied that the document has been properly obtained in the ordinary course of events, the member should inform his or her opponent of such member's intention to use the document and of the circumstances (so far as known) in which the document has been obtained.
- (3) In the event of objection by the opponent to the use of such document the matter shall be referred to the Court for it to determine what use, if any, may be made thereof.
 - (4) Subject to the foregoing sub rules and to the provisions of this Rule 23, a member is under a duty, unless the Court otherwise orders, to make all and such use of such document as would be in his or her client's interests.

24. Rule Changes

The Society in General Meeting may amend these Rules and any amendments thereto from time to time PROVIDED THAT:

- (1) the notice convening such meeting shall contain sufficient identification of the subject matter, and
- (2) no such resolution shall be validly passed unless two thirds of the persons present at the meeting (either in person or by proxy) vote in favour thereof.