

RULES OF PROFESSIONAL CONDUCT

THE GUERNSEY BAR COUNCIL in exercise of the powers conferred by The Royal Court (Bar Administration) Order, 1993, with the sanction of the Bailiff and the approval of Her Majesty's Procureur, hereby make the following Rules:-

A GENERAL

Rule 1

An Advocate shall not do anything in the course of practising as an Advocate, or permit another person to do anything on his or her behalf, which breaches, compromises or impairs or is likely to breach, compromise or impair any of the following:-

- (a) **the Advocate's Oath and Articles;**
- (b) **the Advocate's independence or integrity;**
- (c) **the Advocate's duty to the Court;**
- (d) **a person's freedom to instruct an Advocate of his or her choice;**
- (e) **the Advocate's duty to act in the best interests of the client;**
- (f) **the good repute of the Advocate or of the Guernsey Bar;**
- (g) **the Advocate's proper standards.**

Commentary

Rule 1, apart from the Oath and Articles, comprises those ethical duties imposed on solicitors by the common law. The words should be given a common sense interpretation. Advocates should always refer to Rule 1 if they have an ethical problem.

Rule 2

An Advocate is an officer of the Court, and should conduct himself or herself appropriately, both in his profession and private life.

Commentary

An Advocate, whether practising or not, is an officer of the Court. Certain standards of behaviour are required of an Advocate, as an officer of the Court and as a member of the Guernsey Bar, in his or her activities outside

legal practice. Disciplinary sanctions may be imposed if an Advocate's behaviour tends to bring the Guernsey Bar into disrepute.

B PRIVATE PRACTICE

Rule 3

An Advocate is responsible for exercising proper supervision over both admitted and unadmitted staff.

Commentary

1. The duty to supervise and be responsible for staff covers not only employees but also employees of in-house companies and also independent contractors engaged to carry out work on behalf of the firm e.g. consultants.
2. An Advocate cannot evade responsibility for work carried out by the firm by leaving it entirely to his or her staff, however well qualified.

Rule 4

An Advocate shall not enter into professional partnership with any person other than an Advocate.

Rule 5

As a matter of conduct a partner is *prima facie* responsible for the acts or omissions of the firm, and this extends to the acts or omissions of staff.

Commentary

This Rule extends to cover the acts or omissions of staff of an in-house company.

Rule 6

Where there has been an alteration to the composition of the firm, all clients of the firm who may be affected must be informed promptly.

Commentary

1. All clients for whom the firm is acting are likely to be affected by a material change of its composition. Whether a change is material depends on the circumstances. The departure of a partner would affect all the clients for whom that partner was acting as fee-earner, and all the clients whose matters he or she was responsible for supervising.
2. Contractual obligations between partners will not absolve them from their obligation to fulfil the duties they owe to clients as a matter of professional conduct. Care should be taken to ensure that partnership agreements do not put obstacles in the way of the proper discharge of duties to clients.
3. Firms must ensure that clients know the name and status of the person responsible for the day to day conduct of the matter in which they have instructed the firm, and the principal responsible for its overall supervision.

Rule 7

It is not in itself misconduct for an Advocate, whether partner or employee, to write to clients of a firm after leaving that firm, inviting their instructions. However, nothing in this Rule can absolve the Advocate from any legal obligations arising out of his or her former contract of employment or partnership agreement.

C. EMPLOYED ADVOCATES

Rule 8

An Advocate employed by a non-Advocate ("employed Advocate") is subject to the same principles of professional conduct as an Advocate in private practice.

Rule 9

An employed Advocate may not act for private clients, including fellow employees, outside the course of employment.

D. OBTAINING INSTRUCTIONS

Rule 10

An Advocate must be able to give impartial and frank advice to the client, free from any external or adverse pressures or interests which would destroy or weaken the Advocate's professional independence or the fiduciary relationship with the client.

Commentary

1. A potential client who has been improperly influenced in his or her choice of Advocate cannot be said to have had a free choice. Improper influence can come from the Advocate or from a third party. Where an Advocate has reason to suspect that there may have been improper influence, the Advocate must satisfy himself or herself that the client's freedom of choice has not been restricted.
2. An Advocate must avoid being placed in a position where the Advocate's interests, or the interests of a third party to whom the Advocate may owe a duty, conflict with the interests of the client.
3. An Advocate must not allow clients to override the Advocate's professional judgement, for example by insisting on the Advocate acting in a way which is contrary to law or to a rule or a principle of professional conduct.

E. ADVERTISING

Rule 11¹

The provisions of the Advocates' Publicity Code 2000, as approved by a meeting of the Bar Council held on 28 February 2000 and initialled by the Bâtonnier by way of identification, shall have effect.

Rule 12

Advocates may accept introductions and referrals of business from other persons and may make introductions and refer business to other persons, provided there is no breach of these Rules.

Rule 13

An Advocate must not accept instructions knowing that a third party has stipulated that the Advocate must act.

Commentary

A breach of this Rule would have the effect of denying the prospective client freedom of choice. Consequently, an Advocate must not act for a purchaser or borrower where the Advocate knows or ought to know that a condition of the sale or loan is that the Advocate should act for the purchaser or borrower. Such

¹ Amended in 2000, at the time of adoption of the Advocates' Publicity Code 2000

conditions may be imposed without the knowledge of the Advocate. An Advocate who has any doubts should satisfy himself or herself that third party introductions are not tainted by such objectionable conditions, by making enquiries of the prospective client.

F. **RETAINER**

Rule 14

An Advocate is generally free to decide whether to accept instructions from any particular client. However, an Advocate should not accept instructions in circumstances in which that client owes costs to another Advocate for work undertaken in connection with the same matter, unless there is a genuine dispute over those costs.

Commentary

1. An Advocate who is instructed to bring an action against his or her client's former Advocate should, provided he or she is able, accept those instructions.
2. Every Advocate who is or becomes aware that another Advocate was formerly retained in a particular matter must ascertain from that Advocate whether any fees and disbursements remain outstanding, and whether any dispute as to their payment subsists, and whether such dispute is genuine.

Rule 15

An Advocate must not act or, where relevant, must cease acting further where the instructions would involve the Advocate in a breach of the law or a breach of the principle of professional conduct, unless the client is prepared to change his or her instructions appropriately.

Commentary

An Advocate who has accepted instructions to act is under a duty to observe these Rules and a client must accept the limitations imposed by these Rules.

Rule 16

An Advocate must not accept instructions to act in a matter where another Advocate is acting for the client in respect of the same matter until the first retainer has been determined.

Commentary

1. Where the first retainer has been determined, there is no duty on the second Advocate to inform the first Advocate that he or she has been instructed, except in litigation where the first Advocate is on the record.

2. This Rule does not preclude an Advocate from giving a second opinion without the first Advocate's knowledge. However, the Advocate from whom a second opinion is sought must carefully consider whether he or she is in possession of sufficient facts to give such an opinion. In no circumstances should the second Advocate improperly seek to influence the client to determine the first Advocate's retainer.
3. An Advocate is not precluded from advising another party on the subject matter of the first Advocate's advice if the other party has a separate or distinct interest.

Rule 17

An Advocate must not act or continue to act in circumstances where the client cannot be represented with competence or diligence.

Commentary

This would apply where an Advocate has insufficient time to devote to the matter, or insufficient experience or skill to deal with the instructions.

Rule 18

An Advocate must not accept instructions where he or she suspects that those instructions have been given by a client under duress or undue influence.

Commentary

If an Advocate suspects that the client's instructions infringe this Rule, either the client must be seen alone in order that the Advocate can be satisfied that the instructions were freely given, or the Advocate must refuse to act. Particular care may need to be taken where clients are elderly or otherwise vulnerable to pressure from others.

Rule 19

Where instructions are received not from a client but from a third party purporting to represent that client, an Advocate should obtain written instructions from the client that he or she wishes the Advocates to act. In any case of doubt the Advocate should see the client or take other appropriate steps to confirm instructions.

Commentary

In such circumstances an Advocate must advise the client without regard to the interests of the source from which he or she was introduced.

Rule 20

An Advocate must refuse to take action which he or she believes is solely intended to gratify a client's malice or vindictiveness.

Rule 21

An Advocate who has accepted instructions on behalf of a client is bound to carry out those instructions with diligence and must exercise reasonable care and skill.

Commentary

An Advocate must act within his or her client's express or implied authority. It is therefore essential at the outset for an Advocate to agree clearly with the client the scope of the retainer and subsequently to refer any matter of doubt to the client. If an Advocate limits the scope of the retainer it is good practice for the limits of the retainer to be precisely defined and communicated in writing to the client.

Rule 22

Except as required by law, an Advocate must keep his or her client's business and affairs confidential.²

Commentary

This duty extends to the Advocate's staff, whether admitted or unadmitted, and staff in-house companies, and it is the responsibility of the Advocate to ensure compliance.

Rule 23

It is an implied term of the retainer that an Advocate is under a duty at all times to observe the Rules of professional conduct.

² Amendment approved at AGM 23.10.09

Commentary

1. This means that there will be limitations upon the freedom of an Advocate to do what the client wants him or her to do. An Advocate must not breach these Rules in order to benefit the client.
2. An Advocate owes a duty to the Court which must be reconciled with the duty owed to the client.

Rule 23A

It is an implied term of the retainer that an Advocate is under a duty at all times to observe the provisions of all Guernsey laws and Guernsey codes of conduct in respect of the services rendered to the client.

Commentary

1. This means that Advocates not only have to comply in their dealings with their clients with the provisions of the common law and with all Orders in Council and Ordinances but with all Guernsey codes of conduct and guidelines – for example in respect of money laundering.

Rule 24

An Advocate must not take advantage of the age, inexperience, want of education or business experience, or ill health of the client.

Rule 25

An Advocate is under a duty to keep the client properly informed and to comply with reasonable requests from the client for information concerning his or her affairs.

Commentary

1. The information referred to in this Rule includes recent changes of law where those changes affect the subject matter of the retainer.
2. The extent and frequency of the information supplied and the degree of consultation will depend on the circumstances and upon the type and urgency of the matter and upon the extent of the experience of the client in that type of matter.
3. There may be exceptional circumstances in which an Advocate would be justified in withholding information from a client: for example where an Advocate is acting for both vendor and purchaser: see Rule 49.

Rule 26

An Advocate must not terminate his or her retainer with the client except for good reason and upon reasonable notice.

Commentary

1. Whilst it is open to a client to terminate an Advocate's retainer for whatever reason, an Advocate must complete the retainer unless he or she has a good reason for terminating it. Examples of good reasons include where an Advocate cannot continue to act without being in breach of these Rules, or where an Advocate is unable to obtain clear instructions for a client, or where there is a serious breakdown in the mutual trust and confidence between them.
2. The retainer may be determined by operation of law, e.g. the client's or Advocate's incapacity. Where the client suffers mental incapacity the Advocate should take reasonable steps to ensure that the client's interests are protected.

Rule 27

On termination an Advocate should, subject to any lien, then deliver to the client all papers and property to which the client is entitled or hold them to his or her order and account for all funds of the client then held by the Advocate.

Commentary

A client is not entitled to his or her Advocates' notes. Where a lien arises over a client's papers and documents delivered to an Advocate in his or her professional capacity for costs due and work done, they can be retained until those costs are paid. The lien is passive in nature and does not entitle the Advocate to sell or dispose of the client's property. Whilst the lien operates until satisfaction of the claim for costs, where a genuine dispute over costs arises, and the retainer is determined in favour of another Advocate, the Advocate formerly instructed should not insist on his or her lien if it is necessary for the proper continuing conduct of the matter that the successor Advocate has the clients' papers and documents e.g. in a claim being currently litigated. There is no lien over papers and documents for costs that are excessive or unreasonable.

