

Seychelles

Legal Practitioners Act

## Legal Practitioners (Professional Conduct) Rules, 2013

Statutory Instrument 59 of 2013

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# Seychelles

## Legal Practitioners Act

### Legal Practitioners (Professional Conduct) Rules, 2013

#### Statutory Instrument 59 of 2013

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#### 1. Citation

These Rules may be cited as the Legal Practitioners (Professional Conduct) Rules, 2013.

#### 2. Interpretation

In these Rules—

“**Act**” means the Legal Practitioners Act;

“**court**” means all courts and tribunals established by law for the administration of justice in Seychelles;

“**legal practitioner**” means—

- (a) an attorney-at-law practising in Seychelles;
- (b) a person permitted to appear and practise in courts or tribunals or other institutions established by law for the administration of justice pursuant to sections 12 and 13 of the Act;
- (c) a pupil; and
- (d) a person authorised under section 13A of the Act.

#### 3. Application

These Rules apply to all legal practitioners.

#### 4. Overriding duty to uphold the rule of law

- (1) A legal practitioner has an overriding duty as an officer of the court, to uphold the rule of law and facilitate the administration of justice.
- (2) A legal practitioner shall act honestly, fairly, diligently and competently in providing legal services to his or her clients.
- (3) A legal practitioner shall not engage in or assist or encourage a client to engage in conduct which is —
  - (a) in breach of any written law;
  - (b) an abuse of the process of the court;
  - (c) intended to harass or embarrass another person; or
  - (d) prejudicial to the administration of justice.

## 5. Relationship with clients

- (1) A legal practitioner shall not use the legal practitioner and client relationship to his or her own personal advantage.
- (2) A legal practitioner shall not exploit the inexperience, lack of understanding, illiteracy or other personal shortcomings of a client for his or her own benefit or the benefit of any other person.
- (3) A legal practitioner shall conduct all business on behalf of clients with due diligence and not unreasonably delay in replying to correspondence or carrying out instructions received from his or her clients.
- (4) A legal practitioner shall at all times seek to advance and protect his or her clients' interests to the best of his or her professional ability, independent of any external influence.
- (5) A legal practitioner shall not knowingly or recklessly encourage a client to adopt a course of action which is, in the opinion of the Supreme Court, contrary to the best interests of the client.

## 6. Relationship with other legal practitioners and members of the public

- (1) A legal practitioner shall act with honesty, fairness and courtesy towards other legal practitioners, and shall take all reasonable care to maintain the integrity and reputation of the legal profession.
- (2) A legal practitioner shall—
  - (a) honour all professional undertakings, whether written or oral, given to another legal practitioner or to any other person in the course of his or her practice; and
  - (b) not undertake any professional engagements where he or she has no authority or means of fulfilling the professional engagements.
- (3) A legal practitioner shall conduct his or her practice and his or her dealings with members of the public according to the same principles of honesty, fairness and courtesy and consistently with the public interest.
- (4) A legal practitioner shall not deal directly with a person who is represented by another legal practitioner for the purposes of the matter in which he or she is acting except—
  - (a) to find out whether the person is represented;
  - (b) with the consent of the other legal practitioner; or
  - (c) where the legal practitioner reasonably believes that the circumstances are too urgent for consent to be sought from the other legal practitioner and it will not be unfair to the person.
- (5) All written communications by a legal practitioner shall state the name, and provide full contact details, of the legal practitioner.
- (6) A legal practitioner shall not engage in a trade or profession, solely or jointly with any other person, which is unbecoming of the dignity of the legal profession.

## 7. Accepting instructions

- (1) A legal practitioner shall not—
  - (a) act for any person unless he or she has received instructions from that person or his or her duly authorised agent;
  - (b) accept instructions to act for any person in any matter in which he or she is aware that the person's interest in the matter is or is likely to be in conflict with his or her own interest or the interest of a close personal or professional associate;



- (c) accept instructions from any person in respect of a matter involving a former client if the legal practitioner as a result of acting for the former client is aware of any facts material to the matter which may be prejudicial to that former client.
- (2) Where a legal practitioner knows or has reason to believe that another legal practitioner has been instructed by a client to act in a matter, the legal practitioner may only accept instructions to act for the client in that matter if—
  - (a) the other legal practitioner consents;
  - (b) the other legal practitioner has refused to act further for the client; or
  - (c) the client has withdrawn instructions from the other legal practitioner.
- (3) A legal practitioner shall not accept instructions to act for more than one party to any matter unless each party is aware that he or she intends to act for the other and consents to him or her so acting in the knowledge that he or she may—
  - (a) be prevented from keeping all clients fully informed;
  - (b) be prevented from giving advice which he or she would otherwise give; and
  - (c) become obliged to act in a manner contrary to the interests of one or more party, in which case the legal practitioner shall cease to act for all parties.

## **8. Personal responsibility for appearing and acting on behalf of clients**

- (1) In contentious matters, a legal practitioner shall appear in court personally or brief a partner or another legal practitioner employed by his or her chambers to appear on behalf of his or her client.
- (2)
  - (a) Subject to paragraph (b), where it is not possible for the legal practitioner to appear personally or to brief a partner or another legal practitioner employed by his or her chambers, he or she shall brief another legal practitioner acceptable to the client to appear on behalf of his or her client.
  - (b) Where the legal practitioner considers a particular appearance in circumstances described in paragraph (a) to be of minor decisive value to the final outcome of the matter, he or she shall not be required to obtain the client's consent to such other legal practitioner.
- (3)
  - (a) A legal practitioner shall ensure that he or she is able to competently appear at all court hearings scheduled on any particular day.
  - (b) A legal practitioner who becomes aware of any overlap between court hearings scheduled on any particular day shall ensure that each legal practitioner who is briefed to appear on his or her behalf is sufficiently briefed to do so.
- (4) A legal practitioner shall be personally responsible for all work undertaken on behalf of a client and shall supervise or make arrangements for supervision by a partner or another legal practitioner employed by his or her chambers of all work undertaken by non-legal supporting staff.

## **9. Keeping clients informed**

- (1) A legal practitioner shall inform a client of—
  - (a) the client's legal rights and obligations and possible courses of conduct regarding all issues of substantial importance in each matter in which the legal practitioner is instructed; and
  - (b) all significant developments in that matter.
- (2) A legal practitioner shall make full and prompt disclosure to a client of any personal interest that he or she has or may have in any matter in which he or she is acting on behalf of the client.

- (3) A legal practitioner shall make full and prompt written disclosure to a client of the amount and nature of all payments made to the legal practitioner on behalf of the client and of any and all deductions made by the legal practitioner from those receipts.
- (4) A legal practitioner shall, at all times, communicate promptly and clearly with clients about fees and disbursements, and shall explain the basis for calculating his or her fees as soon as possible after accepting instructions.

## 10. Client confidentiality

- (1) A legal practitioner shall, at all times, respect the confidentiality of the legal practitioner and client relationship.
- (2) The obligation of confidentiality shall continue after the end of the term of legal service.
- (3) A legal practitioner shall not in any circumstance make use of any information received by him or her, or which came to his or her knowledge in confidence, in the course of acting on behalf of a client.
- (4) Notwithstanding sub-rule 3, a legal practitioner may disclose information received by him or her, or which came to his or her knowledge in confidence, in the course of acting on behalf of a client where—
  - (a) the client consents to the disclosure in advance;
  - (b) the legal practitioner reasonably believes that the information is no longer confidential to the client;
  - (c) disclosure is expressly required or authorised by law;
  - (d) disclosure is to the Supreme Court, for the purposes of reporting suspected professional misconduct by another legal practitioner, and the client is informed before the disclosure is made; or
  - (e) the legal practitioner reasonably believes that disclosure is necessary to prevent a serious risk to the health or safety of any person.

## 11. Avoiding conflicts of interest

- (1) A legal practitioner has a continuing responsibility to avoid conflicts of interest with or between his or her clients and shall ensure that all potential conflicts of interest are promptly identified, disclosed and addressed.
- (2) A legal practitioner shall not acquire any interest, either directly or indirectly through another person, in any matter in which he or she is instructed.
- (3) In any dealings with a client, a legal practitioner shall not allow his or her own interest or an interest of his or her close personal or professional associate to conflict with the client's interest.
- (4) A legal practitioner shall not enter into an intimate personal relationship with a client where this would be inconsistent with the trust and confidence placed in him or her by the client.
- (5)
  - (a) Subject to paragraph (b), a legal practitioner shall not appear, or shall cease to appear, before any court in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence, whether verbally or by affidavit.
  - (b) A legal practitioner shall not be prevented from giving evidence on a formal or non-contentious point.
- (6) A legal practitioner shall not advance any money to a client other than disbursements connected with a matter in which he or she is instructed.

- (7) Where a legal practitioner or the chambers acting for more than one party to any matter determines that he or she or the chambers cannot continue to act for all parties without acting in a manner that is contrary to the interests of one or more of them, the legal practitioner or the chambers shall cease to act for all parties unless all parties consent to the legal practitioner or the chambers continuing to act for one party.

## **12. Dealing with client money and other property**

- (1) A legal practitioner shall promptly release all money, securities or other property received from or on behalf of a client except where—
  - (a) the money, securities, or other property is held in accordance with the client's express instructions; or
  - (b) the legal practitioner withholds any amount owing under a taxed bill of costs or an authenticated fee agreement.
- (2) A legal practitioner shall not use money, securities, or other property held on behalf of a client for his or her own benefit or the benefit of any other person, or for any purpose other than the purpose for which the property was entrusted to him or her.

## **13. Prohibition on excessive or unfair charging**

- (1) A legal practitioner shall not charge fees and disbursements which are excessive or enter into a contingency or other costs agreement the terms of which are excessive or unfair.
- (2) Without prejudice to the generality of sub-rule (1), a legal practitioner shall comply with the provisions of the Court Fees (Supreme Court) and Costs Act or other applicable statutory instrument for the time being in force.
- (3) For the purposes of determining whether any fees and disbursements charged or the terms of any costs agreement are excessive or unfair, the following shall be taken into consideration—
  - (a) the maximum amount recoverable under the Court Fees (Supreme Court) and Costs Act or other applicable statutory instrument;
  - (b) the nature, jurisdiction, complexity and urgency of the matter;
  - (c) the amount involved;
  - (d) the terms of any costs agreement and the information given by the legal practitioner to the client in this regard; and
  - (e) the experience and reputation of the relevant legal practitioner or chambers.

## **14. Conduct of litigation**

- (1) The overriding duty of a legal practitioner when conducting litigation is to the court.
- (2) Subject to sub-rule (1), a legal practitioner when conducting litigation shall, at all times, act in the best interests of his or her client.
- (3) A legal practitioner shall not mislead or deceive the court.
- (4) A legal practitioner shall conduct litigation with diligence and not disregard time limits imposed by the court or seek or consent to any adjournment without proper cause.
- (5) A legal practitioner when conducting litigation shall ensure that the court is informed of all relevant decisions and legislative provisions of which he or she is aware whether the effect is favourable or unfavourable to his or her client's case.

**15. Duty to maintain independence in litigation**

- (1) A legal practitioner shall not discuss any case or matter before the court with any judicial officer involved in the proceeding, formally or informally, except in accordance with the law and generally accepted procedure.
- (2) In cases tried by jury, a legal practitioner shall not have any contact with jurors before or after verdict where it is likely to bring the administration of justice into disrepute.
- (3) A legal practitioner shall not have contact with any witness, whether or not the witness is his or her client, under cross-examination or re-examination, including during adjournments.
- (4) A legal practitioner shall not intimidate a witness who he or she knows has been or is likely to be called by another party or cause or encourage such a witness to be intimidated or induced from departing from the truth or abstaining from giving evidence.

**16. Duty to inform client about alternatives to litigation**

- (1) At the commencement of, and during, litigation a legal practitioner shall inform his or her client of —
  - (a) available alternatives to pursuing litigation;
  - (b) any law, procedure or practice which has the prospect of a substantive advantage if the client —
    - (i) pleads guilty; or
    - (ii) takes any steps to reduce the issues, time, costs or distress involved in a proceeding.
- (2) A legal practitioner shall not enter into any arrangement with a public prosecutor for the purposes of securing either the acquittal of the legal practitioner's client, charging the client with an offence which carries a less severe penalty or varying the evidence to be adduced by or for the prosecution except in accordance with the law.

**17. Duty to prevent abuses of court process**

- (1) A legal practitioner when conducting litigation shall ensure, to the best of his or her ability, that discovery obligations are fully complied with and that the rules of privilege are adhered to.
- (2) A legal practitioner shall not devise facts which will assist in advancing a client's case or file or serve any document containing—
  - (a) any statement of fact which is not supported by the client's instructions; or
  - (b) any contention which the legal practitioner does not consider to be properly arguable.
- (3) A legal practitioner shall not make any allegation against a person's reputation or allow any document to be filed or served which alleges, criminality, fraud, or other serious misconduct unless the legal practitioner believes on reasonable grounds that factual material already available to the legal practitioner provides a *prima facie* case for that allegation.
- (4) A legal practitioner shall not coach or permit any potential witness to be coached and shall not call a witness to give evidence where he or she knows or has a reasonable suspicion that the witness has been coached.
- (5) If a procedural irregularity or material point of law comes to the attention of a legal practitioner during or after the hearing of a case but before verdict or judgment has been given, the legal practitioner shall inform the court of that irregularity or point of law without delay.

- (6) A legal practitioner who becomes aware that his or her client or client's agent is abusing or intends to abuse the process of the court shall immediately raise the matter with his or her client and seek instructions to ensure that the court and opposing parties are not misled.
- (7) A legal practitioner shall cease to act in circumstances where he or she knows that a serious abuse of court process has occurred, but is prevented by obligations of confidentiality or the rules of privilege from bringing that abuse to the attention of the court.

## **18. Withdrawal from litigation**

- (1) Where a legal practitioner intends to withdraw from litigation, the legal practitioner shall give his or her client, the court and all other parties reasonable advance notice of that intention.
- (2) A legal practitioner may only withdraw from litigation where—
  - (a) his or her instructions have been withdrawn; or
  - (b) he or she is permitted by the court to withdraw.
- (3) A legal practitioner may seek the court's permission to withdraw from litigation, without disclosing the specific circumstances giving rise to the request, where—
  - (a) the client has instructed the legal practitioner to act in a manner that is or is likely to be contrary to these Rules or the Act;
  - (b) the client has abused or intends to abuse the process of the court, the legal practitioner has advised the client against that course, and the client has declined to act on the legal practitioner's advice; or
  - (c) the relationship of trust and confidence between the client and legal practitioner has irretrievably broken down.
- (4) A legal practitioner may seek the court's permission to withdraw from litigation, in writing setting out the circumstances giving rise to the request, where—
  - (a) the client has unjustifiably disregarded an agreement or obligation as to the payment of the legal practitioner's costs; or
  - (b) there are other substantial grounds for withdrawal due to personal circumstances of the legal practitioner beyond his or her control.

## **19. Termination of legal services**

- (1) A legal practitioner shall not terminate the legal services for which he or she was engaged except where—
  - (a) the legal practitioner and client agree;
  - (b) the client withdraws instructions from the legal practitioner; or
  - (c) there is a just cause for termination and on reasonable advance notice to the client.
- (2) All documents prepared or received by a legal practitioner for the purposes of a client's matter, and intended for the use or information of the client, shall be retained securely and confidentially by the legal practitioner during the term of legal service and for at least seven years after the end of legal service, or until released to the client or otherwise dealt with in accordance with the client's instructions.
- (3) At the end of legal service, if the client so requests, the legal practitioner shall promptly release all documents referred to in sub-rule (2) to the client or the client's agent, except where the legal practitioner has terminated the engagement and claims a lien over documents for costs due from the client.

- (4) A legal practitioner shall promptly return any sum paid by or on behalf of a client as a retainer if the amount paid exceeds the value of the fees and disbursements recoverable from the client.

## **20. Public conduct and advertising**

- (1) A legal practitioner shall have due regard to the importance of maintaining public confidence in the administration of justice in all aspects of his or her public conduct, both personal and professional.
- (2) A legal practitioner shall not make any comment to news media which—
  - (a) expresses a personal opinion on the merits of any current or anticipated matter in which the legal practitioner has been instructed, other than in an academic or educational context; or
  - (b) is calculated or may reasonably be expected to diminish public confidence in the administration of justice or to bring any legal practitioner, any judicial officer, or the legal system into disrepute.
- (3) A legal practitioner shall not advertise in connection with his or her practice if the advertisement is —
  - (a) inaccurate;
  - (b) misleading or likely to mislead;
  - (c) defamatory of another legal practitioner;
  - (d) incompatible with the legal practitioner's obligations of confidentiality; or
  - (e) likely to diminish public confidence in the legal profession or the administration of justice.

## **21. Breach of Rules**

Any breach of these Rules shall constitute professional misconduct for the purposes of section 10 of the Act and the Legal Practitioners (Disciplinary measures and Reinstatement) Rules.

## **22. Reporting misconduct**

- (1) A legal practitioner who has reasonable grounds to believe that another legal practitioner has committed professional misconduct shall make a confidential report to the Supreme Court at the earliest opportunity, subject only to the legal practitioner's duty to protect privileged communications.
- (2) A legal practitioner shall not use or threaten to use the reporting or disciplinary process for any improper purpose.