



**An tÚdarás Rialála  
Seirbhísí Dlí**  
Legal Services  
Regulatory Authority

**DRAFT/**

**CODE OF PRACTICE for  
PRACTISING BARRISTERS**

issued pursuant to section 22 of the  
Legal Services Regulation Act 2015

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## **Part A Preliminary**

### **I. Introduction**

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We, THE LEGAL SERVICES REGULATORY AUTHORITY (“the Authority”),

PURSUANT TO Section 22 of the Legal Services Regulation Act 2015 (“the Act”)

FOR THE PURPOSE OF ensuring the maintenance and improvement of standards in the provision of legal services by Practising Barristers

HAVING REGARD TO the regulatory objectives outlined in section 13(4) of the Act, namely:

- (a) Protecting and promoting the public interest;
- (b) Supporting the proper and effective administration of justice;
- (c) Protecting and promoting the interest of consumers relating to the provision of legal services;
- (d) Promoting competition in the provision of legal services in the State;
- (e) Encouraging an independent, strong and effective legal profession; and
- (f) Promoting and maintain adherence to the professional principles of:
  - (i) Acting with independence and integrity;
  - (ii) Acting in the best interests of clients; and
  - (iii) Maintaining proper standards of work

HAVING REGARD TO the State’s obligations under the following Regulations:

1. European Communities (Lawyers’ Establishment) Regulations 2013 (S.I 732 of 2013) (“the Establishment Regulations”);

2. European Communities (Freedom to Provide Services)(Lawyers) Regulations (S.I. 58 of 1979) (“the FPS Regulations”); and
3. European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. 8 of 2017) (“the Professional Qualifications Regulations”)

AND HAVING CONSULTED WITH AND RECEIVED AND CONSIDERED SUBMISSIONS FROM the relevant professional bodies and other interested parties as provided for under s. 22(3) and s. 22(4) of the Act

DO HEREBY ISSUE a CODE OF PRACTICE FOR PRACTISING BARRISTERS

## **I. Introduction**

- 1.1 This Code is issued by the Legal Services Regulatory Authority (“the Authority”) pursuant to the obligations and powers contained in the Legal Services Regulation Act 2015 (“the Act”), to ensure the maintenance and improvement of standards in the provision of legal services by Practising Barristers in the State.
- 1.2 This Code will have effect from **[INSERT]**.
- 1.3 This Code does not replace the Code of Conduct for the Bar of Ireland, the Professional Code of the Honorable Society of Kings’ Inns or any other professional code to which Practising Barristers may be subject, save that, where a provision of another professional code conflicts with a provision of this Code, this Code shall prevail for the purposes of the Act.
- 1.4 The Authority may amend this Code as it deems necessary, in accordance with the relevant statutory procedure and may further issue guidance to assist Practising Barristers to comply with the Code. It shall be the duty of each Practising Barrister to ensure that he or she meets the requirements of this Code as explained in any guidance issued by the Authority.
- 1.5 A failure to comply with any provision of the Code may constitute or give rise to the provision of legal services of an inadequate standard and/or misconduct and may be the subject of a complaint, inspection or investigation under the Act.

1.6 This Code is not intended to be an exhaustive statement of the rules applicable to Practising Barristers. Other standards, requirements and rules that govern the conduct of Practising Barristers are found in the Act and in the general law (including the law relating to contempt of court), and in professional codes, including the Code of Conduct for the Bar of Ireland (which is applicable to members of the Law Library) and the Professional Code of the Honorable Society of Kings' Inns (which is applicable to all Qualified Barristers). Furthermore, the standards of professional conduct set out herein should not be confused with the requirements of the general law of contract, of tort, of criminal law or of equity, even though the requirements of professional conduct may in some cases follow, or closely parallel, the general legal requirements.

## **II. Purpose of Code**

1.7 The purpose of this Code is to set out the requirements, rules and standards that apply to every person who is a Practising Barrister in Ireland as defined in the Act.

## **III. Scope of the Code**

1.8 The Code applies to all legal practitioners who come within the definition of "Practising Barrister" in the Act. It does not apply to persons who do not fall within the definition of "Practising Barrister", including qualified barristers who are not providing legal services as a barrister. For the avoidance of doubt, this Code applies to every Practising Barrister, whether he or she is member of a professional body within the meaning of the Act or not.

1.9 The following is a summary of the provisions of the Act which define a "Practising Barrister". The full text of the relevant provisions is included in **Schedule A** to this Code.

To be a "Practising Barrister" a person must be a "Qualified Barrister", which means that he or she:

- (a) must have been admitted by the Honorable Society of King's Inns to the degree of Barrister-at-Law or he or she must have been called to the Bar of

Ireland, and must not, since such admittance or call to the Bar, have been admitted to practice as a solicitor, been disbarred by the Benchers of the Honorable Society of King's Inns (which disbarment remains in effect), or had his or her name struck from the Roll of Practising Barristers or the Roll of Solicitors by the High Court, which order remains in effect; or

- (b) must be a registered lawyer, having the same right of audience as a Practising Barrister or a solicitor qualified to practice by virtue of Regulation 10 of the European Communities (Lawyers' Establishment) Regulations 2003 ( S.I. No. 732 of 2003 ) (*“the Establishment Regulations”*).

In addition to being a “Qualified Barrister”, a Practising Barrister must provide, or hold himself or herself out as providing, “legal services as a barrister”. What is regarded as “legal services as a barrister” include a range of legal services that may be provided to another person. It includes the following legal services when provided in connection with proceedings before a court, tribunal, forum for arbitration, or the Personal Injuries Assessment Board (in Ireland or another jurisdiction) (“Proceedings”):

- a) Representation in Proceedings;
- b) Prosecuting or defending Proceedings;
- c) Advice in relation to the conduct of Proceedings;
- d) Representation and advice with regard to settlement of Proceedings;
- e) Drawing or drafting documents in contemplation of, ancillary to or in connection with Proceedings.

“Legal Services” also includes:

- a) Provision of legal advice, which means any oral or written advice on the application of the law (Irish or otherwise) to any particular circumstances that have arisen or may arise in relation to a person, or as to any actions that might appropriately be taken by or on behalf of a person having regard to the application of the law to those circumstances (not including opinions provided to another person in the course of lecturing, teaching, writing or editing a book, report or article or researching an area of the law for the purpose of enhancing the other person's knowledge of the area concerned).

- b) Drafting legal documents for another person for the purpose of securing or transferring a person's legal rights or entitlements;
- c) Representing or acting for such person in a situation in which that person's legal rights or obligations are or are likely to be created or disputed.

1.10 A Qualified Barrister who provides – or holds himself out as providing – any of the legal services specified in paragraph 1.9 of Part A of this Code is a “Practising Barrister” for the purposes of the Act and this Code whether or not:

- (a) that person provides such services for a fee;
- (b) the person describes himself or uses the title of “barrister”, “counsel”, or “barrister at law”; or
- (c) the services are provided under a contract for services or contract of service.

Further, while a Practising Barrister may

- (a) take up paid employment, and, as part of that employment, may provide legal services to his or her employer, including by appearing on behalf of that employer in a court, tribunal or forum for arbitration, and
- (b) provide legal services as a partner in, or an employee of, a legal partnership,

a Barrister so employed falls within the definition of a Practising Barrister for the purposes of this Code.

## **Part B      REQUIREMENTS TO PRACTISE AS A BARRISTER**

### **I.      ROLL OF PRACTISING BARRISTERS**

### **II.     INSURANCE**

#### **I.      Roll of Practising Barristers**

- 2.1      A Qualified Barrister who intends to provide legal services as a Practising Barrister must ensure that his or her name appears on the Roll of Practising Barristers maintained by the Authority. Accordingly, a Qualified Barrister who intends to provide legal services as a barrister must apply to the Authority to have his or her name and any additional information prescribed by the Authority entered on the Roll.
- 2.2      A Qualified Barrister whose name is not entered on the Roll of Practising Barristers is an “unqualified person” for the purposes of the Act and it is an offence for such person to provide legal services as a barrister.

#### **II.     Insurance**

- 2.3      Every Practising Barrister, whether self-employed or a partner or employee in an organisation or entity, must have in place a policy of professional indemnity insurance in respect of the legal services being provided by him or her either directly or, if applicable, through the entity or organisation, unless deemed by the Authority to be exempt from the requirement to have such insurance in place. Such exemptions shall be specified in regulations made by the Authority.
- 2.4      The aforementioned policy, whether it be an individual policy, a group policy approved by the Authority or an entity policy must comply with such regulations, in particular in respect of minimum terms and conditions, as are made by the Authority.



## **PART C GENERAL OBLIGATIONS**

- I. Fundamental obligations**
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### **I. FUNDAMENTAL OBLIGATIONS**

- 3.1 A Practising Barrister is obliged to uphold the rule of law and to facilitate the administration of justice. Where he or she appears before a Court or tribunal established by the State, a Practising Barrister owes a duty of candour to the Court or tribunal, which duty prevails over any conflicting duty owed to his or her client, any other legal practitioner associated with the proceedings or any other party to the proceedings.
- 3.2 A Practising Barrister must comply with and meet the standards of, this Code.
- 3.3 A Practising Barrister must adhere to the professional principles of:
- (i) Acting with independence and integrity;
  - (ii) Acting in the best interests of his or her client; and
  - (iii) Maintaining proper standards of work.
- 3.4 A Practising Barrister must act ethically and honestly at all times, applying the highest standards of dignity and courtesy in his or her interactions with members of the public.

- 3.5 A Practising Barrister must act respectfully and professionally in his or her interactions with the Judiciary, Court personnel and other legal practitioners.
- 3.6 A Practising Barrister must uphold the reputation of the profession of barrister and must not act in a manner likely to diminish public confidence or trust in the profession.
- 3.7 A Practising Barrister must cooperate fully with any investigation conducted by or on behalf of the Authority as provided for in the Act.
- 3.8 In providing services to a client, a Practising Barrister must
- a) Respect the relationship of trust and confidence with the client;
  - b) Provide such services competently, efficiently, professionally, and in a timely manner;
  - c) at all times treat a client with respect and courtesy;
  - d) not act in a discriminatory manner;
  - e) promote, protect and uphold by all proper and lawful means his or her client's best interests, without regard to their own interests or any consequences to themselves or any other person;
  - f) maintain the confidentiality of the client's affairs;
  - g) exercise independent professional judgement on the client's behalf.

## **II. Accepting Instructions**

- 3.9 A Practising Barrister should only accept instructions to act in a matter if he or she is available to so act.
- 3.10 A Practising Barrister should not accept instructions to act in a matter which he or she believes to be beyond his or her competence or experience.
- 3.11 In contentious matters, save where otherwise expressly stated in this Code, a Practising Barrister should not take instructions directly from a client.

- 3.12 A Practising Barrister shall not accept instructions to act in a matter, if his or her capacity to represent the client's interest fully, independently and impartially and to comply with the provisions of this Code in acting in the matter is compromised.
- 3.13 A Practising Barrister shall not accept instructions which would require him or her to act other than in accordance with law or with the provisions of this Code.
- 3.14 A Practising Barrister may be justified in refusing to accept instructions where a conflict of interest arises or is likely to arise or where he or she possesses relevant or confidential information or where there are other special circumstances. (the rules governing conflicts of interest are addressed in more detail in section VIII below). The Practising Barrister shall inform the client, in the case of a direct access instruction, or the client's solicitor in all other cases, of any such conflict of interest or other circumstances of which he or she is aware that precludes or may preclude him or her from acting in the matter.
- 3.15 A Practising Barrister ought not to accept instructions if he or she would be embarrassed in the discharge of his or her duties because he or she has previously advised on or drawn pleadings for another client on the same matter or appeared for another person who is or was connected with the same matter, or he or she is in possession of material information entrusted to him or her by another client and it would be prejudicial to that client's interests or there is any other good and sufficient reason for not so acting and, where he or she has accepted such instructions, he or she should not continue to act.
- 3.16 A Practising Barrister must inform his or her instructing solicitor (or client if receiving instructions directly) promptly, if it becomes apparent that he or she is unlikely to be able to attend to his or her instructions or if there is likely to be a substantial delay in attending to them. In particular, a Practising Barrister must inform his or her instructing solicitor (or client if receiving instructions directly) immediately where there is an appreciable risk that he or she may not be able to undertake the case in which he or she has received a brief, and he or she must in any event return that brief in sufficient time to allow his or her client to make alternative arrangements regarding legal representation.
- 3.17 If it is necessary for a Practising Barrister to return a brief because of conflicting commitments the barrister should return the brief which he or she last accepted unless the solicitor in the case in which he or she was earlier retained (or client in the event that he or she was instructed directly) consents to him or her doing otherwise.

### **III. CLIENT MONIES**

3.18 A Practising Barrister shall not hold moneys of clients. This applies whether the Practising Barrister is a self-employed barrister, an employed barrister, or a barrister in a Legal Partnership.

### **IV. PROTECTION OF DATA / CLIENT CONFIDENTIALITY**

3.19 A Practising Barrister must maintain the confidentiality of each client's affairs, and, save where otherwise permitted or where required to do so by law, is under a duty not to communicate to any third party, information of a confidential nature entrusted to him or her by or on behalf of his or her client. Furthermore, he or she shall not use such information to his or her client's detriment or to his or her own or another person's advantage. This duty continues at all times after the relation of barrister and client has ceased, and after the death of the client.

This Rule does not prevent a Practising Barrister from:

- (i) Imparting information in an appropriate manner for the purpose of the discharge of his or her tasks;
- (ii) Disclosing information to which the client gives informed consent;
- (iii) Communicating such information as is necessary to his or her professional indemnifier;
- (iv) Providing the Authority, or any person duly authorised by the Authority to perform functions under the Act, with all necessary information to enable the Practising Barrister to answer accusations or complaints made by the client against him or her or any other legal practitioner;
- (v) Providing any professional body tasked with the performance of disciplinary functions, with all necessary information to enable the Practising Barrister to answer accusations of complaints made by a client against him or her or any other legal practitioner; or,
- (vi) Disclosing to the appropriate person(s) such information as is otherwise required by law.

- 3.20 When disposing of confidential documentation, whether in printed form or otherwise, a Practising Barrister is under a duty to do so in a manner that reasonably ensures that his or her duty of confidentiality will not be breached.
- 3.21 A Practising Barrister may not permit any recording, by electronic or by any other means, of any privileged or confidential conversation between him or her, his or her solicitors, clients or other person in any circumstances without the authority of such person.
- 3.22 In so far as it may be necessary to keep copy pleadings, advices, or other documents, a Practising Barrister has a duty to ensure the security and confidentiality of such documents. Any matter stored in electronic form should enjoy a proper level of encryption.
- 3.23 A Practising Barrister must take reasonable precautions to maintain the confidentiality of all confidential documents, even when left in places to which only other legal practitioners have access.
- 3.24 The papers in any brief or instructions delivered to a Practising Barrister are the property of the client. A barrister has no right without the consent of the client, whether communicated directly or through the client's solicitor, to lend them or reveal their contents to any person, unless required to do so by law. At the conclusion of his or her retainer, a Practising Barrister should return the papers either directly to the client or to his or her instructing solicitor (if there is an instructing solicitor), unless otherwise agreed.
- 3.25 In recognition of a barrister's duty of confidentiality and independence, a Practising Barrister may not make any public comment about any case in which he or she has been briefed or instructed or about any of the parties involved in the case. A Practising Barrister may not publish, broadcast or cause or permit to be published or broadcast any particulars of any matters in respect of which he or she has been, or is currently, engaged as a barrister.
- 3.26 A Practising Barrister is at all times required to ensure he or she complies with the requirements of the General Data Protection Regulation ("GDPR").

## **V. ADVERTISING**

3.27 A Practising Barrister may only advertise in a manner that is permitted by regulations made pursuant to s. 218(2) of the Act.

3.28 Pending the making of such regulations, a Practising Barrister should not advertise in a manner which would come, or be likely to come, within the scope of section 218(5)(d) of the Act.

## **VI. COOPERATION WITH THE AUTHORITY**

3.29 A Practising Barrister is required to cooperate fully with the Authority.

3.30 A Practising Barrister must notify the Authority of any changes to the information notified by him or her for the purpose of inclusion on the Roll of Practising Barristers, or any other information lawfully required by the Authority to administer and maintain the Roll of Practising Barristers.

3.31 A Practising Barrister should forthwith report to the Authority:

- (a) a conviction for an arrestable offence;
- (b) a conviction for a criminal offence outside the State which, if committed within the State, would be an arrestable offence;
- (c) his or her suspension or disbarment by the Benchers of the Honorable Society of King's Inns.
- (d) his or her disbarment, or any restriction or condition placed on his or her provision of legal services, by a legal regulatory authority in any other jurisdiction in which he or she has or continues to practise.

## **VII. CONTINUING LEGAL EDUCATION**

3.32 A Practising Barrister must undertake the continuing education and professional development necessary to ensure an adequate level of knowledge and competence in his area(s) of practice. A Practising Barrister must comply with any minimum requirements for continuing education and professional development as may be prescribed by the Authority and must also comply with any minimum requirements for continuing education and professional development as are prescribed by any professional body of which he or she is a member.

## **VIII. LEVIES**

3.33 A Practising Barrister must comply in a timely manner with any levy assessment notice lawfully issued by the Authority to him or her or any requirement lawfully imposed on him or her by a professional body of which he or she is a member to contribute to the discharge of a levy assessment notice issued by the Authority to that professional body.

3.34 A Practising Barrister who is in full time service of the State, is not obliged to pay a levy under section 95 of the Act.

## **IX. CONFLICTS OF INTEREST**

3.35 A Practising Barrister may not appear as counsel:-

- i. in any matter in which he or she is a party or has a significant pecuniary interest;
- ii. either for or against any Local Authority of which he or she is a member,
- iii. either for or against any person, body, company, firm or other organisation of which they are an officer, director, partner, engaged in part-time occupation or in which they have directly or indirectly a significant pecuniary interest, subject to the right of an employed barristers to provide legal services to his or her employer;
- iv. in any matter in which he or she is likely to be a witness. If, being engaged in a case, it becomes apparent that he or she is likely to be a witness on a question of fact, he or she should not continue to appear if he or she can retire without jeopardising his or her client's interests.

- 3.36 In cases involving several parties, a Practising Barrister on receipt of instructions for more than one of such parties should consider whether or not any conflict arises as between the individual interests of each of the clients and he or she shall advise the person duly authorised to provide the instructions as to whether any of the clients should be separately advised and represented.
- 3.37 If a Practising Barrister forms the view that a conflict of interest has arisen between a client and the solicitor who has instructed the barrister on behalf of that client, the barrister must provide advice for the client stating the nature of the barrister's concerns and recommending that the client instruct a different solicitor. Unless it proves impossible to do so within a reasonable time, such a barrister should first notify the instructing solicitor that such advice must be given by the barrister and, immediately following such notification, should give such advice (i) at a consultation at which the client and the solicitor are both present or (ii) in writing to the client through the instructing solicitor or (iii) in writing to the solicitor. Where a barrister has given advice under this rule other than in the presence of the client, the barrister must seek the written acknowledgement of the client and, if the aforesaid verification is not provided within a reasonable time, the barrister, having warned the solicitor of his obligations in this regard, must provide the advice to the client directly and in writing.

## **X. RELATIONSHIP WITH CLIENT**

- 3.38 A Practising Barrister who is subject to offensive behaviour by a client can withdraw from so acting if his or her professional conduct is being impugned.
- 3.39 A Practising Barrister may not return his or her brief merely on the grounds that his or her client would not accept his or her advice on a settlement offered but he or she shall continue with the case if his or her client wishes it to be fought.
- 3.40 Where a client seeks to insist that a Practising Barrister pursue a case or an argument on the client's behalf which, though it would not be improper or dishonest to pursue it, has no reasonable chance of success, the barrister shall not be in breach of the retainer (or disentitled to fees for work done) if he or she does not pursue the case or the argument in question provided he or she shall have advised the client unequivocally, as soon as practicable and, where possible, in writing to the client's solicitor (when not instructed directly);



- (i) that the barrister will not put forward the case or argument in question;
- (ii) of the reasons why the barrister considers that the case or argument has no reasonable chance of success; and
- (iii) of the client's right to terminate the barrister's instructions and or pursue the matter with another barrister or with none.

3.41 Save where provided in these rules, it is undesirable for Practising Barristers to consult with a client or their representative in any matter in which he or she is instructed by a solicitor unless the solicitor instructing them is present or has instructed them to do so. If the solicitor is not present the Barrister should forthwith furnish a written memorandum of those instructions to the solicitor.

## **XI. FEES**

3.42 The provisions on fees set out hereunder are not applicable to practising barristers in employment.

3.43 A Practising Barrister's fees are based upon commitments undertaken and work done. A barrister is entitled to charge a reasonable fee for any work undertaken or to be undertaken by him or her (whether or not it involves an appearance in court) on any basis or by any method he or she thinks fit, provided that such basis or method is permitted by law.

3.44 In assessing whether the fee is reasonable, regard should be had to the relevant factors, including the following:

- (a) the complexity and novelty of the issues involved in the legal work;
- (b) the skill or specialised knowledge relevant to the matter which the barrister has applied to the matter;
- (c) the time and labour that the barrister has reasonably expended on the matter;
- (d) the urgency attached to the matter by the client and whether this requires or required the barrister to give priority to that matter over other matters;

- (e) the place and circumstances in which the matter was transacted;
- (f) the number, importance and complexity of the documents that the barrister was required to draft, prepare or examine;
- (g) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;
- (h) whether or not there is an agreement to limit the liability of the barrister;
- (i) whether or not the barrister necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed;
- (j) the use and costs of expert witnesses or other expertise engaged by the barrister and whether such costs were necessary and reasonable.

3.45 A Practising Barrister shall not charge a fee expressed as a specified percentage or proportion of any damages (or other moneys) that may be or become payable to his or her client, other than in relation to a matter seeking only to recover a debt or liquidated demand.

3.46 The fees charged by barristers shall not fix the fees charged by a junior counsel as a fixed percentage or proportion of the fees paid to senior counsel.

3.47 On receiving instructions in a matter or as soon as practicable thereafter, a Practising Barrister shall provide the solicitor with a notice in clear and easily understood language that discloses the legal costs that will be incurred in relation to the matter or the basis on which they will be calculated (“*the Fee Notice*”). This Notice shall set out the amounts already incurred, the VAT applicable, the basis on which the amounts were or are to be calculated, in light of the factors listed above. The Notice must comply with section 150 of the Act.

3.48 A Practising Barrister may enter into an agreement with a client in relation to fees. Such an agreement must comply with section 151 of the Act.

3.49 A Practising Barrister must, as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client, prepare and sign a bill of costs. This must comply with section 152 of the Act and other applicable requirements and the obligation of a barrister under that section is satisfied when the barrister provides the bill of costs to the solicitor.

- 3.50 Where a Practising Barrister has accepted a brief on the basis that his or her fee will be discharged before appearing for his or her client, such barrister is entitled to withdraw from the case in the event that such agreed fee is not paid by the agreed date.
- 3.51 Where a Practising Barrister is asked to provide an estimate of the fees that might be charged if the barrister be instructed in any matter, the provision of such estimate shall not prevent that barrister from accepting definite instructions from any other party involved in such matter.
- 3.52 In all cases where more than one Practising Barrister is briefed the fees to be charged by such Barrister shall be a matter for agreement between each such Barrister and the instructing solicitor.
- 3.53 Nothing in this Code shall operate so as to inhibit a Practising Barrister's entitlement to act for a client pro bono.
- 3.54 Where fees are outstanding from a solicitor to a Practising Barrister beyond any agreed period for payment or, in the absence of any such agreement, beyond a period of three months after the barrister has submitted the relevant fee note to the solicitor, the barrister may, on his or her own initiative make a complaint to the Law Society of Ireland or, when the relevant complaints provisions of the Act are commenced, the Authority, in respect of that solicitor or may follow any other procedure for the recovery of fees that may be appropriate in the circumstances.
- 3.55 Where a Practising Barrister has submitted a fee note to an instructing solicitor, but neither fee nor an acceptable explanation for non-payment has been received, he or she may write directly to the person responsible for providing the payment (whether the client, opposing solicitor or insurer) seeking such payment or reason for non-payment.

## **PART D CONDUCT OF WORK**

- I. General**
- II. Conduct in Court**
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### **I. GENERAL**

- 4.1 In the provision of Legal Services, a Practising Barrister must at all times comply with the fundamental obligations specified in Part C and must also comply with the specific standards and rules contained in this Part.

### **II. CONDUCT IN COURT**

- 4.2 A Practising Barrister must not deceive or knowingly mislead the Court or allow the Court to be misled. A Practising Barrister must take appropriate steps to correct any misleading statement made by him or her to the Court as soon as possible after he or she becomes aware that the statement is misleading.
- 4.3 A Practising Barrister when conducting proceedings in Court is responsible for the conduct and presentation of his or her case, and must exercise the independent judgment called for during the case.
- 4.4 A Practising Barrister when conducting a case must not assert his or her personal opinion of the facts or the law unless expressly invited to do so by the court or required to do so by law.

- 4.5 A Practising Barrister when conducting a case must not make statements or ask questions which are merely scandalous or are intended only for the purpose of vilifying, insulting or annoying a witness or some other person.
- 4.6 In a civil case, a Practising Barrister must, at the appropriate time in the proceedings, inform the court of any binding judgment or applicable legislation of which he is aware and which he believes to be directly relevant, whether or not it favours his position.
- 4.7 A Practising Barrister must in every case use his or her best endeavours to avoid unnecessary expense and waste of the Court's time.
- 4.8 In the event that a Practising Barrister is aware of, or becomes aware of, a scheduling difficulty that may compromise his or her ability to fully perform the legal services in respect of which he or she is instructed, he or she must immediately notify his or her client and/or instructing solicitor of the emergence of the scheduling difficulty, providing a reasoned assessment of the likelihood of and extent to which the scheduling difficulty will impact upon his or her capacity to fully perform the legal services (without prejudice to the Practising Barrister's right to be paid for the work previously done). Any such assessment must never be contingent on the receipt of instructions from the client that are not manifestly in the client's best interests.
- 4.9 A Practising Barrister who accepts a brief must attend the trial or hearing, save that if he or she becomes unavailable for such trial or hearing, he or she must return the brief as soon as possible. If there is more than one Practising Barrister briefed in the matter, each must attend the trial or hearing unless prevented by an unavoidable or unforeseen conflict or commitment or where the client and/or the client's solicitor consents to the Barrister not being in attendance for all or part of the trial or hearing.
- 4.10 A Practising Barrister shall not approach a judge to discuss with him or her any matter then pending or at hearing before that judge without the consent of the judge and his or her opposing lawyer or lay litigant being present during such approach.
- 4.11 A Practising Barrister shall not before or during the trial of any case discuss the case with the trial Judge in private save that, if it becomes necessary to so discuss the case, he or she shall do so only with the consent of the Judge and the solicitor or counsel for each of the parties, and in the presence of the solicitor or counsel for each of the parties, and, if any party is unrepresented, he or she may do so only with the consent of and in the presence of such party.

4.12 A Practising Barrister shall not practice and be an expert witness in the same Court, but this rule does not apply to the provision of expert evidence on foreign law.

4.13 A Practising Barrister shall not knowingly make, procure or countenance the making of any false or misleading statement of fact, whether express or implied, written or parol, with regard to any matter in which he or she is engaged, to any Court, other body or to any other party or any representative thereof.

4.14 While engaged in any matter before a Court or other body, a Practising Barrister shall not mislead nor knowingly permit the Court or other body to mislead itself in relation to the law applicable to that matter save that a Practising Barrister defending in criminal matters shall be under no duty to correct errors by the Court which may favour his or her clients.

4.15 Where a Practising Barrister becomes aware that any false or misleading statement of fact has been made by or on behalf of his or her client in relation to the matter in which that Practising Barrister is engaged, or that any Court, other body or other party may reasonably be continuing to rely on any statement of fact made by or on behalf of his or her client which, though true when made, has become false or misleading, the Practising Barrister shall

1. be satisfied that any such statement of fact has been corrected before any further step be taken by any party in the matter, whether in any proceedings or by way of negotiation, discontinuance or otherwise; or
2. withdraw from the matter before any such step be taken by any party without such correction having been made.

Where more than one Practising Barrister is engaged in any matter, any Practising Barrister other than leading counsel who becomes aware that a false or misleading statement of fact has been made by or on behalf of his or her client in the matter, such Practising Barrister shall bring those circumstances to the attention of leading counsel and, in addition, shall personally comply with the requirements to correct the record or withdraw from the matter.

4.16 The Rules set out in this section, governing a Practising Barrister's obligations when conducting cases, also apply where a Practising Barrister appears in a mediation or before an arbitrator or any other person or persons exercising judicial or quasi-judicial functions, or

before the sole member or members of Tribunals appointed under Statute or by the Oireachtas or any other investigating body.

4.17 A Practising Barrister may act for the chairman and members or the sole member of a tribunal of inquiry and shall, so far as practicable, comply with the provisions of the Code in all respects, and he or she is obliged, when appearing before or acting for such tribunal, to comply with the rules governing Conduct in Court.

### **III. RULES REGARDING WITNESSES**

4.18 A Practising Barrister may not coach a witness in regard to the evidence to be given by that witness.

4.19 A Practising Barrister shall not confer with a witness while such witness is under cross-examination without prior leave of the other parties or the Court.

### **IV. SETTLEMENTS/NEGOTIATIONS**

4.20 A Practising Barrister, in pursuit of the settlement of any case or matter, may negotiate only with the legal practitioner retained by the other party, or with the duly authorised agent of the insurer of the other party. In the event that the other party does not have legal representation, a Practising Barrister may, in the presence of his client's solicitor if instructed in this manner, negotiate with the following persons:

- (i) the other party directly;
- (ii) the duly authorised agent of the insurer of the other party;
- (iii) where the other party is a body corporate, its servants or agents.

4.21 Notwithstanding the foregoing, a Practising Barrister should not, save in exceptional circumstances, negotiate with any other person holding himself or herself out to be the agent of a party who does not have legal representation. Where such a negotiation is undertaken, appropriate steps should be taken to establish that the said agent is in fact duly authorised to act on behalf of the said party.

- 4.22 Where the other party or parties to a case are legally represented, a Practising Barrister may not discuss the merits of a case with any or all of the parties of the other side without the consent of and presence of both his or her own client or his or her own client's solicitor and the other side's legal representatives.
- 4.23 Where a Practising Barrister receives on behalf of a client an offer of settlement and the client is available for consultation and to instruct him or her, he or she, in the presence of the client's solicitor if instructed in this manner, shall inform the client fully of all the terms of the offer. Where such an offer is received and the client is not available for direct consultation, the Practising Barrister shall communicate all the terms offered in full to the client's solicitor to enable the solicitor to communicate the terms in full to the client. Should a Practising Barrister become aware following such communication that a solicitor has failed to communicate the terms of an offer in full to the client, he or she shall take all reasonable steps to ensure that the offer is communicated in full to the client and that the client is made aware of all relevant information to enable the client to give informed instructions in the matter.

## **V. CRIMINAL CASES**

### **Conflicts**

- 4.24 A Practising Barrister who has undertaken to defend a person charged with a criminal offence should not undertake any commitment which conflicts with his or her duty to that person.
- 4.25 A Practising Barrister should not accept a brief in a criminal case "subject to commitments". Once a criminal brief is accepted (whether under Legal Aid or otherwise), it should take priority over all other professional commitments and, subject to the provisions of the Code, the brief may not be returned or handed over and must be followed through to the end even though it takes a course not anticipated when the brief was originally accepted.
- 4.26 A Practising Barrister who holds a defence brief in a criminal matter and also another brief, both of which require the barrister to appear on a particular day, must return the other brief as soon as possible, unless he or she becomes aware of the appearance being required on that day in the first brief after the Practising Barrister was committed to appear on that day in the other



brief. In such case, the Practising Barrister may return the criminal brief to the instructing solicitor and should do so promptly.

4.27 A Practising Barrister may appear for more than one defendant in a criminal trial provided he or she has satisfied himself or herself that there is no conflict of interest, and that the defendants in question have each, having been informed of his or her entitlement to be represented by a separate legal practitioner, independently agreed to such an arrangement.

### **Withdrawal**

4.28 Notwithstanding any other provisions of this Code, in accordance with the provisions of Section 215 of the Act, a Practising Barrister who has accepted instructions to appear in court on behalf of a client who is in custody may not withdraw from the client's case without obtaining permission from the court before which that client is next scheduled to appear.

### **Instructions Required**

4.29 It is improper for a Practising Barrister to conduct a criminal defence unless the following requirements have been met by his or her client's solicitor:

- (a) that they receive their instructions within a reasonable period of time in advance of the date of trial, which instructions include:
  - (i) the book of evidence;
  - (ii) a statement of the accused taken by the solicitor;
  - (iii) a copy of the indictment; and
  - (iv) the statements of any witnesses to be called on behalf of the accused;and
- (b) that any proofs advised have been carried out.

However, it shall not be improper for a Practising Barrister to act in the conduct of a criminal defence notwithstanding the failure of the instructing solicitor to meet these requirements if the accused is on bail and the trial cannot be adjourned, or if the accused is in custody and the consequence of the Practising Barrister not acting on behalf of the accused would be that the accused will not be represented by any barrister during the trial.

### **Presence during trial**

- 4.30 Save where this Code expressly provides otherwise, a Practising Barrister acting for the defence has a duty to be present throughout the trial and if, due to any unforeseen circumstances, he or she has to be temporarily absent, it is his or her duty to see that the accused person is not at any stage unrepresented and such Practising Barrister shall be absent from any part of the trial only with the consent of his or her client's solicitor. If the accused is represented by two Practising Barristers, both may not be absent at the same time.
- 4.31 Where, after the conclusion of the opening speech by the prosecution, a defending Practising Barrister is satisfied that during a specific part of the trial there is no serious possibility that events will occur which relate to his or her client, the Practising Barrister may, with the consent of his or her client's solicitor and the client, and having informed the judge, absent himself or herself from that part of the trial, provided that he or she arranges for another defending Practising Barrister to guard the interests of his or her client during his or her absence from the trial. A defending Practising Barrister who intends to absent himself or herself for a part of a trial shall avoid other commitments which would make it impracticable for him or her to be available to attend in Court at reasonable notice if the interests of the client so require.
- 4.32 In general, in Criminal Legal Aid matters, it is not improper for a defence Practising Barrister, with the consent of the accused, to apply on adequate notice for the adjournment of a re-trial with a remand on bail where the fees for the first trial are unpaid, but where, to the Practising Barrister's knowledge, there is a dispute as to the proper amount of the fees, the Practising Barrister should not seek an adjournment. In no circumstances should an adjournment be sought where the accused is in custody.

### **Confessions**

- 4.33 A Practising Barrister to whom a confession of guilt is made by his or her client must observe the following rules:
- i. If the confession is made before the proceedings have started, he or she may continue to act only if the accused pleads guilty or, where the accused pleads not guilty, he or she may continue to act subject to the limitations referred to in the following sub-paragraphs.

- ii. If the accused is not pleading guilty, the Practising Barrister must explain to the accused that the conduct of his or her defence will be limited in the manner as set out in sub-paragraphs iii and iv below.
- iii. A Practising Barrister must emphasise to the accused, in the presence of the accused's solicitor, that no substantive defence involving an assertion or suggestion of innocence will be put forward on his or her behalf and that, if he or she is not satisfied with this approach to the conduct of the trial, then the accused should seek other advice. A Practising Barrister should in such situation advise his client's solicitor to keep an attendance note in writing of the fact that the accused has been so advised by the Practising Barrister in the presence of the solicitor.
- iv. If the confession is made during the proceedings or in such circumstances that a Practising Barrister cannot withdraw from the case without compromising the position of the accused, he or she should continue to act, but subject to the limitations on the conduct of the defence being that the Practising Barrister may not set up an affirmative case inconsistent with the confession, such as by asserting or suggesting that some other person committed the offence charged or by calling evidence in support of an alibi or by calling the accused to give evidence to deny the charges or support an alibi.

### **Guilty Pleas**

4.34 The accused should be explicitly advised that the decision on whether to enter a plea of guilty is exclusively a matter for him or her. So long as an accused maintains his or her innocence, a Practising Barrister's duty lies in advising the accused on the law appropriate to his or her case and the conduct thereof. A Practising Barrister shall not put pressure on the accused to tender a plea of guilty whether to a restricted charge or not. However, it is not improper to advise an accused as to the strength of a prosecution case and likely outcome where appropriate. Where an accused wishes to enter a plea of guilty, a Prosecuting Barrister should ensure that the accused is fully aware of all of the consequences of such a plea, and he or she should advise the accused in the presence of the accused's solicitor that the instructions to plead guilty are recorded by the accused's solicitor in writing and in the presence of the accused.

- 4.35 Where an accused tells a Practising Barrister that he or she did not commit the offence with which he or she is charged, but nonetheless wishes to plead guilty, it is not improper to continue to act. The consequences of such a course should be explained to the accused and it should be further explained to the accused that what can be submitted in mitigation can only be on the basis that he or she is guilty, if such a plea is entered. In those circumstances, a Practising Barrister shall provide such advice in the presence of the accused's solicitor, where possible, and where not so possible, shall notify the accused's solicitor of the provision of such advice at the earliest possible opportunity and request that said instructions be recorded in writing, with the accused invited to endorse those instructions with his signature.
- 4.36 Where the accused is pleading guilty, a Practising Barrister should not accept instructions to tender a plea in mitigation on a basis inconsistent with the plea of guilty.

### **After Conviction**

- 4.37 If, after a finding of guilty, the prosecution is asked if there are any previous convictions and informs the court that there are none and a Practising Barrister acting for the defence knows that there are previous convictions, he or she is not under a duty to so inform the court.
- 4.38 In normal circumstances, it is the duty of a Practising Barrister acting for the defence to see the accused after conviction and sentence and if he or she is unable to do so to use his or her best endeavours to ensure that their client's solicitor does so. A Practising Barrister acting for the defence shall advise whether an appeal against conviction or sentence or both is appropriate.
- 4.39 It is the duty of a Practising Barrister acting for the defence to appear for the accused in any appeal against conviction or sentence if instructed to do so, unless such barrister has advised the accused that he or she has no reasonable prospect of success on appeal and has advised against an appeal and the accused has appealed despite the advice of such barrister. In that event such barristers are relieved of any obligation to appear at the appeal.

### **Prosecuting Barristers**

- 4.40 It is not the duty of a Practising Barrister acting for the prosecution to obtain a conviction by all means at his or her command but rather he or she shall lay before the jury fairly and

impartially the whole of the facts which comprise the case for the prosecution and shall assist the Court with adequate submissions of law to enable the law to be properly applied to the facts.

4.41 A Practising barrister acting for the prosecution must be familiar with and abide by the Guidelines for Prosecutors issued by the Office of the Director of Public Prosecutions from time to time.

### **Miscellaneous**

4.42 A Practising Barrister is under a duty to defend any accused person on whose behalf he or she is instructed irrespective of any belief or opinion he or she may have formed as to the guilt or innocence of that person.

4.43 If, during the course of a trial and prior to final sentence, the accused absconds and his or her solicitor withdraws from the case, then a Practising Barrister acting for the accused must withdraw. If, for any reason, the accused's solicitor does not withdraw from the case, a Practising Barrister acting for the accused retains an absolute discretion whether or not to continue to act. If he or she does continue he or she should conduct the case as if his or her client were still present in court but has decided not to give evidence. He or she will be free to use any material contained in his or her brief and may cross-examine witnesses for the prosecution or call witnesses for the defence.

## **VI. Drafting Documents**

4.44 A Practising Barrister must not devise facts which will assist in advancing his or her client's case and must not draft any pleading, witness statement, affidavit, notice of appeal or any other document containing any statement of fact or contention which is not supported by his or her client's instructions.

4.45 A Practising Barrister must have regard to the obligation not to coach a witness when drafting any letter, pleading, witness statement, affidavit, notice of appeal or any other document.

- 4.46 A Practising Barrister shall not draft a witness statement or affidavit containing any statement of fact other than evidence which he or she reasonably believes the witness would give if the witness were giving evidence orally.
- 4.47 Nothing in the foregoing rules shall prevent a Practising Barrister from drafting a document containing statements as to formal matters or uncontroversial facts, included by him or her, subject to confirmation of their accuracy by the client or witness.
- 4.48 A Practising Barrister shall not settle a pleading claiming fraud without express instructions and without having satisfied himself or herself that there is or will be available at the trial of the action evidence to support such a claim.
- 4.49 A Practising Barrister shall not settle a pleading claiming professional negligence without express instructions. Save in a case of alleged professional negligence on the part of a Barrister or solicitor, a Practising Barrister ought not to settle a pleading claiming professional negligence unless he or she has satisfied himself or herself that expert evidence is or will be available to support such claim. In certain circumstances, such as when the time for issuing proceedings is in danger of expiring, a Practising Barrister may settle pleadings without such expert evidence, but should advise that proceedings should issue without being served until the required expert evidence is available.
- 4.50 Where two or more Practising Barristers have been retained in a case, it is desirable that at least one of such barristers should settle the pleadings.
- 4.51 Nothing in this rule shall preclude a Practising Barrister from drafting or settling pleadings or other documents which merely deny allegations of fact made against his or her clients, save in any document that is required by law to be true.

## **PART E                      BARRISTERS IN LEGAL PARTNERSHIPS**

### **I.        General**

### **II.      Data Protection / Confidentiality**

### **III.     Transparency**

#### **I.        GENERAL**

5.1 A Practising Barrister in a legal partnership is subject to every obligation and requirement of this Code which is generally applicable to a barrister.

5.2 A Practising Barrister in a Legal Partnership is subject to every provision of Parts B, C, and D and specifically and for the avoidance of doubt, must:

- (A) Satisfy professional indemnity requirements of Part B;
- (B) Comply with all continuing legal education requirements;
- (C) Not receive or handle client money securities or other assets other than by receiving payment of remuneration;
- (D) Ensure that his name is properly recorded on the Roll of Practising Barristers;
- (E) Pay such levy as is required under the Act.

5.3 A Practising Barrister who is a member of the Legal Partnership must ensure that he complies with the fundamental obligations of Part C, including but not only the obligations of independence.

5.4 A Practising Barrister who is a member of a Legal Partnership is also subject to the obligations applicable to Self-Employed Barristers that are contained in Part D of this Code, including those related to managing conflicts of interest.

## **II. DATA PROTECTION**

5.5 A Practising Barrister working in a Legal Partnership is subject to the same requirements and obligations to protect the client's data and confidentiality that are set out in Part C above.

5.6 A Practising Barrister working in a Legal Partnership shall ensure that he or she assists the Legal Partnership in complying with all relevant legal and regulatory requirements placed on the entity in respect of data protection and client confidentiality.

## **III. TRANSPARENCY**

5.7 A Practising Barrister working in a Legal Partnership shall ensure that every letter, communication and publication discloses that the barrister is a partner or employee of the Legal Partnership, as the case may be, and includes the names of the other legal practitioners working in the Legal Partnership.



## Appendix 1

### Section 2, Legal Services (Regulation) Act, 2015 – Relevant Definitions

*“practising barrister” means a person who—*

- (a) is a qualified barrister, and*
- (b) provides, or holds himself or herself out as providing, legal services as a barrister—*
  - (i) whether or not for a fee,*
  - (ii) whether or not under a contract of service or a contract for services, and*
  - (iii) whether or not, in so doing, he or she describes himself or herself as a, or otherwise uses the title of, “barrister”, “barrister-at-law” or “counsel”;*

*“qualified barrister” means a person who—*

- (a) has been admitted by the Honorable Society of King’s Inns to the degree of Barrister-at-Law or has been called to the Bar of Ireland, other than where, subsequent to his or her being admitted to that degree or being so called—*
  - (i) he or she has been admitted as a solicitor,*
  - (ii) he or she, before the date on which Part 6 comes into operation, has been disbarred by the Benchers of the Honorable Society of King’s Inns, where that disbarment remains in effect, or*
  - (iii) his or her name has been struck off the roll of practising barristers or the roll of solicitors by the High Court, which order remains in effect,*
- or,*
- (b) is a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers’ Establishment) Regulations 2003 ( S.I. No. 732 of 2003 );*

*A person provides legal services as a barrister where he or she does one or more of the following*

- (i) In relation to proceedings before a court, tribunal or forum for arbitration, whether in the State or in another jurisdiction, or the Personal Injuries Assessment Board-*
- (ii) represents another person before that court, tribunal, forum or Board in those proceedings,*

- (iii) prosecutes or defends such proceedings on behalf of another person,*
- (iv) advises another person in relation to the conduct of the proceedings,*
- (v) represents and advises another person for the purposes of arriving at or giving effect to any settlement in the proceedings, or*
- (vi) draws or drafts documents for another person in contemplation of, ancillary to or in connection with, those proceedings;*
- (vii) Provides legal advice to another person;*
- (viii) Draws or drafts legal documents for another person that have the purpose of securing or transferring for a person a legal right or entitlement;*
- (ix) Represents or acts for another person in a situation where legal rights or obligations of a person are being, or are likely to be, created or such rights or obligations are, or are likely to be, in dispute.*

*“legal advice” means any oral or written advice-*

- (a) on the application of the law (whether the law of the State, another state or the European Union, international law, or a combination of these) to any particular circumstances that have arisen or may arise in relation to a person, and*
- (b) as to any actions that might appropriately be taken by or on behalf of a person (whether the person referred to in paragraph (a) or another person) having regard to the application of the law to those circumstances,*

*but does not include an opinion on the application of the law provided by the person to another person in the course of-*

- (i) lecturing in or teaching an area of law, as part of a course of education or training,*
- (ii) writing or editing a book, report or article, or*
- (iii) carrying out research in an area of the law, for the purpose of enhancing the other person’s knowledge of the area concerned.*