

CODE OF PRACTICE

for

PRACTISING BARRISTERS

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

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PART 1 PRELIMINARY

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 setting and improvement of standards in the provision of legal services by practising barristers

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

HEREBY ISSUES THIS 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 setting and improvement of standards in the provision of legal services, within the meaning of the Act, by practising barristers in the State.
- 1.2 This Code will have effect from 26th of September 2024.
- 1.3 This Code does not replace the Code of Conduct for the Bar of Ireland, the Professional Code of the Honorable Society of King’s Inns or any other professional code to which practising barristers may be subject, save that, where a provision of a professional code conflicts with a provision of this Code, this Code shall prevail for the purposes of the Act. Where a provision of this Code is at variance with the Act, the Act shall prevail.
- 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 they meet the requirements of this Code.
- 1.5 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 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 King's Inns (which is applicable to all Qualified Barristers).

II. Purpose of Code

- 1.6 The purpose of this Code is to set out 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

- 1.7 The Code applies to all legal practitioners who come within the definition of practising barrister in the Act. For the avoidance of doubt, this Code applies to every practising barrister, whether he or she is a member of a professional body within the meaning of the Act or not. The full text of the relevant provisions of the Act which define a "practising barrister" is included in the Appendix to this Code.

PART 2 REQUIREMENTS TO PRACTISE AS A BARRISTER

I. Roll of practising barristers

- 1.1 A Qualified Barrister who intends to provide legal services as a practising barrister must ensure that their 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 their 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. Professional Indemnity Insurance

- 2.3 Every practising barrister, whether self-employed or a partner or employee in an organisation or entity, to include a legal partnership or a limited liability partnership within the meaning of the Act, must have in place a policy of professional indemnity insurance in respect of the legal services being provided by them 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 must comply with such regulations as are made by the Authority.

PART 3 GENERAL OBLIGATIONS

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 other body, a practising barrister must not deceive or knowingly mislead the court or other body, which duty prevails over any conflicting duty owed to their 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 their client; and,
 - (iii) maintaining proper standards of work.
- 3.4 A practising barrister must act ethically and honestly at all times in the course of exercising their profession.
- 3.5 In the exercise of their profession a practising barrister must act respectfully and professionally in their interactions with the Judiciary, court personnel, other legal practitioners and members of the public.
- 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 and/or as provided for under any other legislative provision which obligates the LSRA to act in a supervisory, regulatory or enforcement role as to other legal obligations imposed on practising barristers.
- 3.8 In providing services to a client, a practising barrister must:
- (i) respect the privileged and confidential relationship with the client;
 - (ii) provide such services competently, efficiently, professionally, and in a timely manner;
 - (iii) at all times treat a client with respect and courtesy;
 - (iv) not act in a discriminatory manner;
 - (v) promote, protect and uphold by all proper and lawful means their client's best interests, without regard to their own interests or any consequences to themselves or any other person;
 - (vi) maintain the confidentiality of the client's information and affairs; and,
 - (vii) exercise independent professional judgement on the client's behalf.

II. Accepting instructions

- 3.9 The provisions on accepting instructions set out hereunder are not applicable to practising barristers in employment, save in the case of barristers employed by legal partnerships.
- 3.10 A practising barrister should not accept instructions to act in a matter if they know, at the time at which the instructions are given, that they are not available to so act.
- 3.11 A practising barrister should not accept instructions to act in a matter which they believe to be beyond their competence.
- 3.12 In contentious matters, as defined in the Act, a practising barrister shall not take instructions directly from a client. However, in a matter other than a contentious matter a practising barrister may accept instructions from a person who is not a solicitor.

Save where provided in this Code it is undesirable for practising barristers to consult with a client or their representative in any matter 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.

- 3.13 A practising barrister shall not accept instructions to act in a matter, if their capacity to represent the client's interests, independently and impartially and to comply with the provisions of this Code in acting in the matter, is compromised.
- 3.14 A practising barrister shall not accept instructions which would require them to act other than in accordance with law or with the provisions of this Code.
- 3.15 A practising barrister may be justified in refusing to accept instructions where a conflict of interest arises or is likely to arise or where they possess relevant or confidential information or where there are other special circumstances. (The rules governing conflicts of interest are addressed in more detail in section IX 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 they are aware that precludes or may preclude them from acting in the matter.
- 3.16 A practising barrister ought not to accept instructions if they would be embarrassed in the discharge of their duties because they have 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 they are in possession of material information entrusted to them 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 they have accepted such instructions, they should not continue to act.
- 3.17 A practising barrister must inform their instructing solicitor (or client if receiving instructions directly) promptly, if it becomes apparent that they are unlikely to be able to attend to their instructions or if there is likely to be a substantial delay in attending to them. In particular, a practising barrister must inform the instructing solicitor (or client if receiving instructions directly) immediately where there is an appreciable risk that they may not be able to undertake the case in which they have received a brief, and they must in any event return that brief in sufficient time to allow their client to make alternative arrangements regarding legal representation.
- 3.18 If it is necessary for a practising barrister to return a brief because of conflicting commitments the barrister should return the brief which they last accepted unless the

solicitor in the case in which they were earlier retained (or client in the event that they were instructed directly) consents to them doing otherwise.

III. Moneys of clients

- 3.19 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 or limited liability partnership.

IV. Protection of data / Client confidentiality

- 3.20 A practising barrister must maintain the confidentiality of each client's information and 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 them by or on behalf of their client. Furthermore, they shall not use such information to their client's detriment or to their 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 their professional duties including (but not limited to) disclosure to their confidential assistants, secretaries, support staff or researchers to the extent necessary and subject to appropriate obligations of confidentiality binding those persons.
- (ii) disclosing information to which the client gives informed consent;
- (iii) communicating such information as is necessary to their professional indemnifier;
- (iv) providing the Authority, or any person duly authorised by the Authority to perform functions under the Act, with all necessary information, subject to the provisions of the Act, to enable the practising barrister to answer enquiries, accusations or complaints made against them or any other legal practitioner;

- (v) providing any professional body performing supervisory or disciplinary functions, with all necessary information to enable the practising barrister to answer enquiries, accusations or complaints against them or any other legal practitioner;
- (vi) disclosing information, subject to the provisions of the Act, to their own legal advisers and representatives or those of any other legal practitioner of or against whom enquiries, accusations or complaints have been made to or by the Authority, any person duly authorised by the authority, any professional body performing supervisory or disciplinary functions or in legal proceedings;
- (vii) disclosing information to their pupil for the purposes of their pupillage;
- (viii) in the case of practising barristers in employment, disclosing information in an appropriate manner to officers, employees or agents (including other legal practitioners) of their employer or persons related to their employer (including parent undertakings, holding companies and subsidiaries), without prejudice to relevant statutory or contractual obligations; or
- (ix) disclosing to the appropriate person(s) such information as is otherwise required by law.

- 3.21 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 their duty of confidentiality will not be breached.
- 3.22 A practising barrister may not permit any recording, by electronic or by any other means, of any privileged or confidential conversation between them and their solicitor, client or other person without the authority of the client.
- 3.23 Insofar 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 such matter stored in electronic form should be subject to a proper level of encryption.
- 3.24 A practising barrister must take reasonable precautions to maintain the confidentiality of all confidential documents placed in their possession, even when left in places to which only other legal practitioners have access.

- 3.25 The papers in any brief or instructions delivered to a practising barrister are the property of the client. A practising 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 their retainer, a practising barrister should return the papers either directly to the client or to the instructing solicitor (if there is an instructing solicitor), unless otherwise agreed.
- 3.26 A practising barrister, when speaking, writing or broadcasting for the public at large on a matter relating to the practices of the Bar, the courts or the administration of justice shall be under a duty to ensure, as far as possible, that their statements are legally and factually correct.
- 3.27 A practising barrister when making any public comment upon any case, including a case in which a practising barrister has been briefed or instructed, must strictly observe the rules and requirements of this Code including, but not limited to, and as applicable, acting with independence and integrity and maintaining the confidentiality of their client's information and affairs.
- 3.28 A practising barrister is at all times required to ensure that they comply with applicable data protection requirements.

V. Advertising

- 3.29 A practising barrister may only advertise in a manner that is permitted by Regulations made by the Authority pursuant to section 218 of the Act.

VI. Cooperation with the Authority

- 3.30 A practising barrister is required to cooperate fully with the Authority in respect of the discharge of its functions.
- 3.31 A practising barrister shall, in accordance with section 135(5A) of the Act, not later than 30 days after the date on which the change occurred, notify the Authority of any changes to the information notified by them for the purpose of inclusion on the roll of practising barristers, and shall, in accordance with section 135A of the Act, provide the Authority with information relating to an address for correspondence.

3.32 A practising barrister shall immediately report to the Authority:

- (i) a conviction for an arrestable offence;
- (ii) a conviction for a criminal offence outside the State which, if committed within the State, would be an arrestable offence;
- (iii) their suspension or disbarment by the Benchers of the Honorable Society of King's Inns; or,
- (iv) their disbarment, or any restriction or condition placed on their provision of legal services, by a legal regulatory authority in any other jurisdiction in which they have practised or continue to practise.

VII. Continuing legal education

3.33 A practising barrister must undertake the continuing education and professional development necessary to ensure an adequate level of knowledge and competence in their 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 they are a member.

VIII. Levies

3.34 A practising barrister must comply in a timely manner with any levy assessment notice issued by the Authority to them or any requirement imposed on them by a professional body of which they are a member to contribute to the discharge of a levy assessment notice issued by the Authority to that professional body.

3.35 A practising barrister who is in the full time service of the State is not obliged to pay a levy.

IX. Conflicts of interest

- 3.36 A practising barrister may not appear as counsel:-
- (i) in any matter in which they are a party or have a significant pecuniary interest;
 - (ii) either for or against any Local Authority of which they are 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 barrister to provide legal services to their employer; or,
 - (iv) in any matter in which they are likely to be a witness. If, being engaged in a case, it becomes apparent that they are likely to be a witness on a question of fact, they should not continue to appear if they can retire without jeopardising their client's interests.
- 3.37 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 they shall advise the person duly authorised to provide the instructions as to whether any of the clients should be separately advised and represented.
- 3.38 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 discuss the possible conflict of interest with the instructing solicitor.

If following this discussion the practising barrister is still of the view that there is a conflict of interest, they should give advice to that effect:

- (i) at a consultation at which the client and the solicitor are both present;
- (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 their obligations in this regard, must provide the advice to the client directly and in writing.

X. Relationship with client

- 3.39 A practising barrister who is subject to offensive behaviour by a client must continue to act for the client. If however their professional conduct is being impugned or the trust of the client in the barrister's professionalism has been thereby undermined they can withdraw from the case provided that the withdrawal will not have the effect of jeopardising the client's interests.
- 3.40 A practising barrister may not return their brief merely on the grounds that their client would not accept their advice on a settlement offered but they shall continue with the case if their client wishes it to be pursued.
- 3.41 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 they do not pursue the case or the argument in question provided they 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.
- 3.42 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 they are 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

- 3.43 The provisions on fees set out hereunder are not applicable to practising barristers in employment.
- 3.44 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 them (whether or not it involves an appearance in court) on any basis or by any method they think fit, provided that such basis or method is permitted by law.

- 3.45 In assessing whether the fee is reasonable, regard should be had to the relevant factors, including the following:
- (i) the complexity and novelty of the issues involved in the legal work;
 - (ii) the skill or specialised knowledge relevant to the matter which the barrister has applied to the matter;
 - (iii) the time and labour that the barrister has reasonably expended on the matter;
 - (iv) 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;
 - (v) the place and circumstances in which the matter was transacted;
 - (vi) the number, importance and complexity of the documents that the barrister was required to draft, prepare or examine;
 - (vii) 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;
 - (viii) whether or not there is an agreement to limit the liability of the barrister; and/or,
 - (ix) 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.
- 3.46 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 their client, other than in relation to a matter seeking only to recover a debt or liquidated demand.
- 3.47 The fees charged by practising barristers shall not fix the fees charged by a junior counsel as a fixed percentage or proportion of the fees paid to senior counsel.
- 3.48 Where a practising barrister has accepted a brief on the basis that their fee will be discharged before appearing for their client, such barrister is entitled to withdraw from the case in the event that such agreed fee is not paid by the agreed date.
- 3.49 Where a practising barrister is asked to provide an estimate of the fees that might be charged if the barrister is 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.

- 3.50 Nothing in this Code shall operate so as to inhibit a practising barrister's entitlement to act for a client pro bono.

PART 4 CONDUCT OF WORK

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 3 and must also comply with the specific standards and rules contained in this Part.

II. Conduct of Cases.

- 4.2 The Rules set out in this section govern a practising barrister's obligations when appearing before a court, an arbitrator or any other person or persons exercising judicial or quasi-judicial functions, or in a mediation, or before the sole member or members of a tribunal appointed under statute or by the Oireachtas or any other investigating body.
- 4.3 A practising barrister when conducting proceedings is responsible for the conduct and presentation of their client's case, and must exercise the independent judgement called for during the case.
- 4.4 A practising barrister when conducting a case must not assert their personal opinion of the facts or the law unless expressly invited to do so 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 they are aware and which they believe to be directly relevant, whether or not it favours their client's position.

- 4.7 A practising barrister must in every case use best endeavours to avoid unnecessary expense and waste of time.
- 4.8 In the event that a practising barrister is aware of, or becomes aware of, a scheduling difficulty that may compromise their ability to fully perform the legal services in respect of which they are instructed, they must immediately notify their 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 their capacity to fully perform the legal services (without prejudice to the practising barrister's right to be paid for the work previously done).
- 4.9 A practising barrister who accepts a brief must attend the trial or hearing, save that if they become unavailable for such trial or hearing, they 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 practising barrister not being in attendance for all or part of the trial or hearing.
- 4.10 A practising barrister shall not approach a judge or other decision maker to discuss with them any matter then pending or at hearing before them without the consent of such person and the opposing lawyer or lay litigant being present during such approach or having consented to same occurring without their presence.
- 4.11 A practising barrister shall not before or during the trial of any case discuss the case with the judge or other decision maker in private save that, if it becomes necessary to discuss the case, they shall do so only with the consent of the judge or decision maker 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, they 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 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 their client.

- 4.14 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 oral, with regard to any matter in which they are professionally engaged, to any court, other body or to any other party or any representative thereof.
- 4.15 A practising barrister must take appropriate steps to correct any misleading statement made by them to the court or other body as soon as possible after they become aware that the statement is misleading.
- 4.16 Where a practising barrister becomes aware that any false or misleading statement of fact has been made by or on behalf of their 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 their client which, though true when made, has become false or misleading, the practising barrister shall:
- (i) 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,
 - (ii) 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 their 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.

- 4.17 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 be obliged, when appearing before or acting for such tribunal, to comply with the rules governing conduct in court.

4.18 The following is the order of precedence between practising barristers in court and in the conduct of professional business:

- (i) The Attorney General;
- (ii) Senior Counsel in the order of their Call to the Inner Bar;
- (iii) Junior Counsel in the order of their Call to the Bar.

III. Rules regarding witnesses

4.19 A practising barrister may not coach a witness in regard to the evidence to be given by that witness.

4.20 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

4.21 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 their 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; and/or,
- (iii) where the other party is a body corporate, its servants or agents.

4.22 Notwithstanding the foregoing, a practising barrister should not, save in exceptional circumstances, negotiate with any other person holding themselves 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.

- 4.23 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 their own client or their own client's solicitor and the other side's legal representatives.
- 4.24 Where a practising barrister receives on behalf of a client an offer of settlement and the client is available for consultation and to instruct them, the barrister, 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

- 4.25 A practising barrister who has undertaken to defend a person charged with a criminal offence should not undertake any commitment which conflicts with their duty to that person.
- 4.26 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 if it takes a course not anticipated when the brief was originally accepted.
- 4.27 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 they become 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 as soon as possible and must do so in sufficient time to ensure that another barrister may be properly instructed in the matter.

- 4.28 A practising barrister may appear for more than one defendant in a criminal trial provided they have satisfied themselves that there is no conflict of interest, and that the defendants in question have each, having been informed of their entitlement to be represented by a separate legal practitioner, independently agreed to such an arrangement.

Instructions required

- 4.29 It is improper for a practising barrister to conduct a criminal defence unless the following requirements have been met by their client's solicitor:

- (i) that they receive their instructions within a reasonable period of time in advance of the date of trial, which instructions include:
 - (a) the book of evidence;
 - (b) a statement of the accused taken by the solicitor;
 - (c) a copy of the indictment; and
 - (d) the statements of any witnesses to be called on behalf of the accused;and,
- (ii) 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, has to be temporarily absent, it is their 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 their 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 their client, the practising barrister may, with the consent of their client's solicitor and the client, and having informed the judge, absent themselves from that part of the trial, provided that they arrange for another defending practising barrister to guard the interests of their client during their absence from the trial. A defending practising barrister who intends to absent themselves for a part of a trial shall avoid other commitments which would make it impracticable for them to be available to attend in court at reasonable notice if the interests of the client so require.

Confessions

- 4.32 A practising barrister to whom a confession of guilt is made by their client must observe the following rules:
- (i) If the confession is made before the proceedings have started, they may continue to act only if the accused pleads guilty or, where the accused pleads not guilty, they 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 their 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 their behalf and that, if they are 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 their

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, they 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

- 4.33 The accused should be explicitly advised that the decision on whether to enter a plea of guilty is exclusively a matter for the accused. So long as an accused maintains innocence, a practising barrister's duty lies in advising the accused on the law appropriate to their 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 should advise that the instructions to plead guilty are recorded by the accused's solicitor in writing and in the presence of the accused.
- 4.34 Where an accused tells a practising barrister that they did not commit the offence with which they are 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 they are 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 their signature.

- 4.35 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

- 4.36 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, they are not under a duty to so inform the court.
- 4.37 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 they are unable to do so to use their 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.
- 4.38 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 they have 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

- 4.39 It is not the duty of a practising barrister acting for the prosecution to obtain a conviction by all means at their command but rather they 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.

Miscellaneous

- 4.40 A practising barrister is under a duty to defend any accused person on whose behalf they are instructed irrespective of any belief or opinion they may have formed as to the guilt or innocence of that person.
- 4.41 If, during the course of a trial and prior to final sentence, the accused absconds and their 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 they continue to act they should conduct the case as if their client were still present in court but has decided not to give evidence. They will be free to use any material contained in their brief and may cross-examine witnesses for the prosecution or call witnesses for the defence.

VI. Drafting documents

- 4.42 A practising barrister must not devise facts which will assist in advancing their 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 their client's instructions.
- 4.43 A practising barrister shall not draft a witness statement or affidavit containing any statement of fact other than evidence which they reasonably believe the witness would give if the witness were giving evidence orally.
- 4.44 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 them, subject to confirmation of their accuracy by the client or witness.
- 4.45 A practising barrister shall not settle a pleading claiming fraud without express instructions and without having satisfied themselves that there is or will be available at the trial of the action evidence to support such a claim.
- 4.46 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 they are satisfied 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.

4.47 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.

4.48 Nothing in these rules shall preclude a practising barrister from drafting or settling pleadings or other documents which merely deny allegations of fact made against their clients, save in any document that is required by law to be true.

PART 5 BARRISTERS IN LEGAL PARTNERSHIPS

I. General

5.1 A practising barrister in a legal partnership is subject to every obligation and requirement of this Code.

5.2 For the avoidance of doubt, a practising barrister in a legal partnership or a limited liability partnership:

(a) Must satisfy the professional indemnity requirements of Part 2;

(b) Must comply with all continuing legal education requirements;

(c) Whether as partner in a legal partnership or as an employee of a legal partnership, shall not hold moneys of clients;

(d) Must ensure that their name is entered on the roll of practising barristers;

(e) Must pay such levy as is required under the Act;

(f) Must ensure that they comply with the fundamental obligations of Part 3, including but not only the obligations of independence;

(g) Must ensure that they comply with the obligations regarding the managing of conflicts of interest.

5.3 A practising barrister in a legal partnership shall not engage in any act or omission that interferes with a solicitor's obligations under the Solicitors Accounts Regulations in force at the applicable time.

II. Data Protection / Confidentiality

5.4 A practising barrister in a legal partnership, for the avoidance of doubt, is subject to the same requirements and obligations to protect the client's data and confidentiality that are set out in Part 3 above.

5.5 A practising barrister in a legal partnership shall ensure that they assist the legal partnership in complying with all relevant legal and regulatory requirements placed on the legal partnership in respect of data protection and client confidentiality.

III. Transparency

5.6 A practising barrister in a legal partnership shall ensure that every communication or publication that is issued in the name and/or on behalf of the legal partnership discloses that the practising barrister is a partner or employee of the legal partnership, as the case may be, and includes the names of every partner of the legal partnership and whether each such partner is a practising solicitor or a practising barrister.

PART 6 BARRISTERS IN EMPLOYMENT

6.1 This Code applies to a practising barrister in employment, where applicable.

6.2 For the avoidance of doubt, a practising barrister in employment:

(a) Must satisfy the professional indemnity requirements of Part 2;

(b) Must comply with all continuing legal education requirements;

- (c) Shall not hold moneys of clients in the course of providing legal services as a practising barrister;
- (d) Must ensure that their name is entered on the roll of practising barristers;
- (e) Must pay such levy as is required under the Act.

Appendix

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 than one 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 -*
 - I. represents another person before that court, tribunal, forum or Board in those proceedings,*
 - II. prosecutes or defends such proceedings on behalf of another person,*
 - III. advises another person in relation to the conduct of the proceedings,*

- IV. *represents and advises another person for the purposes of arriving at or giving effect to any settlement in the proceedings, or*
- V. *draws or drafts documents for another person in contemplation of, ancillary to or in connection with, those proceedings;*
- (ii) *provides legal advice to another person;*
- (iii) *draws or drafts legal documents for another person that have the purpose of securing or transferring for a person a legal right or entitlement;*
- (iv) *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.*

Dr. Thakur

26 September 2024