

APPENDIX A

THE ADVOCATES (PROFESSIONAL CONDUCT) REGULATIONS

Statutory Instrument 267.—2.

The Advocates (Professional Conduct) Regulations. (Under section 77(1)(a) of the Act.)

1. Citation.

These Regulations may be cited as the Advocates (Professional Conduct) Regulations.

2. Manner of acting on behalf of clients.

- (1) No advocate shall act for any person unless he or she has received instructions from that person or his or her duly authorized agent.
- (2) An advocate shall not unreasonably delay the carrying out of instructions received from his or her clients and shall conduct business on behalf of clients with due diligence, including, in particular, the answering of correspondence dealing with the affairs of his or her clients.

3. Withdrawal from cases.

- (1) An advocate may withdraw from the conduct of a case on behalf of a client where.—
 - (a) the client withdraws instructions from the advocate;

- (b) the client instructs the advocate to take any action that may involve the advocate in proceedings for professional misconduct or require him or her to act contrary to his or her advice to the client;
- (c) the advocate is duly permitted by the court to withdraw;
- (d) the client disregards an agreement or obligation as to the payment of the advocate's fees and disbursements.

(2) Whenever an advocate intends to withdraw from the conduct of a case, the advocate shall.—

- (a) give his or her client, the court and the opposite party sufficient notice of his or her intention to withdraw; and
- (b) refund to his or her former client such proportionate professional fees as have not been earned by him or her in the circumstances of the case.

4. Advocate not to prejudice former client.

An advocate shall not accept instructions from any person in respect of a contentious or non-contentious matter if the matter involves a former client and the advocate as a result of acting for the former client is aware of any facts which may be prejudicial to the client in that matter.

5. Duty to appear in court, etc.

(1) Every advocate shall, in all contentious matters, either appear in court personally or brief a partner or a professional assistant employed by his or her firm to appear on behalf of his or her client.

(2) Where it is not possible for the advocate so to appear personally or to brief a partner or professional assistant employed by his or her firm, he or she shall brief another advocate acceptable to the client so to appear; except that where the advocate considers the proceedings in question to be of minor decisive value to the final outcome of the case, he or she shall not be required to obtain the client's acceptance of such other advocate.

6. Advocate to be personally responsible for client's work.

An advocate shall be personally responsible for work undertaken on behalf of a client and shall supervise or make arrangements for supervision by another advocate who is a member of the same firm of all work undertaken by nonprofessional employees.

7. Nondisclosure of client's information.

An advocate shall not disclose or divulge any information obtained or acquired as a result of his or her acting on behalf of a client except where this becomes necessary in the conduct of the affairs of that client, or otherwise required by law.

8. Advocate to account for money of a client.

(1) An advocate shall not use money held on behalf of a client either for the benefit of himself or herself or of any other person.

(2) An advocate shall make full disclosure to his or her client of the amounts and nature of all payments made to the advocate on behalf of that client and, when making any payments to the client, shall set out in writing the sums received on behalf of the client and any deductions made by the advocate from those receipts.

(3) An advocate shall return any sum or part of the sum paid to the advocate by a client as a retainer if the amount paid exceeds the value of the work done and disbursements made on behalf of the client.

9. Personal involvement in a client's case.

No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence, whether verbally or by affidavit; and if, while appearing in any matter, it becomes apparent that he or she will be required as a witness to give evidence whether verbally or by affidavit, he or she shall not continue to appear; except that this regulation shall

not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on a formal or non-contentious matter or fact in any matter in which he or she acts or appears.

10. Advocate's fiduciary relationship with clients.

An advocate shall not use his or her fiduciary relationship with his or her clients to his or her own personal advantage and shall disclose to those clients any personal interest that he or she may have in transactions being conducted on behalf of those clients.

11. Advocate not to exploit client's shortcomings.

An advocate shall not exploit the inexperience, lack of understanding, illiteracy or other personal shortcoming of a client for his or her personal benefit or for the benefit of any other person.

12. Advocate to advise clients diligently.

Every advocate shall advise his or her clients in their best interest, and no advocate shall knowingly or recklessly encourage a client to enter into, oppose or continue any litigation, matter or other transaction in respect of which a reasonable advocate would advise that to do so would not be in the best interests of the client or would be an abuse of court process.

13. Unlawful arrangement with public officers, etc.

An advocate shall not enter into any arrangement with any person employed in the public service whereby that person is to secure either the acquittal of the advocate's client, the bringing of a lesser criminal charge against that client or the varying of the evidence to be adduced by or for the prosecution except where any such arrangement is deemed to be proper practice.

14. Undertakings by an advocate.

An advocate shall not.—

- (a) give any undertaking to another advocate or any other person knowing that he or she has no authority or means of satisfying the undertaking; and
- (b) knowingly breach the terms of an undertaking.

15. Affidavits to contain truth.

An advocate shall not include in any affidavit any matter which he or she knows or has reason to believe is false.

16. Advocate to inform the court of his or her client's false evidence.

If any advocate becomes aware that any person has, before the court, sworn a false affidavit or given false evidence, he or she shall inform the court of his or her discovery.

17. Duty of an advocate to advise the court on matters within his or her special knowledge.

- (1) An advocate conducting a case or matter shall not allow a court to be misled by remaining silent about a matter within his or her knowledge which a reasonable person would realise, if made known to the court, would affect its proceedings, decision or judgment.
- (2) If an irregularity comes to the knowledge of an advocate during or after the hearing of a case but before a verdict or judgment has been given, the advocate shall inform the court of the irregularity without delay.

18. Coaching of clients.

An advocate shall not coach or permit a person to be coached who is being called by him or her to give evidence in court nor shall he or she call a person to give evidence whom he or she knows or has a reasonable suspicion has been coached.

19. Advocate not to hinder witness, etc.

An advocate shall not, in order to benefit his or her client's case in any way, intimidate or otherwise induce a witness who he or she knows has been or is likely to be called by the opposite party or cause such a witness to be so intimidated or induced from departing from the truth or abstaining from giving evidence.

20. Res sub judice.

An advocate shall not make announcements or comments to newspapers or any other news media, including radio and television, concerning any pending, anticipated or current litigation in which he or she is or is not involved, whether in a professional or personal capacity.

21. Advocate may act for client of other advocate.

(1) An advocate may act for a client in a matter in which he or she knows or has reason to believe that another advocate is then acting for that client only with the consent of that other advocate.

(2) An advocate may act for a client in a matter in which he or she knows or has reason to believe that another advocate has been acting for that client, if either.—

(a) that other advocate has refused to act further; or

(b) the client has withdrawn instructions from that other advocate upon proper notice to him or her.

22. Touting.

No advocate may directly or indirectly apply or seek instructions for professional business, or do or permit in the carrying on of his or her practice any act or thing which can be reasonably regarded as touting or advertising or as calculated to attract business unfairly, and in particular, but not derogating from the generality of this regulation.—

(a) by approaching persons involved in accidents, or the employment of others to approach such persons;

(b) by influencing persons, whether by reward or not, who by reason of their employment are in a position to advise persons to consult an advocate; and

(c) by accepting work through any person, organisation or body that solicits or receives payment or any other benefit for pursuing claims in respect of accidents.

23. Publications by advocates.

(1) Subject to subregulations (2) and (3) of this regulation, an advocate shall not knowingly allow articles (including photographs) to be published in any news media concerning himself or herself, nor shall he or she give any press conference or any press statements which are likely to make known or publicise the fact that he or she is an advocate.

(2) An advocate may answer questions or write articles that may be published in the press or in news media concerning legal topics but shall not disclose his or her name except in circumstances where the Law Council has permitted him or her so to do.

(3) Where the Law Council cannot readily convene, the chairperson of the Law Council may grant the permission referred to in subregulation (2) of this regulation to the advocate.

(4) This regulation shall not apply to professional journals or publications or to any publications of an educational nature.

24. Advocate's nameplate or signboard.

(1) An advocate may erect a plate or signboard of not more than 36 centimetres by 25.5 centimetres in size containing the word "advocate", indicating his or her name, place of business, professional qualifications, including degrees, and where applicable, the fact that he or she is a notary public or commissioner for oaths.

(2) Notwithstanding subregulation (1) of this regulation, a nameplate or signboard shall, in the opinion of the Law Council, be sober in design.

(3) No advocate shall carry on any practice under a firm name consisting solely or partly of the name of a partner who has ceased to practise as an advocate.

(4) An advocate or a firm of advocates affected by subregulation (3) of this regulation shall be allowed five years from the date of the change in the composition of the firm, in which to effect the required change in the firm name.

(5) Notwithstanding subregulation (1) of this regulation, no advocate shall include on his or her nameplate, signboard or letterhead any nonlegal professional qualifications or appointments in any public body whether the appointments are present or past.

25. Advocate not to advertise his or her name, etc.

(1) An advocate shall not allow his or her name or the fact that he or she is an advocate to be used in any commercial advertisement.

(2) An advocate shall not cause his or her name or the name of his or her firm or the fact that he or she is an advocate to be inserted in heavy or distinctive type, in any directory or guide and, in particular, a telephone directory.

(3) An advocate shall not cause or allow his or her name to be inserted in any classified or trade directory or section of such directory.

26. Contingent fees.

An advocate shall not enter into any agreement for the sharing of a proportion of the proceeds of a judgment whether by way of percentage or otherwise either as.—

(a) part of or the entire amount of his or her professional fees; or

(b) in consideration of advancing to a client funds for disbursements.

27. Advocate to advance money only for disbursements.

An advocate representing a client shall not advance any money to the client except only for disbursements connected with the case on the matter in which he or she is instructed.

28. Excessive fees, etc.

(1) No advocate shall charge a fee which is below the specified fee under the Advocates (Remuneration and Taxation of Costs) Rules.

(2) Where fees are not specified, the advocate shall charge such fees as in the opinion of the Disciplinary Committee are not excessive or extortionate.

29. Advocate to account promptly and correctly.

Every advocate shall account to his or her clients promptly and correctly for all monies held in respect of clients and in accordance with the Advocates Accounts Rules set out in the First Schedule to the Act.

30. Advocate not to engage in unbecoming trade, etc.

An advocate shall not engage in a trade or profession, either solely or with any other person, which in the opinion of the Law Council is unbecoming of the dignity of the legal profession.

31. Offences under the Advocates Act, etc.

(1) Any act or omission of the advocate, which is an offence under the Advocates Act, shall be professional misconduct for the purposes of these Regulations.

(2) Any conduct of an advocate, which in the opinion of the Disciplinary Committee, whether the conduct occurs in the practice of the advocate's profession or otherwise, is unbecoming of an advocate shall be a professional misconduct for the purposes of these.