



Law Officers' Department

Code of Conduct for Lawyers

- 1) The general purpose of this Code is to set out the rules and standards applicable to anyone working as a lawyer in the Law Officers' Department ("the Department").
- 2) For the purposes of this Code, the term "lawyer" means a person who has obtained a legal professional qualification in Jersey or elsewhere and is an employee.
- 3) It operates in addition to, and not in substitution for, the Lawyer's contract of employment and the terms and conditions applying to States Employees.
- 4) This Code applies to all lawyers and any breach of this Code will be treated as a matter of discipline.
- 5) The Attorney General and Solicitor General have the power to waive in writing, in whole or in part, conditionally or unconditionally, any of the provisions of this Code of Conduct for a particular purpose or purposes expressed in such a waiver, and to revoke such waiver conditionally or unconditionally.

Reputation

- 6) A lawyer must not engage in conduct whether at work or in their private life which is:
 - a) dishonest or otherwise discreditable;
 - b) prejudicial to the administration of justice;
 - c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute; or
 - d) likely to compromise the independence and political neutrality of the Law Officers' Department or to bring the Department into disrepute.
- 7) A lawyer must not, without the prior express permission of the Attorney General, engage directly or indirectly in any other business, occupation or profession. Such permission will not, in any case, be given if this association may adversely affect the reputation of the Law Officers' Department, the Jersey Bar or solicitor's profession or otherwise prejudice the lawyer's ability to properly fulfil their duties and responsibilities.

Standards

- 8) A lawyer must uphold the dignity and high ethical and technical standards of the legal profession.
- 9) A lawyer has an overriding duty to the Court to act with independence in the interests of justice. They must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court.
- 10) A lawyer must exercise independence of judgment and fearlessly promote and protect the best interests of the person or department they have been requested to advise and represent. They must do so without regard to their own interests or to any consequences to themselves or any other person. However, the lawyer's duty to the Court remains paramount.
- 11) A lawyer must not:
 - a) permit their absolute independence and integrity and freedom from external pressures to be compromised;
 - b) do anything (for example accept a present or pay or loan monies) in such circumstances as may lead to any inference that their independence may be compromised;
 - c) compromise their professional standards in order to please their client, the Court or a third party.
- 12) A lawyer must not act in any matter or take any instructions which, if accepted, might result in them being professionally embarrassed and for this purpose a lawyer will be professionally embarrassed if:
 - a) the instructions seek to limit the ordinary authority or discretion of a lawyer in the conduct of the proceedings or to require the lawyer to act otherwise than in accordance with the provisions of this Code;
 - b) the matter is one in which they have reason to believe that they are likely to be a witness or in which whether by reason of any connection with the client or with the Court or a member of it or otherwise it will be difficult for them to maintain a professional independence, or the administration of justice might be or appear to be prejudiced;
 - c) the client refuses to authorise them to make some disclosure to the Court which their duty to the Court requires them to make.
- 13) A lawyer should report any such matter to their manager. A lawyer must, in all their professional activities, be courteous and act promptly, conscientiously, diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the Court's time and to ensure that professional engagements are fulfilled.

The Law Officers

- 14) Ultimately, lawyers provide advice for and on behalf of the Law Officers. All lawyers should accordingly follow Law Officers' instructions and/or provide advice consistent with the Law Officers' view.

- 15) Otherwise, a lawyer is individually and personally responsible for their own conduct and for their professional work. They must exercise their own personal judgment in all their professional activities.

Drafting documents

- 16) A lawyer must not draft any statement of case, witness statement, affidavit, notice of appeal or other document containing:
- a) any contention, which they do not consider to be properly arguable, having regard to their overriding duty to assist the Court in the administration of justice. It is the lawyer, not the client, who decides what is properly arguable;
 - b) any statement of fact or contention which is not supported by the lay client or by their instructions;
 - c) any allegation of dishonesty, fraud or other improper conduct against any person (including an Advocate representing the opposing party) unless they have clear instructions to make such allegation and has before them reasonably credible material which as it stands establishes a *prima facie* case;
 - d) in the case of a witness statement or affidavit, any statement of fact other than the evidence which, in substance, according to their instructions the lawyer reasonably believes the witness would give if the evidence contained in the witness statement or affidavit were being given in oral examination;

provided that nothing in this paragraph will prevent a lawyer drafting a document containing specific factual statements or contentions included by the lawyer subject to confirmation of their accuracy by the lay client or witness.

Conduct in Court

- 17) A lawyer when conducting proceedings in Court:
- a) is personally responsible for the conduct and presentation of their case and must exercise personal judgment about the substance and purpose of statements made and questions asked;
 - b) must not make a submission which they do not consider to be properly arguable, having regard to their overriding duty to assist the Court in the administration of justice. It is the lawyer, not the client, who decides what is properly arguable;
 - c) must not, unless invited to do so by the Court or when appearing before a tribunal where it is their duty to do so, assert a personal opinion of the facts or the law;
 - d) must ensure that the Court is informed of all relevant decisions and legislative provisions of which they are aware, whether the effect is favourable or unfavourable towards the contention for which they argue;
 - e) must bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;

- f) must not adduce evidence obtained otherwise than from or through the client or invent facts which will assist in advancing the lay client's case;
- g) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify insult or annoy either a witness or some other person;
- h) must, if possible, avoid the naming in open Court of third parties whose character would thereby be impugned;
- i) must not by assertion in an oral submission or by cross examination or otherwise make any allegation of dishonesty, fraud or other improper conduct against any person (including an Advocate representing the opposing party) unless they have a clear basis to make such allegation and have reasonably credible material which as it stands establishes a prima facie case;
- j) must not by assertion in a speech impugn a witness whom they have had an opportunity to cross-examine unless in cross-examination they have given the witness a full and proper opportunity to answer the allegation;
- k) must not suggest that a victim, witness or other person is guilty of crime, fraud or misconduct or make any defamatory aspersion on the conduct of any other person unless such allegations go to a matter in issue (including the credibility of the witness) which is material to the case and appear to them to be supported by reasonable grounds.

Contact with witnesses

18) A lawyer must not:

- a) rehearse, practise or coach a witness in relation to their evidence;
- b) encourage a witness to give evidence which is untruthful, or which is not the whole truth; or
- c) except, with the consent of the Court or the representative of the opposing side, communicate directly or indirectly about a case with any witness, once that witness has begun to give evidence until the evidence of that witness has been concluded.

Documents

19) A lawyer should not obtain or seek to obtain a document, or knowledge of the contents of a document, belonging to another party other than by means of the normal and proper channels for obtaining such documents or such knowledge.

20) If a lawyer comes into possession of a document belonging to another party by some means other than the normal and proper channels (for example, if the document has come into their possession because of a mistake or inadvertence by another person or if the document appears to belong to another party, or to be a copy of such a document, and to be privileged from discovery or otherwise to be one which ought not to be in the possession of their client) they should:

- a) where appropriate make enquiries to ascertain the circumstances in which the document was obtained; and

- b) unless satisfied that the document has been properly obtained in the ordinary course of events at once return the document unread to the person entitled to possession of it.
- 21) If, having come into possession of such a document, the lawyer reads it before they realise that they ought not to, the lawyer should immediately draw this to the attention of the lawyer's manager and should inform their opponent of their knowledge of the document and of the circumstances, so far as known to them, in which the document was obtained and of their intention to use it. In the event of objection to the use of such document, it is for the Court to determine what use, if any, may be made of it but subject to that the lawyer will make such use of the document as is in their client's interests.
- 22) If, during the course of a case, a lawyer becomes aware of the existence of a document which should have been, but has not been, disclosed on discovery they should advise their professional client to disclose it forthwith.

Media

- 23) A lawyer must not, in relation to any court proceedings, express a personal opinion to the press or other media or in any other public statement upon the facts or issues arising in the proceedings.
- 24) Personal opinion may be expressed in an academic context with the prior consent of the Attorney General or Solicitor General.

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