



## Law Officers' Department

### Code of conduct for lawyers

- 1) The general purpose of this Code is to provide the requirements for working as a lawyer in the Law Officers' Department ("the Department") and the rules and standards applicable to such lawyers which are appropriate in the interests of justice and in relation to the performance of all their duties as public officers.
- 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 employed in the Department by the States of Jersey Employment Board.
- 3) It operates in addition to, and not in substitution for, the Lawyer's contract of service and the terms and conditions applying to States Employees, for the time being.
- 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 shall 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 in pursuit of his/her profession or otherwise which is:
  - i) dishonest or otherwise discreditable;
  - ii) prejudicial to the administration of Justice;
  - iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute; or
  - iv) likely to compromise the independence and political neutrality of the Law Officers' Department or to bring that 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 his/her association with the same 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 attend properly to his/her duties and responsibilities.

## Standards

- 8) A lawyer shall 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; he/she 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 whom he has been requested to advise and represent. He/she must do so without regard to his/her own interests or to any consequences to himself or any other person. However, the lawyer's duty to the Court remains paramount.
- 11) A lawyer must not:
  - a) permit his/her 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 his/her independence may be compromised;
  - c) compromise his/her professional standards in order to please his/her client, the Court or a third party.
- 12) A lawyer must not act in any matter or take any instructions which if accepted, would cause him/her to be 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 he/she has reason to believe that he is 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 him/her to maintain a professional independence or the administration of justice might be or appear to be prejudiced;
  - c) the client refuses to authorise him/her to make some disclosure to the Court which his duty to the Court requires him/her to make.
- 13) A lawyer should report any such matter to his/her manager. A lawyer must in all his/her 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.
- 14) A lawyer must not in relation to any other person discriminate directly or indirectly because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion or belief.

## **The Law Officers**

- 15) 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.
- 16) Otherwise, a lawyer is individually and personally responsible for his/her own conduct and for his/her professional work. He/she must exercise his/her own personal judgment in all his/her professional activities

## **Drafting documents**

- 17) A lawyer must not draft any statement of case, witness statement, affidavit notice of appeal or other document containing:
  - a) any contention which he/she does not consider to be properly arguable having regard to his 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 his/her instructions;
  - c) any allegation of dishonesty, fraud or other improper conduct against any person (including an Advocate representing the opposing party) unless he/she has clear instructions to make such allegation and has before him/her 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 his/her 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 shall 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**

- 18) A lawyer when conducting proceedings in Court:
  - a) is personally responsible for the conduct and presentation of his/her case and must exercise personal judgment upon the substance and purpose of statements made and questions asked;
  - b) must not make a submission which he/she does not consider to be properly arguable, having regard to his/her 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 his/her 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 he/she is aware, whether the effect is favourable or unfavourable towards the contention for which he/she argues;

- 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 he/she has a clear basis to make such allegation and has before him/her reasonably credible material which as it stands establishes a prima facie case;
- j) must not by assertion in a speech impugn a witness whom he/she has had an opportunity to cross-examine unless in cross-examination he/she has 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 him/her to be supported by reasonable grounds.

## **Contact with witnesses**

19) A lawyer must not:

- a) rehearse, practise or coach a witness in relation to his/her 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**

20) 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.

21) 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 his/her possession in consequence 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 his/her client) he/she should:

- a) where appropriate make enquiries in order 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.
- 22) If having come into possession of such a document the lawyer reads it before he/she realises that he/she ought not to, the lawyer should immediately draw this to the attention of the lawyer's manager and should inform his opponent of his/her knowledge of the document and of the circumstances, so far as known to him/her, in which the document was obtained and of his/her 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 thereto the lawyer shall make such use of the document as will be in his/her client's interests.
- 23) 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 he/she should advise his/her professional client to disclose it forthwith.

## **Media**

- 24) 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.
- 25) Personal opinion may be expressed in an academic context with the prior consent of the Attorney General or Solicitor General.

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