

6.01 Duty to act competently

- (a) A solicitor owes his client a duty to be competent to perform any legal services undertaken on the client's behalf.
- (b) A solicitor must serve his client in a conscientious, diligent, prompt and efficient manner.

Commentary

1. Competence in the context of Principle 6.01(a) goes beyond formal qualification to practise law. It has to do with a solicitor's capability to deal with the matter in question. It includes knowledge, skill, and the ability to use them effectively in the interests of a client (see Principle 5.03).
2. As members of the legal profession, solicitors are expected to be knowledgeable, skilled and capable in the practice of law. A client is entitled to assume that a solicitor has the ability and capacity to deal adequately with any legal matters undertaken on the client's behalf. A solicitor who claims to have substantial experience in a specific area of law is expected to have a higher standard of competence in that area of law.
3. A solicitor must not undertake a matter without being either competent to handle it, or able to become competent without undue delay, risk or expense to the client. This is a professional consideration and is to be distinguished from the standard of care that a court would apply for purposes of determining negligence.
4. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied and the ability to put such knowledge to practical effect.
5. A solicitor should recognize that competence for a particular task may sometimes require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields. In such a situation a solicitor should not hesitate to seek his client's instructions to consult experts. If such instructions are not forthcoming the solicitor should consider whether he is still competent to act.
6. If assistance is required, a solicitor has a duty to select a competent person to assist and thereafter continues to be bound, professionally and legally, to exercise his independent judgment in the matter. If a barrister is instructed, take particular note of Principle 12.03. A solicitor should not allow his own skill and judgment to be entirely dominated by counsel. *[Davy-Chiesman v Davy-Chiesman [1984] 1 ALL ER 321 (CA)]*.
7. Under section 59(2) of the *Legal Practitioners Ordinance* (Cap. 159), a provision purporting to exclude a solicitor's liability for negligence in an agreement for fees in contentious business will be void. In other

business, a solicitor may seek to limit his liability to his clients in accordance with Practice Direction M.

8. There is nothing to prevent a solicitor at the outset from limiting the scope of the retainer. In these circumstances, it is good practice for the limits of the retainer to be precisely defined and communicated in writing to the client.
9. In no circumstances can a solicitor exclude his liability for professional misconduct. Furthermore, a solicitor may not seek an agreement from his client to refrain from making a complaint about his professional misconduct.