



The Law Society's Code of Advocacy for Solicitor Advocates

Professional Ethics

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The Law Society's Code for Advocacy for Solicitor Advocates

PART I -- Introduction

1.1 For the purpose of maintaining the proper administration of justice this Code sets out the principles and standards to be observed by all solicitor advocates when acting as such. These obligations are in addition to and do not replace those imposed by law or required by other Law Society rules, and the *Hong Kong Solicitors' Guide to Professional Conduct*.

1.2 In this Code except where otherwise indicated:

“LPO” means the Legal Practitioners Ordinance and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

“brief” means instructions to an advocate to appear in person at or before a court;

“client” means the lay client and also (in the case of an advocate with a professional intermediary) the professional client and where the context permits includes a prospective client;

“court” means Court of First Instance, Court of Appeal and the Court of Final Appeal.

“Solicitor Advocate” means a person who has higher rights of audience under Part IIIB of the LPO; the singular includes the plural and the plural includes the singular

PART II -- Fundamental principles

2.1 Solicitor Advocates must not:

- (a) engage in conduct whether in pursuit of their profession or otherwise which is:
 - (i) dishonest or otherwise discreditable to a Solicitor Advocate, barrister or solicitor;
 - (ii) prejudicial to the administration of justice; or
 - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- (b) engage directly or indirectly in any occupation if their association with that occupation may adversely affect the reputation of Solicitor Advocate or prejudice their ability to attend properly to the interests of clients.

2.2 Solicitor Advocates have an overriding duty to the court to ensure in the public interest the proper administration of justice is achieved: they must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court.

2.3 Solicitor Advocates:

- (a) must promote and protect fearlessly and by all proper and lawful means the clients' best interests and do so without regard to their own interests or to any consequences to themselves or to any other person (including professional clients or fellow advocates or members of the legal profession);
- (b) subject only to compliance with specific provisions of the Legal Aid Regulations and to their overriding duty to the court owe their primary duty:
 - (i) as between their lay client and their professional client; and
 - (ii) as between the legal aid authorities and the lay client.

to the lay client and must not permit the legal aid authorities or professional clients to limit their discretion as to how the interests of the lay client can best be served;

- (c) must act towards clients at all times in good faith.

2.4.1 Solicitor Advocates must not in relation to any other person (including a client or another advocate) on grounds of race, ethnic origin, gender, religion, sexual orientation or political persuasion treat that person for any purpose less favourably than they would treat other persons.

2.4.2 Solicitor Advocates must not decline to accept instructions to act as such:

- (a) on grounds relating to the race, colour, ethnic or national origins, creed, gender or sexual orientation of the client;
- (b) on the grounds that the nature of the case is objectionable to the Solicitor Advocate or to any section of the public;
- (c) on the grounds that the conduct, opinions or beliefs of the client are unacceptable to the Solicitor Advocate or to any section of the public;
- (d) on any ground relating to the source of any financial support which may properly and lawfully be given to the client for the proceedings in question (for example on the grounds that such support will be available under the Legal Aid Ordinance (Cap. 91)).

2.5 Nothing in this Code is to be taken as requiring a Solicitor Advocate to accept instructions if there are reasonable grounds for the Solicitor Advocate to consider that having regard to:

- (i) the circumstances of the case;
- (ii) the nature of the Solicitor Advocate's practice; or
- (iii) the Solicitor Advocate's experience and standing

the Solicitor Advocate is not being offered a proper fee.

2.6 Solicitor Advocates must not:

- (a) permit their absolute independence and freedom from external pressures to be compromised;
- (b) do anything (for example accept a present) 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 clients, the court or a third party.

2.7 Solicitor Advocates are individually and personally responsible for their own conduct and for professional work: they must exercise their own personal judgment in all their professional activities and must not delegate such responsibility to another advocate.

PART III – Organisation of the Solicitor Advocate’s practice

3.1 Solicitor Advocates must have or have ready access to library facilities which are adequate having regard to the nature of their practice.

3.2 Solicitor Advocates must take all steps which it is reasonable in the circumstances to take to ensure that:

- (a) their practices are administered competently and efficiently and properly staffed having regard to the nature of the practice;
- (b) proper records are kept;
- (c) all employees and staff in the practice:
 - (i) carry out their duties in a correct and efficient manner; and
 - (ii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties.

3.3 Solicitor Advocates may engage in any advertising or promotion in connection with their practice which conforms to the *Solicitors’ Practice Promotion Code*.

PART IV -- The decision to appear

4.1 Solicitor Advocates must not accept any brief if to do so would cause them to be professionally embarrassed and for this purpose Solicitor Advocates will be professionally embarrassed:

- (a) in the case of extended rights of audience in the higher courts, if they do not hold the appropriate qualification and are not competent to appear before the relevant court;

- (b) if they lack sufficient experience or competence to handle the matter, or if their experience of advocacy in the relevant court or proceedings has been so infrequent or so remote in time as to prejudice their competence;
- (c) if having regard to their other professional commitments they will be unable to do or will not have adequate time and opportunity to prepare that which they are required to do;
- (d) if the brief seeks to limit the ordinary authority of discretion of a Solicitor Advocate in the conduct of proceedings in court or to impose on a Solicitor Advocate an obligation to act otherwise than in conformity with the provisions of this Code;
- (e) if the matter is one in which they have reason to believe that they are likely to be witnesses or in which, whether by reason of any connection of the Solicitor Advocate (or of any partner or other associate of the Solicitor Advocate) with the client or with the court or a member of it or otherwise, it will be difficult for them to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (f) if they have been responsible for deciding on a course of action and the legality of that action is in dispute in the proceedings; if they are company directors and the company is a party to or has an interest in the proceedings;
- (g) if there is or appears to be some conflict or a significant risk of some conflict either between the interests of the Solicitor Advocate (or of any partner or other associate of the Solicitor Advocate) and the client, some other person, or between the interests of any one or more of their clients. Examples of the operation of this rule are given in **Annex 1**;
- (h) if the matter is one in which there is a risk of a breach of confidences entrusted to them (or to any partner or other associate) by another client or where the knowledge which they possess of the affairs of another client would give an undue advantage to or might prejudice the new client.

4.2 Solicitor Advocates (whether they are instructed on their own or with another advocate) must in the case of each brief consider whether consistently with the proper administration to justice and having regard to:

- (i) the circumstances including the gravity, complexity and likely cost of the case;
- (ii) the nature of their practice;
- (iii) their ability, experience and seniority;
- (iv) their relationship with the client;
- (v) any other relevant circumstances or matters

the best interests of the client would be served by instructing or continuing to instruct them in that matter or to instruct another advocate (whether solicitor advocate or counsel).

4.2.1 Where more than one Solicitor Advocate is instructed in any matter each Solicitor Advocate must in particular consider whether the best interests of the client would be served by:

- (a) the Solicitor Advocate representing the client together with the other Solicitor Advocate or advocates; or
- (b) the Solicitor Advocate representing the client without the other Solicitor Advocate or advocates; or
- (c) the client instructing only the other Solicitor Advocate or advocates; or
- (d) the client instructing some other advocate.

4.2.2 If Solicitor Advocates consider that the best interests of the client would not be served by their continuing to represent the client (together with any other advocate instructed with them) they must immediately advise the lay client accordingly.

PART V – Withdrawal from a case

5.1 Solicitor Advocates must cease to act and return any brief:

- (a) if continuing to act would cause them to be professionally embarrassed within the meaning of paragraph 4.1.
- (b) if having accepted a brief on behalf of more than one client there is or appears to be:
 - (i) a conflict or a significant risk of a conflict between the interests of any one or more of such clients; or
 - (ii) a risk of a breach of confidence;

and the clients do not all consent to them continuing to act;

- (c) if in any legally aided case (whether civil or criminal) it has become apparent to them that legal aid has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client;
- (d) if the circumstances set out in Regulation 21 of the Legal Aid Regulations (Cap.91) arise;
- (e) if the client refuses to authorise them to make some disclosure to the court which their duty to the court requires them to make;
- (f) if having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery the client fails forthwith to disclose it;

- 5.2 If before or during a case, a document belonging to the other side should come into the possession of the Solicitor Advocate, he should if he intends to make any use of it inform his opponent that it has come into his possession. This information should be communicated in sufficient time for the opponent to raise an objection to the use of the document.
- 5.3 Solicitor Advocates in respect of (a) shall and in respect of (b) and (c) may withdraw from a case where they are satisfied that:
- (a) the brief has been withdrawn or their retainer terminated;
 - (b) their professional conduct is being impugned; or
 - (c) there is some other valid reason for so doing.
- 5.4 Solicitor Advocates must not:
- (a) cease to act or return a brief without having first explained to their client their reasons for doing so;
 - (b) return a brief to another advocate without the consent of the client;
 - (c) return a brief which they have accepted and for which a fixed date has been obtained or (except with the consent of the client and where appropriate the court) break any other professional engagement so as to enable them to attend a social or non-professional engagement;
 - (d) save as provided above return any brief or withdraw from a case in such a way or in such circumstances that their client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.
 - (e) put themselves in a conflict of interest situation when appearing as a Solicitor Advocate on behalf of the client.
- 5.5 Solicitor Advocates must also have regard to potential conflicts that could arise not only in respect of himself or herself but in respect of other members of the Solicitor Advocate's firm.

PART VI – Conduct of work: the client

- 6.1 Solicitor Advocates:
- (a) 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;

- (b) must not undertake any task which:
 - (i) they know or ought to know they are not competent to handle;
 - (ii) they do not have adequate time and opportunity to prepare for or perform; or
 - (iii) they cannot discharge within a reasonable time having regard to the pressure of other work;
 - (c) must read all briefs delivered to them expeditiously;
 - (d) must have regard to any relevant written standards adopted by the Law Society for the conduct of professional work;
 - (e) must inform the client forthwith:
 - (i) if it becomes apparent that they will not be able to do the work within a reasonable time after receipt of instructions;
 - (ii) if there is an appreciable risk that they may not be able to undertake a brief or fulfil any other professional engagement which they have accepted.
- 6.2 Whether or not the relation of Solicitor Advocate and client continues, Solicitor Advocates must preserve the confidentiality of their clients' affairs and must not without the prior consent of the client or as permitted by law lend or reveal the contents of the papers in any brief to or communicate to any third person outside their firm information which has been entrusted to them in confidence or use such information to their clients' detriment or to their own or another client's advantage.
- 6.3 Solicitor Advocates must not in relation to any current matter in which they are or have been briefed offer their personal views or opinions to or in any news or media upon the facts of or the issues arising in that matter.
- 6.4 Solicitor Advocates who form the view that there is a conflict of interest between their lay client and their professional client must advise that it would be in the lay client's interest to instruct another professional adviser and such advice must be given either in writing or at a conference at which both the professional client and the lay client are present.
- 6.5 Solicitor Advocates must not when interviewing a witness out of court:
- (a) place witnesses under any pressure at all to give evidence which is inconsistent with their oath;
 - (b) rehearse, practise or coach witnesses in relation to their evidence or the way in which they should give it.
- 6.6 Solicitor Advocates must not devise facts which will assist in advancing their client's case and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:

- (a) any statement of fact or contention (as the case may be) which is not supported by the client or by their brief or instructions;
- (b) any contention which they do not consider to be properly arguable;
- (c) any allegation of fraud unless they have clear instructions to make such allegation and have before them reasonably credible material which as it stands establishes a prima facie case of fraud;
- (d) in the case of an affidavit or witness statement any statement of fact other than the evidence which in substance according to their instructions the Solicitor Advocate reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given viva voce;

provided that nothing in this paragraph shall prevent a Solicitor Advocate drafting a pleading, affidavit or witness statement containing specific facts, matters or contentions included by the Solicitor Advocate subject to the client's confirmation as to their accuracy.

PART VII – Conduct of work: the court

7.1 Solicitor Advocates when conducting proceedings at court:

- (a) are personally responsible for the conduct and presentation of their case and must exercise personal judgment upon the substance and purpose of statements made and questions asked;
- (b) 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 on the facts or the law;
- (c) 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 and must bring any procedural irregularity to the attention of the court during the hearing and not reserve such matter to be raised on appeal;
- (d) must not adduce evidence obtained otherwise than from or through their client or devise facts which will assist in advancing their client's case;
- (e) 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;
- (f) must if possible avoid the naming in open court of third parties whose character would thereby be impugned;

- (g) 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 an opportunity to answer the allegation;
- (h) must not suggest that a witness or other person is guilty of crime, fraud or misconduct or attribute to another person the crime or conduct of which their client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to their client's case and which appear to them to be supported by reasonable grounds.

PART VIII – Communications with clients

- 8.1 Solicitor Advocates must have proper lines of communications. When instructed by a solicitor they are normally entitled to rely on the solicitor to communicate with the client. When instructed direct by a representative of the client who is not a solicitor, they should ensure that the representative is properly authorised.
- 8.2 Where there is any reason to doubt the propriety of any action or proposed course of action, Solicitor Advocates should satisfy themselves that the client has received and understood any warnings or advice which it may be appropriate to offer. Where the client is a public or corporate body, this duty may include ensuring that the council, the board of directors, the governing body or others in positions of like authority have received the warnings or advice and that consequent instructions have their approval.



Annex 1

The following are examples of the application of paragraphs 4.1(g) of the Code of Conduct:

(1) Membership of or connection with various bodies

Companies

- (a) A Solicitor Advocate who is a director, secretary or in-house counsel of any company should not accept a brief for the company or, in a professional capacity, advise or settle documents for the company.
- (b) A Solicitor Advocate who has been but has ceased to be a director, secretary or in-house counsel of any company should not act professionally, whether for the company or any other person, in any matter connected with or arising out of affairs relating to that company which were current while he was a director, secretary or in-house counsel.
- (c) A Solicitor Advocate who has professionally advised a client about his position as a director or shareholder of a company ought not thereafter to accept a directorship of that company with a view either to assisting in the investigation of the company's affairs or advising the company on matters of law affecting its shareholders; or to accept a directorship as the nominee of the client on his retirement, in order to watch his interest.
- (d) On the other hand, a Solicitor Advocate may, but is not obliged to, accept a brief to appear at a meeting of the shareholders of a company in order either to support the policy of the Board or to present the views of a group of shareholders, and may take a transfer of a share or shares of the company to enable him so to appear, provided he explains to the meeting that he appears as a paid advocate and is not necessarily presenting his own views as a shareholder.
- (e) There is equally no objection to a Solicitor Advocate, in his private capacity and not professionally, serving on a shareholder's committee of inspection or otherwise assisting or acting with the liquidator in the winding-up of a company of which he is a member.

Professional Organisations

- (f) A Solicitor Advocate, who is an honorary member of a professional organisation or an ordinary member of a learned society or association concerned with the study of legal or medico-legal problems, ought not to act professionally for or against the organisation, society or association without the consent of the Law Society. If he is a member of the Executive Committee or governing body of such a society or association he should not act professionally for or against it in any circumstances.

(2) **Deputations**

A Solicitor Advocate who accepts a brief to speak for a deputation ought to make it clear at the outset of the proceedings that he is appearing as Solicitor Advocate and not as a member of the deputation, and he ought to abide by the decision of the authority receiving the deputation as to whether he can be heard as Solicitor Advocate or not.

(3) **Taxation**

It is undesirable that a Solicitor Advocate should, without the express consent of the lay client, appear for the solicitor on the taxation between the solicitor and the client of the costs of a litigation in which the Solicitor Advocate was retained and acted for the client.

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