

SOLICITORS' HELPLINE

The Solicitors' Helpline is available to assist every member of the profession with any problem, whether personal or professional.

THE SERVICE IS COMPLETELY CONFIDENTIAL AND TOTALLY INDEPENDENT OF THE LAW SOCIETY. If you require advice for any reason, phone: 01 284 8484



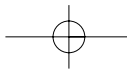
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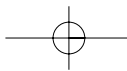
A GUIDE TO PROFESSIONAL CONDUCT OF SOLICITORS IN IRELAND

2nd EDITION



Law Society of Ireland





Law Society of Ireland



Law Society of Ireland

FOREWORD

At the commencement of his term in office Patrick F. O'Connor, then President, requested the Guidance and Ethics Committee to review and update the Law Society publication "A Guide to Professional Conduct of Solicitors in Ireland" which had been first published in 1988. The committee immediately set about making a comprehensive review and their task is now completed.

I believe that the availability of this guide is very important for our profession. As a profession we set standards for our members in the conduct of their practices. As a self regulating profession we enforce those standards ourselves. The guide will, firstly, assist the teaching of the principles of conduct and the values of the profession to trainee solicitors. Even more importantly, it will provide practical guidance to solicitors in their practices when they find themselves in situations where their professional duty is not immediately clear. These situations seem to present themselves more frequently to-day as life becomes increasingly complex.

The Guidance and Ethics Committee operate the Guidance and Ethics Helpline. Solicitors who are concerned at any time about their own position on any matter of conduct should not hesitate to contact the committee through the secretary to the committee at the Law Society. The solicitor will be assisted and will be informed about any relevant published material, including practice notes. The solicitor will then be in a position to make an informed professional judgement on the particular matter.

This guide will be reviewed on an ongoing basis and further editions will be published as necessary. Accordingly, comment on this edition will be welcomed.

I would like to thank Keenan Johnson, Chairman of the Guidance and Ethics Committee (1998-2000) and John P. Shaw, the current Chairman for their work and contribution to this project. I would also like to thank all the members of the committee, others who contributed to the preparation of the material and all who were involved with this publication for carrying out their tasks so competently.

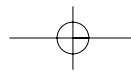
**Elma Lynch,
President,
The Law Society of Ireland.**

October 2002

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ISBN 0-902027-35-2

Published by the Law Society of Ireland





THE SOLICITORS' BENEVOLENT ASSOCIATION (Founded 1863)

The Directors anticipate that, particularly in view of the increasing number of families with young children being helped, there will be a need for increased assistance in the coming years. In recent times grants have been increased in line with rising costs and where beneficiaries are of advanced age. For these reasons the Directors particularly welcome additional subscriptions and donations and the general support of the profession.

Subscriptions and donations will be received by any of the Directors or by the Secretary, from whom all of the information may be obtained at 73 Park Avenue, Dublin, 4.

YOU CAN ALSO BENEFIT THE ASSOCIATION BY WAY OF LEGACY

The following is a suitable form of Bequest.

I GIVE AND BEQUEATH the sum of _____ to the Trustees for the time being of the Solicitors Benevolent Association, c/o Law Society of Ireland, Blackhall Place, Dublin, 7, for the charitable purposes of that Association in Ireland, and I direct that the receipt of the Secretary for the time being of the Association will be sufficient discharge for my Executors.

INTRODUCTION

The title "Guide to Professional Conduct of Solicitors" describes precisely the aims and objectives of this publication, which, like the first edition (which was published in 1988), provides a statement of the accepted principles of good conduct and practice for solicitors. Those principles are illustrated in the context of practical situations including those situations which are most frequently the subject of queries to the Law Society from solicitors.

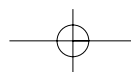
The committee's brief was to review and update the guide, not to make new rules, and this is what has been done. The committee carried out a comprehensive consultative process in the course of their work.

This publication is not a statement of law. However, as the rules of professional conduct derive both from statutory and non-statutory sources, the committee has tried to ensure that all necessary references to legislation and case law are included. Accordingly, where legislation or case law is relevant, reference has been made to it in footnotes. In addition, a comprehensive schedule of statutory instruments promulgated under the Solicitors Acts, 1954 to 1994 and other relevant statutory instruments has been included as an appendix. Reference has also been made in footnotes to practice notes to which the solicitor can refer for a full expansion of particular topics. These are available on the Law Society website at www.lawsociety.ie and are updated on an ongoing basis.

In particular situations the Law Society recommendation as to what is good practice has also been included.

In the course of our work we reviewed and took account of the codes of other jurisdictions and disciplines. We were also cognisant of the request of the CCBE (Conseil Des Barreaux de la Communauté Européenne) which is the association of the Bars and Law Societies within the EU, that the CCBE Code be taken into account in all revisions of national rules, with a view to the progressive harmonisation of codes and regulations governing lawyers within the European Community.

The guide has been made as user friendly as possible. It is hoped that the detailed schedule of contents and the index will lead the solicitor to the required topic without difficulty.





Law Society of Ireland

This guide is relevant for all solicitors whether in private practice as principal, partner or assistant or in employment in the corporate and public services sectors.

References to the masculine should be read to include reference to the feminine.

Keenan Johnson was chairman of the Guidance & Ethics Committee 1998 – 2000 during which time much of the research and the preparation of the text was carried out. On his behalf, and on my own behalf, I would like to thank all who assisted in the preparation of the Guide. I would like to thank especially Law Society Past President Patrick O'Connor for instigating the revision, all the members of the Guidance and Ethics Committees, in particular those of the years 1999 and 2000 namely Peter Allen, Brendan Bradley, John Dillon-Leetch, Niall Farrell, Stephen Maher, Simon Murphy, Maeve O'Driscoll, John O'Malley, and Moya Quinlan. I would also like to say a special thanks to the committee secretary Therese Clarke, who worked so efficiently in collating data and preparing drafts for consideration by the committee.

The guide represents Law Society policy and recommendations as at the date of publication. Nothing in this guide should operate or apply where to do so would be in breach of any law.

John P. Shaw,
Chairman,
Guidance & Ethics Committee.



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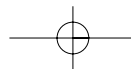
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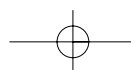
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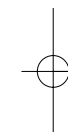
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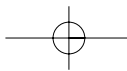
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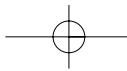
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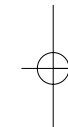
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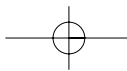
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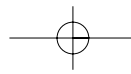
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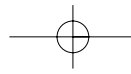




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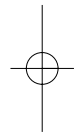
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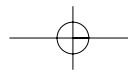
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CHAPTER 1

THE IMPORTANCE OF RULES OF CONDUCT

1.1 THE FUNCTION OF THE SOLICITOR IN SOCIETY

In a society founded on respect for the rule of law, solicitors fulfil a special role. Their duties do not begin and end with the faithful performance of what they are instructed to do so far as the law permits. Solicitors must serve the interests of justice as well as the rights and liberties of their clients. It is their duty not only to plead their clients’ cause but also to be their adviser.

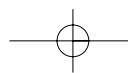
The solicitors’ function therefore imposes on them a variety of legal and moral obligations, sometimes appearing to be in conflict with each other, towards:

- (a) their clients,
- (b) the courts and other bodies before whom solicitors plead their clients’ cause or act on their behalf,
- (c) the public for whom the existence of a free and independent profession is an essential means of safeguarding individual rights in face of the power of the State and other interests in society,
- (d) the legal profession in general and each fellow member of it.

Rules of professional conduct are designed to assist the proper performance by a solicitor of his duties and functions in his practice. Practising solicitors, whether in private, corporate or public service practice, share the same professional standards.

1.2 LEGISLATION

The rules of professional conduct are derived both from statutory and non-statutory



sources. The Solicitors Acts, 1954 to 2002 and the regulations made under these Acts are the legislative framework for the regulation of solicitors.¹

1.3 CORE VALUES OF THE PROFESSION

General

In addition to the legislative requirements, solicitors are also required to observe general core principles of conduct, in particular independence, confidentiality and the avoidance of situations of conflict of interest.

A solicitor should at all times observe and promote these core values of the profession and avoid any conduct or activities inconsistent with those values.²

The rules of all the Bar Associations and Law Societies in the European Community are based on identical values and in most cases demonstrate a common foundation which is also reflected in the rules of Bar Associations and Law Societies throughout the world. When the solicitor observes the highest professional standards, this is to the ultimate benefit of the client whether an individual or an organisation.

Independence

Solicitors should always retain their professional independence and their ability to advise their clients fearlessly and objectively. Independence is essential to the function of solicitors in their relationships with all parties and it is the duty of solicitors that they do not allow their independence to be compromised. Solicitors should not allow themselves to be restricted in their actions on behalf of clients or restricted by clients in relation to their other professional duties. A solicitor's independence is necessary because of his various relationships of trust. The independence of a solicitor's advice is an essential value.

A solicitor should never permit his independence to be undermined by the wishes of a party who has introduced a client.

FOOTNOTE

1. See schedule of Statutory Instruments relevant to the conduct and practice of solicitors, enacted under the Solicitors Acts, 1954 to 2002 and other legislation at Appendix 1.
2. "Code of Conduct for Lawyers in the European Community" – CCBE, 1999. See Appendix 2. "International Code of Ethics" – International Bar Association 1988. See Appendix 3.

Independence of the solicitor employed in an organisation

In in-house situations, the solicitor has only one client, who is also the employer. As an employee of the organisation the solicitor owes a duty of loyalty to the employer. The solicitor will share the common objectives of the organisation but should at the same time maintain an objective and professional stance.

Should a situation arise where an employer instructs a solicitor to act in a way which, in the opinion of the solicitor, would amount to unprofessional conduct on the solicitor's part or which may even be illegal, the solicitor should advise the employer that those instructions cannot be acted upon. The solicitor should analyse the matter carefully, tender the appropriate advice and make every effort to persuade the employer to change the instructions. In appropriate situations the matter might be resolved by seeking a second opinion from another lawyer.

However, difficulties arising in the exercise of professional independence are the exception rather than the norm. Rather, the in-house solicitor is valued for an objective contribution to the making of informed and legally correct decisions by the organisation.

Every solicitor is faced with difficult decisions from time to time. This is inevitable, given the solicitor's role.

In-house solicitors who hold practising certificates are subject to the statutory regulation of the Law Society in the same way as solicitors in private practice. Their advice is privileged in the same way as the advice of colleagues in private practice.³

Conflict and confidentiality

These topics are considered in detail in chapters 3 and 4.

1.4 THE ENFORCEMENT OF THE RULES OF PROFESSIONAL CONDUCT

The failure of the solicitor to observe these rules, whether having a statutory basis or otherwise, could result in a complaint to the Law Society. Referral to the Disciplinary

FOOTNOTE

3. "Information Booklet for Solicitors commencing Employment in the Corporate & Public Services Sectors" - Law Society, February 2002.



Tribunal of the High Court may follow. Alternatively, a complaint may be made directly to the Disciplinary Tribunal.

The Disciplinary Tribunal, which sits as a division of the High Court, may upon due inquiry make a finding of misconduct.⁴

The definition of misconduct in the Solicitors Acts 1954 to 2002 provides as follows:⁵

“misconduct” includes -

- (a) the commission of treason or a felony or a misdemeanour,⁶
- (b) the commission, outside the State, of a crime or an offence which would be a felony or a misdemeanour if committed in the State,
- (c) the contravention of a provision of the Solicitors Acts, 1954 to 2002, or any order or regulation made thereunder,
- (d) in the course of practice as a solicitor –
 - (i) having any direct or indirect connection, association or arrangement with any person (other than a client) whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of section 55 or 56 or section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Act of 1994, or the Principal Act, or section 5 of the Solicitors (Amendment) Act, 2002, or
 - (ii) accepting instructions to provide legal services to a person from another person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of those enactments,

FOOTNOTE

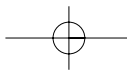
- 4. *“Inquiry by the Disciplinary Tribunal into the conduct of a solicitor on the grounds of alleged misconduct” - Section 7 (as substituted by section 17 of the Solicitors (Amendment) Act, 1994 and as amended by Section 9 of the Solicitors (Amendment) Act 2002) of the Act of 1960.*
- 5. *“Interpretation” - Section 3 (as substituted by section 24 of the Solicitors (Amendment) Act, 1994 and as amended by Section 7 of the Solicitors (Amendment) Act, 2002) of the Act of 1960.*
- 6. *“Abolition of distinction between felony and misdemeanour” - Section 3 of the Criminal Law Act, 1997.*



- (e) any other conduct tending to bring the solicitors’ profession into disrepute.’

A finding of misconduct may result in a sanction being imposed on the solicitor by the Tribunal itself or by the High Court.

The requirement of standards of professional conduct which the profession sets for itself should not be confused with the requirements of the general law of contract, of tort, of criminal law or of equity, even though the requirements of conduct may in some cases follow, or closely parallel, the general legal requirements.



CHAPTER 2

THE SOLICITOR AND HIS RELATIONSHIP WITH HIS CLIENT

2.1 ACCEPTANCE OF INSTRUCTIONS

General

The decision to accept instructions in any particular case is a matter for the discretion of the individual solicitor.

A solicitor should not discriminate unfairly between members of the public. He should not refuse to act for a person on the grounds of the sex, race, colour, religion, sexual persuasion, creed, ethnic origin or membership of any social grouping of that person. However, a solicitor is not bound to accept the instructions of any client. In certain circumstances it is clearly wrong for a solicitor to act or to take instructions, for example, where to accept instructions would involve the solicitor in the furtherance of a crime or in some form of unprofessional conduct.

It is recommended that when a solicitor is taking instructions he should, where practicable, confirm the instructions in writing and set out in general terms what he intends to do.

Information in relation to legal charges

The solicitor must inform the clients in writing of the charges they will incur for the provision of any legal service.¹

Prohibition on loans to clients

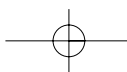
In order to protect the integrity of the relationship between solicitor and client, as well as to avoid any conflict of interest, a solicitor should not, directly or indirectly, make or offer to make any payment to or on behalf of any person for the purpose of obtaining or retaining instructions from that person or for the purpose of securing the transfer of that person's instructions from another solicitor.

A solicitor may discharge outlays associated with a client transaction during the currency of that transaction.

If a solicitor makes a loan of a purely personal nature to a client, the solicitor should ensure that documentation is put in place to support the solicitor's view that the transaction is a personal one.

FOOTNOTE

- ¹ "Charges to clients" - Section 68 of the Solicitors (Amendment) Act, 1994. See later - Chapter 10 "The Remuneration of a Solicitor".



The solicitor's inability to complete instructions

A solicitor should not agree to act for a client if he knows that he will be unable to carry out the instructions of the client adequately.

A solicitor should not accept instructions to act in a matter for which he does not have sufficient expertise or if he will not have time to give the necessary attention to the case.

Where, having regard to his professional, legal and moral obligations, a solicitor decides that he cannot accept instructions from a particular person, he should immediately inform that person of his decision not to act. If the solicitor considers it appropriate to do so, he may recommend another solicitor to the person or he may introduce the person to another solicitor.

The solicitor employed in an organisation

An employed solicitor may receive his instructions from one or more employees in an organisation.

The reporting context within which the solicitor operates is very important. If it is too limited, it makes the exercise of the solicitor's function very difficult.

All the acts of an organisation and of its employees are acts delegated from a board of directors or other source of authority. When difficulties arise, it is important that the senior or sole solicitor has effective lines of communication, if not direct access, to an executive director.

Instructions to be taken directly from client

A solicitor should take instructions directly from the client. Where instructions are first received from a third party the instructions should be confirmed directly with the client.

Payment by client of fees in advance

A solicitor may only wish to act for a client in circumstances where the client pays all fees due in advance or pays a sum in respect of fees due as they arise. A solicitor is entitled to refuse to act for a client if the client does not agree to the terms by which the solicitor is to be paid, as communicated to the client at the commencement of the case.

Time costing

Where the basis of charge is the time spent on a case, it is recommended that the solicitor keeps the client informed on a regular basis of the time spent.

Duress or undue influence

A solicitor should not accept instructions which he suspects have been given by a client under duress or undue influence. Particular care should be taken where a client is elderly or otherwise vulnerable to pressure from others. A solicitor will usually, but not always, see a client alone. In the case of suspected duress or undue influence the solicitor should ensure that the client is seen alone.

Legally aided clients in criminal matters

Where a solicitor on the legal aid panel is either instructed by the defendant or nominated by the court to act on behalf of the defendant, he is under a duty to comply with those instructions unless he has reasonable grounds for refusing to act in that particular case for that particular client, subject to the agreement of the court, where this is necessary.²

Legally aided clients in civil matters

When accepting instructions in civil legal aid matters solicitors should comply with the relevant legislation.³

2.2 PROPER STANDARD OF LEGAL SERVICES

General

A solicitor should be open, frank and honest in all his dealings with his clients.

The retainer of a solicitor is a contract whereby, in return for the offer of a client to employ him, a solicitor, expressly or by implication, undertakes to fulfil certain obligations.

A solicitor should use his utmost skill and care in acting on behalf of his client. The standard of care expected is that of a reasonably careful and skilful solicitor and should also take into account the fact that the relationship of a solicitor and client is a fiduciary relationship.⁴

A solicitor should also take into account that in certain circumstances the courts have held as a matter of law that a duty of care is owed, not just to a solicitor's own client, but to a third party, such as an intended beneficiary of a will or to the purchaser of property when a solicitor is replying to requisitions on behalf of the vendor of the property.⁵

FOOTNOTE

2. *Criminal Justice (Legal Aid) Act, 1962.*
3. *Civil Legal Aid Act, 1995*
4. "Power of Society to impose sanctions for inadequate services"
- Section 8 of the *Solicitors (Amendment) Act, 1994.*
5. *Doran-v-Delaney - Supreme Court [1998] 2 IR 61*

A solicitor should, as far as practicable, explain to the client the procedures to be followed in any particular matter and the length of time the procedures are likely to take.

A solicitor should keep the client informed of the progress of the matter and, where appropriate, copy relevant correspondence to the client.

Where it is important to notify the client of a particular matter, or to confirm or clarify details with the client, this should be done in writing.⁶

Legal agents

When a solicitor employs a legal or other agent to carry out work related to a client's business he should endeavour to ensure that the work will be carried out in a competent manner.⁷

Failure to reply to letters

A solicitor should reply promptly to letters written to him on professional business. A solicitor should always answer letters from another solicitor, in particular those letters which make inquiries on behalf of a client.

Complaints

A solicitor should ensure that there is a system in place for dealing with complaints.

Vulnerable clients

The relationship between a solicitor and a client is a fiduciary relationship. Accordingly, in dealings with any client a solicitor should be cognisant of the inexperience, youth, age, want of education, lack of knowledge or business acumen of the client.

Accounting for monies

At the conclusion of any matter a solicitor should account to the client for monies received on the client's behalf, setting out details of all charges and outlays incurred.

Solicitor who holds power of attorney

Where a solicitor holds a power of attorney from a client, he should ensure that he does not use that power of attorney to gain for himself a benefit which he would not be prepared to allow to an independent third party.

FOOTNOTE

6. "Quality Service Statement" Law Society, February 2001

7. "The use of Legal and other Agents by Solicitors" - Practice Note Gazette, August 1998.

Family law

The practice of family law requires a special approach and the development of skills which enable the practitioner to assist the parties reach a constructive settlement of their differences. The welfare of children should be a first priority. Solicitors should encourage a conciliatory approach.⁸

2.3 TERMINATION OF A RETAINER

General

A solicitor cannot terminate a retainer without good cause and without reasonable notice where the retainer is for work from which the client will derive no benefit until the work is completed.

Where a solicitor decides that he cannot continue to act for a client and the circumstances are such that the determination of his retainer is reasonable, the solicitor should give as much notice as possible to the client of his intention to cease to act.

If the solicitor terminates his retainer for good cause, and has given reasonable notice to his client, he is entitled to be paid on a *quantum meruit* basis.

A solicitor may terminate a retainer in a case where he has asked the client to be put in funds and the client has refused to do so.

If instructions had been accepted on a contingency fee basis, it can be implied in the arrangement that it was a term of such an arrangement that the solicitor would continue to have prosecution of the case. If the solicitor's retainer is terminated, the solicitor will be entitled to his fees on a *quantum meruit* basis.⁹

Client's failure to act on advice or to furnish instructions

A solicitor may be compelled to cease to act for a client because the client refuses to accept and act upon the advice which the solicitor has given him and the circumstances are of such importance as to destroy the basis of the relationship of solicitor and client.

A solicitor should cease to act for a client where the client refuses or fails to give the solicitor further instructions.

FOOTNOTE

8. "Family Law - Code of Practice" Law Society Family Law and Civil Legal Aid Committee, 2002. See Appendix 4.

9. "Transferring files between solicitors" - Practice Note Gazette, December 1996.

**Client of unsound mind**

As with any other contract, if a client is of unsound mind, he does not have the legal capacity to enter into a contractual relationship with the solicitor.¹⁰

If the solicitor's instructions pre-date the mental illness, the retainer of the solicitor is determined by law when the client becomes mentally ill. The solicitor cannot proceed on the basis of instructions given before the mental illness.¹¹

Client in Custody

A solicitor who has accepted instructions to appear in court for a client who is in custody may not withdraw from the client's case without obtaining permission from the court before which that client is next scheduled to appear.¹²

Termination by client

A client may change his solicitor whenever he wishes to do so.

2.4 THE SOLICITOR'S LIEN**General**

Where a solicitor holds documents of a former client under the solicitor's common law lien for undischarged costs and hands them to another solicitor who is then acting for that client, subject to and without prejudice to the first solicitor's lien for costs, the other solicitor should return them on demand to the solicitor claiming the lien, as long as the lien subsists.

A lien can be exercised on all the files of a particular client if there are costs outstanding on one of those files.¹³

Land certificate

A solicitor holding a land certificate as security for costs due by a client may be required by the Registrar of Titles to produce the certificate for the purpose of any dealing with the registered lands. The production of the certificate does not alter the right to the custody of the certificate or affect the solicitor's lien.¹⁴

FOOTNOTE

10. "Clients of unsound mind" - *Practice Note Gazette*, December 1998.

11. *Power of Attorney Act, 1996.*

S.I. No. 196 of 1996. Enduring Power of Attorney Regulations, 1996.

12. "Restriction on the withdrawal of a solicitor from a case" - *Section 74 Solicitors (Amendment) Act, 1994*

13. *Re: Capital Fire Insurance Association (1883) 24 Ch D 408*

Re: Audley Hall Cotton Spinning Co. (1886) LR 6Eq 245

14. "Certificates" - *Section 105 of the Registration of Title Act, 1964.*

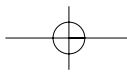


No solicitor's lien exists over a will.

No solicitor's lien exists over documents or papers held on trust or on accountable receipt.

A lien for a debt due can continue to be exercised even after the period when proceedings for the recovery of the debt would be statute barred has expired. However, a lien cannot arise if a debt has already become statute barred.

When exercising a lien to hold documents a solicitor should try to ensure that the exercise of the lien does not, when viewed objectively, reflect badly on the solicitor or the legal profession in general.



CHAPTER 3

CONFLICT OF INTEREST

3.1 CONFLICT OF INTEREST BETWEEN SOLICITOR AND CLIENT

Where a conflict of interest exists between the interests of a solicitor and those of his client the solicitor must not act for the client. If the conflict arises during the course of a transaction, the solicitor must cease to act for that client.

3.2 CONFLICT OF INTEREST BETWEEN TWO CLIENTS

If a conflict of interest arises between two clients in a matter in which the firm is acting, the firm must cease to act for either client in that matter. In exceptional circumstances one of the clients may consent to the other client remaining.

In order to make a judgement on whether there is a conflict of interest, the solicitor should consider whether there is a conflict on the facts. Is the solicitor in possession of information which would prejudice the position of the other party? Even if this is not the case, is the perception of the other party that there is a conflict of interest? If this is so, the solicitor should consider whether it would be in the client's best interest to instruct a different solicitor to avoid the issue being a focus in itself to the detriment of the client's case. The circumstances of each case must be examined and the matter decided on a case-by-case basis. Factors such as the strength of the solicitor/client relationship or that the transfer to a new solicitor may involve the client in additional expense should be considered. Relevant authorities should be reviewed.¹

3.3 PROPERTY TRANSACTIONS

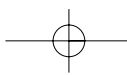
General

As a general principle a solicitor, or two or more solicitors acting in partnership or association, should not act for both vendor and purchaser in a transfer of property for value at arm's length.

However, provided there is no conflict, actual or perceived, between the vendor and pur-

FOOTNOTE

1. "Potential conflict of interest where a solicitor is acting for both driver and passenger of the one vehicle" - *Practice Note Gazette, July 1998.*
Prince Jefri v KPMG (1999) 1 All ER 517



chaser before or during a transaction relating to the transfer of property, exceptions to that general principle may arise, where:

- (a) the vendor and the purchaser are associated companies,
- (b) the vendor and the purchaser are related by blood, adoption or marriage,
- (c) the vendor and the purchaser are established clients of the solicitor, and are both clearly advised at the outset by the solicitor of the desirability of separate independent representation, but each agrees that the solicitor should continue to act for both,
- (d) two associated firms or two offices of the same firm are acting for the vendor and the purchaser, provided that:
 - (i) the respective firms or offices are in different locations,
 - (ii) neither party has been referred to the firm or office acting for him from an associated firm or office of the same firm, and
 - (iii) the transaction is dealt with or advised by a different solicitor in full-time attendance at each firm or office.

Voluntary transfers

Where a solicitor acts for both parties to a voluntary transfer of property or a transfer of property at consideration other than full market value, the transferor should be advised in appropriate cases, preferably in writing, to obtain independent advice as to the implications of the transaction before any documentation is executed.

In circumstances where the terms of such a transfer incorporate onerous obligations on the part of the transferee and if the transferor has not been independently advised, the transferee should be advised in appropriate cases, preferably in writing, to obtain independent advice as to the implications of the transaction before any documentation is executed.

It is recommended that in both of these situations the execution of any document by either the transferor or the transferee should be witnessed by the independent adviser.

Transactions between vendors and purchasers of newly constructed residential units

A solicitor's firm is prohibited from acting in conveyancing transactions on behalf of both

the builder and purchaser of a newly constructed residential unit where the vendor is the builder of that residential unit or is associated with the builder of that unit, subject to some exceptions.²

3.4 STATE SOLICITORS

A State solicitor, his partner or his qualified assistant should not appear for a defendant in any criminal proceedings within the State solicitor's area, where a summons is issued by the Garda Síochána, the Director of Public Prosecutions, the Attorney General or any government department.

3.5 BEQUESTS OR GIFTS BY CLIENT TO SOLICITOR, STAFF OR FAMILY

Where a client intends to confer a bequest under his will or make a gift by deed to the solicitor drafting the will or deed and the bequest or gift is of a significant amount, either in itself or having regard to the size of the estate of the testator or the client's means, then the solicitor should advise the testator to obtain independent legal advice as to that intended bequest or gift. If the testator refuses to be independently advised and presses the solicitor to act, the solicitor should persist in his refusal to act. It is not sufficient for the will leaving the bequest or the deed conferring the gift to be attested by an independent solicitor. This also applies where the bequest or gift is to a partner, staff member or member of the family of that solicitor.

The solicitor should also keep a written attendance confirming that the testator has received independent legal advice and has acted as a free agent. It is also advisable that the first solicitor should obtain written confirmation from the independent solicitor that independent advice has been given.

Where a client wishes to leave a token legacy or to make a token gift of a nominal amount to a solicitor, as a mark of regard and appreciation for the services rendered by the solicitor, there is nothing unprofessional in the solicitor taking such a gift or legacy without the donor or testator receiving independent legal advice.

The principal or partners in a firm should ensure that an assistant solicitor or a member of staff of the firm does not insert a clause in a will under which that person takes personal benefit or provides for a gift to himself from a client of the firm without the express consent of the principal or partners.

FOOTNOTE

2. *S.I. No. 85 of 1997. (Solicitors Professional Practice Conduct and Discipline) Regulation, 1997.*



3.6 WILLS FOR PARENTS

If a parent asks a son or daughter who is a solicitor to make a will, there is potential for conflict of interest if the solicitor is to benefit. A conflict may arise between the interests of the solicitor and his or her siblings. Even if the will is a simple will, and the estate is to be divided equally between all the children of a marriage, a difference in benefit granted by a parent to the children during the parent's lifetime may make the situation less straightforward than it appears. The solicitor should consider whether in these circumstances independent advice is essential.³

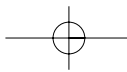
Similar considerations may apply to other family wills.

3.7 BORROWING MONEY FROM A CLIENT

A solicitor should not borrow money from a client unless that client is independently advised in that transaction or it is part of the business of the client to lend money.

FOOTNOTE

3. "Wills for Parents" - *Practice Note Gazette*, August/September 1997.



CHAPTER 4

PRIVILEGE AND CONFIDENTIALITY BETWEEN SOLICITOR AND CLIENT

4.1 PRIVILEGE

General

Legal professional privilege is a fundamental feature of the administration of justice and the rule of law. When communications, which qualify as privileged communications, pass between a solicitor and his client or a person who consults the solicitor with a view to becoming a client, the solicitor cannot be compelled to disclose those communications. Communications which qualify as privileged communications are those which contain legal advice. The prosecution or the other side to litigation must prove its case only on the evidence it can produce to the court. Both oral and written communications may be protected by privilege.¹

Privilege does not extend to communications made for the purpose of being repeated to the other party to a dispute.

The solicitor employed in an organisation

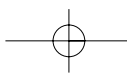
There is case-law to the effect that, at least for some aspects of EC competition law, some communications between an in-house solicitor and that solicitor's employer are not subject to legal professional privilege. Despite this case-law, which has very limited application, prudent practising in-house solicitors should work on the basis that their advice is legally privileged. Accordingly, practising solicitors should have systems in place to assist identification of privileged communications between themselves, acting as such and not merely administratively, and their employers, whether Government department, Local Authority or commercial company.²

Court orders or warrants

If a solicitor is served with a court order or warrant requiring the production of the documentation of a particular client, the terms of the court order or warrant should be examined. If items subject to privilege are excluded from the order, the solicitor has a duty

FOOTNOTE

1. *Smurfit Paribas v AAB Export Finance Limited* (1990 ILRM 588)
Miley-v-Flood 2001 2IR 50
2. "Information Booklet for Solicitors commencing Employment in the Corporate & Public Services Sectors" Law Society, February 2002.



to check the documentation and retain any material which is subject to privilege.³

Tax legislation

Solicitors may be accountable persons in certain circumstances in respect of tax payable. However, legislation provides that a person may refuse to allow the Revenue Commissioners to inspect files or documents where that person has a legal right to do so, such as where privilege can be established.⁴

Loss or waiver of privilege

Privilege may be lost by inadvertence or waiver. It can be waived by the client or, if the client has died, by his personal representative to whom privilege passes.

Exceptions to privilege

Privilege does not exist in the following circumstances:

- (a) communications made for some fraudulent or illegal purpose,
- (b) communications made by a client to a solicitor before the commission of a crime for the purpose of being guided or helped in the commission of that crime,
- (c) in the case of joint retainer where communications made to a solicitor for all those clients jointly must be disclosed to all of them, except where a communication is made to a solicitor in his exclusive capacity as solicitor for one party only,
- (d) communications between solicitor and client concerning those persons who have a joint interest with the client in the subject matter of the communications or between joint claimants under the same claim,
- (e) where privilege may be overridden by statute,
- (f) in the case of records of public proceedings, public documents, pleadings, or copies of them when they have been filed, depositions and transcripts of proceedings in court.

There is a distinction between the law of legal professional privilege and the professional duty to keep clients' affairs confidential.

FOOTNOTE

3. *Criminal Justice Act, 1994*.
S.I. No. 324 of 1994, *Criminal Justice Act, 1994 (Commencement) Order, 1994*.
S.I. No. 55 of 1995, *Criminal Justice Act, 1994 (Commencement) Order, 1995*.
S.I. No. 105 of 1995, *Criminal Justice Act, 1994 (Section 32) (10b) Regulations, 1995*.
"What to do when the CAB comes to call" – Briefing, *Gazette* May 2000.
"Policy statement concerning professional secrecy of lawyers and legislation on money laundering" - CCBE November 1997. See Appendix 5.
EU Directive on Moneylaundering 2001/97/EC (Amends 91/308/EEC)
4. "Collection and enforcement of Stamp Duty" – Revenue Commissioners Statement of Practice SP - SD 1/91. See also Para. 9.2 Finance Act, 1991.

4.2 PROFESSIONAL DUTY OF CONFIDENTIALITY

General

A solicitor has a professional duty to keep confidential all matters coming within the solicitor/client relationship including the existence of that relationship. These matters can only be disclosed with the consent of the client or by the direction of a court.

The solicitor's professional duty of confidentiality should override a solicitor's inclination as a dutiful citizen to report any matter to the authorities or to co-operate with them against the interest of the client.

For instance, where a solicitor is asked by the Garda Síochána for information or documentation relating to a client, unless the client is prepared to waive confidentiality, the solicitor should insist upon receiving a court order or warrant. Likewise, where the solicitor is asked to attend court to give evidence of matters which are within solicitor/client confidentiality the solicitor should not attend unless he receives a witness summons or subpoena. Where this is done, it will be a matter for the court, not for the solicitor, to decide the issue of confidentiality.

A solicitor should keep the addresses of clients confidential. However, as a matter of courtesy, he may offer to forward correspondence to a client.

Revenue Audits

When a solicitor is the subject of a Revenue audit all necessary steps should be taken by the solicitor to ensure that there is no breach of confidentiality.⁵

Disclosure of testator's affairs

On the death of a client/testator, a solicitor should not, without the consent of the executor, disclose any information other than to the executor about the testator's affairs.

Supplying copy of will

A solicitor acting for the executor should not supply a copy of, or extract from, a will to a beneficiary unless so directed by the executor. The executor should, however, be advised that it is the recommended and normal practice to supply an extract of the relevant part of the will to an interested legatee.

FOOTNOTE

5. "Memorandum of Understanding between the Revenue Commissioners and the Law Society of Ireland concerning the Audit of the tax returns of Solicitors and Solicitors Practices." – February 2002. See appendix 6.
"Guidelines to Solicitors in relation to Revenue Audits". Law Society Probate Administration & Taxation Committee – February 2002. See appendix 6.

**Testator's solicitor**

Where a will drafted by a solicitor is the subject of a probate action in which that solicitor is not concerned, the solicitor who has drafted the will is at liberty, after commencement of the proceedings and subject to the consent of the executor or personal representative, to supply a statement as to the surrounding circumstances to any interested party.

Wills from an acquired practice

Where a solicitor acquires the practice of another solicitor together with custody of envelopes containing wills, he is entitled to open the envelopes and communicate with the clients or their personal representatives for the purpose of notifying them of the existence of the wills and of advising that they may be amended as appropriate in accordance with changes in the law or in accordance with further instructions.

Cases involving children

There may be exceptional circumstances involving children where a solicitor should consider revealing confidential information to an appropriate authority. This may be where the child is the client and the child reveals information which indicates continuing sexual or other physical abuse but refuses to allow disclosure of such information. Similarly, there may be situations where an adult discloses abuse either by himself or herself or by another adult against a child but refuses to allow any disclosure. The solicitor should consider whether the threat to the child's life or health, both mental and physical, is sufficiently serious to justify a breach of the duty of confidentiality or, alternatively, to warrant an application to the President of the High Court for directions.

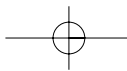
Exceptions to confidentiality

The circumstances which override confidentiality are similar to those which override privilege. Where the solicitor is being used by the client to facilitate the commission of a crime or fraud, confidentiality is waived and the solicitor is then free to communicate his knowledge to a third party, for instance to a colleague subsequently instructed in the matter.

Where the solicitor believes on reasonable grounds that there is a real risk of death or serious injury to the client himself or to a third party, confidentiality may be waived to the extent necessary.

4.3 RECEIPT OF INFORMATION INTENDED FOR THE OTHER PARTY TO LITIGATION**General**

A solicitor should not ask to obtain access to private correspondence or documents of, or



intended for, the other side in a case or matter in which he has been instructed. This includes desisting from opening letters not addressed to him or his firm. If, however, the contents of documents come to his knowledge in another way, he is entitled, and may have a duty, to use the information obtained for the benefit of his client. It has been held that where information of a privileged nature inadvertently comes to the notice of the opposing party, although the documents remain privileged, the opposing party is not precluded on the grounds of privilege from giving secondary evidence of their contents.

If a solicitor is satisfied that evidence has been obtained illegally, for instance, if it has been stolen, this evidence should not be produced to the court.

Receipt of confidences from someone not the client

A solicitor acting in a case or matter should endeavour to avoid allowing himself to be put in a position of receiving confidential information which he is asked not to pass to his own client.

4.4 STAFF OF SOLICITOR

The duty to protect clients' privilege and the duty to keep the affairs of clients confidential extends to the staff of a solicitor. It is recommended that staff should be informed of their responsibility to refrain from disclosing to any unauthorised party anything they learn in the course of their employment and that this should be acknowledged by them in writing. This duty, imposed on each member of the staff of a solicitor, is not terminated by the determination of the retainer of the solicitor by a client, by the completion of the matter in question or by the termination of the employment of the member of staff.

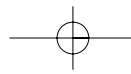
4.5 FAMILY LAW FILES

A solicitor should be mindful of the extent and effect of the *in-camera rule*. A solicitor must not disclose the contents of a family law file which is subject to this rule to any third party even if he has his own client's consent.

FOOTNOTE

6. M(R) v M(D) 2001 2 ILRM at 369





CHAPTER 5

THE SOLICITOR AND HIS RELATIONSHIP WITH THE COURT

5.1 FUNDAMENTAL PRINCIPLES

General

A solicitor not only acts for his client and owes a duty to do his best for that client but he also owes a duty to the court. The proper administration of justice requires that the court be able to rely upon each lawyer who appears before it or who has dealings with it. A solicitor:

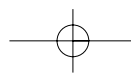
- (a) should promote and protect fearlessly by all proper and lawful means the client's best interests and do so without regard to his own interest or to any consequences to himself or to any person,
- (b) should keep confidential information about a client and his or her affairs and must not disclose the facts known to him regarding the client's character or previous convictions without the client's express consent,
- (c) has an overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved and should assist the court in the administration of justice and should not deceive or knowingly or recklessly mislead the court.

A solicitor is under no duty to undo the consequences of the court being misled by the prosecution or by the opposing party otherwise than on a point of law, where this occurs due to the prosecution or plaintiff lacking certain information or misconceiving the force of the available information. A solicitor should not, however, assert what he knows to be untrue or substantiate a fraud, as that would amount to a positive deception of the court.

A solicitor interacts with the court in one of two ways, firstly, directly by way of advocacy before the court and, secondly, in filing pleadings and other documents which come before the courts.

The solicitor advocate

There are general rules which apply to all solicitor advocates whether acting in a civil or criminal matter and irrespective of which side the solicitor is representing.





A solicitor should present his client's case to his client's best advantage. It is not the task of an advocate to win a case at all costs. In addition, the advocate has a duty to assist the court in reaching a just decision and in furtherance of that aim he must advise the court of all relevant cases and statutory provisions.

With regard to evidence, while the advocate should not deceive the court in relation to any facts placed before it, he is not obliged to make available to the court any evidence harmful to his case of which the court or the opposing party is otherwise unaware. Except where appearing as a prosecution advocate, a solicitor is not under any duty to inform the court of the existence of witnesses who would assist the other side. However, if a solicitor knows that an affidavit has been made and filed in the case which he is conducting and which is therefore within the knowledge of the court and the affidavit is such that if it were before the court it might affect the mind of the judge, then the advocate's duty is to disclose the affidavit to the judge.

It is the duty of the advocate to uphold fearlessly the proper interests of his client and to protect his client's liberty. He is entitled to state every fact freely and to use every argument, whether technical or otherwise, that may be used in accordance with the law and within the rules of professional conduct. He should resist any attempt to restrict him or his client in the performance of this task.

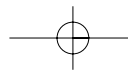
It is the duty of an advocate to guard against being made the channel of questions which are only intended to insult, degrade or annoy either the other side, a witness or any other person. He is under a duty to exercise his own judgement both with regard to the substance and the form of a question.

The advocate should never allow his personal feelings to intrude upon his task as an advocate. He should always act with due courtesy not only towards the court but also towards his opponent and all concerned in the case.

A solicitor should not call a witness whose evidence is untrue to the solicitor's knowledge, as opposed to his belief.

The solicitor prosecutor

In a criminal case the responsibilities of the advocate acting for the prosecution are different from those of the advocate acting for the defence. The advocate who is prosecuting must see that every material point is made which supports the prosecution case or weakens the case put forward for the defence. The advocate should not regard his task as one of winning the case. The advocate must present the case against the accused relentlessly but with scrupulous fairness. The names of all witnesses and all material facts



must be disclosed to the court irrespective of whether the witnesses and facts are detrimental to the prosecution case.

The prosecutor must state the relevant facts dispassionately. The prosecutor, particularly where the accused is unrepresented, should mention to the court any mitigating circumstances. The prosecutor must not in his opening address state as a fact anything which he knows, or ought to know, he is not in a position to prove. The prosecutor must not conceal from an opponent facts which are within the knowledge of the prosecutor and which are inconsistent with the facts which the prosecutor has presented to the court. Before commencement of the trial where a prosecutor obtains evidence which may assist the defence or learns of witnesses who may do so, the prosecutor must supply the defence with the particulars of the evidence and the names of the witnesses. During the trial if the prosecutor obtains evidence which he does not intend to use and which may assist the defence, he must give it to the defence. If the prosecutor knows of a credible witness who can give evidence concerning material facts which tend to show the accused to be innocent he must either call that witness or make the witness statement available to the defence.

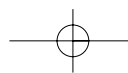
In opening the case, the prosecutor must not deliberately withhold anything which tends to favour the accused. The prosecutor must reveal all relevant cases and statutory provisions known to him irrespective of whether the information is to the benefit of the prosecution case and this is so whether or not the prosecutor has been called upon to argue the particular law in question.

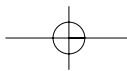
The solicitor advocate for the accused

In a criminal case the solicitor has a duty to ensure that the prosecution discharges the onus placed upon it to prove the guilt of the accused.

Unless there are exceptional circumstances, a client's privilege prevents the solicitor from making a disclosure of privileged information without the client's consent. The defence advocate, unlike the advocate for the prosecution, is under no duty of disclosure to the court or to the prosecution or to correct any information which may have been given to the court by the prosecution if the correction would be to the detriment of the defendant. However, the advocate should not indicate agreement with information that the prosecution has put forward that the advocate knows to be incorrect. The advocate for the defence is of course obliged to disclose to the prosecution and to the court all relevant cases and statutory provisions relating to his client's case but should not, subject to alibi evidence, disclose any evidence in relation to his client's defence.

Should the court put any question to the advocate for the defence as to the character of the





defendant, whether the character of the defendant is or is not an issue, his reply should be that the question is not one for him to answer.

Whilst a defence advocate should present every technical defence which is available to the defendant he should never present a defence other than one based upon the facts.

Duty of disclosure of previous convictions

Where the prosecution outlines to the court the accused's previous convictions but this information is incorrect or incomplete to the knowledge of the solicitor for the defence, that solicitor, if asked by the court to comment on the list of previous convictions, should decline to comment. Where not asked to comment on the list of previous convictions the solicitor should not be seen to corroborate the incorrect information furnished by the prosecution as that would amount to positive deception. Where an accused gives evidence to the court and in so doing accepts the list of previous convictions given to the court and which list is to the knowledge of the advocate incorrect, that advocate must then cease his representation of the accused.

Admission of guilt by client

In criminal matters it is a matter for the jury or the court, not for the advocate for the defence, to decide the guilt or innocence of his client. It is the duty of the solicitor for the defence to put the prosecution to proof of what it alleges and the solicitor may submit to the court that there is insufficient evidence adduced to justify a conviction. Where, prior to the commencement or during the course of any criminal case, a client admits to his solicitor that he is guilty of the charge, it is well settled that the solicitor need only decline to act in such proceedings if the client is insistent on giving evidence to deny such guilt or requires the making of a statement asserting his innocence. Where the client has admitted his guilt to his solicitor but will not be giving evidence, his solicitor may continue to act for him. The solicitor for the defence may also advance any other defence which obliges the prosecution to prove guilt other than protesting the client's innocence.

5.2 PRISONERS IN COURTHOUSE CELLS

Where a solicitor requires to have a consultation with a prisoner in custody in cells within the courthouse or in the immediate vicinity of a court, the solicitor should so inform the court and seek to have the accused's case put back in order to enable a consultation take place.

5.3 CONFLICT ARISING DURING RETAINER

According to the principles of agency, a solicitor, whether acting as advocate or otherwise,



derives his instructions and authority solely from those who instruct him. It is an implied term of the retainer of a solicitor that he is free to conduct the proceedings in such a way as he, in his proper discretion, considers appropriate. If the express instructions given to the solicitor give rise to a situation in which the inclusion or exclusion of evidence on the one hand and his duty to the court on the other hand conflict, he should, unless his instructions are varied, withdraw from the case after seeking the court's approval to that course, but without disclosing matters which are protected by the client's privilege.¹

5.4 PERJURY BY A CLIENT

A solicitor should decline to act further in any proceedings where a solicitor has knowledge that the client has committed perjury or has misled the court in relation to those proceedings unless the client agrees to make a full disclosure of his conduct to the court.

5.5 COMMUNICATION WITH THE COURT

A solicitor should not discuss the merits of a case with the judge, registrar, clerk or other official before whom a case is pending. Where during the case a written communication to the court is required, the solicitor should deliver a copy of the communication to the solicitor or counsel representing the other side of the case or to the opposing party, if he is not represented by a solicitor or counsel. Where an oral communication is proper, adequate notice to the other party or his solicitor or counsel should be given.

If, after the conclusion of the evidence and legal argument, judgement is reserved and the solicitor then discovers a proposition of law which is directly in point and proposes to bring it to the attention of the judge, the solicitor on the other side ought to concur in his so doing, even if he knows that the proposition is against him. If he does not concur the first solicitor may submit the additional authority to the judge in writing and that solicitor should at the same time send his opponent a copy of the letter he has sent to the judge.

5.6 WITNESSES

Advertising for witnesses

On the instructions of his client a solicitor may advertise for witnesses to come forward

FOOTNOTE

1. "Restriction on the withdrawal of a Solicitor from a case" - Section 74 Solicitors (Amendment) Act, 1994.



to give evidence as to a particular occurrence but the advertisement should not invite persons to testify as to particular facts.

Interviewing witnesses

There is no property in a witness.

A solicitor is entitled to interview a witness and to take statements from him in any civil or criminal proceedings, whether that witness has been interviewed or called as a witness by the other party, provided there is no question of tampering with the evidence of a witness or suborning him to change his story.

In the rare case where a solicitor for the defence interviews a witness for the other side, that solicitor may well be exposed to the suggestion that he has tampered with the evidence of such a witness. A court or jury would be more likely to conclude that the witness has been tampered with where such an interview has taken place and this might harm the case to be made by the solicitor's client. The fact that the witness has been interviewed may be seen to weaken the cross examination.

In criminal cases it is recommended that a solicitor for the prosecution or the defence who may wish to interview witnesses who have already given evidence on the preliminary enquiry into an indictable offence, or who it is known are to be called as witnesses for the other side, should communicate first with the solicitor for the other side informing him of his intention. It may be a wise precaution in such circumstances for the interview on behalf of the defence to take place in the presence of a representative of the Garda Síochána who is not involved in the case.

It is not improper for a solicitor to advise a witness from whom a statement is being sought that he need not make a statement except subject to specific legislative exceptions. The advice the solicitor gives will depend on the interests of his client and the circumstances of the case.

Witness in the course of giving evidence

When a witness is in the course of being cross examined a solicitor should not, without the leave of the court or without the consent of counsel or the solicitor for the other side, discuss the case with the witness, whether or not that witness is the client. The prohibition covers the whole of the relevant time including adjournments and weekends.²

FOOTNOTE

2. "Cross Examination of Witnesses" - *Practice Note Gazette*, November 1994.

Payment to witnesses

A solicitor should not make payments or offer to make payments or agree to the making of payments to a witness contingent upon the nature of the evidence given or the outcome of a case. There is no objection to the payment to any witness of reasonable expenses or reasonable compensation for loss of time for attending court or the payment of a reasonable fee for the services of an expert witness.

In legally aided cases, a solicitor should draw to the attention of witnesses the fact that the case is being legally aided and that the witness fees and disbursements will be those which are taxed or assessed as being proper by the relevant authority, being the Legal Aid Board for civil cases and the Department of Justice, Finance Division for criminal cases. It should be explained that no payments other than those made by these bodies can be made to the witnesses and that the solicitor has no personal liability for the payment of any fees, either those allowed, or any fees additional to those amounts.

Expenses of witness served with a subpoena

A solicitor should be cognisant of the fact that costs will not always be awarded in favour of his client. If he is of the opinion that his client should not have to bear the expenses of a particular witness on whom the solicitor has served a subpoena, he should bring the matter to the attention of the court and seek an order for costs in favour of his client in relation to those expenses.

The solicitor as witness

It is unwise for a solicitor to be a witness in his own case or to remain in a case where a member of his firm is called as a witness. However, a solicitor may give evidence in a case where either the evidence to be given is purely formal, such as the witnessing of deeds in civil cases or, in criminal cases, where evidence relating to attendance at a Garda station or prison is required. In making the decision as to whether to continue or cease acting, consideration should be given to the nature of the case, the nature of the evidence and the position of the client should the solicitor cease to act. However, the interest of justice, real or perceived, should be the deciding factor.

5.7 COMPLIANCE WITH ORDERS OF THE COURT

A solicitor is obliged to comply with an order of the court requiring him to take or refrain from taking some particular course of action and failure to do so may amount to contempt of court. A solicitor should not aid or assist a client where the client refuses to obey an order of the court. A solicitor is bound to honour an undertaking given to the court.



5.8 THE SOLICITOR STANDING BAIL

A solicitor should not stand bail for a person for whom he or his firm acts. It is unlawful for any person, including a solicitor, to be a party to a bargain to indemnify a surety for bail.

5.9 DRESS IN COURT

A solicitor appearing in court should always dress in a manner which shows respect for the dignity and formality of the court.

5.10 PUBLICITY FOR PENDING LITIGATION OR COURT PROCEEDINGS

A solicitor who on his client's instructions issues a statement to the press in relation to pending litigation or a case at hearing should ensure that he is not in contempt of court.



CHAPTER 6

THE SOLICITOR AND HIS RELATIONSHIP WITH THIRD PARTIES

6.1 PROFESSIONAL STANDARD OF CONDUCT

A solicitor, whether in his professional capacity or otherwise, should not engage in any conduct which is fraudulent, deceitful or in any way contrary to his position as a solicitor and an officer of the court. A solicitor should not use his position to take unfair advantage either for himself or for any other person.

6.2 INDUCEMENTS

A solicitor should not actively encourage or offer inducements to any third party with a view to obtaining instructions from any person.¹

6.3 PERSONS ACTING FOR THEMSELVES

Where a solicitor acting for a client in any matter finds that the other party to the matter has decided to act for himself, the solicitor is not bound to actively assist the other party. Where the solicitor forms the opinion that the other party is not competent to act for himself, the solicitor should recommend that the other party consult a solicitor.

In a conveyancing matter where a solicitor is instructed by a vendor and is not aware of the name and address of the solicitor for the purchaser, it is in order for the solicitor for the vendor to write to the purchaser asking the purchaser for the name and address of his solicitor.

When dealing with a lay conveyancer the solicitor should explain to his own client difficulties which may be encountered. For instance, the solicitor will not be in a position to accept undertakings in relation to any matter. Additional expense may be incurred because it is likely that extra work will be involved. If the solicitor is acting on behalf of the purchaser, the deposit should not be handed over to the lay vendor. An alternative

FOOTNOTE

- ¹ "Prohibition with respect to introduction of business – Section 62 of the Solicitors Act, 1954 S.I. No. 351 of 1996. Solicitors (Advertising) Regulations, 1996. Regulation 5(a)(vi)

stakeholder, who would be acceptable to the vendor, should be sought so that a better procedure for the protection of the purchaser's deposit can be put in place. A reputable person known to both parties might be found or an arrangement could be made with a bank.

While the solicitor is not under any duty to assist a third party other than as set out above or as directed by the court, a solicitor should at all times behave in a courteous manner towards that individual.

6.4 LITIGATION - INITIATING LETTERS

Where a solicitor is instructed to collect a simple debt it is improper to demand the costs of the letter which he sends to the debtor, as the costs of that letter are not part of the debt. It is also improper to imply in such a letter that the debtor will have to pay the costs of the litigation, if any, which may follow, as that will be a matter for the court. However, a solicitor may state in such correspondence that in the event of proceedings proving necessary, the letter will be used as evidence in an application for costs to be awarded against the debtor.

Before a solicitor institutes any proceedings, a preliminary letter should usually be written to the intended defendant by the solicitor acting for the intended plaintiff, even though the costs of such letter may not be recoverable. However, there are circumstances where proceedings will be issued without a warning letter.

A solicitor may wish, as a matter of courtesy, to include a letter with the proceedings to explain the reason why this was necessary.

6.5 UNDERTAKINGS

General

6.5.1 An undertaking is any unequivocal declaration of intention addressed to someone who reasonably places reliance on it which is made by a solicitor in the course of his practice, either personally or by a member of the solicitor's staff, whereby the solicitor, or in the case of a member of his staff, his employer, becomes personally bound. Undertakings should be in writing and be signed by the principal or a partner of the firm giving the undertaking. Before giving the undertaking a solicitor should obtain an irrevocable instruction in writing from the client authorising the solicitor to give the undertaking.

- 6.5.2** A solicitor will be required to honour the terms of a professional undertaking as a matter of conduct.
- 6.5.3** An undertaking will normally be required to be honoured only as between the giver and the recipient or an assignee of the recipient.
- 6.5.4** An ambiguous undertaking is generally construed in favour of the recipient.
- 6.5.5** An undertaking does not have to constitute a legal contract to be enforceable in conduct.
- 6.5.6** An undertaking is still binding even if it is to do something outside the solicitor's control.
- 6.5.7** A solicitor is responsible for honouring an undertaking given by a member of the solicitor's staff, whether such staff member is admitted to the Roll of Solicitors or not.
- 6.5.8** Where a solicitor in partnership gives an undertaking as a solicitor in the course of practice, all partners are responsible for its performance.
- 6.5.9** A solicitor cannot avoid liability on an undertaking by pleading that to honour it would be a breach of duty owed to the client.
- 6.5.10** A solicitor who gives an undertaking which is expressed to be dependent upon the happening of a future event should notify the recipient immediately if it becomes clear that the event will not occur.
- 6.5.11** In addition to the Law Society's power to enforce undertakings as a matter of conduct, the court, by virtue of its inherent jurisdiction over its own officers, has power of enforcement in respect of undertakings.
- 6.5.12** An undertaking should not be given by a solicitor as an inducement to a client to secure that client's business.
- 6.5.13** A solicitor should not seek an undertaking from another solicitor which the first solicitor knows, or ought to know, should not be given.²

FOOTNOTE

2. "Principles relating to Professional Undertakings" – Booklet Law Society, July 1996.

**Children's monies**

An undertaking should not be given in relation to funds to be recovered on behalf of children. This is because the courts have an exclusive jurisdiction in relation to the determination of infant actions and the disposition of monies paid, whether on foot of a judgement, compromise or settlement of such actions.

The solicitor employed in an organisation

The position in relation to undertakings is no different for a solicitor in employment in an organisation from the position of a solicitor in private practice. The solicitor is responsible for the solicitor's own undertakings and for those of the staff who report to that solicitor. Sometimes the solicitor's personal liability in the matter may not be appreciated by the employer until explained.

A solicitor should not give a professional undertaking to do something which is outside the solicitor's control. As an employee, the functions delegated to a solicitor may be limited and therefore undertakings should be limited to those delegated functions. If the carrying out of some function is reserved to another employee or category of employees in the organisation, that matter should not be the subject of an undertaking given by the solicitor because it is outside the solicitor's control. If it is not certain that a function is or will remain in the solicitor's control, specific delegation of the function should be sought before the undertaking is given. If the solicitor's authority to give professional undertakings as solicitor on behalf of the organisation is not clearly defined, the authority should be specifically delegated.³

6.6 LAW SOCIETY

A solicitor should reply promptly to correspondence from the Law Society whether in relation to complaints or to any other practice matter.

The solicitor should co-operate with the Law Society in dealing with and resolving complaints. A solicitor should attend meetings of the Law Society's Compensation Fund Committee or the Registrar's Committee if requested to do so, unless excused beforehand.

Failure to communicate with the Law Society could result in a referral to the Disciplinary Tribunal and a finding of misconduct.⁴

FOOTNOTE

3. "Information Booklet for Solicitors commencing employment in the Corporate & Public Services Sectors" - Law Society, February 2002.
4. "Amendment of Act of 1994" Section 13 Solicitors (Amendment) Act, 2002.
"Law Society sets up panel to help Solicitors in Trouble" - Gazette, March 2001.

**6.7 FEES AND EXPENSES OF PROFESSIONAL AND OTHER SERVICE PROVIDERS****General**

A solicitor acting on behalf of a client does not incur personal or legal responsibility for the fees and/or expenses of a professional or other service provider engaged on behalf of a client to provide a service or served with a subpoena to appear in a court case to which the client is a party. Unless there is agreement to the contrary, the solicitor is clearly acting as an agent for a disclosed principal. However, it is the responsibility of the solicitor to ensure that such fees are discharged at the earliest opportunity. For the sake of clarity, however, it is recommended that when engaging a professional or other service provider or serving a subpoena on a professional witness the solicitor should advise the individual that he is doing so solely as the agent of a disclosed principal.

A solicitor should ensure that adequate notice is given and suitable arrangements made in respect of attendances by witnesses who are attending court on foot of a subpoena or otherwise.

Payment of treatment and other professional fees

Where a solicitor acts for a plaintiff in an action in which treatment or other professional fees are recovered as part of the special damages and where no undertaking has been given by the solicitor to pay same, it is the obligation of the solicitor to pay all damages received to the client but to use reasonable endeavours to ensure that the fees are paid to the professional at the earliest opportunity.

6.8 WRITING OFFENSIVE LETTERS

A solicitor, while acting for a client or otherwise, should not use insulting language or indulge in acrimonious correspondence.

6.9 DISCRIMINATION

A solicitor should treat all persons as equal. A solicitor should avoid discrimination against any person whether clients, counsel, professional witnesses, opposing clients or witnesses because of their sex, race, colour, religion, sexual persuasion, creed, ethnic origin or membership of any social grouping.



6.10 RECORDING CONVERSATIONS

A solicitor may make an electronic recording of a conversation with a colleague, client or third party. If a solicitor proposes to record a conversation, he should warn the party to be recorded that the conversation will be recorded. There may be exceptional circumstances where such warning need not be given.

6.11 ADMINISTRATION OF OATHS

Solicitors are now entitled to administer oaths. They have the same obligations as apply to Commissioners for Oaths.⁵

FOOTNOTE

5. "Administration of oaths and taking of affidavits" - Section 72 of the Solicitors (Amendment) Act, 1994. Memorandum from Chief Justice re section 72 of the Solicitors (Amendment) Act, 1994. See Law Directory annually where the memorandum is included in reference material.



CHAPTER 7

THE SOLICITOR AND HIS RELATIONSHIP WITH OTHER SOLICITORS

7.1 PROFESSIONAL STANDARD OF CONDUCT

General

A solicitor should act towards other solicitors with frankness and good faith consistent with his overriding duty to the client.

A solicitor should honour his word given either personally or by partners or by any other member of the solicitor's firm, and whether or not given in writing. However, in matters such as undertakings proper consideration should be given to whether the acceptance of an oral statement only is appropriate. It should be noted that in the event of disciplinary proceedings being invoked to compel compliance with an undertaking a copy of a written undertaking would be an essential proof.

A solicitor should maintain his personal integrity and observe the requirements of good manners and courtesy towards other members of the profession or their staff.

A solicitor should not write offensive letters to other members of the profession.

Amendments to conveyancing contracts by purchaser's solicitor

If amendments to the terms of a conveyancing contract, or a map which forms part of that contract, are made by a purchaser's solicitor, the vendor's solicitor should be alerted to that fact in the covering letter returning the contracts.¹

7.2 COMMUNICATING WITH THE CLIENT OF ANOTHER SOLICITOR

General

A solicitor should neither interview nor otherwise communicate with any party who to the solicitor's knowledge has retained another solicitor to act in the matter about which the first solicitor wishes to communicate, except with that solicitor's consent. However, in exceptional circumstances the general rule may not apply. For instance, where a solicitor has failed to reply in writing to correspondence from another solicitor, then the other solicitor may be justified in writing directly to the client of that solicitor. A solicitor who intends to write to the client of another solicitor should first warn that solicitor in writing of his intention to do so.

FOOTNOTE

1. "Amendments to Conveyancing Contract before execution by a Purchaser" - Practice Note Gazette, October 1993.

The client of an in-house solicitor

Where the other solicitor is a solicitor employed in-house in an organisation, the employer of the in-house solicitor is usually that solicitor's client. If there is ongoing correspondence with the in-house solicitor all communications should be directed to that solicitor. Other personnel in the organisation should not be contacted directly. Otherwise, the proper involvement of the in-house solicitor in the matter is affected.²

7.3 "WITHOUT PREJUDICE" COMMUNICATIONS BETWEEN SOLICITORS

Communications between solicitors for opposing parties or between one solicitor and the opposing party are not privileged since they are not confidential unless there is an express or implied agreement that they should be, for example, in circumstances where letters are written "without prejudice".

The phrase "without prejudice" is an evidential device which, when applied to correspondence or oral communications, precludes the production of that evidence as evidence of any information thus imparted.

The device only attaches where the words are applied in the course of bona fide negotiations for the settlement of disputes. If agreement is reached at the conclusion of negotiations, the privilege ceases to attach to the correspondence and the correspondence or any oral statements arising therefrom may be adduced in proof of the agreement.

7.4 SUPPLYING INFORMATION ON REQUEST TO ANOTHER SOLICITOR

A solicitor should only supply information concerning documents in his possession or furnish information on a client's file to another solicitor upon the receipt of written instructions from the client to supply the information and upon satisfactory provision being made for payment of the solicitor's proper costs for so doing. This course of action is subject to any question of privilege of the client and the interests of the client being protected.

FOOTNOTE

2. "Communication with the client of another solicitor: an in-house solicitor"
- *Practice Note Gazette, January /February 1998.*

7.5 COSTS OF SOLICITOR AGENT

A solicitor who instructs a solicitor agent should ensure that the solicitor agent is paid at the earliest opportunity.³

7.6 TRANSFER OF FILES BETWEEN SOLICITORS

A courteous request for files and a prompt response are the keys for a smooth handover of files between solicitors.

Unless a solicitor is agreeable to do so, there is no reason why the first solicitor should continue to fund a case after the client has left that solicitor. If costs are due, a bill of costs should be furnished without delay. Costs may be agreed, arbitrated or taxed. "No foal, no fee" arrangements are determined if the client moves to another solicitor. It can be implied in these contingency fee arrangements that they are conditional on the first solicitor continuing to have prosecution of the case. The first solicitor will be entitled to his fees on a quantum meruit basis.

The first solicitor may opt to accept an undertaking in respect of the payment of costs as alternative security to the solicitor's common law lien. Even in cases where an undertaking in respect of the payment of his costs is being accepted by the first solicitor, all outlays paid should be refunded immediately to him.

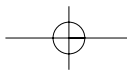
The first solicitor should be released from undertakings furnished to third parties. No solicitor should co-operate with a client who seeks to leave a solicitor with an outstanding undertaking.

Once the fees and outlays of the first solicitor have been paid, the file belongs to the client. The file transferred should include instructions, briefs, copies of correspondence written to third parties and documents prepared by third parties for the benefit of the client. Any item which deals with the substance of the matter and which would assist the new solicitor should be included. Certain papers belong to the previous solicitor and may be retained by him. These include letters, papers and documents prepared by that solicitor for his own benefit and for which he has not charged and does not intend to charge the client.

When a solicitor proposes to come on record for a client, the appropriate notice of change of solicitor to the court, the opposite party and the solicitor discharged must be filed and served before the notice takes effect. At the conclusion of a litigation case if a second

FOOTNOTE

3. "Foreign Agents Fees 50,000 - You Pay" - *Practice Note Gazette, April/May 1996. See chapter 11*



solicitor recovers costs which include the cost of work done by the first solicitor, he is accountable to the first solicitor for the appropriate portion of those costs. This is the case even if there are solicitor/client costs properly payable to him and these exceed the total amount of the party and party costs recovered. This applies where the first solicitor was not paid when his instructions were terminated.

Proceeding without the file is not recommended but this may be necessary in certain circumstances.

A solicitor who has been engaged by a client is entitled to his costs and to be paid by that client for all work properly done by him. Where a client discharges one solicitor and engages the services of a second solicitor, the second solicitor should ensure, in his initial discussions with the client, that the client fully appreciates and understands the client's obligation to pay all costs due for work properly done by the first solicitor. The second solicitor should endeavour to ensure that such costs are discharged by the client.

An employee leaving a firm cannot, without formal authority, take the files of clients, even the files of clients introduced by the employee. If a partner leaves a firm, or if the partnership is dissolved, there should be prompt notification to the clients of the firm, explaining to them that they may choose to instruct whomsoever they wish. Files should never be a pawn in disputes between solicitors.

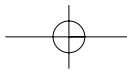
On receipt of an authority for the transfer of a file there is no objection to a solicitor first instructed in a matter approaching the client to seek an explanation of the reasons for the determination of the retainer.⁴

7.7 PAYMENT FOR ASSISTANT SOLICITORS' PRACTISING CERTIFICATES

It is a matter of contract between the principal or partners of a firm and the solicitor employees of that firm whether the practising certificates of assistant solicitors are paid for by the firm. However, where a firm employs an assistant solicitor who holds a practising certificate paid for by another firm, in which the assistant was previously employed, it is recommended that the apportioned cost for the period when the solicitor is employed by the second firm should be refunded to the first firm.

FOOTNOTE

4. "Transferring files between solicitors" - *Practice Note Gazette*, December 1996.



7.8 SERIOUS MISCONDUCT BY ANOTHER SOLICITOR

If a solicitor is of the opinion that another solicitor is engaged in serious misconduct, this should be brought to the attention of the Law Society. If this would involve disclosure of a client's affairs, the client's consent to do so should be obtained.

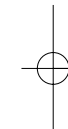
There is no obligation to bring any matter to the attention of the Law Society if it comes to a solicitor's notice in the course of assisting a colleague as a panel member of a recognized Law Society assistance scheme.⁵

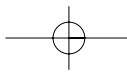
7.9 REFERRAL OF FILES UNDER A REFERRAL SCHEME

Where a client is referred to a solicitor under a consultancy referral system established by the Law Society, the basis of the arrangement should be that the specialist should not take advantage of the trust placed in him by his colleague by agreeing to take on further instructions from the client within the period of twelve months from the referral, if such new instructions are of a type which the referring practitioner could carry out himself being within his reasonable competency.

FOOTNOTE

5. "Law Society sets up Panel to help Solicitors in Trouble" - *Gazette*, March 2001.





CHAPTER 8

THE SOLICITOR AND HIS RELATIONSHIP WITH COUNSEL

8.1 RETENTION OF COUNSEL

A solicitor acting on a general retainer from a client is not entitled, without instructions from the client, to seek the advice of or to instruct counsel.

8.2 INSTRUCTIONS TO COUNSEL

In all cases where counsel is instructed, a solicitor should always be conscious that counsel can only be as effective as the instructions he receives allow. It is the duty of a solicitor to properly instruct counsel in a manner which ensures that counsel has all instructions and information which a solicitor has and which are or may be necessary for counsel to properly represent the client's interest within a reasonable time. It is the duty of a solicitor to furnish to counsel within a reasonable time all further instructions and information which counsel reasonably requests for the proper conduct of the case.

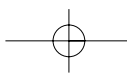
A solicitor should take care in the selection of suitable counsel and should, when considering the advice of counsel, ensure that it contains no obvious errors. If the advice conflicts with previous advice, it may be necessary to seek clarification.

A solicitor should use his best endeavours to ensure that the counsel carries out instructions within a reasonable time and that the matter does not become statute barred or liable to be struck out for want of prosecution. Where appropriate, a solicitor should ask for the return of papers in order to instruct another counsel.

8.3 ATTENDANCE ON COUNSEL

It is the duty of a solicitor to ensure that counsel is adequately attended on by a solicitor or a responsible member of his staff in court or whenever counsel is interviewing the client or any witness for the client.

A solicitor should not, in communication with his client, unfairly lay blame on counsel for an unsatisfactory outcome of a case.



8.4 THE SOLICITOR'S LIABILITY FOR PROFESSIONAL FEES

A solicitor has no personal liability for counsels' fees. This arises from the law of principal and agent which is the relationship which exists between solicitor and client. Because the solicitor is merely an agent, the solicitor does not incur a personal liability for the debts of a disclosed principal.

A solicitor who has received a fee from a client payable to counsel should pay such fee immediately. A solicitor who instructs counsel should use his best endeavours to ensure that counsel receives fees that are due and owing to him at the earliest opportunity. If a fee is marked on a brief and has been agreed with counsel, the fee is payable to counsel. In the absence of any express agreement a reasonable fee should be paid to counsel.

If a solicitor has reasonable grounds for believing that the client is unlikely to be in a position to pay counsel's fees in the event of the case being lost, counsel should be advised of this in the initial letter of instruction.

A spirit of co-operation and trust should always exist between solicitor and counsel.

CHAPTER 9

THE SOLICITOR IN PRACTICE

9.1 KEEPING INFORMATION SECURE

Solicitors who share accommodation or staff with non-solicitors should ensure that arrangements are in place which restrict access to all information, including information stored on computer, to authorised staff. Failure to do so could lead to a breach of confidentiality in respect of the business and affairs of the clients.

9.2 THE SUPERVISION OF THE SOLICITOR'S OFFICE

General

A solicitor is responsible for exercising proper supervision over staff. A solicitor practising as a sole principal is responsible for everything done in that practice. In a firm, each partner, jointly and severally, is similarly responsible. This includes the delivery of legal services in a competent manner and compliance with the law and regulations governing a solicitor's practice.

A solicitor may delegate work to his staff in such manner as he considers appropriate. However, a solicitor will not escape responsibility for work carried out in his office by delegating the relevant matter to the staff employed by him, even though they are well qualified to do the work.

The office of a solicitor should be supervised by the principal or partners of the firm or by a qualified assistant. In the event of unavoidable absences, adequate alternative arrangements for supervision should be made.

Branch office

Solicitors who operate branch offices have a particular duty to ensure that there is adequate supervision at those offices. Opening times should be restricted to times when a qualified assistant is in attendance or adequate alternative arrangements for supervision can be made.¹

FOOTNOTE

1. "Direction to grant or refuse practising certificate" - Section 49(f) (as substituted by section 61 (d) of the Solicitors (Amendment) Act, 1994) of the Solicitors Act, 1954.

**The solicitor's duty of supervision within an organisation**

A solicitor should properly supervise unqualified staff, for whom that solicitor is responsible. The solicitor is professionally responsible for all acts of the staff when they are carrying out work of a legal nature. Although the solicitor's staff in an organisation may also be answerable to other superiors in the organisation, the duty of supervision is not in any way diluted for the solicitor in relation to the legal work being carried on.

9.3 PROFESSIONAL NAMES, NAMEPLATES AND PROFESSIONAL NOTEPAPER**General**

The use of professional names, nameplates and notepaper is now regulated. The name of the practice should be the name or one of the names of the solicitors or one or more of the present or former principals of the firm or such other name as is approved in writing by the Society.

Professional name of the solicitor employed in an organisation

An employed solicitor in an organisation in the corporate or public services sectors may practise in the solicitor's own name, in the name of the employer or under a business name. If the solicitor practises in the solicitor's own name, it is recommended that a clear indication is given on the notepaper that the letter has emanated from the legal department in the organisation.

If the solicitor practises in the employer's name, an indication should be given on the notepaper that the letter emanated from the solicitor's practice within the organisation.

Business name

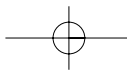
A solicitor using a business name should ensure registration under the Registration of Business Names Act, 1963.

Access by a client to the stationery of a solicitor

A client should not have access to the stationery of a solicitor.²

FOOTNOTE

2. *S.I. No. 178 of 1996. Solicitors (Practice Conduct & Discipline) Regulations, 1996.*
"New Regulations for Professional Names, Notepaper, Nameplates" - Practice Note Gazette, July 1996.
"Information Booklet for Solicitors commencing employment in the Corporate and Public Services Sectors"
- Law Society, February 2002.
"Use of Professional Notepaper in Debt Collection Matters" - Practice Note Gazette, December 1997.

**9.4 SERVICE COMPANIES**

There is no objection to a solicitor forming a service company to carry out necessary services in connection with the running of the practice of that solicitor. Membership of such companies should be limited to partners of the firm, solicitors holding practising certificates, retired partners of the firm or dependants of retired or deceased partners.

9.5 ADVERTISING

Advertising by solicitors is now regulated.

When a solicitor is advertising he should ensure that the advertisement does not encourage litigation or exaggerate the solicitor's expertise. Advertising should be couched in terms which do not give offence to members of the public or to members of the profession. A solicitor should not advertise in a manner which brings the profession into disrepute.³

9.6 THE SOLICITOR ACTING FOR ASSOCIATIONS

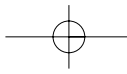
Where a solicitor acts for an association such as a trade association, a residents' association or a trade union, he may also be asked to act for members of that association or trade union. It may be a condition of obtaining legal advice or assistance that the member should instruct the solicitor for the association or trade union. This is an acceptable practice, but the name of the solicitor or his firm should not appear on the publicity materials or other documents or papers issued by the association or trade union.

9.7 PROFESSIONAL INDEMNITY INSURANCE

A practising certificate will not issue to a solicitor unless the solicitor provides evidence of professional indemnity insurance or exemption therefrom. A solicitor is required to carry run-off cover for a fixed period from the date of cessation of practice, currently two years.⁴

FOOTNOTE

3. *S.I. No. 351 of 1996. Solicitors (Advertising) Regulations, 1996.*
4. *S.I. No. 312 of 1995. Professional Indemnity Insurance Regulations, 1995.*
S.I. No. 209 of 1998. Professional Indemnity Insurance (Amendment) Regulations, 1998.
S.I. No. 362 of 1999. Professional Indemnity Insurance (Amendment) Regulations, 1999.
S.I. No. 504 of 2001. Professional Indemnity Insurance (Amendment) Regulations, 2001.



9.8 ACCOUNTS REGULATIONS

General

The principal or partners of a firm must ensure compliance with all accounts regulations. Partners have a joint and several responsibility in the matter.⁵

Monies handled by a solicitor under a power of attorney

Monies handled by a solicitor acting for a client under a power of attorney are clients' monies within the meaning of the Solicitors Accounts Regulations.

9.9 INVESTMENT AND INSURANCE SERVICES

If a solicitor provides investment business services, investment advice or insurance intermediary services to clients such services/advice must comply with the relevant legislation. The requirements vary depending on whether the services to the clients are, or are not, incidental to the provision of legal services to those clients.⁶

9.10 THE SOLICITOR AS AGENT FOR AN INSTITUTION

If a solicitor holds an agency for an institution, the office of the solicitor should be clearly seen to be the office of a solicitor and not a branch of the organisation from whom the solicitor holds the agency.

9.11 THE SOLICITOR'S LIEN ON MONIES

A solicitor has a common law right to exercise a lien on monies held. A solicitor cannot exercise a lien on monies coming into the solicitor's control if the monies were sent to him for a specific purpose, such as for the payment of stamp duty.

If a solicitor holds monies in the client account which are greater than the amount due to the solicitor, the exercise of the lien should be limited to the amount due.

FOOTNOTE

5. *S.I. No. 421 of 2001. Solicitors Accounts Regulations, 2001.*
6. *The Investment Intermediaries Act, 1995.*
The Investor Compensation Act, 1998.
Memorandum on the application of the Investment Intermediaries Act, 1995 ("IIA") and the Investor Compensation Act, 1998 ("ICA") to Solicitors - Law Society, 25th November 1998.
Memorandum on Solicitors Financial Services operated by Irish Pensions Trust Ltd. ("IPT"), an authorised investment business firm - Law Society, 25th November 1998.
S.I. No. 439 of 1999. The Solicitors Acts 1954 to 1994 (Investment Business and Investor Compensation) Regulations, 1998.

Where a solicitor receives a cheque payable to a client which cannot be lodged to the solicitor's account because the necessary endorsement has not been made by the client and the solicitor has no written authority to make the endorsement, the solicitor can only exercise a lien on the uncashed cheque.⁷

9.12 OFFICE SYSTEMS - CONFIDENTIALITY

The principal or partners of a firm should ensure that office systems do not present a risk that privileged or confidential information will be disclosed.⁸

9.13 DESTRUCTION OF FILES

In order to protect the interests of clients who may be sued by third parties and also to protect the interests of a solicitor's firm which may be sued by former clients or by third parties, a solicitor should ensure that all files, documents and other records are retained for appropriate periods.

When a solicitor drafts a will for a client he should consider whether the handwritten instructions taken should be retained with the original will.⁹

9.14 CHANGES IN THE SOLICITOR'S PRACTICE

Where the composition of a firm of solicitors is materially altered, whether by dissolution, amalgamation or cesser of practice, prompt notification to the clients of the firm of the particular circumstances of the alteration should be made. It is a matter for the client to decide which new firm he will instruct. It would not be proper for the new firm to take over the affairs of any client, including money and papers held, without the client concerned first being notified.

Ideally, all of the solicitors involved should agree how the clients will be informed. This will usually be by means of a circular letter, the text of which could be agreed between the solicitors concerned. This letter could issue in the name of one or all of the solicitors. Alternatively, the solicitors could agree that each of them would inform particular clients.

FOOTNOTE

7. *S.I. No. 421 of 2001. Solicitors' Accounts Regulations, 2001. Regulation 32*
"Regulations for accounts" - Section 76 (17) of the Solicitors (Amendment) Act, 1994.
"Prohibition on lodging for collection of unendorsed third-party cheques - Section 76 (17) of the Solicitors (Amendment) Act, 1994" - Practice Note Gazette, August/September 1995.
8. *"Fax Transmissions" - Practice Note Gazette, January/February 1995.*
9. *"Destruction of Files and other Papers" - Practice Note Gazette, August/September 1996.*



When appropriate, such letters should mention the amount outstanding to the credit of the particular client account.

Professional indemnity insurance matters should be addressed, particularly when a practice is sold, to ensure cover in the event of claims by clients of the former practice, especially where the solicitors concerned are not insured by the same insurers.⁹

9.15 THE SOLICITOR'S ABSENCE FROM OFFICE DUE TO ACCIDENT OR ILLNESS

A solicitor who is a sole practitioner or the sole principal of a firm should endeavour to have arrangements in place so that in the event of accident or illness the practice may be carried on with the minimum of interruption to the clients' affairs.

9.16 DEATH OR INCAPACITY OF THE SOLICITOR

It is desirable for a solicitor who is a sole practitioner or sole principal to nominate a solicitor as one of his executors.

Where a solicitor who was a sole practitioner has died, becomes incapacitated, bankrupt or abandoned, alternative arrangements for the continuation of the practice may be made, subject to the requirements of the relevant legislation.¹⁰

FOOTNOTE

9. *Guidelines for solicitors retiring or ceasing to practice as sole practitioners or sole principals* - Law Society, September 1999.
10. *Intervention in practice of sole practitioner in cases of death, incapacity, bankruptcy or abandonment* - Section 61 (as substituted by section 31 of the Solicitors (Amendment) Act, 1994) of the Solicitors Act, 1954.



CHAPTER 10

THE REMUNERATION OF THE SOLICITOR

10.1 INFORMATION IN RELATION TO LEGAL CHARGES

General

The law now requires that clients are made fully aware of the charges which they will have to pay for the provision of any legal services provided by their solicitors. The information must be given in writing. Included in the definition of "charges" are fees, outlays, disbursements and expenses.

The legislation applies to all matters both contentious and non-contentious.

In relation to contentious business, solicitors are obliged at the completion of the case to inform clients in relation to the total amount of any settlement or award, the amounts of any contribution to costs received from any other party or parties, or any insurers of such party or parties and the amount due by the client for any additional solicitor/client charges.¹

Settlement negotiations

During settlement negotiations the solicitor should explain matters fully to the client including the legitimate deductions which will be made from the settlement figure so that the client will know the net amount which he/she will receive following payment of the settlement monies. This should include an explanation of fees to be deducted by the solicitor, if these are in excess of the amount to be recovered as party and party costs.²

10.2 OVERCHARGING

When a solicitor is retained by the client to do certain work in his professional capacity, the law implies a term into the contract between them that the remuneration of the solicitor will be fair and reasonable. The law now requires the Law Society to investigate complaints of excessive charging. Where a complaint is upheld, the Society must direct a refund of portion of the fee, if the fee has been paid, or a waiver of portion of the fee, if the fee has not been paid.³

FOOTNOTE

1. *"Charges to clients" - Section 68 of the Solicitors (Amendment) Act, 1994*
2. *"Section 68 of the Solicitors (Amendment) Act, 1994 - Precedent Letters" - Law Society, June 1998.*
3. *"Solicitor/Client Fees" - Practice Note Gazette, December, 1998.*
3. *"Power of Society to impose sanctions for charging excessive fees" - Section 9 of the Solicitors (Amendment) Act, 1994.*



10.3 RESTRICTION ON CALCULATION OF CHARGES AS A PERCENTAGE OF DAMAGES

In contentious matters a solicitor may not calculate charges as a specified percentage or proportion of any damages or other monies that may become payable to the client and any such charges are unenforceable in any action to recover them except in debt collection matters.⁴

10.4 SOLICITOR TRUSTEE - COSTS

A solicitor who is appointed as a trustee ought not to charge his costs for legal work done by him in relation to the trust unless all the other trustees agree to that course of action or there is a clause in the trust instrument enabling that solicitor to charge his costs to the trust. The usual initial letter giving information with regard to legal charges should be sent to the trustees.

10.5 PROFITS AND COMMISSIONS

All monies received by a solicitor for and on behalf of a client from a financial institution or insurance company are deemed to be the client's money. In all cases full disclosure to the client should be made if a profit or commission received by a solicitor is in fact due to the client.

If a solicitor makes a profit arising from work done on behalf of a client, this need not be disclosed in the case of commission from insurance companies, from transactions on the stock exchange, from building societies and from interest on a solicitor's general client account.⁵

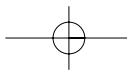
10.6 SEARCH FEES

Where a solicitor is required to make a search for papers and documents, or to schedule documents of a former client, he may charge a reasonable fee for the work involved.

Where a solicitor is requested by a person, other than his client, but with his client's consent, to give information which necessitates making a search, a reasonable fee may be charged to such persons for such a search.

FOOTNOTE

4. "Charges to clients" - Section 68 (2) of the Solicitors (Amendment) Act, 1994.
5. S.I. No. 108 of 1995, Solicitors (Interest on Clients' Monies) Regulations, 1995. The Investment Intermediaries Act, 1995. The Investor Compensation Act, 1998.



10.7 AUDITORS' FEES

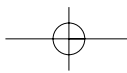
Where a solicitor is requested by a client's auditor to furnish information required for audit purposes, a reasonable fee may be charged to the client for this work.

10.8 FEE SHARING

A solicitor is prohibited by law from sharing professional fees, generated by the provision of legal services by that solicitor, with a non-solicitor or with a solicitor who does not hold a current practising certificate.⁶

FOOTNOTE

6. "Qualifications for acting as solicitor" - Section 54 of the Solicitors Act as substituted by Section 62 of the Solicitors (Amendment) Act, 1994. "Prohibition on solicitor acting as agent for unqualified person" - Section 59 of the Solicitors Act, 1954.



**CHAPTER 11****CONDUCT IN INTERNATIONAL PRACTICE****11.1 RELEVANCE FOR ALL LAWYERS**

Proper professional conduct is relevant not only in national practice but also in international practice. Solicitors in this jurisdiction have contact through their practices with lawyers in other jurisdictions. Proper conduct in these situations has been outlined in codes adopted by the International Bar Association and by CCBE, the association of Bars and Law Societies of Europe.

In 1988 the International Bar Association adopted the current code as the basic code for lawyers' cross-border practice and for lawyers practising outside their own jurisdiction.

The current code of the CCBE was adopted in 1999 and is recognised as the expression of consensus of all the Bars and Law Societies of the EU in relation to codes of conduct for lawyers' cross-border practice within the EU and for lawyers practising outside the jurisdiction of their own Member State.

Both codes have as their basis the principles of good conduct common to all lawyers.¹

11.2 RELATIONS BETWEEN LAWYERS

A solicitor should recognise all other lawyers as professional colleagues and act fairly and courteously towards them.

11.3 COMPLAINTS AGAINST LAWYERS IN ANOTHER JURISDICTION

A solicitor should not commence any form of proceedings against any solicitor/lawyer in another jurisdiction concerning a matter of professional conduct without first informing the Bar or Law Society to which the other lawyer belongs, for the purpose of allowing that body an opportunity to assist in reaching a settlement of the matter. However, if a settlement is not reached within a reasonable period, the solicitor may institute such

FOOTNOTE

1. "International Code of Ethics" - International Bar Association 1988. See Appendix 3.
"Code of Conduct for Lawyers in the European Community" - CCBE 1999. See Appendix 2.



proceedings as he deems necessary. This recommendation is subject to the client's position not being prejudiced by this procedure.²

11.4 FOREIGN AGENTS' FEES

A solicitor who instructs a lawyer outside the jurisdiction is personally liable to pay all fees reasonably and properly incurred by that lawyer unless there has been an express agreement that the solicitor is not to be made personally liable. The alternative is for the solicitor to advise the client to employ a foreign lawyer directly and to give assistance to the client in locating a lawyer.³

11.5 EU DIRECTIVE ON SERVICES

This Directive covers a situation where a lawyer with an office established in one Member State provides legal services in another, without actually establishing an office there.

The lawyer remains subject to his own rules but without prejudice to respect for the rules of the Host State. The latter's rules are applicable to the extent that they are capable of being observed by the lawyer and the extent to which their observance is "objectively justified to ensure, in the State, the proper exercise of a lawyer's activity, the standing of the profession and respect for the rules concerning incompatibility".⁴

11.6 EU DIRECTIVE ON ESTABLISHMENT.

In December 1998 the EU adopted a Directive, referred to as the Establishment Directive, which facilitates a lawyer's practice in a Member State other than the state in which his qualification was obtained.

The Directive deals with the matter of rules of professional conduct. It provides that the

FOOTNOTE

2. "Code of Conduct for Lawyers in the European Community" - CCBE 1999, Clause 5.9. See Appendix 2.
3. "Code of Conduct for Lawyers in the European Community" - CCBE 1999, Clause 5.7. See Appendix 2. "International Code of Ethics" - International Bar Association, 1988, rule 19. See Appendix 3. "Foreign Agents Fees £50,000 - You Pay" - Practice Note Gazette, April/May 1996.
4. Council Directive No. 77/249 (EEC), S.I. No. 58 of 1979. European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979. S.I. No. 197 of 1981. European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations, 1981. S.I. No. 226 of 1986. European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations, 1986.



immigrant lawyer is subject to the rules of professional conduct which apply to lawyers in the Host State.

It also provides that if the obligations enforced in the Host Member State are not complied with, the rules of procedure, penalties and remedies provided for in the Host Member State shall apply.⁵

FOOTNOTE

5. EU Directive on Establishment (98/5/EC), Article 6(1) and Article 7.



APPENDIX 1

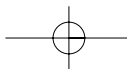
SCHEDULE OF STATUTORY INSTRUMENTS RELEVANT TO
THE CONDUCT AND PRACTICE OF SOLICITORS, SOME
ENACTED UNDER THE SOLICITORS ACTS, 1954 TO 1994 AND
SOME UNDER OTHER LEGISLATION

1. European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979. S.I. No. 58 of 1979.
2. European Communities (Freedom to provide services) (Lawyers) (Amendment) Regulations 1981. S.I. No. 197 of 1981.
3. Solicitors' Accounts Regulations No. 2, 1984. S.I. No. 304 of 1984.
4. European Communities (Freedom to provide services) (Lawyers) (Amendment) Regulations 1986. S.I. No. 226 of 1986.
5. Solicitors (Professional Practice) Regulations, 1988. S.I. No. 343 of 1988.
Re: Professional Fees
6. Solicitors (Practice, Conduct and Discipline) Regulations, 1990. S.I. No. 99 of 1990.
Re: Acting on behalf of a minor in a personal injury claim.
7. Solicitors (Interest on Clients' Moneys) Regulations, 1995. S.I. No. 108 of 1995.
8. Professional Indemnity Insurance Regulations, 1995. S.I. No. 312 of 1995.
9. Solicitors (Practice, Conduct and Discipline) Regulations, 1996. S.I. No. 178 of 1996.
Re: Professional Names/ Notepaper Regulations.
10. Solicitors (Advertising) Regulations, 1996. S.I. No. 351 of 1996.
11. Solicitors (Professional Practice, Conduct and Discipline) Regulations, 1997. S.I. No. 85 of 1997.
Re: Restrictions on Solicitor acting in a conveyancing transaction on behalf of both the builder and purchaser of residential units.



12. Solicitors (Adjudicator) Regulations, 1997. S.I. No. 406 of 1997.
13. Professional Indemnity Insurance (Amendment) Regulations, 1998. S.I. No. 209 of 1998.
14. The Solicitors Acts, 1954 to 1994 (Investment Business and Investors Compensation) Regulations, 1998. S.I. No 439 of 1998.
15. Professional Indemnity Insurance (Amendment) Regulations, 1999. S.I. No. 362 of 1999.
16. Professional Indemnity Insurance (Amendment) Regulations, 1999. S.I. No. 362 of 1999.
17. Solicitors Accounts Regulations, 2001. S.I. No. 421 of 2001.
18. Professional Indemnity Insurance (Amendment) Regulations, 2001. S.I. No. 504 of 2001.
19. The Solicitors Acts, 1954 to 1994 (Euro Changeover) Regulations, 2001. S.I. No. 460 of 2001.

Note: In addition, regulations governing Practising Certificates and Practising Certificate Fees are published on an annual basis.



APPENDIX 2

CONSEIL DES BARREAUX DE L'UNION EUROPÉENNE RAT DER ANWALTSCHAFTEN DER EUROPÄISCHEN UNION CONSEJO DE LOS COLEGIOS DE ABOGADOS DE LA UNIÓN EUROPEA CONSIGLIO DEGLI ORDINI FORENSI DELL'UNIONE EUROPEA RAAD VAN DE BALIES VAN DE EUROPESE UNIE CONSELHO DAS ORDENS DE ADVOGADOS DA UNIÃO EUROPEIA SUMBOULIO TWN DIKHGORIKWN SULLOGWN THS EURWPAIKHS ENWSHS RÅDET FOR ADVOKATERNE I DEN EUROPÆISKE FÆLLESKAB EUROOPAN UNIONIN ASIANAJAJALIITTOJEN NEUVOSTO RÁÐ LÖGMANNAFÉLAGA Í EVRÓPUSAMBANDINU RÅDET FOR ADVOKATFORENINGENE I DET EUROPEISKE FELLESSKAP RÅDET FOR ADVOKATSAMFUNDEN I DEN EUROPEISKA UNIONEN **COUNCIL OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN UNION**

CCBE CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION

THIS CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION HAS BEEN ADOPTED BY THE 18 NATIONAL DELEGATIONS REPRESENTING THE BARS AND LAW SOCIETIES OF THE EUROPEAN UNION AT THE CCBE PLENARY SESSION HELD IN LYONS ON NOVEMBER 28TH, 1998.

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1. PREAMBLE

1.1 The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client's cause but to be his adviser.

A lawyer's function therefore lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;
- the legal profession in general and each fellow member of it in particular; and
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2 The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilized societies. The failure of the lawyer to observe these rules must in the last resort result in a disciplinary sanction.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.



1.3 The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of «double deontology» as set out in Article 4 of the E.C. Directive 77/249 of 22nd March 1977.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to his cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he belongs to the extent that they are consistent with the rules in this Code.

1.4 Field of Application Ratione Personae

The following rules shall apply to lawyers of the European Union and the European Economic Area as they are defined by the Directive 77/249 of 22nd March 1977.



1.5 Field of Application Ratione Materiae

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than his own; and
- (b) the professional activities of the lawyer in a Member State other than his own, whether or not the lawyer is physically present in that Member State.

1.6 Definitions

In these rules:

“Home Member State” means the Member State of the Bar or Law Society to which the lawyer belongs.

“Host Member State” means any other Member State where the lawyer carries on cross-border activities.

“Competent authority” means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

2. GENERAL PRINCIPLES

2.1 Independence

2.1.1. The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.



- 2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

2.2 Trust and Personal Integrity

Relationship of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3 Confidentiality

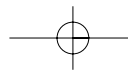
- 2.3.1. It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

- 2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.
- 2.3.3. The obligation of confidentiality is not limited in time.
- 2.3.4. A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

2.4 Respect for the Rules of Other Bars and Law Societies

Under the laws of the European Union and the European Economic Area a lawyer from another Member State may be bound to comply with the rules of the Bar or Law Society of the Host Member State. Lawyers have a duty to inform



themselves as to the rules which will affect them in the performance of any particular activity.

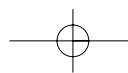
Member organisations of CCBE are obliged to deposit their codes of conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

2.5 Incompatible Occupations

- 2.5.1. In order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice a lawyer is excluded from some occupations.
- 2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.
- 2.5.3. A lawyer established in a Host Member State in which he wished to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6 Personal Publicity

- 2.6.1. A lawyer should not advertise or seek personal publicity where this is not permitted.
- In other cases a lawyer should only advertise or seek personal publicity to the extent and in the manner permitted by the rules to which he is subject.
- 2.6.2. Advertising and personal publicity shall be regarded as taking place where it is permitted, if the lawyer concerned shows that it was placed for the purpose of reaching clients or potential clients located where such advertising or personal publicity is permitted and its communication elsewhere is incidental.



**2.7 The Client's Interest**

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession.

2.8 Limitation of Lawyer's Liability towards his Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his liabilities towards his client in accordance with rules of the Code of Conduct to which he is subject.

3. RELATIONS WITH CLIENTS**3.1 Acceptance and Termination of Instructions**

- 3.1.1. A lawyer shall not handle a case for a party except on his instructions. He may, however, act in a case in which he has been instructed by another lawyer who himself acts for the party or where the case has been assigned to him by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him when the specific circumstances show that the identity, competence and authority are uncertain.

- 3.1.2. A lawyer shall advise and represent his client promptly, conscientiously and diligently. He shall undertake personal responsibility for the discharge of the instructions given to him. He shall keep his client informed as to the progress of the matter entrusted to him.

- 3.1.3. A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work.

- 3.1.4. A lawyer shall not be entitled to exercise his right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2 Conflict of Interest

- 3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

- 3.2.2. A lawyer must cease to act for both clients when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.

- 3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

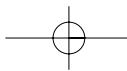
- 3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3 Pactum de Quota Litis

- 3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

- 3.3.2. By «pactum de quota litis» is meant an agreement between a lawyer and his client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

- 3.3.3. The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of competent authority having jurisdiction over the lawyer.



3.4 Regulation of Fees

- 3.4.1. A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable.
- 3.4.2. Subject to any proper agreement to the contrary between a lawyer and his client fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client.

3.5 Payment on Account

If a lawyer requires a payment on account of his fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6 Fee Sharing with Non-Lawyers

- 3.6.1. Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.
- 3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

3.7 Cost Effective Resolution and Availability of Legal Aid

- 3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at

appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

- 3.7.2. A lawyer shall inform his client of the availability of legal aid where applicable.

3.8 Clients' funds

- 3.8.1. When lawyers at any time in the course of their practice come into possession of funds on behalf of their clients or third parties (hereinafter called «client's funds») it shall be obligatory:

3.8.1.1. That client's funds shall always be held in an account of a bank or similar institution subject to supervision of Public Authority and that all clients' funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.

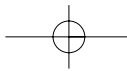
3.8.1.2. That any account in which the client's funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the lawyer.

3.8.1.3. That any account or accounts in which client's funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the client's funds held by the lawyer.

3.8.1.4. That all funds shall be paid to clients immediately or upon such conditions as the client may authorise.

3.8.1.5. That payments made from client's funds on behalf of a client to any other person including:

- a) payments made to or for one client from funds held for another client and
- b) payment of the lawyer's fees,





be prohibited except to the extent that they are permitted by law or are ordered by the court and have the express or implied authority of the client for whom the payment is being made.

3.8.1.6. That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his client's funds and distinguishing client's funds from other funds held by him.

3.8.1.7. That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyer's client's funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.

3.8.2. Subject as aftermentioned, and without prejudice to the rules set out in 3.8.1 above, a lawyer who holds client's funds in the course of carrying on practice in any Member State must comply with the rules relating to holding and accounting for client's funds which are applied by the competent authorities of the Home Member State.

3.8.3. A lawyer who carries on practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member State concerned comply with the requirements of the Host Member State to the exclusion of the requirements of the Home Member State. In that event he shall take reasonable steps to inform his clients that he complies with the requirements in force in the Host Member State.

3.9 Professional Indemnity Insurance

3.9.1. Lawyers shall be insured at all times against claims based on professional negligence of an extent which is reasonable having regard to the nature and extent of the risks which each lawyer may incur in his practice.

3.9.2. When a lawyer provides services or carries out practice in a Host Member State, the following shall apply:

3.9.2.1. The lawyer must comply with any Rules relating to his obligation to insure against his professional liability as a lawyer which are in force in his Home Member State.

3.9.2.2. A lawyer who is obliged so to insure in his Home Member State and who provides services or carries out practice in any Host Member State shall use his best endeavours to obtain insurance cover on the basis required in his Home Member State extended to services which he provides or practice which he carries out in a Host Member State.

3.9.2.3. A lawyer who fails to obtain the extended insurance cover referred to in paragraph 3.9.2.2 above or who is not obliged so to insure in his Home Member State and who provides services or carries out practice in a Host Member State shall in so far as possible obtain insurance cover against his professional liability as a lawyer whilst acting for clients in that Host Member State on at least a basis equivalent to that required of lawyers in the Host Member State.

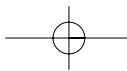
3.9.2.4. To the extent that a lawyer is unable to obtain the insurance cover required by the foregoing rules, he shall inform such of his clients as might be effected.

3.9.2.5. A lawyer who carries out practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with such insurance requirements as are in force in the Host Member State to the exclusion of the insurance requirements of the Home Member State. In this event he shall take reasonable steps to inform his clients that he is insured according to the requirements in force in the Host Member State.

4. RELATIONS WITH THE COURTS

4.1 Applicable Rules of Conduct in Court

A lawyer who appears, or takes part in a case before a court or tribunal in a



Member State, must comply with the rules of conduct applied before that court or tribunal.

4.2 Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent by the other party's lawyer.

4.3 Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of his client honourably and fearlessly without regard to his own interests or to any consequences to himself or to any other person.

4.4 False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5 Extension to Arbitrators Etc.

The rules governing a lawyer's relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1 Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the

reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2 Co-operation Among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which he is not competent to undertake. He should in such case be prepared to help his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3 Correspondence Between Lawyers

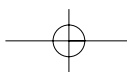
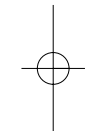
5.3.1. If a lawyer sending a communication to a lawyer in another Member State wishes it remain confidential or without prejudice he should clearly express this intention when communicating the document.

5.3.2. If the recipient of the communication is unable to ensure its status as confidential or without prejudice he should return it to the sender without revealing the contents to others.

5.4 Referral Fees

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to himself.



**5.5 Communication with Opposing Parties**

A lawyer shall not communicate about a particular case or matter directly with any person whom he knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

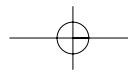
5.6 Change of Lawyers

5.6.1. A lawyer who is instructed to represent a client in substitution for another lawyer in relation to a particular matter should inform that other lawyer and, subject to 5.6.2 below, should not begin to act until he has ascertained that arrangements have been made for the settlement of the other lawyer's fees and disbursements. This duty does not, however, make the new lawyer personally responsible for the former lawyer's fees and disbursements.

5.6.2. If urgent steps have to be taken in the interests of the client before the conditions in 5.6.1 above can be complied with, the lawyer may take such steps provided he informs the other lawyer immediately.

5.7 Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

**5.8 Training Young Lawyers**

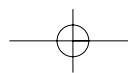
In order to improve trust and co-operation amongst lawyers of different Member States for the clients' benefit there is a need to encourage a better knowledge of the laws and procedures in different Member States. Therefore, when considering the need for the profession to give good training to young lawyers, lawyers should take into account the need to give training to young lawyers from other Member States.

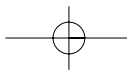
5.9 Disputes amongst Lawyers in Different Member States

5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct he shall draw the matter to the attention of his colleague.

5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.





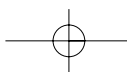
APPENDIX 3

INTERNATIONAL BAR ASSOCIATION
INTERNATIONAL CODE OF ETHICS

FIRST ADOPTED 1956; THIS EDITION 1988

RULES

- 1 A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.
- 2 Lawyers shall at all times maintain the honour and dignity of their profession. They shall, in practice as well as in private life, abstain from any behaviour which may tend to discredit the profession of which they are members.
- 3 Lawyers shall preserve independence in the discharge of their professional duty. Lawyers practising on their own account or in partnership where permissible, shall not engage in any other business or occupation if by doing so they may cease to be independent.
- 4 Lawyers shall treat their professional colleagues with the utmost courtesy and fairness. Lawyers who undertake to render assistance to a foreign colleague shall always keep in mind that the foreign colleague has to depend on them to a much larger extent than in the case of another lawyer of the same country. Therefore their responsibility is much greater, both when giving advice and when handling a case. For this reason it is improper for lawyers to accept a case unless they can handle it promptly and with due competence, without undue interference by the pressure of other work. To the fees in these cases Rule 19 applies.
- 5 Except where the law or custom of the country concerned otherwise requires, any oral or written communication between lawyers shall in principle be accorded a confidential character as far as the Court is concerned, unless certain promises or acknowledgements are made therein on behalf of a client.





- 6 Lawyers shall always maintain due respect towards the Court. Lawyers shall without fear defend the interests of their clients and without regard to any unpleasant consequences to themselves or to any other person.
Lawyers shall never knowingly give to the Court incorrect information or advice which is to their knowledge contrary to the law.
- 7 It shall be considered improper for lawyers to communicate about a particular case directly with any person whom they know to be represented in that case by another lawyer without the latter's consent.
- 8 A lawyer should not advertise or solicit business except to the extent and in the manner permitted by the rules of the jurisdiction to which that lawyer is subject. A lawyer should not advertise or solicit business in any country in which such advertising or soliciting is prohibited.
- 9 A lawyer should never consent to handle a case unless: (a) the client gives direct instructions, or, (b) the case is assigned by a competent body or forwarded by another lawyer, or (c) instructions are given in any other manner permissible under the relevant local rules or regulations.
- 10 Lawyers shall at all times give clients a candid opinion on any case.
They shall render assistance with scrupulous care and diligence. This applies also if they are assigned as counsel for an indigent person.
Lawyers shall at any time be free to refuse to handle a case, unless it is assigned by a competent body.
Lawyers should only withdraw from a case during its course for good cause, and if possible in such a manner that the client's interests are not adversely affected.
The loyal defence of a client's case may never cause advocates to be other than perfectly candid, subject to any right or privilege to the contrary which clients choose them to exercise, or knowingly to go against the law.
- 11 Lawyers shall, when in the client's interest, endeavour to reach a solution by settlement out of court rather than start legal proceedings. Lawyers should never stir up litigation.
- 12 Lawyers should not acquire a financial interest in the subject matter of a case which they are conducting. Neither should they, directly or indirectly, acquire property about which litigation is pending before the Court in which they practise.
- 13 Lawyers should never represent conflicting interests in litigation. In non-litigation



- matters, lawyers should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This Rule also applies to all lawyers in a firm.
- 14 Lawyers should never disclose, unless lawfully ordered to do so by the Court or as required by Statute, what has been communicated to them in their capacity as lawyers even after they have ceased to be the client's counsel. This duty extends to their partners, to junior lawyers assisting them and to their employees.
- 15 In pecuniary matters lawyers shall be most punctual and diligent.
They should never mingle funds of others with their own and they should at all times be able to refund money they hold for others.
They shall not retain money they receive for their clients for longer than is absolutely necessary.
- 16 Lawyers may require that a deposit is made to cover their expenses, but the deposit should be in accordance with the estimated amount of their charges and the probable expenses and labour required.
- 17 Lawyers shall never forget that they should put first not their right to compensation for their services, but the interests of their clients and the exigencies of the administration of justice.
The Lawyer's right to ask for a deposit or to demand payment of out of pocket expenses and commitments, failing payment of which they may withdraw from the case or refuse to handle it, should never be exercised at a moment at which the client may be unable to find other assistance in time to prevent irreparable damage being done.
Lawyers' fees should, in the absence or non-applicability of official scales, be fixed on a consideration of the amount involved in the controversy and the interest of it to the client, the time and labour involved and all other personal and factual circumstances of the case.
- 18 A contract for a contingent fee, where sanctioned by the law or by professional rules and practice, should be reasonable under all circumstances of the case, including the risk and uncertainty or the compensation and subject to supervision of a court as to its reasonableness.
- 19 Lawyers who engage a foreign colleague to advise on a case or to cooperate in handling it, are responsible for the payment of the latter's charges except where



there has been express agreement to the contrary. When lawyers direct a client to a foreign colleague they are not responsible for the payment of the latter's charges, but neither are they entitled to a share of the fee of this foreign colleague.

- 20 Lawyers should not permit their professional services or their names to be used in any way which would make it possible for persons to practise law who are not legally authorised to do so. Lawyers shall not delegate to a legally unqualified person not in their employ and control any functions which are by the law or custom of the country in which they practise only to be performed by a qualified lawyer.
- 21 It is not unethical for lawyers to limit or exclude professional liability subject to the rules of their local Bar Association and to there being no statutory or constitutional prohibitions.

INTERNATIONAL BAR ASSOCIATION INTERNATIONAL CODE OF ETHICS

The International Bar Association is a federation of national Bar Associations and Law Societies and individual members. Most of the organisational members have established Codes of Legal Ethics as models for or governing the practice of law by their members. In some jurisdictions these Codes are imposed on all practitioners by their respective Bar Associations or Law Societies or by the courts or administrative agencies having jurisdiction over the admission of individuals to the practice of law.

Except where the context otherwise requires, this Code applies to any lawyer of one jurisdiction in relation to his contacts with a lawyer of another jurisdiction or to his activities in another jurisdiction.

Nothing in this Code absolves a lawyer from the obligation to comply with such requirements of the law or of rules of professional conduct as may apply to him in any relevant jurisdiction. It is a re-statement of much that is in these requirements and a guide as to what the International Bar Association considers to be a desirable course of conduct by all lawyers engaged in the international practice of law.

The International Bar Association may bring incidents of alleged violations to the attention of relevant organisations.



APPENDIX 4

FAMILY LAW IN IRELAND CODE OF PRACTICE

INTRODUCTION

There is concern that solicitors and court procedures might add to the distress and anger that can arise when relationships break down. Solicitors should deal with matters in a way designed to preserve people's dignity and to encourage them to reach agreement. The result will often be to achieve the same or more satisfactory solutions than going to court but at less cost both in terms of emotion and money.

Solicitors act as representatives of the client, but are also officers of the Court and citizens having special responsibilities for the quality of justice.

As a representative of clients, the solicitor performs various functions. As an adviser, the solicitor provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, the solicitor forthrightly asserts the client's position under the rules of the adversarial system. As a negotiator, the solicitor seeks a result advantageous to the client but consistent with the requirement of honest dealings with others.

In all professional functions, the solicitor must uphold the duties owed to clients in accordance with the Law Society's rules of professional conduct and must also demonstrate respect for the Constitution and the legal system and for those who serve it, including judges, other lawyers and public officials.

The Constitution is strongly supportive of the family. In family law cases therefore solicitors should fulfil their professional duties in a manner conducive to the best interests of their client but also mindful of the best interests of the family as a whole.

The solicitor's responsibilities as a representative of clients and as an officer of the court are usually harmonious. However, conflicting responsibilities can be encountered. The Code of Practice suggests methods by which such conflicts may be resolved.

The Law Society recommends that all solicitors practising family law should follow this



code. Our members should explain the code to their clients, as it will form the basis of the approach that they adopt.

Keeping the code is not a sign of weakness. It does not expose the client to disadvantage. The approach the solicitor adopts should be firm and fair. Solicitors are not prevented from taking immediate and decisive action where necessary. Even when there are ongoing discussions, court proceedings may be started and continue at the same time in case negotiations do not produce an agreement.

The code is not a straitjacket. Its guidelines cannot be absolute rules. It may be necessary to depart from the code if professional rules or duties require it.

GENERAL

1. At an early stage, you should explain to your client the approach you adopt in family law work.
2. You should encourage your client to see the advantages to the parties of a constructive and non-confrontational approach as a way of resolving differences. You should advise, negotiate and conduct matters so as to help the parties settle their differences as quickly as possible and reach agreement, while allowing them time to reflect, consider and come to terms with their new situation.
3. If there are contentious issues concerning children, you should advise your client that the court will, by law, prioritise the best interests of the child. You should make sure that your client understands that the best interests of the child should be put first. You should explain that where a child is involved, your client's attitude to the other spouse will affect the family as a whole and the child's relationship with his or her parents.
4. You should encourage the attitude that the dispute is not a contest in which there is a winner and a loser, but rather that it is a search for fair solutions. You should avoid using words or phrases that suggest or cause a dispute where there is no serious dispute. You should stress the need for your client to be open and honest in all aspects of the case and you must explain what could happen if your client is not open and honest.
5. Emotions are often intense in relationship disputes. You should avoid inflaming



them in any way. You should take great care when considering the effect your correspondence could have on other parties and on your own client. Your letters should be clear and free of jargon. Remember that clients may see assertive letters between solicitors as aggressive declarations of war. Your correspondence should aim to resolve issues and to settle the matter, not to further inflame emotions or to antagonise.

MEDIATION

6. You should make sure that your client knows about other available services (such as mediation and counselling) which may bring about a settlement and may help your client and any other parties involved. You should explore, with your client, the possibility of a reconciliation and, where appropriate, give every encouragement in that regard.

RELATIONSHIP WITH A CLIENT

7. You should make sure that you are objective and do not allow your emotions or personal opinions to influence your advice.
8. When advising your client you must explain all options. The client must understand the consequences of any decision the client has to make. The decision is to be made by your client; you cannot decide.
9. You must make your client aware of the legal costs at all stages and comply fully with your obligations under section 68 of the Solicitors (Amendment) Act, 1994. The benefits and merits of any steps taken must be balanced against the costs. The right of your client to apply for Civil Legal Aid should also be made clear.

DEALING WITH OTHER SOLICITORS

10. In all dealings with other solicitors, you should show courtesy and try to maintain a good working relationship.
11. You should try to avoid criticising the other solicitors involved in a case.

**DEALING WITH A PERSON WHO DOES NOT HAVE A SOLICITOR**

12. When you are dealing with someone who is not represented by a solicitor, you should take even greater care to communicate clearly and try to avoid any technical language or jargon that is not easily understood.
13. You should strongly recommend an unrepresented person to consult a solicitor and also advise that person that he or she may have an entitlement to Civil Legal Aid.

COURT PROCEEDINGS

14. When taking any step in the proceedings, the long-term effect on your client and other family members must be balanced with the likely short-term benefit to the case.
15. If the purpose of taking a particular step in proceedings may be misunderstood or appear hostile, you should consider explaining it, as soon as possible, to your colleague.
16. Before filing proceedings, you and your client should consider whether the other party or his or her solicitor should be contacted in advance with a view to coming to an agreement and minimising misunderstandings.
17. You should discourage your client from naming any third parties unless there are very good reasons to do so.

CHILDREN

18. You should encourage your client to put the child's welfare and interests first.
19. You should encourage your client to co-operate with the other parent when making decisions concerning the child, and advise parents it is often better to make arrangements for the child between themselves, through their solicitors or through a mediator rather than through a court hearing.
20. In any letters you write, you should keep disputes about arrangements for the



child separate from disputes about money. They should usually be referred to in separate letters.

21. You must remember that the interests of the child may not reflect those of either parent. In special circumstances, in private law cases, it may be appropriate for the child to be represented separately by a guardian *ad litem*.
22. A guardian *ad litem* should have the expertise and knowledge derived from working in the field of child protection and child welfare.
23. Specially trained solicitors should provide legal representation for the child, working with or without a guardian *ad litem*.
24. You should only accept instructions from a child if you have the necessary training and expertise in this field.
25. You must continually assess the child's competence to give instructions.
26. You should make sure that the child has enough information to make informed decisions. The solicitor should advise and give information in a clear and understandable manner and be aware that certain information may be harmful to the child.
27. Dual representation for the child is desirable in health board cases. A guardian *ad litem* and a solicitor for the child should both be appointed, unless there are compelling reasons why the child should not be so represented.
28. The child's rights to welfare and to representation are not easily separated, but that ought not to be an insurmountable problem.
29. You should not show favour towards either parent, the health board or any other person involved in the court proceedings.
30. Where expert reports on a child have been obtained in proceedings and where the normal solicitor/client relationship would dictate that a copy of this report should be made available to the client, this position should prevail wherever possible having regard to the age and understanding of the child client. However, where it is the view of the expert that the report should not, for whatever reason, be made available to the child client, then the solicitor should make the child client aware of the existence of the report. The content of the report should not be



communicated to the child client, or a copy given to the child client. The direction of the court should be sought with regard to the matter.

EXPERT WITNESSES

31. Whether either party or their solicitor wishes to have a child medically examined or assessed for the purposes of producing evidence in court, the parties shall in the first instance seek the agreement of the other party to the proceedings so as to secure an agreed referral to a mutually acceptable expert. Solicitors for both sides should agree on the issues to be notified to the agreed expert and the areas where direction and advice is being sought from the expert. In default of agreement the matter should be referred to the court for its direction.

CONFLICT OF INTEREST

32. Where a solicitor has acted for parties in non-contentious matters, and subsequently one or other of the parties return to that solicitor seeking advice, then the solicitor has a duty to ensure that the other party has no objection to the retainer and that, in the course of the work done for the parties, the solicitor has acquired no information which could lead to a possible conflict of interest.
33. It is inappropriate for a solicitor or a firm of solicitors to represent both parties in any matrimonial/relationship dispute.

2nd Edition 2002



APPENDIX 5

CONSEIL DES BARREAUX DE L'UNION EUROPÉENNE RAT DER ANWALTSCHAFTEN DER EUROPÄISCHEN UNION CONSEJO DE LOS COLEGIOS DE ABOGADOS DE LA UNIÓN EUROPEA CONSIGLIO DEGLI ORDINI FORENSI DELL'UNIONE EUROPEA RAAD VAN DE BALIES VAN DE EUROPESE UNIE CONSELHO DAS ORDENS DE ADVOGADOS DA UNIÃO EUROPEIA SUMBOULIO TWN DIKHGORIKWN SULLOGWN THS EURWPAIKHS ENWSHS RÅDET FOR ADVOKATERNE I DEN EUROPÆISKE FÆLLESKAB EUROOPAN UNIONIN ASIANAJAJALIITTOJEN NEUVOSTO RÁÐ LÖGMANNAFÉLAGA Í EVRÓPUSAMBANDINU RÅDET FOR ADVOKATFORENINGENE I DET EUROPEISKE FELLESKAP RÅDET FOR ADVOKATSAMFUNDEN I DEN EUROPEISKA UNIONEN COUNCIL OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN UNION

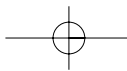
CCBE POLICY STATEMENT CONCERNING PROFESSIONAL SECRECY OF LAWYERS AND LEGISLATION ON MONEY LAUNDERING

ADOPTED AT THE PLENARY SESSION OF 14 AND 15 NOVEMBER 1997

1. **Introduction**
- Lately, the European countries have in conjunction with many other countries made a great effort in fighting criminal activities related to money laundering. While the CCBE has a great respect for the important aims of that effort, amongst other things leading to much legislation, CCBE is at the same time anxious of some of the consequences.

The legislation represents yet another threat to the protection of the professional secrecy of lawyers, obliging them or proposing to oblige them to report suspicious activities related to money laundering. CCBE sees that as a typical example we have seen several of in later years where the reference to important aims of our societies has been used to reduce the scope of the fundamental professional secrecy of lawyers.

This is the background for the issue of this policy statement of CCBE.



2. **General**

2.1 *The principle of professional secrecy*

CCBE would like to emphasise the fact that the professional secrecy of lawyers is not first and foremost a privilege for the lawyer or the client. It is a necessity for the functioning of a free and democratic society.

A citizen, an organisation or a company in such society must be sure that what is confided in the lawyer by his client remains a secret by the lawyer. Otherwise the client cannot trust the lawyer and will often refrain from taking professional advice when it is most needed. The client must be able to discuss freely with his lawyer whether a certain activity is legal or not. The free and trustful discussion prevents each day a lot of illegal activities. Many of those activities might have been committed had the client not dared to take the lawyer's advice because he could not trust the total professional secrecy as a consequence of the lawyer's duty to report what he heard.

A free democratic society can be measured in how far it protects this important feature of such society. The right to have a lawyer defending your interest and only having your interests in mind, is one of the fundamental human rights of such a society.

It is therefore of fundamental importance that the lawyer's professional secrecy is protected, not only as concerns lawyers acting as defenders in criminal cases, but in all activities of a lawyer in and out of courts.

The modern society does not have a reduced need for such protection of the professional secrecy. On the contrary, in the modern society where the citizens are controlled and followed electronically in a way unheard of a few years ago, the lawyer's office is among the few remaining sanctities. The protection of this sanctity is more important than ever. The countries face here a choice of the type of society wanted in Europe of today and in the future. It is a political choice of maintaining and supporting one of the best features of the European social and democratic way of life.



2.2 *The infringements of the principle*

For a long time the professional secrecy had a general application where only the lawyer in his own conscience decided when to break the secrecy. The general rule was that it could be broken only when necessary to avoid a serious crime directly endangering a person's life.

For a number of years now, however, legislation in different European countries has infringed or tried to infringe upon the protection of this secrecy. Each time it has been done with reference to crimes that everyone agrees should be fought, like incest, serious tax frauds and money laundering. While not at all in opposition to need of promoting such good causes, CCBE is growing more and more anxious concerning the consequences of the legislation on the lawyer's professional secrecy. A person, an organisation or a company being uncertain about the legality, legitimacy and other parts of such activities, cannot ask the lawyer's advice for fear of having the information divulged to the police or other authorities. This may very often occur at the moment where advice is most needed and quite often prevent crimes from being committed. These consequences of the legislation are regrettable and may lead to a destruction of the protection of the professional secrecy.

CCBE would emphasize that the organisation does not in any way want a protection of the criminal activities of any lawyer behind the shield of professional secrecy. All lawyers are under oath not to enter into any criminal activities. They act under stricter codes of ethics than other professions, codes which are enacted through a tough disciplinary system. CCBE has therefore nothing against actions against lawyers suspected themselves of partaking in criminal activities, provided, however, that the legislation does not make ordinary advice given by the lawyer a criminal activity.

What the CCBE does feel, however, is that there is a lack of understanding of the consequences of the piecemeal legislation framed with good intentions on the professional secrecy of lawyers.



**3. The internal rules of the lawyers**

CCBE does not see any real danger in weakening the fight against money laundering or other criminal activities by upholding the widest possible protection of the lawyer's professional secrecy.

As pointed out above, the lawyers act under their code of conduct which is stricter than any other profession's. It is a standard part of such codes that the lawyer should avoid criminal activities and avoiding in any way aiding such activities.

A consequence of this it is any lawyer's right and obligation to withdraw from a case when he seriously suspects that the transactions of the case would lead to a money laundering operation. One must distinguish between where the lawyer participates in a suspicious legal operation, from which he must withdraw and abstain, and the situation where the lawyer do not participate in such an operation, but is defending individuals charged with being guilty of money laundering. In the latter situation it is his duty to ensure and maintain the defence of the accused while respecting strictly his ethical rules.

The problems concerning money laundering have led to a new rule being proposed in the revision of the CCBE Code of Conduct. The new rule obliges the lawyer to identify his client or for whom his immediate client is working.

4. Practical devices

The protection of the professional secrecy of the lawyer must also extend to his files. The lawyers are in need of a minimum procedure of protection when required by the police or other authorities to afford access to the lawyers' files.

There should be no possibility for even requiring access unless the suspicion is described in precise and – above all – specific terms. No “fishing expedition” should be allowed in any manner, however indirectly.

If the files are required on such basis, it is of paramount importance that a neutral person is present to be the judge of whether any document required is protected by professional secrecy. Such person may in certain legal systems preferably be a judge except the judge being in charge of the criminal investigation. In other legal systems the neutral person may be a local bar leader, his deputy or an independent lawyer.



The present legislative state shows that there are great variations between the European countries concerning how this situation should be tackled. A common European legislation on such general basis would be of great help.

5. Recommendation

CCBE aims to work for a harmonized attitude amongst its member organisations. It therefore recommends that national lawyer's organizations of the CCBE member States to include, if not already included, in their codes of conduct the following obligations :

- 1) In whichever case submitted to a lawyer, he or she should check the identity of the client or the intermediary of the client for which the lawyer is acting;
- 2) To prohibit, when lawyers are asked to handle funds, for any lawyer to receive or handle any fund that do not strictly correspond to a file known by name.
- 3) For lawyers participating in a legal transaction to withdraw if they seriously suspect that the planned operation will result in money laundering and the client is not prepared to abstain from this operation.

CCBE also aims at including these provisions in its own Code of Conduct for transnational legal business.

6. Conclusion

The CCBE emphasizes that the protection of the lawyer's professional secrecy is of fundamental importance in a free and democratic society. It is also a principle of EU law; indeed the confidentiality requires that every person subject to trial must be entitled to talk freely (cfr. AM&S decision of 18.05.1982).

This professional secrecy is under threat by legislation that is based on worthy purposes but overlooks the bad consequences for the professional secrecy and the functioning of a free and democratic society.

There is therefore a clear need for a far more careful analysis and focus on this aspect of the legislation. For this reason the lawyers' profession should not have to be submitted to the provisions of Directive 91/308/CEE of the Council of 10.6.1991, in particular article 12 of this directive.

The CCBE warns the legislators against sweeping legislative actions against money laundering. Such legislative actions often prove counter productive to the goals they try to achieve.



Finally the CCBE emphasizes strongly the importance of a common European legislation protecting the professional secrecy in an appropriate way commensurate to its social importance.



APPENDIX 6

MEMORANDUM OF UNDERSTANDING BETWEEN THE
REVENUE COMMISSIONERS AND THE LAW SOCIETY OF
IRELAND CONCERNING THE AUDIT OF THE TAX RETURNS
OF SOLICITORS AND SOLICITORS PRACTICES

1. **The Purpose of this Memorandum of Understanding**

The purpose of this memorandum of understanding is to clarify certain procedural matters that may arise in the audit of the tax returns (Income tax, Capital Gains tax, VAT, PAYE/PRSI, 3rd Party returns etc.) of solicitors and solicitors' practices.

2. **Audit Focus**

The primary purpose of the Revenue audit of solicitors or solicitors' practices is the audit of the tax returns of the individual solicitor or partnership, or both, as the situation demands. In carrying out these audits Revenue officials will not be collecting, collating or verifying client information.

However, Revenue audit programmes include verifying or cross checking tax related financial information on transactions from one taxpayers business records to those of another taxpayer. Similar checks are carried out in all businesses.

3. **Information or professional advice of a confidential nature given to clients is not sought by Revenue Auditors**

Confidential information which does not have a bearing on the tax liability of any solicitor is not sought by Revenue officials.

Revenue officials fully recognise the concept of legal advice privilege¹ and litigation privilege².

FOOTNOTE

1. **Legal Advice Privilege**

The basic rule is that communications between a lawyer in his professional capacity and his client are privileged from production if they are confidential and for the purposes of seeking or giving legal advice to the client. It does not apply to legal assistance which covers many tasks which a solicitor carries out for clients.

2. **Litigation Privilege**

The basic rule here is that communications, after litigation has been commenced or after litigation has been contemplated, between (a) a lawyer and his client, (b) a lawyer and his non professional agent or (c) a lawyer and third party, for the sole or dominant purpose of such litigation (whether for seeking or giving advice in relation to it, or for obtaining evidence to be used in it, or for obtaining information leading to such obtaining), are privileged from production.

Revenue officials are entitled to access the names and addresses of clients subject to the exclusions as described at footnote³.

Tax legislation obliges solicitors to give authorised Revenue officials access to books, records and other documents, information and explanations for the purposes of verifying the tax liabilities of any individual solicitor or practice. Revenue officials are also entitled to reasonable assistance in this regard.

4. Special Cases

In addition to paragraph 3, in certain limited situations, where there are exceptionally sensitive issues, a solicitor may request that either the name and address of the client, or certain aspects of the case, should not be disclosed. Revenue officials will agree to conduct the audit without the client's name and address or the issues being revealed, provided the non disclosure does not restrict the audit process, and that sufficient meaningful information is supplied to the Revenue official to enable the tax issues to be verified.

Bearing in mind the confidentiality obligations on Revenue officials, it is expected that situations where this clause might be invoked will be exceptional.

Where there is disagreement regarding disclosure in these circumstances, the solicitor may request a review by the Senior Inspector or Regional Director to whom the Revenue official reports or a review by the internal / external reviewers in accordance with Statement of Practice S.P. Gen 2/99 .

5. Access to books, records, documents and information and explanations relating to tax.

Revenue officials will seek access to books, records, documents and information and explanations relating to tax so as to verify the amounts of professional income and other income earned within a specified period, and also to verify the correct accounting for VAT and the correct operation of PAYE/PRSI.

Broadly in general terms, access is sought, where appropriate, to the following:

- The underlying records (cash book, cheque journal, etc.), the accounts linking papers which link the underlying records to the annual accounts,

FOOTNOTE

3. *Exceptional Circumstances*

In addition to the privilege items outlined in the preceding footnotes account will also be taken of Mr. Justice Kelly's dicta in Miley v Flood [HC 2000 No. 310 I.R. (Kelly J) 24 January 2001];

"..... a solicitor is not entitled to maintain a claim to privilege in respect of the identity of his client. A dilution of this general principle arises where (a) the naming of the client would incriminate or (b) where the identity of the client is so bound up with the nature of the advice sought, that to reveal the clients identity would be in fact to reveal that advice".

including Trial Balance, Nominal Ledger, Journal entries, Bank account reconciliation, client Ledger balances reconciliation and reconciliation of opening and closing accounts balances.

- Records relating to fees receivable and profits earned, the timing of earnings, valuations of debtors and work in progress, timely transfer of costs to office account, treatment of clients outlay, treatment of office and personal expenditure, reconciliation of clients balances with balances in clients bank accounts.
- Access is sought to individual client's ledger accounts, correspondence, information and explanations so as to verify figures in the accounts, the status or timing of some transactions such as the source or destination of sums passing through the client ledger accounts, the commencement and ending of separate steps in litigation or other services giving rise to payment of fees, the valuation of work in progress, the determination of bad debts and other income or expense related transactions.
- Records and documents relevant to VAT.
- Records of employee emoluments relevant to PAYE/PRSI.
- all bank accounts (current, loan, deposit etc.) - client accounts, office accounts (including paid cheques) and private accounts.
- Computations of taxable profits and distribution of profits among the partners.
- Documents relating to various claims to relief and allowances.
- The correct accounting for any relevant tax under any provisions of the Taxes Acts.

The above is an indicative list only and other records etc. may be required depending on the circumstances of any particular case.

Access is sought only to such practice correspondence that is likely to assist in verifying issues such as checking the timing of transfer of fees to office account, valuation of debtors and work in progress, verifying creditors and other income or expense related transactions. Where files are sought the solicitor may remove



from the files, where relevant, items attracting legal advice privilege, litigation privilege and details of tax advice given to clients.

Where there is disagreement regarding disclosure in these circumstances the solicitor may request a review by the Senior Inspector or Regional Director to whom the Revenue official reports or a review by the internal / external reviewers in accordance with Statement of Practice S.P. Gen 2/99

6. Review

It is agreed that this Memorandum of Understanding will be reviewed as necessary, and in any event after two years in operation.

7. Position re Non-Production of Records to Date

It is accepted by Revenue that the non production of records in the course of an audit which commenced prior to 28 February 2002, on the basis that the solicitor was of the view that privilege applied, will not count as non co-operation for the purposes of penalty mitigation.

DISCLAIMER

Neither the Law Society nor the Revenue Commissioners accept any responsibility for any errors, omissions or inaccuracies herein nor for any loss arising to anyone as a consequence of acting or refraining from acting in reliance on the information herein contained. Readers are advised to obtain professional advice and guidance as appropriate.



**GUIDELINES TO SOLICITORS
IN RELATION TO REVENUE AUDITS**

Discussions have taken place between the Law Society and the Revenue Commissioners ("Revenue") in relation to the conduct of Revenue audits on solicitors' practices.

REVENUE AUDITS

If a solicitor is the subject of a Revenue audit it is recommended that the solicitor should familiarise himself with the following publications namely:-

- (i) Memorandum of understanding between the Law Society and Revenue, February 2002.
- (ii) Code of Practice for Revenue Auditors.
- (iii) Tax Commentary . Volume 4 Issue 1 prepared by John Bradley at KPMG for the Law Society dated August 1996. ¹
- (iv) VAT and Solicitors: A simplified commentary as published by the Probate Administration and Taxation Committee updated as of [February 2002].
- (v) The legislation and in particular Section 16-18 of the Value Added Tax Act, Regulation 3 of the Value Added Tax (Invoice and Other Documents) Regulations 1992 and Section 886 and 905 of the Taxes Consolidation Act 1997.

At the commencement of the audit, the Revenue Auditor will enquire if the solicitor wishes to make a voluntary disclosure.

Section 1086 of the Taxes Consolidation Act provides that a voluntary disclosure arises "where the Revenue..... are satisfied that, before any investigation or enquiry has been commenced by them.... into any matter occasioning a liability... the person had voluntarily furnished to them complete information.... and full particulars of the said matter". The benefits of voluntary disclosure are that

- publication will not arise
- penalties are generally mitigated and
- whilst no absolute assurance can be given, generally speaking Revenue will not seek a prosecution and a monetary settlement will be accepted.

When making a voluntary disclosure, the Revenue auditor will take notes and will read the note back to the solicitor so as to ensure that it reflects fully the extent of the disclosure. The auditor may seek assurances as to the completeness of the note and record the response of the solicitor and any consequential revisions to the note. The note will



then be initialled by the auditor and the date and time will be marked thereon. This procedure is adopted so that there is no dispute at a later stage as to whether a complete voluntary disclosure was made or not. If at any stage of the audit, the Revenue issue a caution to a solicitor, the audit should cease or if the investigation branch present themselves at a solicitor's office, it is recommended that the solicitor should take advice from a colleague with a knowledge of criminal law practice and procedure.

BOOKS AND RECORDS TO BE PRODUCED

Revenue are entitled to inspect the solicitor's office bank account and to have sight of the office bank statements, cheque payments book, cash receipts book, purchases book, petty cash records, wages records and any other records which pertain to the office bank account.

The Law Society is of the opinion that Revenue are entitled to inspect the client bank account, client bank statements, client cheque payments book, client cash receipts book, client ledger accounts and copies of VAT invoices issued to clients without the client's name and address being redacted unless in exceptional cases revealing the client's name would (a) incriminate the client or (b) is so bound up with the nature of the advice given to the client as to reveal the name would reveal that advice². The only item which may be redacted is information or advice which attracts privilege, if indeed such information exists on the accountancy records. Solicitors are reminded that under the VAT legislation, there is no legislative requirement to have information or advice of a confidential nature listed on a VAT invoice and it is accordingly recommended that any practice whereby such information appears on a VAT invoice ceases. Similarly under the Solicitors Accounts Regulations the only information requirement to be contained on a client account is that the account be clearly marked as being a client account.

In ongoing litigation cases where there may be payment to a witness or expert for example in respect of a report, and the identity of the witness has not yet been revealed to the other side and if the client claims privilege over the identity of such a witness, then accordingly the witness' name may be redacted from the records being produced to the Revenue.

If an issue arises with Revenue as to whether privilege is being properly claimed it is open to the Solicitor to take his own advices on the matter and to dispute the matter with the Revenue either through the internal / external review mechanism within Revenue or through the Courts.

Revenue have stated that they are entitled to have sight of the annual accountant's report to the Law Society on the grounds that the reconciliation of the client bank account as



requested in paragraph 2 of the document brings the document into the realm of financial records which Revenue are entitled to see. The Law Society is of the opinion that the accountant's report is a document prepared for the Law Society and whilst the Society does not have a hard and fixed view on the matter feels that a solicitor is probably obliged to give the Revenue a copy of this document if there are surpluses on the client bank account equating with the parking of fees in the client account. The parking of fees in the client account is prohibited under the Solicitors Accounts Regulations, 2001. In circumstances where there are no unexplained surpluses in the client account and a solicitor may have made a voluntary disclosure and has made available to Revenue details of the client bank account, in such instances the Law Society feels that it is a matter for the Revenue to satisfy itself as to the adequacy or otherwise of the income tax return of the solicitor without having to resort to a document prepared for the solicitor's governing body.

During the course of the audit the Revenue will select the client ledger accounts it wishes to examine. At all stages the solicitor should bear in mind that there is a taxpayer's charter of rights whereby Revenue have stated that there is a presumption of honesty in favour of the solicitor taxpayer and that every effort is made to limit the impact of the audit on the solicitor's practice and to keep to a minimum the costs a solicitor incurs in complying with the audit. Revenue will generally agree the method of selection of client ledger accounts with the solicitor or its advisor early on in the audit. Usually a letter of the alphabet will be selected.

Revenue should not be given open unlimited access to client files per se. If a solicitor has been keeping proper records and raising VAT invoices when they fall due on the completion of a service then there should be no need for the Revenue to request access to a client's files. In general Revenue will usually only request sight of a client file for the purpose of verifying whether a service has been completed or not or verifying creditors or expenses. If a solicitor does receive a request from Revenue to have access to the client file, the solicitor must be afforded a reasonable opportunity of reading the file and removing therefrom any items attracting privilege or details of tax advice given to a client. Care must be taken that Revenue do not receive such information.

It is anticipated that circumstances may arise where Revenue request access to a particular client ledger or client file which is not privileged but which is particularly sensitive and the solicitor may feel obliged, due to the high degree of sensitivity about the matter, to refuse the Revenue access to the information. In such circumstances it is suggested that the parties attempt to resolve the matter in a practical fashion. Where there is a disagreement as to whether Revenue should have such access the matter can be referred to the internal / external review mechanism within Revenue and in such instances

Revenue have advised that the party reviewing the matter would not necessarily need to be appraised of the client's name in order to come to a decision upon the matter.

BREACHES OF TAX CODE

During the course of the discussions with Revenue, Revenue highlighted certain examples where solicitors were found to be in breach of the tax code. Whilst the following is not an exhaustive list, the principal areas were as follows:-

1. **Fees being left sitting indefinitely in the client account**

In such instances profits are being suppressed and the solicitor's income tax liability is not being accurately assessed. Solicitors are reminded that under the Solicitors' Accounts Regulations such practice is prohibited. Where a solicitor has completed a service on behalf of a client and a bill of costs has been raised, solicitors are advised that the fees should be transferred across in a timely manner from the client account to the office account.

2. **Solicitors using "pro forma invoices"**

Revenue stated that since the change over of the obligation on solicitors to account for VAT from a cash receipts basis to an invoice basis that some solicitors allegedly sought ways and means of continuing to pay VAT on a cash receipts basis. A practice had arisen that a formal VAT invoice would only be raised when payment was received from a client. When furnishing a bill to a client, solicitors were using "pro forma VAT invoices" or fee statements which bore the narrative "this is not a VAT invoice". This meant that there was an understatement of debtors on the solicitors accounts with a consequent suppression of income. As VAT was only being paid once received, there was a consequent time gap when Revenue were at a loss of use of the VAT. Solicitors are reminded that an invoice must be raised within 15 days of the end of the month in which the service is completed and that if they are on an invoice basis that they must account to Revenue for that VAT regardless of whether the client has discharged the liability or not. Solicitors are referred to the pamphlet prepared by the Probate Administration & Taxation Committee in February 2002 entitled "VAT and Solicitors: A simplified commentary". It is recommended that solicitors read this pamphlet and apprise themselves of their VAT obligations.

3. **Personal expenditure being included as an item of outlay in the client account.**

Revenue have found that in certain instances extraordinary expenses (for example travelling expenses) have been included as an item of outlay with the

consequent result that the fee which would ordinarily be charged for the service is reduced and there is accordingly a loss of income tax and VAT to Revenue. Only properly vouched expenses should be charged as outlay to a client.

The Law Society recommends that solicitors examine their records and if the solicitor finds instances of the above that the solicitor contacts his accountant/tax adviser and that immediate steps be taken to rectify the situation.

Whilst every effort has been made by the Law Society to give guidance to solicitors on the subject matter of Revenue audits, every audit is different and every solicitor has its own way of dealing with accounts with the result that hard and fast advice cannot be given on the topic.

PROBATE ADMINISTRATION AND TAXATION COMMITTEE

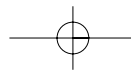
FEBRUARY 2002

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FOOTNOTE

- 1 *Care should be taken when reading this article as it sets out the law as of August 1996. In particular solicitors are referred to the advices contained in this article that client information should not be revealed to the Revenue Commissioners. Such advice is no longer current.*
- 2 *See Miley -v- Flood HC 2000 No. 310JR. Unrep. Kelly J. 24.1.01.*



PANEL TO ASSIST SOLICITORS

ABOUT WHOM COMPLAINTS

ARE MADE TO THE LAW SOCIETY

**PROBLEMS ARE
MORE LIKELY TO
BE RESOLVED IF
THEY ARE GIVEN
IMMEDIATE AND
PROPER
ATTENTION.**

**If you have been notified
by the Law Society of a
complaint made against
you or of other difficulties
relating to your practice,
you may wish to contact a
panel member to assist
you with your initial
response to the Society.**

**To obtain a list of panel members contact the
Guidance and Ethics Committee at the Law Society:**

Tel. (01) 6724878

Email a.collins@lawsociety.ie

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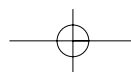
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Law Society of Ireland

CORK SOLICITORS' HELPLINE



WORRIED? NEED TO TALK TO SOMEONE?

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