



## **CODE OF CONDUCT FOR THE BAR OF IRELAND**

**Adopted by a General Meeting  
of the Bar of Ireland  
on 20<sup>th</sup> July 2020**

**COMMENCEMENT ORDER  
FOR THE CODE OF CONDUCT FOR THE BAR OF IRELAND 2020**

WHEREAS the Code of Conduct for the Bar of Ireland 2020 (the “2020 Code”) was adopted by a general meeting of the Bar of Ireland on the 20<sup>th</sup> day of July 2020 and whereas the General Council of the Bar of Ireland, in exercise of its power to determine a date for the commencement of the 2020 Code and certain parts and provisions thereof, has determined to commence certain parts and provisions thereof

AND by way of determination of the General Council of the Bar of Ireland of this 27<sup>th</sup> day of January 2021

THE 28<sup>th</sup> day of January 2021 is determined as the commencement date of the following provisions of the 2020 Code:

1. Rule 6.13(i);
2. Such portion of Rule 6.13(ii) not previously commenced so that the whole of Rule 6.13(ii) be now commenced; and
3. Rule 6.13(iii).

BY ORDER of the General Council of the Bar of Ireland this **27<sup>th</sup> day of January 2021.**

**COMMENCEMENT ORDER  
FOR THE CODE OF CONDUCT FOR THE BAR OF IRELAND 2019**

Whereas the Code of Conduct for the Bar of Ireland 2019 (the “2019 Code”) was adopted by a general meeting of the Bar of Ireland on 22 July 2019 and whereas the General Council of the Bar of Ireland, in exercise of its power to determine a date for the commencement of the 2019 Code and certain parts and provisions thereof, has determined to commence certain parts and provisions thereof;

And by way of determination of the General Council of the Bar of Ireland of this **6<sup>th</sup> November 2019**;

The **11<sup>th</sup> November 2019** is determined as the commencement date of the following parts and provisions of the 2019 Code:

1. The whole of rule 2.22 highlighted in bold and underlined that states: “No provision of this Code shall be construed as preventing or restricting a Barrister from working with, or otherwise doing business with a barrister who does not subscribe to this Code **and who is in employment within the meaning of Section 212 of the Act of 2015.**”

2. The whole of rule 3.23 highlighted in bold and underlined that states: “**Notwithstanding the foregoing, or anything else in this Part, and in accordance with the provisions of Section 215 of the Act of 2015, a Barrister who has accepted instructions to appear in court on behalf of 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.**”–

3. The whole of rule 10.4 highlighted in bold and underlined that states: “For the avoidance of doubt, Rule 12.14 herein also applies to criminal as civil cases. **However in accordance with the provisions of Section 215 of the Act of 2015, a Barrister who has accepted instructions to appear in court on behalf of 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.**”

4. The whole of rule 12.1 highlighted in bold and underlined that states:  
“Barristers’ fees are based upon commitments undertaken and work done. Barristers are entitled to charge for any work undertaken or to be undertaken by them (whether or not it involves an appearance in court) on any basis or by any method they think fit, provided that such basis or method is permitted by law and a Barrister is entitled to take into account when marking or nominating such fee, all features of the instructions which bear upon the commitment which is thereby undertaken or has been undertaken by them including:

- the complexity of the issue or subject matter;
- the length and venue of any trial or hearing;
- the amount or value of any claim or subject matter in issue provided, however, that
- the level of fee should not be calculated solely on the basis of the value of the case or on a basis directly proportionate to the value of the case;
- the time within which the work is or was required to be undertaken;
- any other special feature of the case.

**-and any other matter set out in Schedule 1 to the Act of 2015.”**

By Order of the General Council of the Bar of Ireland this **6<sup>th</sup> November 2019.**

**COMMENCEMENT ORDER  
FOR THE CODE OF CONDUCT FOR THE BAR OF IRELAND 2016**

Whereas the Code of Conduct for the Bar of Ireland 2016 (the “2016 Code”) was adopted by a general meeting of the Bar of Ireland on 25 July 2016 and whereas the General Council of the Bar of Ireland, in exercise of its power to determine a date for the commencement of the 2016 Code and certain parts and provisions thereof, has determined to commence certain parts and provisions thereof;

And by way of determination of the General Council of the Bar of Ireland of this **14<sup>th</sup> May 2019**;

The **4<sup>th</sup> June 2019** is determined as the commencement date of the following parts and provisions of the 2016 Code:

1. The Introduction and Part 1 except for that part of rule 1.4(f) that states: “or where the context so admits a person who instructs a barrister directly in a matter other than a contentious matter”;
2. Part 2 except for that part of rule 2.21 that states: “(b) a multi-disciplinary partnership as defined in the Act of 2015 (if such is permitted under the Act” and that part of rule 2.22 that states: “and who is in employment within the meaning of Section 212 of the Act of 2015.”;
3. Part 3 except for Rule 3.6 and Rule 3.23;
4. Part 4 except for that part of rule 4.1 that states: “Rule 3.6 and”;
5. Part 5;
6. Part 6 except for Rule 6.13(i) and those parts of rule 6.13(ii) that state: “Pending the making of such regulations as are referred to in s.218(2) of the Act of 2015,” and “in accordance with s.218(1) of the Act of 2015, and, if applicable,” and Rule 6.13(iii);
7. Parts 7, 8 and 9;
8. Part 10 except for that part of rule 10.4 that states: “However in accordance with the provisions of Section 215 of the Act of 2015, a barrister who has accepted instructions to appear in court on behalf of 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.”;
9. Part 11;
10. Part 12 except for that part of rule 12.1 that states: “and any other matter set out in Schedule 1 to the Act of 2015”.
11. Parts 13 and 14.

By Order of the General Council of the Bar of Ireland this **14<sup>th</sup> May 2019**.

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## **CODE OF CONDUCT FOR THE BAR OF IRELAND**

WHEREAS it is the desire of the Bar of Ireland that a single statement be made which incorporates the rules and practices of the Bar together with the several rulings made from time to time by the Bar Council and other matters upon which it is expedient to rule, and WHEREAS the rules following hereafter are necessary to ensure proper practice at the Bar and for the purposes of ensuring that the ultimate consumers of legal services and the sound administration of justice are provided with the necessary guarantees in relation to integrity, experience, choice and efficiency. Now the Bar in General Meeting hereby this day adopts this Code of Conduct ("the Code") which applies to all Barristers whether called to the Bar before or since this day.

### **1. General**

- 1.1. Amendments and additions to the Code may be made by the Bar in General Meeting;
- 1.2. The Bar Council, or the Professional Practices Committee of the Bar Council, pursuant to its power to exercise disciplinary powers over Members of the Law Library, may rule in matters of discipline or professional practice, issue general guidelines, and give advance rulings to Barristers as to whether their conduct will or will not be in conformity with the Code, and nothing herein shall prejudice the right of the Bar Council to do so, subject to the provisions of the Legal Services Regulation Act, 2015.
- 1.3. The Bar Council may waive the application, either generally or specifically, of any provision of the Code when, in its opinion, the best interests of the Bar so require, and any waiver granted by the Bar Council prior to the adoption of this rule shall continue in force.
- 1.4. The following words used in the Code shall have the meanings set out below, save where the context otherwise requires:-
  - (a) A Barrister means a person who is a practising barrister, as defined under the Legal Services Regulation Act, 2015 (the "Act of 2015") who subscribes to the provisions of the Code of Conduct for the Bar of Ireland and is a Member of the Law Library;
  - (b) A solicitor means a person who is the holder of a practising certificate from The Law Society of Ireland or is otherwise entitled to practice as a solicitor in Ireland;
  - (c) The Bar Council means the General Council of the Bar of Ireland referred to in the Constitution adopted by the Bar in General Meeting on the 20<sup>th</sup> February 1914, as amended, and as is elected, from time to time, pursuant thereto;
  - (d) The Professional Practices Committee is the Committee of the Bar Council established pursuant to paragraph 33 of the Constitution of the Bar of Ireland;

- (e) The Education and Training Committee is the Committee of the Bar Council established pursuant to paragraph 35 of the Constitution of the Bar of Ireland;
- (f) A client means a person on whose behalf a Barrister has been instructed by a solicitor or where the context so admits a person authorised to avail of the Bar Council's Direct Professional Access Scheme as amended from time to time ~~or where the context so admits a person who instructs a Barrister directly in a matter other than contentious matter;~~
- (g) The term instructions includes a request (whether or not accompanied by documents) to advise, to draft proceedings or other legal documents, and/or to appear in Court or before any tribunal or other body;
- (h) The term Court means any Court of law;
- (i) The term Brief means instructions to appear before any Court or tribunal, inquiry, board or other body (whether statutory or otherwise) on behalf of a client;
- (j) The term Papers mean a written set of instructions;
- (k) The Law Library means the central location(s) of practice from which Barristers are entitled to practise and that is administered by the Bar Council;
- (l) The term Case means any matter in which a Barrister is asked to advise, draft pleadings or other legal documents or to represent a client;
- (m) The term Pupil means a Barrister in the first year of practice who is required by the Code to be a pupil of a Master and who was previously referred in the Code of Conduct as a "devil";
- (n) The term Master means a Barrister who is entered on the Register of Masters maintained by the Bar Council;
- (o) The Bar means, for the purposes of the Code, all Barristers to whom this Code applies;
- (p) Foreign lawyer means a lawyer whose principal place of practice is other than Ireland and who is not a Barrister or a registered lawyer within the meaning of the Code;
- (q) The term "leader" or "leading Barrister" means a Barrister who is first in Point of time in call to the outer bar or the inner bar as the case may be;
- (r) Part time occupation means an occupation which does not prevent regular attendance at Court or at the Law Library during term on the request of a Solicitor or another Barrister, or which does not otherwise materially interfere with a Barrister's availability to those who may seek the services of that Barrister;

- (s) Registered lawyer means a lawyer in respect of whom a registration certificate is in force issued by the Bar Council in accordance with Regulation 6(3) (b) of the European Communities (Lawyers' Establishment) Regulations 2003;
- (t) The 1977 Directive means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services;
- (u) The 1998 Directive means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;

1.5. The following provisions shall apply and have effect in relation to the construction of the Code:

- (a) Singular and Plural: Every word importing the singular shall, unless the contrary intention appears, be construed as if it also imported the plural, and every word importing the plural shall, unless the contrary intention appears, be construed as if it also imported the singular;
- (b) Masculine and feminine: Every word importing the masculine gender shall, unless the contrary intention appears, be construed as if it also imported the feminine gender, and every word importing the feminine gender shall, unless the contrary intention appears, be construed as if it also imported the masculine gender;
- (c) Person: The word "person" shall, unless the contrary intention appears, be construed as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons as well as an individual.

1.6. Transitional

In respect of anything done or omitted to be done by a Barrister or otherwise arising before the commencement date:

- (a) This Code (or where the context so requires, the relevant provision(s) of this Code) shall not apply;
- (b) The Code of Conduct (or where the context so requires, the relevant provision(s) of the Code) in force at the relevant time shall apply as if this Code had not been adopted by the Bar of Ireland.

In this rule the term "commencement date" shall mean such date as the Council of the Bar of Ireland may determine, either generally or by reference to any particular provision(s), including, where appropriate, parts of provisions, and different dates may be fixed for the commencement of different provisions or different parts of provisions

of this Code

## **2. Barrister - General Principles**

- 2.1. Barristers shall uphold at all times the standards set out in the Code and shall conduct themselves in accordance with the standards of conduct expected of Barristers in their practice and it is their duty to be independent and free from any influence, especially such as may arise from their personal interests or external pressure, in the discharge of their professional duties as Barristers.
- 2.2. Barristers are individually responsible for their own conduct and they shall at all times uphold the standards set out in the Code, and the dignity and high standing of the profession of Barrister and their own standing as members of the profession. Failure to do so may constitute professional misconduct or a breach of professional standards rendering a Barrister liable to disciplinary proceedings.
- 2.3. It is the duty of Barristers:
  - (a) to comply with the provisions of the Code;
  - (b) to act at all times with honesty and integrity;
  - (c) not to engage in conduct (whether in pursuit of their profession or otherwise) which may bring the Barristers' profession into disrepute, which may injure the dignity and high standing of the profession, or which is likely to diminish the trust and confidence placed in them or in the profession;
  - (d) not to engage in conduct which is prejudicial to the administration of justice;
  - (e) to observe the ethics and etiquette of their profession;
  - (f) to provide a competent and professional standard of work and service to each client;
  - (g) to conduct their profession as Barristers so as to ensure that there is no serious falling short, by omission or commission, of the standard of conduct expected of a Barrister;
  - (h) to be individually responsible for their own conduct;
  - (i) to co-operate with an investigation conducted by the Bar Council and/or the PPC pursuant to paragraph 2.20 of the Code; and
  - (j) to co-operate with an investigation conducted by the Barristers Professional Conduct Tribunal or the Barristers Professional Conduct Appeals Board, pursuant to paragraph A4 of the Disciplinary Code for the Bar of Ireland, or the Disciplinary Committee of the Benchers of the Honorable Society of King's Inns.
- 2.4. Subject to these Rules, Barristers as members of the Law Library and as members of an independent referral bar hold themselves out as willing and obliged to appear

in Court on behalf of any client on the instructions of a solicitor and to give legal advice and other legal services to clients. A Barrister who accepts an appointment as Attorney General is hereby deemed to continue to be a Barrister in practice at the Bar.

- 2.5. Barristers have an overriding duty to the Court to ensure in the public interest that the proper and efficient administration of justice is achieved and they must assist the Court in the administration of justice and must not deceive or knowingly mislead the court.
- 2.6. Barristers must promote and protect fearlessly and by all proper and lawful means their client's best interests and do so without regard to their own interest or to any consequences for themselves or to any other person including fellow members of the legal profession.
- 2.7. Barristers must maintain the confidentiality of each client's affairs, in accordance with the provisions of this Code including in particular those to be found in Part 3.
- 2.8. The many duties to which Barristers are subject require their absolute independence, free from all other influence, especially such as may arise from their personal interests or external pressure. Barristers must therefore avoid any impairment of their independence and be careful not to compromise their professional standards in order to please their client, the Court or third parties. This independence is necessary in non-contentious matters as well as in litigation.
- 2.9. In order to perform their functions with due independence and in a manner which is consistent with their duty to participate in the administration of justice Barristers are excluded from occupations which conflict with the duties contained in the Code, such as other roles in, or in connection with, or connected to the administration of justice, provided however that:
  - (a) Barristers are permitted to engage in any part-time occupation that is not inconsistent with the Code.
  - (b) Barristers may be arbitrators or mediators and may receive remuneration for such office.
  - (c) Barristers may be members or officers of a law centre (established by the Free Legal Advice Centre) when it is functioning and may accept non-paying briefs from such centre provided they are instructed and attended by a solicitor in Court.
  - (d) Barristers may be members of any public body, board or council, whether or not an emolument is payable in respect of their membership thereof.
- 2.10. Barristers shall not abuse the title Barrister-at-Law or where applicable Senior Counsel, but this rule shall not prohibit the disclosure of their professional qualification by Barristers in a manner consistent with the Code and any instrument made under the Code.
- 2.11. In all matters outside the ordinary professional functions of Barristers it is the duty and responsibility of Barristers to consult the Bar Council (in relation to any matter affected by the Code) as to what they may not do and whether for remuneration or

otherwise.

- 2.12. Barristers must forthwith report to the Bar Council the fact that they have been convicted of a criminal offence involving dishonesty or of a criminal offence which might bring the profession into disrepute. If Barristers are in doubt as to their duty under this Rule, the conviction should be reported forthwith.
- 2.13. It is the duty of Barristers at all times to ensure that their practice is efficiently and properly administered and, in particular, they must take all reasonable and practicable steps to ensure that their Court engagements are properly fulfilled.
- 2.14. The Professional Practices Committee may, from time to time, issue guidelines in respect of a Barrister's duties in respect of taking over a case from another Barrister. Barristers shall ensure that they carry out their duties in accordance with such guidelines.
- 2.15. Barristers shall be insured at all times against claims based on professional negligence. Barristers shall so insure to an extent which is reasonable having regard to the nature and extent of the risks which those Barristers may incur in their practice and in any event at a level not less than the minimum level of professional indemnity insurance as declared from time to time by the Bar Council. However Barristers may enter into an arrangement with a solicitor and/or a client that the extent of their legal liability for any act or default shall not exceed a stipulated sum provided however that such sum shall not be less than the minimum level of professional indemnity as may be prescribed from time to time pursuant to this Rule.
- 2.16. In the interest of maintaining an independent referral bar Barristers are prohibited from directly or indirectly administering or handling the funds or assets of any client and Barristers shall not give any financial advice or assistance to a client or their solicitor on the investment of such funds or assets.
- 2.17. Barristers shall not be required to give a certificate of title for the Land Registry but may give their opinion.
- 2.18. Failure to comply with the duties set out in Rule 1.2 shall be professional misconduct and may render Barristers liable to exclusion or suspension from membership of the Law Library and to be reported to the Benchers of the Honorable Society of King's Inns with a view to disbarment, or may render them liable to a fine or a finding that they be admonished or suspended for a stated period from practice at the Bar of Ireland.
- 2.19. A failure to comply with the duties set out in Rule 2.3 which does not in the opinion of the Bar Council amount to serious professional misconduct may be a breach of proper professional standards and may render the Barrister liable to disciplinary measures imposed by the Disciplinary Code for the Bar of Ireland including admonishment, imposition of a fine and the requirement to repay specified fees.
- 2.20. The Bar Council and/or the PPC may initiate an investigation into any matter of serious concern to it regarding the professional conduct of a Barrister or into any

matter notifiable to it pursuant to rule 2.12 of this Code or into any matter which, in the opinion of the Council, may have brought or may be likely to bring the profession into disrepute and it may initiate and conduct such investigation whether or not any complaint has been made to it against any Barrister. It is the duty of Barristers to cooperate with any such investigation in a timely manner whether by way of furnishing comment or information or by attending before the Council and/or the PPC (or such other person or persons as it shall delegate to investigate any such matter) when asked to do so. Failure to comply with this duty of co-operation shall be professional misconduct.

- 2.21. No provision of this Code shall be construed as preventing or restricting a Barrister from working with, or otherwise doing business with, a legal practitioner who does not subscribe to this Code and who is providing legal services in (a) a legal partnership as defined in the Act of 2015 ~~(b) a multi-disciplinary practice as defined in the Act of 2015 (if such is permitted under the Act)~~ or (c) a limited liability partnership as defined in the Act of 2015.
- 2.22. No provision of this Code shall be construed as preventing or restricting a Barrister from working with, or otherwise doing business with a barrister who does not subscribe to this Code and who is in employment within the meaning of Section 212 of the Act of 2015.
- 2.23. The Bar Council shall promulgate a Direct Professional Access Scheme setting forth rights of access to a Barrister by such persons authorised by the same to have access to a Barrister.

### 3. Relations between Barrister and Client

- 3.1. Barristers have a duty to uphold the interests of their client without regard to their own interests or any consequences to themselves or any other person.
- 3.2. The duty of a Barrister to act in the best interests of each client includes a duty to consider whether the client's best interests are served by representation by a different Barrister, and, if so, to advise the client to that effect.
- 3.3. Barristers shall not discriminate in favour of or against any person availing, or seeking to avail, of the services of the Barrister on the grounds of race, colour, sex, sexual orientation, language, politics, religion, nationality, national or social origin, national minority, birth or other status and it shall be the professional duty of Barristers to comply with all laws intended to prevent any discrimination on any grounds.
- 3.4. In contentious matters, save for the purpose of acting in proceedings in accordance with Rule 5.25 Barristers should not take instructions directly from a client. Barristers shall not visit a client in prison unless attended.
- 3.5. In contentious matters, if a client contacts a Barrister initially and asks the Barrister to act the Barrister should do nothing unless and until the Barrister is contacted by the client's solicitor but if it is a matter of urgency the Barrister may contact the client's solicitor.
- ~~3.6. A Barrister may accept instructions directly from a client in matters other than contentious matters. However, where the matter becomes contentious, the Barrister must not draft any formal document, engage in correspondence or make direct contact with third parties and they must direct that a solicitor be retained in order for them to continue to advise and provide other professional services as Barristers.~~
- 3.7.
  - (a) Barristers must maintain the confidentiality of each client's affairs, and, subject to the provisions below, are under a duty not to communicate to any third party, information entrusted to them by or on behalf of their clients, and not to use such information to their client's detriment or to their own or another client's advantage. This duty continues at all times after the relation of Barrister and client has ceased, and after the death of the client.
  - (b) Barristers may not permit any recording, by electronic or by any other means, of any privileged or confidential conversation between them, their solicitors, clients or other person in any circumstances without the authority of their client.
  - (c) When disposing of confidential documentation, whether in printed form or otherwise, Barristers are under a duty to do so in a manner that reasonably ensures that their duty of confidentiality will not be breached

- (d) In so far as it may be necessary to keep copy pleadings, advices, or other documents, Barristers have a duty to ensure the security and confidentiality of such documents. Any matter stored in electronic form should enjoy a proper level of encryption.
  - (e) Barristers must take reasonable precautions to maintain the confidentiality of documents, even when left in places to which only other Barristers and/or solicitors have access.
  - (f) Provided that
    - (i) This rule shall not prevent Barristers imparting information entrusted to them by their client for the purpose of properly discharging duties as a pupil Master, or to other Barristers for the purpose of enabling the other Barrister to carry out the tasks envisaged by paragraph 7.9.
    - (ii) The duty of confidentiality described above applies equally to pupils in relation to information entrusted to their Masters and coming to the pupil's knowledge in the course of pupillage, and to a Barrister carrying out tasks envisaged by paragraph 7.8 in relation to information that comes to their knowledge for such purpose.
    - (iii) This rule shall not prevent the disclosure of information to which the client gives informed consent.
    - (iv) This rule shall not prevent Barristers notifying and co-operating with their professional indemnifiers in relation to any matters.
    - (v) This rule shall not prevent Barristers from communicating information that is necessary to enable the Barrister to answer accusations or complaints made by the client against the Barrister, the instructing solicitor, or another Barrister or solicitor, whether to the Bar Council, to the Law Society, to a disciplinary body, in a litigious matter, or when the Barrister seeks a ruling from the Bar Council or the Professional Practices Committee, or where a Barrister is asked to co-operate with an investigation of the Bar Council or the Professional Practices Committee.
    - (vi) This Rule shall not prevent a Barrister from making such disclosures as are otherwise required by law.
- 3.8. Barristers may not permit a member of the Garda Síochána, Prison Officer, and Revenue Official, Security Guard or any other person, to read instructions confided in them as a Barrister, in any circumstances.
- 3.9. The copyright in an opinion belongs to the client who has paid the appropriate professional fee.
- 3.10. Having regard to the anticipated length and complexity of a case and having regard to their other professional commitments and the provisions of this Code Barristers are bound to accept instructions in any case in the field in which they profess to practice (having regard to their experience and seniority) subject to the Payment of a proper professional fee. A Barrister may be justified in refusing to accept instructions where a conflict of interest arises or is likely to arise or where they possess relevant or confidential information or where there are other special circumstances.

- 3.11. Barristers ought not to accept instructions if they would be embarrassed in the discharge of their duties because they have previously advised on or drawn pleadings for another client on the same matter or appeared for another person who is or was connected with the same matter, or assisted another Barrister in the discharge of such duties, as envisaged by paragraph 7.9, or they are in possession of material information entrusted to them by another client and it would be prejudicial to that client's interests or there is any other good and sufficient reason for not so acting and where they have accepted such instructions they should not continue to act.
- 3.12. Barristers may not accept instructions in any case where by reason of their connection with the client or the subject matter it would be difficult for them to maintain their professional independence or where such connection might reasonably give rise to the perception on the part of a Court before which they appear that their professional independence is or may be compromised in the discharge of their duties as Barristers.
- 3.13. Barristers may not appear as counsel:-
- (a) in any matter in which they themselves are a party or have a significant pecuniary interest;
  - (b) either for or against any Local Authority of which they are a member, or
  - (c) either for or against any person, company, firm or other organisation of which they are an officer, director, partner, engaged in part-time occupation or in which they have directly or indirectly a significant pecuniary interest.

Exceptions to this rule may be authorised by the Bar Council.

- 3.14. Barristers shall not appear in any case in which they are likely to be witnesses. If, being engaged in a case, it becomes apparent that they are likely to be witnesses on a question of fact, they should not continue to appear if they can retire without jeopardising their client's interests.
- 3.15. Barristers may not accept instructions in any matter with which they have previously been concerned in the course of another profession or occupation or from any firm or company in which they have been a partner or director or engaged in part-time occupation. Exceptions to this rule may be authorised by the Bar Council.
- 3.16. In cases involving several parties, Barristers on receipt of instructions for more than one of such parties should consider whether or not any conflict arises as between the individual interests of each of the clients and they shall advise the solicitor as to whether any of the clients should be separately advised and represented by a Barrister or solicitor.
- 3.17. While briefs are in general accepted on the understanding that the Barrister concerned may be unavoidably prevented by a conflicting professional engagement from attending the case, Barristers may not accept so many instructions that they cannot reasonably expect to give adequate attention to all of

them within a reasonable time.

- 3.18. If a Barrister has accepted a brief in a case the Barrister may not without the consent of the solicitor who has briefed the Barrister accept a further brief in any other case which is likely to reduce to a serious degree the time and attention that the Barrister should properly give to the case in which the Barrister had first accepted a brief.
- 3.19. Barristers must inform their instructing solicitor promptly if it becomes apparent that they are unlikely to be able to attend to their instructions or if there is likely to be a substantial delay in attending to them. In particular Barristers must inform their instructing solicitor immediately where there is an appreciable risk that they may not be able to undertake the case in which they have accepted a brief, and they must in any event return that brief in sufficient time to allow another Barrister to be engaged and to prepare the case.
- 3.20. If it is necessary for a Barrister to return a brief because of conflicting commitments the Barrister should return the brief which the Barrister last accepted unless the solicitor in the case in which the Barrister was earlier retained consents to him doing otherwise.
- 3.21. Where Barristers receive instructions which they believe to be beyond their competence they should decline to act in the matter and shall so inform the instructing solicitor without delay.
- 3.22. A Barrister whose client behaves in an offensive manner towards that Barrister must nevertheless continue to act for that client provided however that where they are justified in assuming that their professional conduct is being or is likely to be impugned or that the trust of the client in the Barrister's professionalism has been thereby undermined they can withdraw from the case provided that their withdrawal will not have the effect of jeopardising their client's interests.
- 3.23. Notwithstanding the foregoing, or anything else in this Part, and in accordance with the provisions of Section 215 of the Act of 2015, a Barrister who has accepted instructions to appear in court on behalf of 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.
- 3.24. Barristers may not return their brief merely on the grounds that their client would not accept their advice on a settlement offered but they shall (subject to the provisions of Paragraphs 5.3, 5.16 and 5.19) continue with the case if their client wishes it to be fought.
- 3.25. Where a client seeks to insist that a Barrister pursue a case or an argument on the client's behalf which, though it would not be improper or dishonest to pursue it, has no reasonable chance of success, the Barrister shall not be in breach of the retainer (or disentitled to fees for work done) if the Barrister does not pursue the case or the argument in question provided the Barrister shall have advised the client unequivocally, as soon as practicable and, where possible, in writing to the client's solicitor;

- (i) that the Barrister will not put forward the case or argument in question;
  - (ii) of the reasons why the Barrister considers that the case or argument has no reasonable chance of success; and
  - (iii) of the client's right to terminate the Barrister's instructions and or pursue the matter with another Barrister or with none.
- 3.26. Where a Barrister receives on behalf of a client an offer of settlement and the client is available for consultation and to instruct the Barrister, the Barrister, in the presence of the solicitor, shall inform the client fully of all the terms of the offer. Where such an offer is received and the client is not available for direct consultation, the Barrister shall communicate all the terms offered in full to the instructing solicitor and shall direct the solicitor to communicate the terms in full to the client. Should a Barrister become aware following such communication that a solicitor has failed to communicate the terms of an offer in full to the client, the Barrister shall report a conflict of interest as having arisen between the solicitor and client and shall proceed in accordance with Rule 3.28 (a) of these rules.
- 3.27. Save where provided in these rules it is undesirable for Barristers to consult with a client or their representative in any matter unless the solicitor instructing them is present or has instructed them to do so. If the solicitor is not present the Barrister should forthwith furnish a written memorandum of those instructions to the solicitor.
- 3.28.
- (a) If a Barrister forms the view that a conflict of interest has arisen between a client and the solicitor who has instructed the Barrister on behalf of that client, the Barrister must provide advice for the client stating the nature of the Barrister's concerns and recommending that the client instruct a different solicitor. Unless it proves impossible to do so within a reasonable time, such a Barrister should first notify the instructing solicitor that such advice must be given by the Barrister and, immediately following such notification, should give such advice (i) at a consultation at which the client and the solicitor are both present or (ii) in writing to the client through the instructing solicitor or (iii) in writing to the solicitor. Where a Barrister has given advice under this rule other than in the presence of the client, the Barrister must seek the written acknowledgement of the client and, if the aforesaid verification is not provided within a reasonable time, the Barrister, having warned the solicitor of his obligations in this regard but notwithstanding the provisions of rule 3.26 hereof, must provide the advice to the client directly and in writing.
  - (b) For the purposes of these rules cases involving a 'conflict of interest' include but are not limited to;
    - (i) any case where, by reason of any act or omission of a Barrister's instructing Solicitor, in the view of the Barrister, the Barrister's client may have suffered or may potentially suffer any loss, damage or detriment; and

- (ii) any case where, to the knowledge of a Barrister, the Barrister's instructing solicitor has failed, within an appropriate period, to comply with the instructions of his client, whether or not those instructions conform with any advice of the Barrister.

#### **4. Relations between Barristers and Solicitors**

- 4.1. Subject to ~~Rule 3.6~~ and Part 13 of these rules and subject to such further exceptions as may be authorised by the Bar Council (including access through the Bar Council's Direct Professional Access Scheme as amended from time to time) a Barrister may not act in a professional capacity except upon the instructions of a solicitor or in appropriate cases a Patent Agent, Trade Mark Agent or Tax Accountant.
- 4.2. Barristers may give advice free of charge to a friend or a relative or on a charitable basis without the intervention of a solicitor. However they must not in such circumstances, where the matter is or becomes contentious, draft any formal document, engage in correspondence or make direct contact with third parties and they must direct that a solicitor be retained in order for them to continue to advise and provide other professional services as Barristers.
- 4.3. Barristers may not work in or be an employee of a solicitor's office.
- 4.4. Barristers may not have a retainer or enter into any agreement to do all the work of a solicitor's office whether advisory or contentious but they may have a retainer to do all the work of a particular client and they shall be paid an individual fee for each piece of work.
- 4.5. Barristers may not have a room in a solicitor's office. However, a Barrister may have a room in the same office facilities or other premises as a solicitor or other person, provided that:
  - (i) There is a complete separation between the room occupied by the Barrister and the room occupied by the solicitor or other person;
  - (ii) There is a complete separation between the services provided by the Barrister and the services provided by the solicitor or other person with whom the Barrister shares the office facilities or premises;
  - (iii) Nothing is done that might reasonably create the impression that there is any sharing of work, income, or profits of the business;
  - (iv) The Barrister has effective arrangements in place to protect the confidentiality of client affairs;
  - (v) There is no general referral arrangement or understanding between the barrister and person or persons with whom the barrister is sharing.
- 4.6. It is desirable that Barristers, when providing advice or draft documents to a solicitor by e-mail or by the forwarding of software, either keep a hard copy of such documents or forward such a copy to their instructing solicitor as soon as reasonably practicable. All such communications should be expressed to be confidential and privileged.

## 5. Obligations of Barristers in Conducting Cases

### General

- 5.1. Barristers must maintain due respect and courtesy towards the Court before which they are appearing.
- 5.2. Subject to the provisions of the Code Barristers should defend the interests of their client in a way which they consider to be to the client's best advantage and within the limits of the law.
- 5.3.
- (a) A Barrister shall not knowingly make, procure or countenance the making of any false or misleading statement of fact, whether express or implied, written or oral, with regard to any matter in which that Barrister is engaged, to any Court, other body or to any other party or any representative thereof.
  - (b) Nothing in this rule shall preclude Barristers from drafting or settling pleadings or other documents which merely deny allegations of fact made against their clients, save in any document that is required by law to be true.
  - (c) Nothing in this rule shall preclude a Barrister in a criminal matter from acting in accordance with Rule 10.12.
  - (d) While engaged in any matter before a Court or other body, Barristers shall not mislead nor knowingly permit the Court or other body to mislead itself in relation to the law applicable to that matter save that Barristers defending in criminal matters shall be under no duty to correct errors by the Court which may favour their clients.
  - (e) Where a Barrister becomes aware that any false or misleading statement of fact has been made by or on behalf of that Barrister's client in relation to the matter in which that Barrister is engaged, or that any Court, other body or other party may reasonably be continuing to rely on any statement of fact made by or on behalf of that Barrister's client which, though true when made, has become false or misleading, the Barrister shall
    - (i) be satisfied that any such statement of fact has been corrected before any further step be taken by any party in the matter, whether in any proceedings or by way of negotiation, discontinuance or otherwise; or
    - (ii) withdraw from the matter before any such step be taken by any party without such correction having been made.
  - (f) Where more than one Barrister is engaged in any matter, any Barrister other than leading counsel who becomes aware that the circumstances described in paragraph (e) of this rule have arisen shall bring those circumstances to the attention of leading counsel and, in addition, shall personally comply with the requirements set out in that paragraph.

## **Drafting Documents**

- 5.4. A Barrister must have regard to the provisions of Rule 5.3 when drafting any letter, pleading, witness statement, affidavit, notice of appeal or any other document.
- 5.5. A Barrister must not devise facts which will assist in advancing the client's case and must not draft any pleading, witness statement, affidavit, notice of appeal or any other document containing any statement of fact or contention which is not supported by the client's instructions.
- 5.6. Barristers shall not draft a witness statement or affidavit containing any statement of fact other than evidence which the Barrister reasonably believes the witness would give if the witness were giving evidence orally.
- 5.7. Nothing in the foregoing rules shall prevent a Barrister from drafting a document containing statements as to formal matters or uncontroversial facts, included by the Barrister subject to confirmation of their accuracy by the client or witness.
- 5.8. A Barrister shall not settle a pleading claiming fraud without express instructions and without having satisfied himself that there is or will be available at the trial of the action evidence to support such a claim.
- 5.9. Barristers shall not settle a pleading claiming professional negligence without express instructions. Save in a case of alleged professional negligence on the part of a Barrister or solicitor, Barristers ought not to settle a pleading claiming professional negligence unless they have satisfied themselves that expert evidence is or will be available to support such claim. In certain circumstances, such as when the time for issuing proceedings is in danger of expiring, Barristers may settle pleadings without such expert evidence, but should advise that proceedings should issue without being served until the required expert evidence is available.
- 5.10. Where two or more Barristers have been retained in a case, it is desirable that at least one of such Barristers should settle the pleadings.

## **Contact with Witnesses and Negotiations Inter Partes**

- 5.11. Barristers may not coach a witness in regard to the evidence to be given.
- 5.12. Barristers shall not confer with a witness while such witness is under cross-examination without prior leave of the other parties or the Court.
- 5.13. Subject to the provisions of Rule 5.14, where the other party or parties to a case are legally represented, a Barrister may not discuss the merits of a case with the parties of the other sides without the consent of and presence of both his instructing solicitor and the solicitor and/or barrister for the other side.
- 5.14. (a)

Subject to Rules 2.21 and 2.22 above, a Barrister, in pursuit of the settlement of any

case or matter, may negotiate only with the Barrister or solicitor retained by the other party, or with the duly authorised agent of the insurer of the other party. In the event that the other party does not have legal representation, a Barrister may, in the presence of his instructing solicitor, negotiate with the following persons:

- (i) the other party directly;
- (ii) the duly authorised agent of the insurer of the other party;
- (iii) where the other party is a body corporate, its servants or agents.

(b)

Notwithstanding the foregoing, a Barrister should not, save in exceptional circumstances, negotiate with any other person holding themselves out to be the agent of a party who does not have legal representation. Where such a negotiation is undertaken, appropriate steps should be taken to establish that the said agent is in fact duly authorised to act on behalf of the said party.

### **Conduct before Court**

- 5.15. A barrister when conducting proceedings in Court is responsible for the conduct and presentation of his case, and must exercise the independent judgment called for during the case. A barrister must not act as a mere spokesperson for the client or the instructing solicitor.
- 5.16. Barristers must not deceive or knowingly mislead the court. A Barrister must take appropriate steps to correct any misleading statement made by the Barrister to the court as soon as possible after the Barrister becomes aware that the statement was misleading. (see paragraphs 2.5 and 5.3)
- 5.17. Barristers when conducting a case must not assert their personal opinion of the facts or the law unless expressly invited to do so by the court or required to do so by law.
- 5.18. Barristers when conducting a case must not make statements or ask questions which are merely scandalous or are intended only for the purpose of vilifying, insulting or annoying a witness or some other person. (see paragraph 5.15).
- 5.19. In a civil case Barristers must, at the appropriate time in the proceedings, inform the court of any relevant decision on a point of law and, in particular, of any binding authority or of any applicable legislation of which they are aware and which the Barrister believes to be in point whether it be for or against their contention. (See paragraph 5.3)
- 5.20. Barristers must in every case use their best endeavours to avoid unnecessary expense and waste of the Court's time. They should, (subject to paragraph 5.21), when asked, inform the Court of the probable length of the case and also subsequently inform the Court of any developments which significantly affect the information already provided.
- 5.21. Barristers should at once inform the court of a settlement or of an intention to

apply for an adjournment or (provided they can do so without prejudice to their client's interests) of any other matter which may significantly affect the estimated length of the hearing.

- 5.22. A Barrister may appear in court with one or more Barristers on behalf of the client if the Barrister is satisfied that such representation is in the overall interests of the client or if the client or instructing solicitor so requires.
- 5.23. Where Barristers accept a brief they have an obligation to attend the trial or hearing. When more than one Barrister is briefed each must attend the trial or hearing unless prevented by an unavoidable or unforeseen conflict or commitment or where the instructing solicitor consents to the Barrister not being in attendance for all or part of the trial or hearing. When only one Barrister is briefed, there is an obligation on that Barrister to attend the trial or hearing. If Barristers find, subsequent to accepting a brief, that they are unable to attend they must return the brief to their solicitor as soon as possible. (See paragraphs 3.17 – 3.20)
- 5.24. In any case in which more than one Barrister is engaged it is for the leading Barrister and not for the court to decide which Barrister will make the closing address but the leading Barrister should ensure that such Barrister has been present during a substantial part of the case and has heard the submissions to which the Barrister is to reply.
- 5.25. Barristers appear in any court as of right and not by courtesy of the Court and it is not necessary or desirable that they should be introduced to the Court by a solicitor or any of its officers.
- 5.26. In general, Barristers shall be attended in court by their instructing solicitors or their clerks or assistants, but subject to the following exceptions: -
  - (a) When moving an application for an adjournment or a consent order;
  - (b) When appearing in the District Court, or on District Court Appeals, on the instructions of a solicitor

Barristers so appearing shall furnish forthwith a written memorandum of the proceedings to their solicitors.

- 5.27. It is the duty of a Barrister who takes judgment or concludes or rules a settlement to endorse the terms of or the effect of the same on the brief or otherwise record them in writing.
- 5.28. Barristers shall not approach a judge to discuss with them any matter then pending or at hearing before that judge without the consent of the judge and their opposing lawyer or lay litigant being present during such approach.
- 5.29. Barristers shall not before or during the trial of any case discuss the case with the trial Judge in private save that if it becomes necessary to so discuss the case they shall do so only with the consent of the Judge and the solicitor or counsel for each of the

parties, and in the presence of the solicitor or counsel for each of the parties, and if any party is unrepresented they may do so only with the consent of and in the presence of such party.

- 5.30. Barristers shall not habitually practice in any Court of which their parent, spouse or near blood relative is a presiding Judge. When a Barrister appears before a Court of which their parent, spouse or near blood relative is the Judge or one of the Judges, appropriate steps should be taken to ensure that such fact is made known to the opposing party.
- 5.31. A Barrister shall not practice and be an expert witness in the same Court but this rule does not apply to expert evidence on foreign law.
- 5.32. Judges of the Irish Courts, following retirement or resignation, who return to the Bar may not practice in a court of equal or lesser jurisdiction than the court of which they were a judge.

#### **Conduct before other Judicial and Quasi-Judicial Bodies, and before Mediators**

- 5.33. The Rules set out in this section, governing a Barrister's obligations when conducting cases, also apply where a Barrister appears in a mediation or before an arbitrator or any other person or persons exercising judicial or quasi-judicial functions, or before the sole member or members of Tribunals appointed under Statute or by the Oireachtas or any other investigating body.
- 5.34. Barristers may act for the chairman and members or the sole member of a tribunal of inquiry and shall, so far as practicable, comply with the provisions of the Code in all respects, and they are obliged, when appearing before such tribunal, to comply with the rules governing a Barrister's relationship with the courts.

### **6. Relations Between Barristers and the Public at Large**

- 6.1. In recognition of a Barrister's duty of confidentiality and independence a Barrister may not make any public comment upon any case in which the Barrister has been briefed or instructed or upon any of the parties involved in the case. Barristers may not write for publication, broadcast by radio or television, publish in book or film, or otherwise cause or permit to be published any particulars of any matters on which they have been, or are currently, engaged as Barristers.
- 6.2. Barristers who have retired from practice may write memoirs of their experience at the Bar, using due discretion in regard to cases in which they have been engaged, and for the feelings of persons concerned, and they shall strictly observe the rules of the Code with regard to professional confidences.
- 6.3. Without prejudice to paragraphs 6.1 and 6.2 and subject to paragraphs 6.4 to 6.6 of the Code, Barristers may speak in public or publish any matter in newspapers or magazines and broadcast on radio or television any matter whatsoever

notwithstanding that in doing so they state facts or express opinions on matters relating to law.

- 6.4. Barristers, when speaking or writing as permitted by paragraph 6.3 above, on a matter relating to practices of the Bar, the Courts or the administration of justice:
- (i) Shall be under a duty to ensure, as far as possible, that their statements are legally and factually correct;
  - (ii) Shall acquaint themselves with any policy or position of the Bar Council on the matter in question.
  - (iii) Shall have a duty to make clear whether the views expressed are their personal views or the views of the Bar Council.
  - (iv) Shall not purport to speak on behalf of the Bar generally, that being a matter for the Bar Council and its properly nominated representatives
- 6.5. Barristers speaking or writing as permitted by paragraph 6.3 above shall not:
- (a) Without the permission of the Bar Council or the PPC, discuss any case in which they are or were professionally engaged; or
  - (b) Directly or indirectly suggest that any client or class of client were advised to employ them; or
  - (c) Breach any provision of this Code.
- 6.6. Barristers who participate in a broadcast, whether on radio, television, or otherwise:-
- (a) may appear as an actor, provided they do not act the part of Barrister and provided it is not disclosed that they are a Barrister;
  - (b) may not appear in robes;
  - (c) may not broadcast on any matters in which they have been engaged as a Barrister; and
  - (d) may not broadcast about their practice at the Bar.
- 6.7. Barristers writing or speaking as permitted by paragraph 6.3 above may describe themselves or cause themselves to be described as a "Barrister" or "Senior Counsel" as the case may be.
- 6.8. Only matters which affect the Bar in its professional capacity can be considered by the Bar at General Meeting and thus matters concerned with the courts and the administration of justice can be considered by the Bar at General Meeting.
- 6.9. Barristers may not contact or engage with the press or other media on behalf of their client. However, When a matter has been at hearing before a court, Barristers may, at their discretion, show the pleadings to a news reporter unless either the court has directed otherwise, or their client has expressly instructed

them not to do so, or there has been an agreement between Barristers or the parties not to do so.

- 6.10. The papers in any brief or instructions delivered to a Barrister are the property of the client. Barristers have no right without the consent of the client or solicitor to lend them or reveal their contents to any person save in accordance with Rule 3.7. At the conclusion of the case Barristers should return the papers to the instructing solicitor (if there is an instructing solicitor), unless otherwise agreed.
- 6.11. Meetings of the Bar and of the Bar Council and of Committees of the Bar Council or of Committees established by the Bar Council are private and nothing discussed at such meetings shall be disclosed to the newspapers, radio or television or to other persons who are not members of the Law Library and practising as a Barrister. It is the Chairman of the Bar Council, from time to time who is authorised to issue statements to the media on behalf of the Bar Council.
- 6.12. Barristers may arrange to be photographed as Barristers, provided that in doing so they comply with any regulations that may from time to time be issued in that regard by the Bar Council.
- 6.13. (i) Barristers may only advertise in a manner prescribed by regulations made pursuant to s.218(2) of the Act of 2015.  
  
(ii) Pending the making of such regulations as are referred to in s.218(2) of the Act of 2015, Barristers may only advertise in accordance with s.218(1) of the Act of 2015 and, if applicable, in accordance with such rules, regulations or guidelines as may be made by the Bar Council pertaining to advertising by Barristers.  
  
(iii) Any such rules, regulations or guidelines as may be made by the Bar Council shall have due regard to the principles contained in s.218(1), s.218(4) and s.218(5) of the Act of 2015 and the provisions of this Code as may be appropriate.

## **7. Relations between Barristers**

- 7.1. It is the duty of Barristers to treat each of their colleagues with civility and respect.
- 7.2. It is the duty of Barristers to treat each Barrister with equality and not to discriminate in favour or against a Barrister on any of the grounds set out at Rule 3.3.
- 7.3. Matters of dispute between Barristers should not be made public. It is desirable that any complaint about a colleague first be raised with the colleague in question, where appropriate. Complaints may also be referred to the Professional Practices Committee of the Bar Council or such other person or Committee of the Bar Council as may be charged with dealing with such complaints.

- 7.4. Barristers must not, in the course of practice, engage in any conduct, which constitutes victimisation, harassment or sexual harassment. The Bar Council may issue guidelines applicable to complaints of this nature.
- 7.5. All conversations and communications between barristers on professional matters shall, unless expressly agreed, be strictly private, confidential and without prejudice. This obligation of confidentiality applies to any Barrister who is not a party to any such conversation or communications but who overhears such conversations or communications.
- 7.6. No Barrister shall use for any professional or private purpose or otherwise disclose any information on professional matters obtained accidentally or otherwise from observation of documents or from conversation with or between colleagues in or outside of the Law Library.
- 7.7.
- (a) The following is the order of precedence between Barristers in court and in the conduct of professional business:
    - (i) The Attorney General;
    - (ii) Senior Counsel in the order of their Call to the Inner Bar;
    - (iii) Junior Counsel shall take precedence according to the order of their Call to the Bar save as hereafter provided;
    - (iv) In the case of Junior Counsel called to the Bar after 2 July, 1988 and who do not join the Law Library or commence practice within twelve months of their Call they shall be required to waive their precedence and to take precedence in the order of their joining the Law Library.
  - (b) Other than in situations outlined at (a) above the following shall be the order of precedence:
    - (i) The Father or Mother of the Bar who shall be the member of the Bar earliest in their initial Call to the Bar;
    - (ii) Barristers whether Junior or Senior in the order of their initial Call to the Bar;
    - (iii) when dining at King's Inns the Benchers according to their own order of precedence take precedence to all others
    - (iv) at Circuit functions, Barristers shall take such precedence as the members of the Circuit shall determine and such order shall be observed by all Barristers whether members of the Circuit or otherwise.
- 7.8. A Barrister may not hand over their brief to another barrister to conduct a case unless their instructing solicitor so directs.

- 7.9. A Barrister shall not have breached the Code merely by carrying out a specific task of research or opinion work given to the Barrister by another Barrister, or by giving such a task to another Barrister, on terms that are mutually acceptable, so long as the arrangement does not involve any contract of service, a standing retainer or employment terms.
- 7.10. Subject to compliance with the rules of this Code and instruments made under it, a Barrister shall not have breached the Code merely by sharing any facility, premises or cost of practice, including any capital or operating cost, with one or more other Barrister. For the avoidance of doubt, a Barrister is entitled to so share in a location not administered by the Bar Council.
- 7.11. In the interests of maintaining the independence of the Bar a Barrister as an independent practitioner must not enter into any professional partnership or any other form of unincorporated association or seek to practice the profession through a corporate entity and the Barrister must not enter into any professional partnership or relationship (including the sharing of briefs) with another Barrister.
- 7.12. The Rules contained in this Part also apply to relations between barristers and foreign lawyers, and between Barristers and registered lawyers.
- 7.13. When a foreign lawyer is briefed to appear in Court with a Barrister then the order of precedence shall be that the Barrister shall take precedence over the foreign lawyer save where the Bar Council has otherwise directed and in this regard the Bar Council shall have regard to the public interest in the proper and efficient administration of justice.
- 7.14. The order of precedence set out in this part of the Code shall apply mutatis mutandis to tribunals, inquiries, panels, boards, committees, arbitrators and such other bodies before whom a Barrister appears.

## **8. Relations between Barristers, the Law Library and the Bar Council**

### **Membership of the Law Library**

- 8.1. The Law Library is the central and primary place of practice for the Bar of Ireland. The Law Library includes the Law Libraries in Dublin and Cork and the Law Library Buildings at Church Street, Dublin 7.
- 8.2. In the interest of maintaining an independent bar membership of the Law Library is confined to full-time practising Barristers subject to the exceptions provided under paragraph 2.9 of this Code and to such exceptions as may from time to time be approved by the Bar Council.
- 8.3. Barristers taking up any full-time public or private appointment which renders them unable to comply with paragraphs 2.8-2.9 of the Code shall cease to be members of the Law Library.
- 8.4. In the interest of maintaining an independent bar Barristers shall not carry on their practices as partners or in such a way so as to lead solicitors or others to believe that they are partners. This provision shall not prevent one or more Barristers from sharing any facility, premises or cost of practice in accordance with paragraph 7.10 of the Code.
- 8.5. Barristers shall at all times treat all members of staff of the Bar Council with civility and respect. Any offensive or obscene behaviour, including threats, harassment, sexual harassment, bullying or abuse (whether written, physical or verbal), shall be considered a breach of the Code.

### **Duties of Masters and Pupils**

- 8.6 The duties of masters include the duty of teaching pupils the rules and customs of the Bar and ensuring that they have read and understand the Code and what is proper professional practice by Barristers.
- 8.7 In the interest of the maintenance of quality of services, any person intending to practice as a Barrister must complete a continuous period of not less than twelve months pupillage with a master who is registered as such with the Bar Council unless expressly excused therefrom by the Bar Council. During the pupillage period, pupils are practising Barristers within the meaning of and subject to the Code and as such, are entitled to accept work on their own behalf subject to the other provisions of the Code.
- 8.8 Nothing in the relationship between the master and the pupil shall be deemed to be a contract of employment or contract of service. During the course of the pupillage, the pupil shall be under an obligation to further his or her education, training and professional development.

- 8.9 The Bar Council shall maintain a register of masters and no Barristers shall take a pupil unless their name is entered upon the said register. Barristers who are Junior Counsel may be entered on the register of Masters if they have completed seven years practice and all applications for such entry shall be determined by the Education and Training Committee of the Bar Council whose decision on any application shall be final and conclusive. A Barrister with less than seven years practice shall only be entered on the register of Masters only in exceptional circumstances as determined by the Education and Training Committee.
- 8.10 Masters shall ensure that they carry out their obligations to their pupils in accordance with such guidelines as may be issued from time to time by the Bar Council or the Professional Practices Committee or the Education and Training Committee.
- 8.11 A Master, in furtherance of increasing access to the profession and of the education, training and development of his/her pupil, shall defray the cost of his/her pupil's Law Library entry fee, annual subscription fee for the year of pupillage and professional indemnity insurance premium for the year of pupillage by paying either directly to the Bar Council on the pupil's account or directly to the pupil the amount of the pupil's said Law Library entry fee and annual subscription in equivalent manner to those provided in the Rules of Membership for the payment of the master's own annual subscription beginning on the 13<sup>th</sup> October and paying directly to the pupil the amount of the professional indemnity insurance premium on or before the first Friday of Michaelmas term.
- 8.12 A Master, in agreeing to take a pupil for education and training accepts the obligation to defray the costs of that pupil in accordance with paragraph 8.11 but may, for good and just reason, apply to the Library Committee for discharge from part or all of such obligation, the onus always being on the master to establish such good and just reason, to the satisfaction of the Committee.
- 8.13 Material non-compliance by the master with the provisions of paragraph 8.11 shall be deemed a breach of the Code of Conduct.
- 8.14 These provisions shall take effect from the commencement of Michaelmas term, in October 2021.

## **9. Practising certificates and Continuing Professional Development**

- 9.1. It shall be a requirement of all practising Barristers that they hold a current practising certificate. The Bar Council may specify by way of regulations, requirements to hold, applications for, the issuing, amendment, suspension and revocation of practising certificates, the commencement of the requirement to hold a practising certificate and related and ancillary matters. Barristers shall

comply with any such regulations.

- 9.2. The Bar Council may specify by way of scheme or rules, the nature, content and format of courses and other activities which are required to be undertaken by Barristers (or any category of Barristers) by way of continuing professional development. A Barrister shall comply with any such scheme or rules. A Barrister may be required to submit details of continuing professional development undertaken, to the Bar Council in the form prescribed, and at the time specified, by the Bar Council.

## **10. Duty of a Barrister in the Conduct of a Criminal Case**

- 10.1. Barristers who have undertaken to defend a person charged with a criminal offence should not undertake any commitment which conflicts with their duty to that person.
- 10.2. A Barrister should not accept a brief in a criminal case "subject to commitments". Once a criminal brief is accepted (whether under Legal Aid or otherwise) it should take priority over all other professional commitments and, subject to the provisions of the Code, the brief may not be returned or handed over and must be followed through to the end even though it takes a course not anticipated when the brief was originally accepted.
- 10.3. A Barrister who holds a defence brief in a criminal matter and also another brief, both of which require the Barrister to appear on a particular day, must return the other brief as soon as possible, unless the Barrister became aware of the appearance being required on that day in the first brief after the Barrister was committed to appear on that day in the other brief. In such case the Barrister may return the criminal brief to the instructing solicitor. A Barrister returning a brief in these circumstances should do so as soon as possible and must do so in sufficient time to ensure another Barrister may be properly instructed in the matter.
- 10.4. For the avoidance of doubt, Rule 12.14 herein also applies to criminal as civil cases. However in accordance with the provisions of Section 215 of the Act of 2015, a Barrister who has accepted instructions to appear in court on behalf of 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.-
- 10.5. It is improper for Barristers to conduct a criminal defence unless the following requirements have been met by their solicitor:
- (a) that they receive their instructions within a reasonable period of time in advance of the date of trial, which instructions include:
    - (i) the book of evidence;
    - (ii) a statement of the accused taken by the solicitor;

- (iii) a copy of the indictment; and
  - (iv) the statements of any witnesses to be called on behalf of the accused; and
  - (v) that any proofs advised have been carried out.
- (b) However, it shall not be improper for a Barrister to act in the conduct of a criminal defence notwithstanding the failure of the instructing solicitor to meet these requirements if the accused is on bail and the trial cannot be adjourned or if the accused is in custody and the consequence of the Barrister not acting on behalf of the accused would be that the accused will not be represented by any Barrister during the trial.
- 10.6. Barristers acting for the defence have a duty to be present throughout the trial and if due to any unforeseen circumstances they have to be temporarily absent it is their duty to see that the accused person is not at any stage unrepresented and a Barrister shall be absent from any part of the trial only with the consent of their solicitor. If the accused is represented by two Barristers both may not be absent at the same time.
- 10.7. The foregoing Rule 10.6 is subject to the following qualification:
- Where, after the conclusion of the opening speech by the prosecution, a defending Barrister is satisfied that during a specific part of the trial there is no serious possibility that events will occur which relate to the Barrister's client the Barrister may, with the consent of his solicitor and the client and having informed the judge, absent himself or herself from the trial provided that the Barrister arranges for another defending Barrister to guard the interests of the Barrister's client and such defending Barrister who intends to absent himself or herself shall avoid other commitments which would make it impracticable for the Barrister to be available to attend in Court at reasonable notice if the interests of the client so require.
- 10.8. In general in Criminal Legal Aid matters it is not improper for a defence Barrister with the consent of the accused to apply on adequate notice for the adjournment of a re-trial with a remand on bail where the fees for the first trial are unpaid but where to the Barrister's knowledge there is a dispute as to the proper amount of the fees the Barrister should not seek an adjournment. In no circumstance should an adjournment be sought where the accused is in custody.
- 10.9. Barristers shall not attend at a Garda Station for any professional purposes including but not limited to identification parades or at interviews of suspects.
- 10.10. Barristers may appear for more than one defendant in a criminal trial provided they have satisfied themselves that there is no conflict of interest.
- 10.11. Barristers to whom a confession of guilt is made by their client must observe the following rules:
- (a) If the confession is made before the proceedings have started, they may continue to act only if the accused pleads guilty or where the accused pleads not guilty then they may continue to act subject to the limitations referred to in the

following sub-paragraphs.

- (b) If the accused is not pleading guilty the Barrister must explain to the accused that the conduct of their defence will be limited in the manner as set out in sub-paragraph below.
- (c) Barristers must emphasise to the accused that no substantive defence involving an assertion or suggestion of innocence will be put forward on their behalf and that, if they are not satisfied with this approach to the conduct of the trial, then the accused should seek other advice. Barristers should in such situation advise their solicitor to keep an attendance note in writing of the fact that the accused has been so advised by the Barrister and in the presence of the instructing solicitor.
- (d) If the confession is made during the proceedings or in such circumstances that a Barrister cannot withdraw without compromising the position of the accused the Barrister should continue to act but subject to the limitations on the conduct of the defence being that the Barrister may not set up an affirmative case inconsistent with the confession such as by asserting or suggesting that some other person committed the offence charged or by calling evidence in support of an alibi or by calling the accused to give evidence to deny the charges or support an alibi.

10.12. The accused should be explicitly advised that the decision on whether to enter a plea of guilty is exclusively a matter for him. So long as an accused maintains his or her innocence a Barrister's duty lies in advising the accused on the law appropriate to his or her case and the conduct thereof. Barristers shall not put pressure on the accused to tender a plea of guilty whether to a restricted charge or not. However, it is not improper clearly to advise an accused as to the strength of a prosecution case and likely outcome where appropriate. Where an accused wishes to enter a plea of guilty a Barrister should ensure that the accused is fully aware of all of the consequences of such a plea and they should advise that the instructions to plead guilty are recorded by their instructing solicitor in writing and in the presence of the accused. Where an accused tells a Barrister that he did not commit the offence with which he is charged but nonetheless wishes to plead guilty it is not improper to continue to act. The consequences of such a course should be explained and it should be further explained that what can be submitted in mitigation can only be on the basis that he is guilty if such a plea is entered. In those circumstances a Barrister shall advise his instructing solicitor to record those instructions in writing and the accused should be invited to endorse those instructions with his signature. Where the accused is pleading guilty Barristers should not accept instructions to tender a plea in mitigation on a basis inconsistent with the plea of guilty.

10.13. Every accused person has the right to decide whether to give evidence in his or her own defence. Barristers may properly advise their client upon this but the accused themselves must make such decision.

10.14. If during the course of a trial and prior to final sentence the accused absconds and the defending Barrister's solicitor withdraws from the case, then Barristers acting for the accused must withdraw. If for any reason the instructing solicitor does not withdraw

from the case defending Barristers retain an absolute discretion whether or not to continue to act. If they do continue they should conduct the case as if their client were still present in court but has decided not to give evidence. They will be free to use any material contained in their brief and may cross-examine witnesses for the prosecution or call witnesses for the defence.

- 10.15. Barristers are under a duty to defend any accused person on whose behalf they are instructed irrespective of any belief or opinion they may have formed as to the guilt or innocence of that person.
- 10.16. Barristers should not withdraw from a criminal case and leave the accused unrepresented because of the conduct of or anything said by the trial judge unless the Barristers consider that by so doing they are acting in the best interests of their client.
- 10.17. If after a finding of guilty the prosecution is asked if there are any previous convictions and informs the court that there are none and defence Barristers know that there are previous convictions, they are under no duty to so inform the court.
- 10.18. In normal circumstances it is the duty of defence Barristers to see the accused after conviction and sentence and if they are unable to do so to ensure that their instructing solicitor does so. A defence Barrister shall advise whether an appeal against conviction or sentence or both is appropriate.
- 10.19. It is the duty of defence Barristers to appear for the accused in any appeal against conviction or sentence if instructed to do so unless such Barrister has advised the accused that they have no reasonable prospect of success on appeal and has advised against an appeal and the accused has appealed despite the advice of such Barrister. In that event such Barristers are relieved of any obligation to appear at the appeal.
- 10.20. It is not the duty of prosecuting Barristers to obtain a conviction by all means at their command but rather they shall lay before the jury fairly and impartially the whole of the facts which comprise the case for the prosecution and shall assist the Court with adequate submissions of law to enable the law to be properly applied to the facts.
- 10.21. It is not the duty of prosecuting Barristers to obtain the imposition of the maximum possible penalty by all means at their command but rather they shall fairly and impartially lay before the court the evidence which comprises the case for the prosecution and shall assist the court with adequate submissions of law to enable the law to be properly applied to the evidence.
- 10.22. If an accused person is unrepresented, it is proper for prosecuting Barristers to inform the Court of any mitigating circumstances as to which they are instructed.
- 10.23. A prosecuting Barrister must use his best endeavours, and if necessary seek appropriate court rulings, to ensure that all potentially relevant material in the possession of the prosecution is disclosed to the defence.
- 10.24. Barristers prosecuting an accused person should be present throughout the trial but if two or more Barristers appear for the prosecution the attendance of one of such Barristers is sufficient.

- 10.25. Prosecuting Barristers must be familiar with the Guidelines for Prosecutors issued by the Office of the Director of Public Prosecutions from time to time.
- 10.26. It is the duty of prosecuting Barristers to assist the court at the conclusion of the summing-up by drawing the attention of the court to any apparent error or omission of fact or law which, in their opinion, ought to be corrected.
- 10.27. A Barrister for the defence or prosecution should not have discussions with a judge about a case unless a Barrister or solicitor from the other side is also present.
- 10.28. There is nothing improper in a Barrister for the prosecution or defence agreeing to exclude evidence in a case but a Barrister should not involve the Judge in such exclusion of evidence other than in the course of a hearing in open Court.
- 10.29. Barristers may not permit any person, including a client, or a relative or a friend of a client to use them as conduits for the transmission to or from any person in custody of any item (or message). However, Barristers may transmit necessary messages between a client and the client's solicitors.

## **11. Senior Counsel**

- 11.1. Only Barristers of professional eminence should apply for admission to or be admitted to the Inner Bar. Barristers shall not apply to the Government for admission to the Inner Bar unless they have a bona fide intention to conduct practice as members of the Inner Bar and enjoy a status of professional eminence by virtue of their practice at the Bar.
- 11.2. Although barristers may recommend that Senior Counsel should be retained, a client is never required to do so. It is for the client through instructing solicitor to decide whether it is necessary or desirable to brief Senior Counsel and to decide the number of Counsel to be retained in a case.

## **12. Fees**

- 12.1. Barristers' fees are based upon commitments undertaken and work done. Barristers are entitled to charge for any work undertaken or to be undertaken by them (whether or not it involves an appearance in court) on any basis or by any method they think fit, provided that such basis or method is permitted by law and a Barrister is entitled to take into account when marking or nominating such fee, all features of the instructions which bear upon the commitment which is thereby undertaken or has been undertaken by them including:
  - the complexity of the issue or subject matter;
  - the length and venue of any trial or hearing;
  - the amount or value of any claim or subject matter in issue provided,

however, that

-the level of fee should not be calculated solely on the basis of the value of the case or on a basis directly proportionate to the value of the case;

-the time within which the work is or was required to be undertaken;

-any other special feature of the case.

-and any other matter set out in Schedule 1 to the Act of 2015.

- 12.2. A Barrister is not obliged to discount his fee, or to mark a lower fee than that which was previously estimated, by reference to the outcome of a matter.
- 12.3. Barristers may not undertake work as a Barrister at a wage or salary.
- 12.4. Where Barristers accept a brief on which no fee has been marked by the instructing solicitor and where no fee has been agreed in advance, they remain entitled to mark a proper and reasonable fee having regard to the nature and extent of the work undertaken and they are not bound to reduce the fee that would thus be marked by reference to the outcome of the matter.
- 12.5. Barristers are not obliged to accept instructions or a brief without having agreed the fee which they are prepared to accept or without having a reasonable opportunity to consider the fee offered in the light of the nature and extent of the work involved in the instructions.
- 12.6. Where Barristers decide not to accept a brief by reason of the inadequacy of the fee offered, they owe a duty to return the brief promptly to their instructing Solicitor.
- 12.7. Barristers may not accept instructions on condition that payment will be subsequently fixed as a percentage or other proportion of the amount awarded other than in relation to a matter seeking only to recover a debt or liquidated demand.
- 12.8. Subject to Rules 3.23 and 10.24 of this Code, where Barristers have accepted a brief on the basis that their fee will be discharged before appearing for their client such Barrister is entitled to withdraw from the case in the event that such agreed fee is not paid by the agreed date.
- 12.9. In cases where Barristers have actually been briefed for the hearing then such Barrister shall, in the event of a settlement resulting from negotiations, be entitled to charge a brief fee.
- 12.10. Where a Barrister is asked to provide an estimate of the fees that might be charged if the Barrister be instructed in any matter, the provision of such estimate shall not prevent that Barrister from accepting definite instructions from any other party involved in such matter.

- 12.11. In all cases where more than one Barrister is briefed the fees to be charged by such Barrister shall be a matter for agreement between each such Barrister and the instructing solicitor.
- 12.12. Nothing in this Rule shall operate so as to inhibit a Barrister's entitlement to act for a client pro bono.
- 12.13. The Bar Council may give Guidance on Barristers' duties in relation to legal costs and fees and it shall be the duty of Barristers to ensure that they meet the requirements of such Guidance and of any other guidelines as may be issued from time to time by the Bar Council.
- 12.14. Where fees are outstanding from a solicitor to a Barrister beyond any agreed period for payment or, in the absence of any such agreement, beyond a period of three months after the Barrister has submitted the relevant fee note to the solicitor, the Barrister may, on his or her own initiative make a complaint to the Law Society of Ireland in respect of that solicitor or may follow any other procedure for the recovery of fees that may be appropriate in the circumstances.
- 12.15. Without prejudice to a Barrister's right to make complaints to the Law Society of Ireland, a Barrister shall report to the Bar Council any solicitor or person having direct professional access from whom a fee is due and unpaid for a period in excess of twelve months unless there is a reasonable explanation for the delay in payment. Without prejudice to a Barrister's right to make complaints to the Law Society of Ireland, a Barrister shall report to the Bar Council any solicitor from whom a fee is owed and payment is due pursuant to the Criminal Justice (Legal Aid) Act 1962, and said fee is unpaid for a period in excess of twelve months unless there is a reasonable explanation for the delay in payment. A Barrister shall be required to submit details of outstanding fees owed pursuant to the Criminal Justice (Legal Aid) Act 1962, to the Bar Council in the form prescribed, on an annual basis.
- 12.16. Where a Barrister has submitted a fee note to the instructing solicitor, but neither fee nor an acceptable explanation for non-payment has been received, a Barrister may write directly to the person responsible for providing the payment (whether the client, opposing solicitor or insurer) seeking such payment or reason for non-payment.
- 12.17. Barristers shall not have their name placed on a Legal Aid Panel until they have completed six months pupillage or until they have been members of the Law Library for one year.

### **13. Overseas Practice Rules**

- 13.1. In Rule 13 " European Lawyer" means a person who is a "Lawyer" as defined in the 1977 Directive other than a Barrister or advocate of the United Kingdom.
- 13.2. A Barrister may act upon the instructions of a European lawyer without the intervention of an Irish solicitor.

- 13.3. A Barrister maintaining a principal place of practice outside of Ireland may, subject to such concessions as the rules of the local Bar may impose, practise there in association with a foreign lawyer.
- 13.4. Nothing in these rules shall permit a Barrister to undertake work outside Ireland which if performed inside the Country would involve an infringement of any other provision of this Code, to the extent permitted by the 1977 and the 1998 Directives.
- 13.5. A Barrister may accept instructions from a foreign lawyer or directly from a lay client in respect of non-contentious matters or where the work involved originated and is to be performed wholly outside Ireland, to the extent permitted under, and subject to, the conditions and rules of professional conduct applicable in that other jurisdiction.

#### **14. Registered lawyers**

- 14.1. Registered lawyers shall be subject to the Code in respect of professional activities pursued by them in the State to the extent permitted by the 1977 and the 1998 Directives, and for this purpose references in this Code to a Barrister, Counsel or Junior Counsel are to be construed as including references to a registered lawyer, save where the context otherwise requires it.
- 14.2. For the purposes of this Rule 7.7 registered lawyers shall take precedence in their order of being entered on the register.
- 14.3. A registered lawyer shall comply with any obligation or requirement imposed by or under the European Communities (Lawyers' Establishment) Regulations 2003 S.I. No. 732 of 2003, and regulations referred to at Article 5 of the Constitution of the Bar of Ireland.