



Western Australia

Legal Profession Act 2008

## **Legal Profession Conduct Rules 2010**

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# Legal Profession Conduct Rules 2010

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**Defined terms**



## Legal Profession Conduct Rules 2010

### Part 1 — Preliminary

**1. Citation**

These rules are the *Legal Profession Conduct Rules 2010*.

**2. Commencement**

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on 1 January 2011.

**3. Terms used**

In these rules —

***affiliate***, in relation to a practitioner, means —

- (a) an associate of the practitioner's law practice; or
- (b) a corporation or partnership in which the practitioner has a material beneficial interest; or
- (c) a member of the immediate family of —
  - (i) the practitioner; or
  - (ii) a partner of the practitioner's law practice; or
  - (iii) a director of the practitioner's law practice;

***client documents*** means documents to which a client is entitled as a matter of law including but not limited to the following —

- (a) documents received from the client by a practitioner or the practitioner's law practice;
- (b) documents prepared by a practitioner or the practitioner's law practice for the client or predominantly for the purposes of the client or the client's matter;
- (c) documents received by a practitioner or the practitioner's law practice from a third party for or on behalf of the client or intended for the use or information of the client or for the purposes of the client's matter;

**compromise** includes any form of settlement of a matter, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise;

**costs** includes disbursements;

**court** includes the following —

- (a) a tribunal exercising judicial, or quasi-judicial, functions;
- (b) a person or body carrying out an investigation or inquiry under statute or by appointment by a Parliament;
- (c) a Royal Commission;
- (d) a person or body conducting arbitration or mediation or any other form of dispute resolution;

**current proceedings** means proceedings which have not been finally determined, including proceedings in which there is still the possibility of an appeal or other challenge to a decision being filed, heard or decided;

**employee**, in relation to an entity, means a person who is engaged under a contract of service or contract for services in or by the entity whether or not —

- (a) the person works full-time, part-time or on a temporary or casual basis; or
- (b) the person is a law clerk or articled clerk;

**engagement** means the appointment of a practitioner or of the practitioner's law practice to provide legal services in relation to a matter;

**immediate family**, in relation to a person, means a spouse, child, grandchild, sibling, parent or grandparent of the person;

**instructing practitioner** means a practitioner or law practice who or which engages another practitioner to provide legal services in respect of a client of the first-mentioned practitioner or law practice;

**insurance company** includes any entity, whether statutory or otherwise, which indemnifies persons against civil claims;

**law practice**, in relation to a practitioner, means a law practice of which the practitioner is an associate;

**matter** means any legal service the subject of an engagement or required to be provided by the practitioner or the practitioner's law practice to fulfil an engagement including but not limited to services provided in relation to any of the following —

- (a) a case;
- (b) dealings between parties that may affect, create or be related to a right, entitlement or interest in property of any kind;
- (c) advice on the law;

**opponent** means —

- (a) a party to a matter who is opposed to the client of a practitioner; and
- (b) if the party is represented, the practitioner representing that party;

**order** includes a judgment, decision or determination;

**party** includes each person who is jointly a party to a matter;

**practitioner** means a person to whom these rules apply in accordance with rule 4(1).

**4. Application**

- (1) These rules apply to a person who is —
  - (a) an Australian lawyer; or
  - (b) an Australian-registered foreign lawyer; or
  - (c) an overseas-registered foreign lawyer,  
engaged in legal practice in this jurisdiction.
- (2) A breach of these rules may constitute unsatisfactory professional conduct or professional misconduct.
- (3) These rules —
  - (a) do not affect the inherent jurisdiction and powers of the Supreme Court with respect to a practitioner; and
  - (b) are in addition to any duty or requirement imposed on a practitioner by statute, law or equity.

## **Part 2 — Fundamental duties of practitioners**

### **5. Paramount duty to court and administration of justice**

A practitioner's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty, including but not limited to a duty owed to a client of the practitioner.

### **6. Other fundamental ethical obligations**

(1) A practitioner must —

- (a) act in the best interests of a client in any matter where the practitioner acts for the client; and
- (b) be honest and courteous in all dealings with clients, other practitioners and other persons involved in a matter where the practitioner acts for a client; and
- (c) deliver legal services competently and diligently; and
- (d) avoid any compromise to the practitioner's integrity and professional independence; and
- (e) comply with these rules and the law.

(2) A practitioner must not engage in conduct, in the course of providing legal services or otherwise, which —

- (a) demonstrates that the practitioner is not a fit and proper person to practice law; or
- (b) may be prejudicial to, or diminish public confidence in, the administration of justice; or
- (c) may bring the profession into disrepute.

## Part 3 — Relations with clients

### 7. Client instructions

A practitioner must —

- (a) follow a client's lawful, proper and competent instructions; and
- (b) treat a client fairly and in good faith, giving due regard to the client's position of dependence, the practitioner's special training and experience and the high degree of trust the client is entitled to place in the practitioner; and
- (c) be completely frank and open with the client; and
- (d) act in the best interests of a client in any matter where the practitioner acts for the client; and
- (e) perform the work required on behalf of the client diligently; and
- (f) not accept an engagement which is beyond the practitioner's competence; and
- (g) not accept an engagement unless the practitioner is in a position to carry out and complete the engagement diligently; and
- (h) not perform work in such a manner as to increase the proper costs to a client.

### 8. Communicating with client

A practitioner must communicate candidly and in a timely manner with a client in relation to any matter in which the practitioner represents the client.

### 9. Confidentiality

- (1) In this rule —  
*associated entity*, in relation to a law practice, means an entity, including a service trust or corporation, that is not part of the

law practice but which provides legal or administrative services exclusively to the law practice;

**client information** means information confidential to a client of which a practitioner becomes aware in the course of providing legal services to the client.

- (2) A practitioner must not disclose client information to a person other than the client unless the person is —
- (a) an associate of the practitioner's law practice; or
  - (b) a person engaged by the practitioner's law practice for the purposes of providing legal services to the client; or
  - (c) a person employed or otherwise engaged by an associated entity of the practitioner's law practice for the purposes of providing administrative services to the client.
- (3) Despite subrule (2), a practitioner may disclose client information to a person if —
- (a) the client expressly or impliedly authorises the disclosure of the information to that person or the practitioner believes, on reasonable grounds, that the client has authorised the disclosure of the information to that person; or
  - (b) the practitioner is permitted or compelled by law to disclose the information to that person; or
  - (c) the practitioner discloses the information to the person in a confidential setting, for the sole purpose of obtaining advice from that person in connection with the first-mentioned practitioner's legal or ethical obligations; or
  - (d) the practitioner discloses the information for the purpose of avoiding the probable commission of a serious offence; or

- (e) the practitioner discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or
- (f) the information is disclosed on a confidential basis to a person who is the insurer of the practitioner, the practitioner's law practice or associated entity for the purposes of obtaining or claiming insurance or notifying the insurer of potential claims; or
- (g) the disclosure of the information is necessary to respond to a complaint or a proceedings brought against any of the following —
  - (i) the practitioner;
  - (ii) the practitioner's law practice;
  - (iii) an associated entity of the practitioner's law practice;
  - (iv) a person employed by one of the persons referred to in subparagraphs (i) to (iii).

**10. Keeping client informed**

- (1) A practitioner must take all reasonable and practicable steps to inform a client of the client's rights and possible courses of conduct in relation to any matter in which the practitioner represents the client.
- (2) A practitioner must take all reasonable and practicable steps to keep a client informed about all significant developments and generally about the progress on any matter in which the practitioner represents the client unless the practitioner has been instructed by the client not to do so.
- (3) A practitioner must notify the client promptly if the practitioner receives money or securities on behalf of the client.

**11. Impecunious clients**

- (1) If a practitioner has reason to believe that a client will not be able to raise or borrow sufficient money to pay the practitioner's

costs and the client may be eligible for legal aid, the practitioner must inform the client of the availability of legal aid.

- (2) A practitioner must make an application for legal aid on the request of a client but the practitioner is not obliged to act for the client on a legal aid basis if the application is successful.
- (3) A practitioner who acts for a client on a legal aid basis must not receive, or contract with the client to receive, any amount for costs in addition to the amount paid by the grant of legal aid.

## Part 4 — Conflict of interest

### 12. Conflict of interest generally

A practitioner must protect and preserve the interests of a client unaffected by the interest of —

- (a) the practitioner; or
- (b) the practitioner's law practice; or
- (c) another client of the practitioner; or
- (d) an affiliate of the practitioner; or
- (e) any other person.

### 13. Conflict of interest concerning former clients

(1) In this rule —

*former client*, in relation to a practitioner, includes a person who —

- (a) had previously engaged —
  - (i) the practitioner; or
  - (ii) the practitioner's law practice; or
  - (iii) a law practice of which the practitioner was an associate at the time of the previous engagement;  
or
  - (iv) a law practice of which a partner, director or employee of the practitioner's law practice was an associate at the time of the previous engagement;
- or
- (b) provided confidential information to the practitioner, notwithstanding that the practitioner was not formally engaged and did not render an account.

(2) A practitioner must not provide, or agree to provide, legal services to a person if there is a real possibility that the

practitioner would be required, in order to act in the best interests of the person —

- (a) to use confidential information obtained from a former client to the detriment of the former client; or
  - (b) to disclose to the person confidential information obtained from a former client.
- (3) Subrule (2) does not apply if —
- (a) the former client has given informed written consent to the practitioner providing the legal service; or
  - (b) an effective information barrier has been established to protect the former client's confidential information.

#### **14. Conflict of interest concerning current clients**

- (1) A practitioner and the practitioner's law practice must avoid conflicts between the duties owed to 2 or more clients of the practitioner or the law practice.
- (2) A practitioner must not provide, or agree to provide, legal services for a client if —
- (a) the practitioner or the practitioner's law practice is engaged by another client in the same or a related matter; and
  - (b) the interests of the client and the other client are adverse; and
  - (c) there is a conflict or potential conflict of the duties to act in the best interests of each client.
- (3) Subrule (2) does not apply if —
- (a) each client is aware that the practitioner or the practitioner's law practice is also providing legal services to each other client; and
  - (b) each client has given informed consent to the practitioner or the practitioner's law practice providing the legal services to each other client; and

- (c) an effective information barrier has been established to protect the confidential information of each client.

**15. Conflicts concerning practitioner's own interests**

- (1) In this rule —

*authorised deposit-taking institution* has the meaning given in the *Banking Act 1959* (Commonwealth) section 5;

*listed public unit trust* means a unit trust that has one or more units listed for quotation on the official list of a stock exchange in Australia or elsewhere;

*substantial benefit* means a benefit which has a substantial value relative to the financial resources and assets of the person intending to bestow the benefit.

- (2) A practitioner must avoid conflicts between the interests of a client and the interests of —
  - (a) the practitioner; or
  - (b) the practitioner's law practice; or
  - (c) an affiliate of the practitioner.
- (3) A practitioner must not provide, or agree to provide, legal services to a client if the practitioner knows or ought reasonably to know that the interests of a person referred to in subrule (2)(a) to (c) may conflict with the interests of the client.
- (4) Subrule (3) does not apply if the client —
  - (a) is fully informed of the conflict of interests; and
  - (b) has received independent written legal advice about the effect of the conflict; and
  - (c) agrees to the practitioner providing the legal services.
- (5) Nothing in this rule prevents a practitioner —
  - (a) drawing a will appointing the practitioner or an affiliate of the practitioner as executor, if the practitioner informs the client in writing before the client signs the will —

- (i) of any entitlement of the practitioner or the affiliate to claim executor's commission; and
  - (ii) of the inclusion in the will of any provision entitling the practitioner or the affiliate to charge legal costs in relation to the administration of the estate; and
  - (iii) if the practitioner or the affiliate has an entitlement to claim executor's commission, that the client could appoint as executor a person who might make no claim for executor's commission;
- or
- (b) if the client is an affiliate of the practitioner, drawing a will or other instrument under which the practitioner or an affiliate of the practitioner will or may receive a substantial benefit other than a proper entitlement to executor's commission or legal costs.
- (6) Subject to subrule (7A), a practitioner must not borrow money or assist an affiliate of the practitioner to borrow money from —
- (a) a client of the practitioner or of the practitioner's law practice; or
  - (b) a former client of the practitioner or of the practitioner's law practice who has indicated a continuing reliance upon the advice of the practitioner or of the practitioner's law practice in relation to the investment of money.
- (7A) Subrule (6) does not apply in respect of a client who is —
- (a) an authorised deposit-taking institution; or
  - (b) a listed public unit trust; or
  - (c) the responsible entity of a managed investment scheme registered under the Corporations Act Chapter 5C or a custodian for that scheme; or
  - (d) an affiliate of the practitioner who has received —

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- (i) full written disclosure regarding the proposed loan; and
    - (ii) independent legal or financial advice regarding the proposed loan;
  - or
  - (e) an employer of the practitioner.
- (7B) The onus of establishing the requirements in subrule (7A)(d)(i) and (ii) rest with the practitioner.
- (7) A practitioner must not become a surety or guarantor for a client.

*[Rule 15 amended: Gazette 5 Apr 2013 p. 1465-6.]*

## **Part 5 — General conduct of practice**

### **16. Maintaining professional integrity**

- (1) A practitioner must not attempt to further a client's matter by unfair or dishonest means.
- (2) A practitioner must not intentionally assist or induce another practitioner to breach these rules.
- (3) A practitioner must take all reasonable and practical steps to ensure that any associate of the practitioner's law practice does not breach these rules.
- (4) A practitioner must take all reasonable and practicable steps to ensure that all work carried out for or on behalf of the practitioner by a non-practitioner in connection with the provision of a legal service is properly supervised.
- (5) A practitioner who becomes aware that a client of the practitioner may be in breach of Part 3 of the Act (relating to reservation of legal work and related matters) is to treat the information as confidential but must point out the possible breach to the client and recommend that the client should avoid any further behaviour that may be a breach of Part 3.
- (6) A practitioner who becomes aware that a person who is not a client of the practitioner may be in breach of Part 3 of the Act (relating to reservation of legal work and related matters) must —
  - (a) if the knowledge is received in the course of providing legal services for a client of the practitioner, point out the breach to the client and recommend that the matter be reported to the Complaints Committee, but not report the matter to the Complaints Committee without the client's instructions to do so; or
  - (b) otherwise, report the matter to the Complaints Committee.

**17. Conduct of practice**

(1) In this rule —

***unlawful discrimination*** means discrimination that is unlawful in this jurisdiction;

***unlawful harassment*** means harassment that is unlawful in this jurisdiction;

***workplace bullying*** means behaviour that could reasonably be expected to offend, intimidate, degrade, humiliate, isolate or alienate a person working in a workplace.

(2) A practitioner who is a principal of a law practice must take all reasonable and practicable steps to ensure that —

(a) the practice is efficiently and properly administered; and

(b) legal services that the practice has agreed to provide are provided in a timely manner; and

(c) early notice is given if the practice is unable to provide a legal service that the practice has agreed to provide.

(3) A practitioner who is a principal of a law practice must take all reasonable and practicable steps to ensure that —

(a) a practitioner is supervising the law practice at its main place of business when the practice is open for business; and

(b) a practitioner is supervising a branch of the law practice when the branch is open for business.

(4) Without limiting subrule (3), a practitioner who is a principal of a law practice must take all reasonable and practicable steps to ensure that adequate and regular supervision is provided for all legal services carried out by the practice.

(5) A practitioner must not engage in conduct which constitutes —

(a) unlawful discrimination; or

(b) unlawful harassment; or

(c) workplace bullying.

**18. Fees**

- (1) A practitioner must not, in a letter of demand for debt written on behalf of a client to another person, claim costs from the other person unless the client has a right to recover those costs.
- (2) A practitioner must, within a reasonable time after receiving a request from a client, render an invoice for the work referred to in the request.
- (3) A practitioner must not charge costs which are more than is reasonable for the practitioner's services having regard to the following —
  - (a) the complexity of the matter;
  - (b) the time and skill involved in dealing with the matter;
  - (c) any scale of costs that might be applicable to the matter;
  - (d) any agreement as to costs between the practitioner and the client.
- (4) Subject to any order made under the Act, a practitioner must not charge a client or former client any costs for answering a complaint regarding the practitioner which is made to the practitioner, the practitioner's law practice, the Law Society or the Legal Profession Complaints Committee.
- (5) A practitioner must not, in the course of the practitioner's practice —
  - (a) give or agree to give an allowance in the nature of an introduction fee or spotter's fee to any person for introducing professional business to the practitioner; or
  - (b) receive or agree to receive a similar allowance from any person for introducing or recommending clients to that person.

**19. Law practices**

- (1) A practitioner must not falsely represent that the practitioner is or was a partner in a law practice with another person.

- (2) A practitioner who is the principal of a law practice must not allow the name of a person to appear on any sign or stationery in relation to the practice unless —
- (a) the name forms part of the name of the law practice; or
  - (b) the name is that of a person who is a practitioner and who is —
    - (i) a partner of the law practice; or
    - (ii) employed by the law practice,and the person's title or position within the law practice is stated.

**20. Conduct of other business**

- (1) A practitioner who is engaged in legal practice must not carry on another business unless —
- (a) the other business does not detract from the dignity of the legal profession; and
  - (b) the practitioner keeps the conduct of that other business entirely separate from the practitioner's law practice insofar as correspondence, accounts and presentation to the public are concerned; and
  - (c) the carrying on of the other business is not intended to attract legal work to the practitioner or the practitioner's law practice or likely to lead to any infringement of the Act or these rules.
- (2) For the purpose of subrule (1), a practitioner is taken to be carrying on another business if that business is conducted by a company but is substantially under the practitioner's direction or control.

**21. Practitioner employed by person other than law practice**

- (1) A practitioner who is employed by a person other than by a law practice must comply with these rules as modified by this rule.
- (2) A practitioner to whom this rule applies may —

- (a) carry out legal work in the practitioner's own name; and
- (b) with the consent of the person who employs the practitioner, use the letterhead of the employer in connection with the carrying out of legal work; and
- (c) appear on the record before a court for the person who employs the practitioner.

**22. Undertakings**

- (1) In this rule —  
***undertaking*** means an undertaking intended to bind the person giving the undertaking.
- (2) A practitioner must ensure the timely and effective performance of an undertaking given by the practitioner to another practitioner unless —
  - (a) the other practitioner would not reasonably be expected to rely on the undertaking; or
  - (b) the practitioner is released by the recipient of the undertaking or by a court of competent jurisdiction.
- (3) A practitioner must ensure the timely and effective performance of an undertaking given by the practitioner to a third party in the course of providing legal services to a client or for the purposes of the client's business unless released by the recipient of the undertaking or by a court of competent jurisdiction.

**23. Another practitioner's error**

A practitioner who observes that another practitioner is making or is likely to make a mistake or oversight which may involve the other practitioner's client in unnecessary expense or delay —

- (a) must not do or say anything to induce or foster the mistake or oversight; and
- (b) must draw the attention of the other practitioner to the mistake or oversight if —

- (i) doing so is unlikely to prejudice the interests of the first-mentioned practitioner's client; or
- (ii) the first-mentioned practitioner's client consents.

**24. Inadvertent disclosure**

A practitioner to whom material is disclosed by another practitioner in circumstances where the first mentioned practitioner knows or reasonably suspects that the material is privileged and that the disclosure was inadvertent —

- (a) must not disclose the material or its substance to the practitioner's client or use the material in any way; and
- (b) must immediately, in writing, notify the practitioner's client and the other practitioner —
  - (i) that the material has been disclosed; and
  - (ii) that the practitioner will return, destroy or delete the material (as appropriate) at a time set out in the notice (being not less than 2 clear business days and not more than 4 clear business days from the date of the notice);

and

- (c) must return, destroy or delete the material as set out in the notice; and
- (d) must notify the practitioner's client and the other practitioner in writing as soon as the practitioner has returned, destroyed or deleted the material.

**25. Contracting with another**

A practitioner who engages another person to provide services on behalf of a client must advise the other person, in writing and in advance, if the practitioner does not accept personal liability for the other person's fee.

**26. Responsibility for fees of other practitioners**

- (1) Unless otherwise agreed, a practitioner who engages another practitioner to advise or assist in a matter is responsible for the payment of the other practitioner's fees.
- (2) A practitioner must pay fees referred to in subrule (1) within a reasonable time, whether or not the client has provided sufficient funds.
- (3) A practitioner who directs a client to another practitioner is not responsible for the payment of the other practitioner's fees.

**27. Termination of engagement**

- (1) Subject to subrules (2) to (4), a practitioner may terminate an engagement and cease to act for a client only in the following circumstances —
  - (a) the client commits a material breach of a written costs agreement;
  - (b) the termination is pursuant to an express right to terminate the engagement contained in a written costs agreement with the client;
  - (c) the practitioner is required to terminate the engagement by these rules or in order to avoid breaching these rules;
  - (d) the client materially misrepresents any material fact relating to the subject matter of the engagement;
  - (e) the practitioner reasonably believes that continuing to act for the client would be likely to have a serious adverse effect on the practitioner's health;
  - (f) the mutual trust and confidence between the practitioner and the client has irretrievably broken down;
  - (g) the termination is for any other reason permitted by law.
- (2) A practitioner who is engaged to represent a client charged with a serious offence must not terminate the engagement or otherwise cease to act for the client unless —

- (a) there are exceptional circumstances for termination of the engagement or ceasing to act; and
  - (b) there is sufficient time for another practitioner to be engaged by the client and for that practitioner to master the case.
- (3) Despite subrule (2), a practitioner who is engaged to represent a client charged with a serious offence must not terminate the engagement or otherwise cease to act for the client because the client has failed to make satisfactory arrangements for the payment of costs unless —
- (a) the terms of a written costs agreement between the practitioner and the client entitle the practitioner to terminate the engagement in such circumstances; and
  - (b) the client has been served with written notice of the practitioner's intention a reasonable time before the date appointed for commencement of a trial in relation to the matter or the commencement of the sittings of the court in which the trial is listed; and
  - (c) the client is unable to make other arrangements for payment of the practitioner's fees satisfactory to the practitioner within a reasonable period of time after such notice (not being less than 7 days); and
  - (d) there remains sufficient time for another practitioner to be engaged by the client and to master the matter.
- (4) A practitioner may terminate an engagement by giving reasonable notice in writing to a client who has a grant of legal aid in relation to the engagement if —
- (a) the grant of aid is withdrawn or otherwise terminated; and
  - (b) the client is unable to make any other arrangement for payment of the practitioner's fees satisfactory to the practitioner.

**28. Client documents**

- (1) In this rule —  
*practitioner with designated responsibility* means a practitioner with overall responsible for the carriage of a client’s matter.
- (2) A practitioner with designated responsibility for a client’s matter must, as soon as is reasonably practicable, ensure that any client documents or copies of electronic client documents are given to the client or former client or another person authorised by the client or former client if —
- (a) the practitioner’s or the practitioner’s law practice’s engagement is completed or terminated; and
  - (b) the client requests the documents; and
  - (c) there is not a lien over the documents.
- (3) Subject to subrule (4), a practitioner or a law practice may destroy or dispose of documents held by the practitioner or law practice relating to a matter if a period of 7 years has elapsed since the practitioner’s or law practice’s engagement in the matter was completed or terminated except where there are client instructions to the contrary.
- (4) A practitioner must not deal with or destroy any title deed, will, original executed agreement or any document or thing held by the practitioner for safe keeping for a client or former client other than in accordance with —
- (a) the instructions of the client or former client; or
  - (b) the instructions of another person authorised by law to provide those instructions; or
  - (c) an order of a court.

**29. Lien over essential documents**

Despite rule 28(2)(c), if client documents over which there is a lien are essential to the conduct of the client’s defence or prosecution of current proceedings a practitioner must —

- (a) surrender the documents to another practitioner acting for the client if —
  - (i) the other practitioner undertakes to hold the documents subject to the lien and the practitioner has obtained reasonable security for the unpaid costs; or
  - (ii) there is an agreement between the practitioner and the other practitioner for the payment of the practitioner's costs on completion of the relevant proceedings;

or

- (b) deliver the documents to the client if —
  - (i) another practitioner is not acting for the client; and
  - (ii) the practitioner has obtained reasonable security for the unpaid costs.

**30. Charging for document storage**

A practitioner must not, without agreement in writing, charge a client or a former client for —

- (a) the storage of documents, files or other property on behalf of the client or former client; or
- (b) for retrieval from storage of those documents, files or other property.

**31. Transfer of practice**

A principal of a law practice which is to be partially or fully transferred to another law practice must, in respect of each client whose matter may be transferred to the other law practice ensure that the client —

- (a) is given reasonable notice of the intended transfer; and
- (b) is informed that the client is not obliged to engage the other law practice.

## **Part 6 — Advocacy and litigation**

### **32. Independence**

- (1) A practitioner engaged to represent a client in a matter that is before a court must exercise the judgment called for during the hearing of the matter independently, after giving appropriate consideration to the wishes of the client and any instructing practitioner.
- (2) A practitioner must —
  - (a) confine the hearing of a matter to issues which the practitioner believes to be the real issues; and
  - (b) present the client's case as quickly and simply as is consistent with its robust advancement; and
  - (c) if the practitioner is aware of any persuasive authority that the practitioner reasonably believes might be against the client's case, inform the court of that authority.
- (3) During the hearing of a matter, a practitioner must not make submissions or express views to a court on any material evidence or material issue relevant to the matter in terms which convey, or appear to convey, the practitioner's personal opinion on the merits of that evidence or issue, unless required to do so by law or by a court.

### **33. Formality before court**

- (1) A practitioner must not act towards a court or another practitioner in a manner that may reasonably give the appearance to another person that the practitioner has special favour with a court.
- (2) A practitioner must not act as counsel for a client in a matter if it would be difficult for the practitioner to maintain professional independence because of a connection with the client.
- (3) A practitioner must not act as counsel for a client in a matter if the impartial administration of justice might be prejudiced or

appear to be prejudiced because of the practitioner's connection with the court or a member of the court.

- (4) Without limiting the generality of this rule, Schedule 1 provides examples of circumstance where a practitioner should not act as counsel for a client because of connections that may affect professional independence or impartial administration of justice.

**34. Frankness in court**

- (1) A practitioner must not knowingly or recklessly mislead a court.
- (2) A practitioner must correct a misleading statement made to a court by the practitioner as soon as possible after the practitioner becomes aware that the statement was misleading.
- (3) A practitioner who does not correct an error in a statement made to a court by another person has not by that omission made a misleading statement.
- (4) A practitioner seeking any interlocutory relief in an ex parte application must disclose to the court all factual and legal matters —
- (a) that are within the practitioner's knowledge; and
  - (b) that are not protected by legal professional privilege; and
  - (c) that the practitioner has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the practitioner's client.
- (5) A practitioner who has knowledge of matters that the practitioner believes are protected by legal professional privilege but that otherwise the practitioner would be required to disclose under subrule (4) must —
- (a) seek instructions for the waiver of legal professional privilege so as to permit the practitioner to disclose those matters to the court; and
  - (b) if the client does not waive the privilege —

- (i) inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and
  - (ii) inform the court that the practitioner cannot assure the court that all matters which should be disclosed by the practitioner's client have been disclosed to the court.
- (6) A practitioner must, at the appropriate time in the hearing of a matter and if the court has not yet been so informed, inform the court of—
  - (a) any binding authority; or
  - (b) where there is no binding authority, any other authority decided by an Australian appellate court; or
  - (c) any authority on the same or materially similar legislation as that in question in the case, including any authority decided at first instance in the Federal Court or a Supreme Court, which has not been disapproved; or
  - (d) any applicable legislation,of which the practitioner is aware and that the practitioner reasonably believes may be relevant to a matter before the court and adverse to the case of the practitioner's client.
- (7) A practitioner need not inform the court of things referred to in subrule (6) if the opponent tells the court that—
  - (a) the opponent's whole case will be withdrawn; or
  - (b) the opponent will consent to final judgment in favour of the practitioner's client,unless the appropriate time for the practitioner to have informed the court of those matters has already arrived or passed.
- (8) A practitioner must inform the court of things referred to in subrule (6) that the practitioner becomes aware of after judgment or decision has been reserved and while the case

remains pending, whether the authority or legislation came into existence before or after the judgment or decision was reserved.

- (9) For the purposes of subrule (8) a practitioner may inform the court by —
  - (a) sending a letter to the court, copied to the opponent, that is limited to the relevant reference unless the opponent has consented beforehand to any further material in the letter; or
  - (b) requesting the court to relist the case for further argument on a convenient date, after first notifying the opponent of the intended request and consulting the opponent as to the convenient date for further argument.
- (10) A practitioner is not required to inform the court of things referred to in subrule (6) that would have rendered admissible evidence tendered by the prosecution that the court ruled to be inadmissible without calling on the defence.
- (11) A practitioner who does not disclose a fact known to the practitioner about a client's character or past has not by that omission made a misleading statement.
- (12) A practitioner who knows or suspects that the prosecution is unaware of a client's previous conviction must not ask a prosecution witness whether the client has previous convictions.
- (13) A practitioner who knows or suspects that a court may be unaware of an effect of an order which the court is making must, as soon as the practitioner becomes aware that the court may be unaware of the effect of the order, inform the court.

**35. Delinquent or guilty clients**

- (1) If a client informs a practitioner, before judgment or decision in a matter that the client has lied in a material particular to the court or has procured another person to lie to the court or has falsified or procured another person to falsify in any way a document which has been tendered, the practitioner must —

- (a) advise the client that the court should be informed of the lie or falsification and request authority from the client so to inform the court; and
  - (b) if the client authorises the practitioner to inform the court, promptly inform the court of the lie or falsification; and
  - (c) if the client does not authorise the practitioner to inform the court, refuse to take any further part in the matter and not inform the court of the lie or falsification.
- (2) If a client in criminal proceedings confesses guilt to a practitioner but maintains a plea of not guilty, the practitioner may cease to act for the client unless —
- (a) there is insufficient time for another practitioner to be engaged by the client and for that practitioner to master the case; and
  - (b) the client, having been informed of the consequences, insists on the practitioner continuing to act.
- (3) If, in circumstances referred to in subrule (2), a practitioner continues to act for a client the practitioner —
- (a) must not falsely suggest that another person committed the offence to which the proceedings relate; or
  - (b) must not lead evidence that is inconsistent with the client's confession; or
  - (c) may, as relevant to the circumstances, argue that —
    - (i) the evidence as a whole does not prove that the client is guilty of the offence charged; or
    - (ii) for some reason of law the client is not guilty of the offence charged; or
    - (iii) for any other reason not prohibited by paragraph (a) or (b) the client should not be convicted of the offence charged.
- (4) If a client informs a practitioner that the client intends to disobey a court's order the practitioner —

- (a) must advise the client against that course and warn the client of its dangers; and
- (b) must not advise the client how to carry out or conceal that course; and
- (c) must not inform the court or the opponent of the client's intention unless —
  - (i) the client has authorised the practitioner to do so beforehand; or
  - (ii) the practitioner believes on reasonable grounds that the client's intended conduct constitutes a threat to any person's safety.

**36. Responsible use of court process and privilege**

- (1) A practitioner must take all reasonable and practicable steps to ensure that work the practitioner does in relation to a case is done so as to —
  - (a) confine the case to identified issues which are genuinely in dispute; and
  - (b) have the case ready to be heard as soon as practicable; and
  - (c) present the identified issues in dispute clearly and succinctly; and
  - (d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case; and
  - (e) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.
- (2) A practitioner must ensure that action by or on behalf of the practitioner to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person —
  - (a) is reasonably justified by the material then available to the practitioner; and

- (b) is appropriate for the advancement of the client's case on its merits; and
  - (c) is not made principally in order to harass or embarrass the person; and
  - (d) is not made principally in order to gain some collateral advantage for the client or the practitioner or the instructing practitioner (if any) out of court.
- (3) A practitioner must not draw or settle any court document that alleges criminality, fraud or other serious misconduct by a person unless the practitioner believes on reasonable grounds that —
- (a) factual material already available to the practitioner provides a proper basis for the allegation; and
  - (b) the evidence by which the allegation is made will be admissible; and
  - (c) the practitioner's client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the client's case if it is not made out.
- (4) A practitioner must not open as a fact any allegation which the practitioner does not then believe on reasonable grounds will be capable of support by available evidence.
- (5) A practitioner must not cross-examine so as to suggest criminality, fraud or other serious misconduct on the part of any person unless —
- (a) the practitioner believes on reasonable grounds that the material already available to the practitioner provides a proper basis for the suggestion; and
  - (b) in cross-examination going to credit alone, the practitioner believes on reasonable grounds that affirmative answers to the suggestion would diminish the witness's credibility.

- (6) A practitioner must make all reasonably practicable enquiries before the practitioner can have reasonable grounds for holding a belief required by subrule (2), (3), (4) or (5).
- (7) For the purpose of subrule (6), a practitioner may rely on the opinion of an instructing practitioner to establish reasonable grounds for holding a belief, except in the case of a closing address or submission on the evidence.
- (8) A practitioner must not suggest criminality, fraud or other serious misconduct against any person in the course of the practitioner's address on the evidence unless the practitioner believes on reasonable grounds that the evidence in the case provides a proper basis for the suggestion.
- (9) A practitioner who has instructions which justify submissions for the client in mitigation of the client's criminality and which involve allegations of serious misconduct against any other person not able to answer the allegations in the case must seek to avoid disclosing the other person's identity directly or indirectly unless the practitioner believes on reasonable grounds that such disclosure is necessary for the defence of the client.
- (10) In proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence —
  - (a) a practitioner must not ask that witness a question or pursue a line of questioning which tends —
    - (i) to mislead or confuse the witness; or
    - (ii) to be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive;and
  - (b) a practitioner must take into account any particular vulnerability of the witness in the matter and tone of the questions that the practitioner asks.

**37. Communication with opponents**

- (1) A practitioner must not knowingly make a false or misleading statement to an opponent in relation to a matter (including its compromise).
- (2) A practitioner must take all necessary steps to correct any false or misleading statement unknowingly made by the practitioner to an opponent as soon as practicable after the practitioner becomes aware that the statement was false or misleading.
- (3) A practitioner who does not correct an error in a statement made to the practitioner by an opponent has not by that omission made a misleading statement, unless by the practitioner's silence the opponent might reasonably infer that the practitioner is affirming the statement.
- (4) A practitioner must not confer or deal directly with an opponent who is represented by another practitioner unless —
  - (a) the other practitioner has previously consented to the dealing; or
  - (b) the practitioner believes on reasonable grounds that —
    - (i) the circumstances are so urgent as to require the practitioner to do so; and
    - (ii) the dealing would not be unfair to the other practitioner's client;or
  - (c) the substance of the dealing is solely to enquire whether the opponent is represented and, if so, by whom; or
  - (d) notice has been given to the other practitioner of the practitioner's intention to communicate with the opponent and the other practitioner has failed to respond to the notice within a reasonable time and there is a reasonable basis for proceeding with the communication.

- (5) A practitioner must not confer or deal directly about a matter with an opponent who is not represented by a practitioner but is being indemnified by an insurance company that is actively engaged in contesting the matter unless —
- (a) if the practitioner believes on reasonable grounds that any statements made by the opponent to the practitioner may harm the opponent's interests under the insurance policy, the practitioner has clearly informed the opponent beforehand of that belief; or
  - (b) the practitioner —
    - (i) is aware that the opponent is represented by a practitioner in another matter; and
    - (ii) has notified the representative in the other matter of the practitioner's intention to confer or deal directly with the opponent; and
    - (iii) has allowed enough time for the opponent to be advised by the representative in the other matter.
- (6) A practitioner must not communicate with a court in an opponent's absence concerning a matter of substance in connection with current proceedings unless —
- (a) the communication is made in connection with —
    - (i) an ex parte application; or
    - (ii) a hearing of which the opponent has had proper notice;
  - or
  - (b) the communication is in response to a court requirement;
  - or
  - (c) the opponent has consented to the specific communication.
- (7) A practitioner must promptly tell the opponent what passes between the practitioner and a court in a communication referred to in subrule (6).

**38. Opposition access to witnesses**

- (1) A practitioner must not take any step to prevent or discourage a witness or a prospective witness in proceedings from —
  - (a) conferring with an opponent in the proceedings; or
  - (b) being interviewed by or on behalf of any person involved in the proceedings.
- (2) A practitioner who advises a witness or prospective witness —
  - (a) that the witness need not agree to confer or to be interviewed; or
  - (b) about relevant obligations of confidentiality,has not, by providing that advice, breached subrule (1).

**39. Integrity of evidence — influencing evidence**

- (1) A practitioner must not suggest to or advise a witness that the witness should give false evidence.
- (2) A practitioner must not make a suggestion to, or condone a suggestion being made to, a prospective witness about the content of evidence which the witness should give at any stage in the proceedings.
- (3) A practitioner who —
  - (a) advises a prospective witness to tell the truth; or
  - (b) questions and tests in conference the version of evidence to be given by a prospective witness; or
  - (c) draws the witness's attention to inconsistencies or other difficulties with the witness's evidence,has not, by that action, breached subrule (1) or (2).

**40. Integrity of evidence — 2 witnesses together**

- (1) A practitioner must not confer with, or condone another practitioner conferring with, 2 or more lay witnesses at the same time about an issue if —

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- (a) there are reasonable grounds for the practitioner to believe that the issue may be contentious at a hearing; and
- (b) one of the witnesses may be affected by, or may affect, evidence to be given by another of the witnesses,

unless the practitioner believes on reasonable grounds that special circumstances require such a conference.

- (2) Subrule (1) does not apply in respect of an issue about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.

**41. Communication with witness under cross-examination**

A practitioner must not confer with a witness, including a party or client, called by the practitioner on any matter related to proceedings while that witness remains under cross-examination, unless —

- (a) the cross-examiner has consented beforehand to the practitioner conferring with the witness; or
- (b) the practitioner —
  - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require the practitioner to confer with the witness; and
  - (ii) informs the cross-examiner —
    - (I) if possible, before the practitioner confers with the witness; or
    - (II) otherwise, as soon as practicable after the practitioner has conferred with the witness.

*[Printers correction: Gazette 26 Nov 2010 p. 5953-4.]*

**42. Practitioner as material witness in client's case**

- (1) A practitioner must not act for a client in the hearing of a case in which it is known, or becomes apparent, that the practitioner will be required to give evidence centrally material to the determination of contested issues before the court.
- (2) In the circumstances provided for in subrule (1) an associate of the practitioner's law practice may act for the client if —
  - (a) in the practitioner's reasonable opinion there are exceptional circumstances that justify the associate acting; and
  - (b) the client, having been given an opportunity to obtain independent legal advice concerning the issue, consents to the associate acting.

**43. Public comment**

- (1) Except as otherwise provided in this rule, a practitioner may —
  - (a) participate in any lecture, talk or public appearance; or
  - (b) participate in any radio, television or other transmission; or
  - (c) contribute to any written or printed publication.
- (2) A practitioner must not publish or take steps towards the publication of any material concerning current proceedings that may prejudice a fair trial or otherwise subvert or undermine the administration of justice.
- (3) A practitioner must not participate in or contribute to a forum of a type referred to in subrule (1) if the forum is, in whole or in part, about a matter in which the practitioner is or has been professionally engaged unless —
  - (a) participation is not contrary to the interests of the client; and
  - (b) the practitioner gives a fair and objective account of the matter in a manner consistent with the maintenance of

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the good reputation and standing of the legal profession;  
and

- (c) if the forum is of a type referred to in subrule (1)(b), the client has given informed consent.

**44. Prosecutor's duties**

- (1) In this rule —

*prosecutor* means a practitioner who appears for a complainant, the Commonwealth or the State in criminal proceedings.

- (2) A prosecutor must —

- (a) seek to have the whole of the relevant evidence placed before the court in an impartial and intelligible manner;  
and  
(b) assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

- (3) A prosecutor must as soon as practicable after becoming aware of any information or material which might arguably affect or assist either the defence case or the prosecution case make the information or material available to the defence.

- (4) A prosecutor must not press the prosecution's case for a conviction beyond a full, firm and impartial presentation of that case.

- (5) A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

- (6) A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds —  
(a) is capable of contributing to a finding of guilt; and  
(b) carries weight.

- (7) A prosecutor who has reasonable grounds to believe that material available to the prosecution may have been unlawfully or improperly obtained must promptly —

- (a) inform the defence if the prosecutor intends to use the material; and
  - (b) make available to the defence a copy of the material if it is in documentary form; and
  - (c) inform the defence of the grounds for believing that the material was unlawfully or improperly obtained.
- (8) A prosecutor must not confer with or interview an accused person except in the presence of the accused person's legal representative.
- (9) A prosecutor must not inform a court or an opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- (10) A prosecutor who informs a court of evidence supporting an aspect of the prosecution's case and who later learns that the evidence will not be available, must —
  - (a) promptly inform the defence; and
  - (b) inform the court when next the case is before the court.
- (11) A prosecutor must —
  - (a) correct any error made by the defence; and
  - (b) assist the court to avoid appealable error.
- (12) If an accused person is unrepresented, a prosecutor must inform the court of any mitigating circumstances of which the prosecutor is aware.

## **Part 7 — Miscellaneous**

### **45. Advertising**

- (1) A practitioner and the principal of a law practice must ensure that any advertising, marketing or promotion in connection with the practitioner or the law practice is not —
  - (a) false, misleading or deceptive; or
  - (b) likely to mislead or deceive; or
  - (c) offensive; or
  - (d) likely to be prejudicial to, or diminish public confidence in, the administration of justice; or
  - (e) likely to bring the profession into disrepute; or
  - (f) prohibited by law.
- (2) Without limiting the generality of subrule (1), a practitioner must not —
  - (a) convey a false or misleading impression that the practitioner or the practitioner's law practice has specialist expertise in relation to services offered by the practitioner or the practitioner's law practice; or
  - (b) advertise or otherwise hold out or imply that the practitioner or the practitioner's law practice is accredited by a relevant professional body to provide specialist services in an area of legal practice unless the practitioner or law practice is so accredited.

### **46. Sharing premises**

A practitioner who shares an office with a person who is not engaged in providing legal services must ensure that a client of the practitioner who also receives services from the other person is informed about the nature and the terms of the services provided by the practitioner and the services provided by the other person.

**47. Sharing receipts**

A practitioner must not share, or enter into any arrangement for the sharing of, the receipts, revenue or other income arising from the provision of legal services by the practitioner, with —

- (a) a disqualified person; or
- (b) a person convicted of an indictable offence that involved dishonest conduct.

**48. Tax avoidance**

- (1) A practitioner must not promote or market a tax scheme or arrangement which has the predominant purpose of avoidance of tax.
- (2) A practitioner must not have a financial interest in a business organisation (whether incorporated or otherwise) which promotes or markets any tax scheme or arrangement which has the predominant purpose of avoidance of tax.

**49. Returning judicial officers**

- (1) In this rule —  
*judicial officer* includes a master and a magistrate, but does not include a person who holds judicial office in an acting capacity, or a commissioner of the Supreme Court or the District Court.
- (2) A practitioner who has been a judicial officer must not, for a period of 2 years after ceasing to hold judicial office, appear in —
  - (a) a court of which the practitioner was a member; or
  - (b) a court in which the practitioner has presided; or
  - (c) a court from which appeals to a court referred to in paragraph (a) or (b) may be made or brought.

**50. Dealing with regulatory authority**

- (1) In this rule —

***regulatory authority*** means a local regulatory authority and an interstate regulatory authority.

- (2) A practitioner must be open and candid in his or her dealings with a regulatory authority.
- (3) A practitioner who is requested by a regulatory authority to provide comments or information in relation to the practitioner's conduct or professional behaviour must —
  - (a) respond to the request within a reasonable time and in any event within 14 days (or such extended time as the regulatory authority may allow); and
  - (b) provide in writing a full and accurate account of his or her conduct in relation to the matters covered by the request.



- (2) A practitioner should refrain from any professional activities which might create in the minds of members of the public —
- (a) confusion between the practitioner's position as a practitioner and as a Justice; or
  - (b) a suspicion that influence or favour in the practitioner's practice may be derived from their position as a Justice.

**6. Arbitration**

A practitioner who has acted in an arbitration for the arbitrator either by advising the arbitrator on points of law arising during the arbitration or on the form of the award, should not advise or appear for one of the parties in the arbitration in any proceedings relating to the arbitration or the award.

**7. Appearance before relatives**

A practitioner shall not habitually practise in any court of which a parent or a near relative of the practitioner is the sole judicial officer.

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## Notes

- <sup>1</sup> This is a compilation of the *Legal Profession Conduct Rules 2010* and includes the amendments made by the other written laws referred to in the following table.

### Compilation table

Citation	Gazettal	Commencement
<i>Legal Profession Conduct Rules 2010</i>	19 Nov 2010 p. 5775-825 (Printers correction in <i>Gazette</i> 26 Nov 2010 p. 5953-4)	r. 1 and 2: 19 Nov 2010 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jan 2011 (see r. 2(b))
<i>Legal Profession Conduct Amendment Rules 2013</i>	5 Apr 2013 p. 1465-6	r. 1 and 2: 5 Apr 2013 (see r. 2(a)); Rules other than r. 1 and 2: 6 Apr 2013 (see r. 2(b))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
affiliate .....	3
associated entity, in relation to a law practice,.....	9(1)
authorised deposit-taking institution .....	15(1)
client documents .....	3
client information.....	9(1)
compromise.....	3
costs .....	3
court .....	3
current proceedings.....	3
employee.....	3
engagement .....	3
former client, in relation to a practitioner, .....	13(1)
immediate family, .....	3
instructing practitioner .....	3
insurance company .....	3
judicial officer.....	49(1)
law practice,.....	3
listed public unit trust .....	15(1)
matter .....	3
opponent .....	3
order.....	3
party .....	3
practitioner .....	3
practitioner with designated responsibility .....	28(1)
prosecutor .....	44(1)
regulatory authority.....	50(1)
substantial benefit .....	15(1)
undertaking .....	22(1)
unlawful discrimination .....	17(1)
unlawful harassment .....	17(1)
workplace bullying .....	17(1)