

Hon. Rose Brown



## Law Practitioners Bill 2018

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### **An Act to regulate the practice of law in the Cook Islands and replace the Law Practitioners Act 1993-94.**

**The Parliament of the Cook Islands enacts as follows—**

#### **1 Title**

This Act is the Law Practitioners Act 2018.

#### **2 Commencement**

This Act comes into force on the day after the date on which it receives the assent of the Queen's Representative.

### **Part 1 Preliminary matters**

#### **3 Purpose**

The purpose of this Act is to—

- (a) maintain public confidence in the practice of law in the Cook Islands;
- (b) provide for the admission of law practitioners and the regulation of lawyers in the Cook Islands;
- (c) protect consumers of legal services in the Cook Islands;

- (d) provide for the effective continued operation of the Cook Islands Law Society:
- (e) state the fundamental obligations of practitioners and set out a revised Code of Ethics.

#### 4 **Interpretation**

In this Act, unless the context otherwise requires,—

**auditor** means any person who is—

- (a) a member of Chartered Accountants Australia and New Zealand; or
- (b) a person or a member of an organisation designated by the Chief Justice as an auditor for the purposes of this Act

**certified**, in relation to a document, means authenticated as a true copy—

- (a) by a notary public; or
- (b) if authenticated in a jurisdiction that is a member of the Commonwealth, by—
  - (i) a person admitted to practise law in that jurisdiction; or
  - (ii) a notary public

**Chief Justice** means the Chief Justice of the Cook Islands

**Code of Ethics** means the code set out in the Schedule

**Commonwealth** means the Commonwealth of Nations, and includes the Hong Kong Special Administrative Region of the People's Republic of China

**court** means—

- (a) the High Court and the Court of Appeal established under Part IV of the Constitution; and
- (b) the Privy Council

**Judge** means a Judge of the High Court

**law practice** means a firm of lawyers, and includes a professional corporation as defined in section 17

**Law Society** or **Society** means the Cook Islands Law Society continued by Part 5

**lawyer** means either of the following:

- (a) a practitioner who holds a current practising certificate:
- (b) a person who holds a temporary practising certificate

**legal practice** means any of the following:

- (a) the provision of advice in relation to any legal or equitable rights or obligations:
- (b) the preparation or review of any document that—
  - (i) creates, or provides evidence of, legal or equitable rights or obligations; or
  - (ii) creates, varies, transfers, extinguishes, mortgages, or charges any legal or equitable title in any property:
- (c) appearing on behalf of any other person in any court:
- (d) any work that is incidental to any of the work described in paragraphs (a) to (c)

**ordinarily resident** means a person who has made the Cook Islands their place of residence for the foreseeable future

**practising certificate** means a practising certificate issued by the Law Society under section 18 or renewed under section 19

**practitioner** means a person who has been admitted as a barrister and solicitor, or as a barrister sole, in the Cook Islands

**prescribed** means prescribed by regulations made under this Act

**qualifying country** means any of the following:

- (a) New Zealand;
- (b) Australia (including any state or territory of Australia);
- (c) the United Kingdom (including any territory of the United Kingdom);
- (d) Singapore;
- (e) Hong Kong;
- (f) Canada;
- (g) any other country designated by the Chief Justice from time to time as a qualifying country for the purposes of this Act

**Registrar** means a Registrar or a Deputy Registrar of the High Court

**regulations** means regulations made under this Act

**roll** means the roll of barristers and solicitors and barristers sole that was kept under the Law Practitioners Act 1993-94 and continues to be kept by the Registrar under section 11

**temporary practising certificate** means a certificate issued by the Law Society under section 21 or renewed under section 22.

**5 Act binds the Crown**

This Act binds the Crown.

**6 Application of Act**

This Act applies to legal practice in the Cook Islands.

## **Part 2 Practitioners and lawyers**

### **Subpart 1—Admission as practitioner**

**7 Who may be admitted as practitioner**

A person may be approved for admission in the Cook Islands as a barrister and solicitor, or as a barrister sole, if the person—

- (a) is aged at least 21 years; and
- (b) is a fit and proper person to practise law; and
- (c) has—
  - (i) been admitted as a barrister and solicitor, or a barrister sole, under the laws of New Zealand or any other qualifying country; or
  - (ii) has passed the relevant professional legal studies programme in a qualifying country; and

- (d) is either—
  - (i) ordinarily resident in the Cook Islands; or
  - (ii) not ordinarily resident in the Cook Islands, but is applying for admission as a barrister sole only (and not as a barrister and solicitor) and the Chief Justice is satisfied that the applicant has a sound knowledge of Cook Islands law.

**8 Application for approval for admission**

- (1) A person who wishes to be admitted in the Cook Islands must first seek approval for admission by lodging an application in the prescribed form (if any) with the Registrar.
- (2) Every application must include with it—
  - (a) a certified copy of the applicant’s qualifications in law; and
  - (b) a certified copy of the applicant’s passport, driver’s licence, or other document issued by a governmental authority that bears photo identification and is non-transferable; and
  - (c) evidence that the applicant—
    - (i) is admitted as a barrister and solicitor, or as a barrister sole, in a qualifying country; or
    - (ii) has passed the relevant professional legal studies programme in a qualifying country; and
  - (d) either—
    - (i) evidence that the applicant is ordinarily resident in the Cook Islands; or
    - (ii) if the applicant is not ordinarily resident in the Cook Islands but is applying for admission as a barrister sole only (and not as a barrister and solicitor), evidence of his or her knowledge of Cook Islands law; and
  - (e) a statement declaring any criminal convictions; and
  - (f) if the applicant is admitted in a qualifying country, a certificate of standing or equivalent document issued by a law society or an equivalent body in that country.
- (3) The Registrar must forward the application to the Chief Justice and give public notice of it by—
  - (a) affixing a notice in a conspicuous place at the courthouse and registry of the High Court at Rarotonga; and
  - (b) placing a notice in a newspaper circulating in the Cook Islands.
- (4) The Chief Justice must, on receiving an application for admission,—
  - (a) make, or cause to be made, any inquiries (including inquiries to the Law Society) that he or she thinks necessary into the character, qualifications, and experience of the applicant; and
  - (b) consider any policy for admission prepared by the Society.
- (5) The Chief Justice must approve the application if he or she is satisfied that the applicant meets the requirements of section 7.
- (6) The Chief Justice may impose conditions on any approval for admission.

- (7) On approving an application for admission, the Chief Justice must advise the Registrar and direct the Registrar to arrange for the applicant to take the oath or affirmation in section 9.
- (8) The Registrar must inform the secretary of the Law Society of any approval granted under subsection (5) and any conditions imposed under subsection (6).

**9 Oath or affirmation**

A person may not be admitted unless he or she takes the following oath or affirmation before a Judge:

*Oath*

“I [*name*] swear by Almighty God that I will be faithful and bear true allegiance to Her [*or His*] Majesty [*name of the reigning Sovereign*] as the Head of State of the Cook Islands, and to Her [*or His*] heirs and successors, that I will uphold the Constitution of the Cook Islands, and that I will truly and honestly conduct myself in the practice of a barrister and solicitor [*or barrister, as the case may be*] to the best of my knowledge and ability: So Help Me God.”

*Affirmation*

“I [*name*] affirm that I will be faithful and bear true allegiance to Her [*or His*] Majesty [*name of the reigning Sovereign*] as the Head of State of the Cook Islands, and to Her [*or His*] heirs and successors, that I will uphold the Constitution of the Cook Islands, and that I will truly and honestly conduct myself in the practice of a barrister and solicitor [*or barrister, as the case may be*] to the best of my knowledge and ability.”

**10 Admission**

- (1) A person is admitted as a practitioner when their name is entered by the Registrar on the roll.
- (2) The Registrar must enter on the roll the name of any person who has—
  - (a) been approved for admission by the Chief Justice under section 8; and
  - (b) taken the oath or affirmation required by section 9; and
  - (c) paid the prescribed fee for admission.
- (3) The entry on the roll must show whether the person is admitted as a barrister and solicitor or as a barrister sole.
- (4) Every person who is admitted is, by virtue of that admission, a member of the Law Society.
- (5) Upon admission, the Registrar must issue a certificate of admission in the prescribed form (if any), under the seal of the court, to the practitioner whose name is entered on the roll.

**11 Registrar responsible for maintenance of roll**

- (1) The roll of barristers and solicitors and barristers sole that was kept by the Registrar under the Law Practitioners Act 1993-94 must continue to be maintained by the Registrar, and must be available for public inspection during the normal hours of operation of the Ministry of Justice.
- (2) The name of every person on the roll immediately before this Act comes into force remains on the roll after this Act comes into force until it is removed in accordance with this Act.

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- (3) The Registrar must remove a practitioner's name from the roll if—
  - (a) the practitioner is dead; or
  - (b) the Chief Justice requires, under section 29(1)(a), that the person's name to be struck off the roll.
- (4) The Registrar must restore a person's name to the roll if the Chief Justice requires, under section 31, that the person's name be restored to the roll.
- (5) If a person asks for information on the current status of a person whose name is or was on the roll, the Registrar must, on payment of the prescribed fee (if any), issue a certificate showing that information.

### **12 Officers of court**

Every practitioner is an officer of the court.

### **13 Code of Ethics**

Every practitioner is bound by the Code of Ethics.

## Subpart 2—Lawyers

### **14 Only lawyers may practise law**

- (1) A person must not practise law in the Cook Islands unless he or she is a lawyer.
- (2) In subsection (1), to **practise law** means to engage in legal practice while—
  - (a) charging for those services; or
  - (b) acting in a way that implies that the person is qualified or entitled to practise law in the Cook Islands.
- (3) A lawyer may appear as a lawyer in any court of the Cook Islands.
- (4) Every lawyer is entitled to sue for and recover his or her costs, including disbursements and counsel's fees, for services rendered in that capacity.

### **15 Requirement to enter into terms of engagement with clients**

- (1) Every lawyer (other than a barrister sole) and law practice must enter into terms of engagement with their clients in accordance with this section.
- (2) The lawyer or law practice must give the client a copy of the terms of engagement at the earliest opportunity after being engaged.
- (3) The terms of engagement must include the following:
  - (a) a statement of the principal aspects of the services to be provided to the client;
  - (b) either a quote for those services or the hourly charge-out rate;
  - (c) whether the lawyer or practice (or the lawyer's employer) carries professional indemnity insurance and, if so,—
    - (i) the excess payable; and
    - (ii) the maximum liability of the insurer for any one claim; and
    - (iii) the maximum liability of the insurer for all claims during the period of insurance; and
    - (iv) the general nature of the risks covered;
  - (d) the terms of payment of invoices;
  - (e) whether funds must be paid on account and, if so, how much:

- (f) whether the lawyer operates a trust account and, if so, whether fees charged to the client may be deducted from money held on behalf of the client in the trust account.

**16 Revising lawyer's bill of costs**

- (1) A Judge may revise a lawyer's bill of costs, whether or not it has been paid,—
  - (a) on the Judge's own initiative; or
  - (b) on the reference in writing of the party chargeable; or
  - (c) by order of the court, which may be made with any directions and subject to any conditions that the court thinks fit.
- (2) The revision must be made on an assessment of the fairness and reasonableness of the bill of costs, having regard to—
  - (a) the reasonable overheads of the lawyer; and
  - (b) the degree of difficulty and the magnitude of the work done; and
  - (c) the level of experience and expertise of the lawyer; and
  - (d) all relevant matters based on prevailing circumstances.
- (3) Unless the lawyer and the person chargeable otherwise agree, every reference under subsection (1)(b) must be made within 12 months after the date of delivery of the bill.
- (4) A Judge may, on revising a bill of costs, make any orders that he or she thinks necessary to facilitate and give effect to the revision and to any decision on the bill (including a decision as to costs).

**17 Professional corporations**

- (1) A law practice that is incorporated as a company under Cook Island law is a professional corporation.
- (2) Despite anything to the contrary in this Act or any other Act, a professional corporation must use, in place of the word "Limited" or "Ltd" in its name, the words "Professional Corporation" or "P.C." as part of its name.
- (3) A professional corporation comprising a sole practitioner may have one shareholder who is not a lawyer, so long as that shareholder does not hold more than 1% of the total shareholding of the company, or more than one share, whichever is the lesser.
- (4) The board of every professional corporation must be controlled by lawyers.
- (5) Every professional corporation must maintain, and (if required by the Law Society) maintain to the satisfaction of the Law Society, adequate arrangements for professional indemnity insurance.

**Subpart 3—Practising certificates and temporary practising certificates**

*Practising certificates*

**18 Application for and issue of practising certificates**

- (1) Any practitioner may apply to the Law Society for a practising certificate.
- (2) The secretary of the Law Society must issue a practising certificate to any practitioner who pays—
  - (a) the Society's annual membership fee; and

- (b) the practising certificate fee.
- (3) A practising certificate must record—
  - (a) whether the holder is entitled to practise as a barrister and solicitor or as a barrister sole; and
  - (b) that the holder's name appears on the roll; and
  - (c) that the holder is entitled to practise law in the Cook Islands; and
  - (d) any restrictions on admission imposed by the Chief Justice.
- (4) Every practising certificate must be in the form determined by the Law Society and be signed by the president or secretary of the Society.
- (5) A person who is qualified to hold a practising certificate is deemed to hold that certificate on and from the date on which the application and required fees are received by the secretary of the Law Society, even if the practising certificate is not issued immediately.

**19 Currency and renewal of practising certificates**

- (1) Every practising certificate expires on the close of 31 January following its issue.
- (2) A lawyer may renew his or her practising certificate by paying, before the practising certificate expires, the Society's annual membership fee and the practising certificate fee.
- (3) The Law Society must immediately cancel the practising certificate of any person who ceases to be a practitioner.

*Temporary practising certificates*

**20 Application for temporary practising certificate**

- (1) A person who is not admitted in the Cook Islands but is admitted to practise law and appear in the courts of a qualifying country (the applicant's **home jurisdiction**) may apply to the Law Society for a temporary practising certificate.
- (2) A temporary practising certificate entitles a person to appear in specified proceedings in any court of the Cook Islands as a barrister sole.
- (3) The application must include the following:
  - (a) a certified copy of the applicant's qualifications in law;
  - (b) a certified copy of the applicant's passport, driver's licence, or other document issued by a governmental authority that bears photo identification of the applicant and is non-transferable;
  - (c) evidence that the applicant has been admitted to practise law in his or her home jurisdiction;
  - (d) evidence that the applicant has practised law;
  - (e) a certificate of standing issued by the Law Society of the applicant's home jurisdiction;
  - (f) the reference details of the Cook Islands proceedings for which the temporary practising certificate is required;
  - (g) evidence that the applicant has been instructed by—
    - (i) the Crown; or

- (ii) a barrister and solicitor, or a law practice, engaged by a party to the proceedings; or
  - (iii) engaged by a person who is not a party to, but has an interest in, the proceedings.
- (4) The Law Society may make or cause to be made any inquiries into the qualifications and experience of the applicant as it considers necessary.

**21 Issue of temporary practising certificate**

- (1) The Law Society must issue a temporary practising certificate to an applicant if—
  - (a) the Society is satisfied that the applicant—
    - (i) is qualified to practise law; and
    - (ii) is admitted to practise law as a barrister in his or her home jurisdiction; and
    - (iii) is competent to practise law in the Cook Island; and
    - (iv) is of good standing in his or her home jurisdiction; and
    - (v) has been instructed or engaged in connection with the proceedings for which the certificate is issued; and
  - (b) the applicant pays the Society's fee for a temporary practising certificate.
- (2) A temporary practising certificate must record—
  - (a) that the holder is entitled to practise as a barrister sole in the Cook Islands; and
  - (b) the reference details of the proceedings for which the holder may act and appear as a representative in court; and
  - (c) the party for whom the holder may act.
- (3) Every temporary practising certificate must be in a form determined by the Law Society and be signed by the president or secretary of the Society.
- (4) The Law Society must give notice to the Registrar whenever a temporary practising certificate is issued.

**22 Currency and renewal of temporary practising certificates**

- (1) A temporary practising certificate is valid only for the proceedings for which it was issued.
- (2) A temporary practising certificate expires on the sooner of the following:
  - (a) the close of 31 January following its issue;
  - (b) the final determination of the proceedings for which it was issued.
- (3) If the proceedings for which the temporary practising certificate was issued are not finally determined before 31 January in the year following its issue, the certificate may be renewed on payment of the fee for a temporary practising certificate .

**Part 3**

**Complaints of professional misconduct**

**23 What is professional misconduct by lawyer or law practice**

In this Part, **professional misconduct** means any of the following:

- (a) a breach of the Code of Ethics (but this applies only to practitioners):
- (b) a failure to comply with any applicable requirements of Part 4 concerning trust accounts:
- (c) conduct unbecoming to a lawyer:
- (d) negligence or incompetence in legal practice to such a degree or with such frequency that the negligence or incompetence —
  - (i) reflects adversely on the fitness of the lawyer or law practice to engage in legal practice; or
  - (ii) is likely to be prejudicial to, or diminish public confidence in, the administration of justice:
- (e) conviction for an offence punishable by imprisonment for a term exceeding 1 year, and the conviction—
  - (i) reflects adversely on the fitness of the lawyer or law practice to engage in legal practice; or
  - (ii) is likely to be prejudicial to, or diminish public confidence in, the administration of justice.

**24 Complaints of professional misconduct**

- (1) Any person may lodge with the Registrar a written complaint of professional misconduct by a lawyer or law practice.
- (2) Every complaint must be in writing and include—
  - (a) the name of the lawyer or law practice complained about; and
  - (b) the name and contact details of the complainant; and
  - (c) a full description of the complaint (such as information about when, where, how much money was involved, and who else was involved); and
  - (d) evidence (such as copies of invoices, correspondence, and emails) relevant to the complaint.
- (3) If a complaint complies with the requirements of this section and any regulations, the Registrar must forward the complaint to the Chief Justice without delay and send a copy to the secretary of the Law Society.

**25 Chief Justice to consider complaint**

- (1) On receipt of a complaint, the Chief Justice must consider the complaint in whatever manner he or she considers appropriate, which may include, without limitation:
  - (a) discussing the complaint with any or all of the parties:
  - (b) investigating or inquiring into the substance of the complaint:
  - (c) conducting a formal inquiry into the complaint under section 26.
- (2) The Chief Justice may regulate how complaints are dealt with under this section by making rules, not inconsistent with this Act or the regulations, setting out procedures to be followed.

**26 Formal inquiry**

- (1) If the Chief Justice decides to conduct a formal inquiry into a complaint, he or she has the powers of a commission of inquiry under the Commissions of Inquiry Act 1966 and (without limiting the operation of that Act)—

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- (a) may summon witnesses and obtain all documents and information relevant to the complaint; and
  - (b) may conduct interviews and make any inquiries that he or she thinks fit; and
  - (c) has the right of access to the office and the books, documents, and records of the lawyer or law practice; and
  - (d) may require any person, by notice in writing, to—
    - (i) attend and give evidence at any hearing; and
    - (ii) produce all books or documents in that person's custody or under his or her control relating to the subject matter of the complaint.
- (2) If the Chief Justice appoints someone to conduct the inquiry on his or her behalf, the Chief Justice may make the appointment subject to such conditions as he or she thinks fit.

### **27 Suspension from practice**

- (1) At any time after a complaint of professional misconduct has been lodged against a lawyer, or against a law practice where a lawyer works, the Chief Justice may make an order that the lawyer concerned is suspended from practice, or from practising in a particular capacity, until the complaint has been dealt with.
- (2) While a lawyer is suspended from practice by the Chief Justice, the lawyer is not entitled to practise in any capacity to which the suspension relates.
- (3) An order suspending a lawyer from practice takes effect upon delivery of the order to the Registrar, and notice of the order must also be given immediately to the lawyer concerned and to the secretary of the Law Society.
- (4) The lawyer may apply at any time for the order to be withdrawn or varied.
- (5) The Chief Justice may at any time, whether on application or otherwise, withdraw an order for suspension, or vary its terms.

### **28 Decisions on complaints**

- (1) On completing consideration of a complaint, the Chief Justice must determine whether the lawyer or law practice has engaged in professional misconduct.
- (2) Complaints of a minor or technical nature may be determined on the balance of probabilities; but complaints that could result in the lawyer being struck off the roll, or being required to pay a substantial amount of money, must be determined beyond reasonable doubt.
- (3) If the Chief Justice determines that the lawyer or law practice has not engaged in professional misconduct, the Chief Justice must dismiss the complaint.
- (4) Every decision of the Chief Justice under this section must be in writing and include the reasons for the decision.
- (5) The Chief Justice may, at his or her discretion, order the publication of any decision under this section and, if relevant, of any order made under section 29, and determine where and how publication may or must be done.

**29 Consequences of finding of professional misconduct**

- (1) If a lawyer or law practice has engaged in professional misconduct, the Chief Justice must censure any lawyer or law practice involved and may, in addition, order any one or more of the following:
  - (a) that the name of the lawyer be struck from the roll or be annotated as specified in the order:
  - (b) that the lawyer be suspended from practice under section 27:
  - (c) that the lawyer or law practice ceases to practise, or ceases to advise on any matters specified by the Chief Justice, for any period specified by the Chief Justice:
  - (d) that the lawyer or law practice does specified work for a specified period, within the time and for a fee specified in the order:
  - (e) that the lawyer or law practice reduces the fee charged to the complainant to the amount specified by the Chief Justice:
  - (f) if the complaint relates to alleged overcharging, that the lawyer's or law practice's bill of costs be referred for revision under section 16:
  - (g) if the Chief Justice believes the complainant has suffered loss resulting from the wrongdoing or negligence of the lawyer or law practice, that the lawyer or law practice pays the complainant an amount (not exceeding \$1,000,000) specified by the Chief Justice:
  - (h) that the lawyer makes his or her practice, or the law practice makes its practice, open for inspection (including by making books of account open for inspection) at the times and to the persons specified in the order:
  - (i) that the lawyer or law practice makes reports to any person specified by the Chief Justice at such times and in such manner as specified by the Chief Justice:
  - (j) that the lawyer or law practice takes advice in relation to the management of the practice from any person specified in the order:
  - (k) that the lawyer or law practice pays to the Cook Islands Government Account a fine (not exceeding \$50,000) specified by the Chief Justice:
  - (l) that the lawyer or law practice pays the Cook Islands Government Account an amount (not exceeding \$5,000) specified by the Chief Justice towards the costs of the considering, inquiring into, or conducting a hearing into the complaint:
  - (m) that the lawyer or law practice ceases operating a trust account:
  - (n) that the lawyer or law practice reimburses funds to a client or clients to the extent specified by the Chief Justice.
- (2) An order under this section may be made on and subject to any conditions the Chief Justice thinks fit.
- (3) If the Chief Justice orders a lawyer or law practice to pay a sum of money,—
  - (a) the order is in all respects deemed to be a judgment of the High Court; and
  - (b) interest accrues on the judgment in accordance with the Judicature Act 1980-81; and
  - (c) the judgment is enforceable by the complainant under the Code of Civil Procedure of the High Court 1981.

**30 Appeals**

Any lawyer or former lawyer, and any law practice, may appeal to the Court of Appeal against any decision of the Chief Justice under section 28 or any order made under section 29(1).

**31 Restoration to roll**

The Chief Justice may at any time, and at his or her absolute discretion, order that the name of a person whose name has been struck from the roll on an order made under section 29(1)(a) be restored to the roll or that any annotations to the entry on the roll be removed or amended.

**32 Other claims against lawyers and law practices**

- (1) Nothing in this Part limits the right of a person to make a claim for damages, or to take any other action or seek any other remedy, against a lawyer or a law practice.
- (2) If an order has been made under section 29 requiring the payment of money, in any action for damages relating to the same matter, the court must, in fixing any award of damages, deduct the amount ordered under section 29.

**Part 4  
Trust accounts**

**33 Who may operate trust accounts**

- (1) Any practitioner who is admitted as a barrister and solicitor (but not as a barrister sole), and any law practice, may operate a trust account.
- (2) Despite subsection (1), a practitioner may not operate a trust account if he or she is employed, whether by contract or otherwise, and whether part-time or full-time,—
  - (a) by the Government of the Cook Islands; or
  - (b) by the Public Service of the Cook Islands; or
  - (c) as an in-house counsel within the private sector.

**34 Operation of trust accounts**

- (1) Only practitioners who hold practising certificates as barristers and solicitors may be signatories to a trust account.
- (2) Every trust account must be held at a branch of a trading bank in the Cook Islands.
- (3) A practitioner or law practice may, with the consent of the client, hold funds for that client in an account other than the practitioner's or practice's trust account, but only if the account is held on trust in a term deposit at a branch of a trading bank in the Cook Islands.
- (4) At no time may a trust account be overdrawn.
- (5) Any interest earned during a calendar year on trust account funds, other than interest earned on money held for a specific client in a term deposit, must be transferred to the Law Society's community account within 1 month after the end of the calendar year in which the interest was earned.

**35 Payments into and out of trust accounts**

- (1) Every disbursement or fee of a practitioner or law practice that operates a trust account must be paid from the trust account as follows:
  - (a) the funds must be held on trust for the purpose of a client for whom the practitioner or law practice is acting;
  - (b) the transfer of funds may be made to the general account of the practitioner or law practice only if an invoice is sent (by email, fax, or post) to the person who is the beneficiary of the funds that are to be deducted from the trust account.
- (2) For the purpose of subsection (1)(b), an invoice sent in accordance with that paragraph is deemed to have been received by the beneficiary on the working day following the day on which it was sent if the invoice was properly transmitted or addressed and (if applicable) all postal charges were paid.
- (3) No money held in a trust account of a practitioner or law practice—
  - (a) is available for the payment of the debts of any creditor of the practitioner or practice; or
  - (b) is liable to be attached or taken in execution under an order or process of any court at the instance of the creditor.
- (4) However, subsection (3) does not apply if the debt arises from the purpose for which the practitioner or practice received the money concerned.
- (5) A receipt must be issued for funds received on trust, in accordance with the following:
  - (a) if the funds are received by way of cash or cheque, the receipt must be issued within 1 day of receipt of the funds;
  - (b) if the funds are received by direct credit, the receipt must be issued on or before the fourth day of the month after the date of receipt of the funds.
- (6) All receipts issued under subsection (5) must record the name of the client for whom the funds are held on trust.

**36 Audit of trust accounts**

- (1) Within 20 days after the last day of each month, every practitioner and law practice that operates a trust account must prepare a list of balances held on trust for clients.
- (2) Every practitioner and law practice that operates a trust account must ensure that the trust account is audited annually by an auditor, and that the audit for each calendar year is completed within 4 months after the end of that calendar year.
- (3) The auditor must bring to the attention of the Law Society any audit of a trust account that does not receive an unqualified report, and the Society may refer the matter as a complaint to the Registrar under section 24.
- (4) A failure to have trust accounts audited as required by this section is a disciplinary matter and the Law Society must, on becoming aware of such a failure, file a complaint with the Registrar under section 24.

## **Part 5**

### **Cook Islands Law Society**

#### **37 Cook Islands Law Society continued**

- (1) The Cook Islands Law Society established under the Law Practitioners Act 1993-94 continues and is deemed to be established under this Act.
- (2) The Law Society is a body corporate with perpetual succession and a common seal and, subject to this Act, is capable of exercising all the functions of a body corporate and of holding land.

#### **38 Membership of Law Society**

- (1) The members of the Law Society are as follows:
  - (a) every practitioner:
  - (b) honorary members elected by the Society at its annual general meeting:
  - (c) the Attorney-General, by virtue of his or her office:
  - (d) any person who is a member by virtue of section 49(3).
- (2) However, a member who has not paid the Society's current annual membership fee—
  - (a) is not entitled to stand for election to the council or to vote in any election; and
  - (b) may attend Law Society events and training only at the discretion of the president of the Society.

#### **39 Functions of Law Society**

- (1) The Law Society has the following functions:
  - (a) to promote and encourage proper conduct among the members of the legal profession:
  - (b) to consider and propose appropriate amendments to laws:
  - (c) if so requested by the court, to assist the court in the conduct of its business:
  - (d) to promote the further education and training of lawyers:
  - (e) to represent practitioners at overseas conferences.
- (2) Without limiting subsection (1), the Law Society has the following functions in particular:
  - (a) ensuring that the Code of Ethics is publicly available, both in hard copy (at a reasonable price) and on the Law Society's internet site (free of charge):
  - (b) issuing, on request, a certificate of standing for any practitioner, in which case the Society may charge a fee to cover the cost of doing so.

#### **40 Council of Law Society**

- (1) The governing body of the Law Society is its council, the members of which are the **officers** of the Society.
- (2) The council comprises at least 5 members who are elected, including—
  - (a) a member elected as president; and
  - (b) a member elected as vice-president; and

- (c) at least 3 other members elected as officers, one of whom must serve as secretary.
- (3) The elected officers must appoint to the council a treasurer, who need not be a member of the Society.
- (4) The council may appoint other officers as required, including any acting officer necessary to replace an elected officer who dies, resigns, or otherwise becomes incapable of carrying out his or her duties, until a replacement officer is elected.
- (5) The council may appoint committees of members of the Law Society and may delegate to any committee all or any of the functions or powers of the council.
- (6) The council may regulate its own procedure and the conduct of the affairs of the Society, subject to this Act, the regulations, and any rules of the Society.

**41 Rules, meetings, and elections**

- (1) The Law Society may make rules, subject to this Act and the regulations, concerning the procedures and operation of the Society, including rules concerning—
  - (a) general meetings, annual general meetings, and other meetings of members; and
  - (b) the conduct of elections; and
  - (c) the making, amendment, and revocation of rules of the Society.
- (2) Any rules of the Society that were in force before this Act comes into force remain the rules of the Society until they are amended or revoked, to the extent that the rules are not inconsistent with this Act or the regulations.
- (3) At each annual general meeting, the incumbent officers of the Society must resign, but they may stand for re-election at that or any other annual general meeting.
- (4) However, no person may hold office as president for more than 3 consecutive years.

**42 Fees of the Law Society**

- (1) The annual membership fee of the Law Society must be set at an annual general meeting, but if it is not changed it remains the same as the fee for the previous year.
- (2) The Law Society may set the following fees at an annual general meeting or any general meeting:
  - (a) the fee for a practising certificate;
  - (b) the fee for a temporary practising certificate.
- (3) The Society may charge members, or set fees, for any other service provided by the Society.

**43 Community account**

- (1) The Law Society must establish a separate bank account to be known as its community account.
- (2) The funds of the community account (including any interest earned by it) must be applied only for charitable purposes—
  - (a) associated with the provision of legal services or legal education within the Cook Islands; or

- (b) any other purpose specified in regulations.
- (3) The following funds received by the Law Society must be paid into the community account:
  - (a) interest that is earned on trust accounts operated by practitioners and law practices:
  - (b) any money remaining in the Fidelity Fund after all claims against the funds have been settled and the time for refunding contributions has ended:
  - (c) any money received or allocated by the Society for payment into the community account.

## **Part 6**

### **Miscellaneous provisions**

#### *Chief Justice*

#### **44 Delegations by Chief Justice**

- (1) The Chief Justice may delegate any of his or her functions or powers under this Act to any Judge, by notice to the Judge in writing.
- (2) A notice of delegation is conclusive evidence of the Judge's authority to perform the function or exercise the power delegated.
- (3) A delegation may be given generally or specifically, and may be withdrawn at any time, in writing, by the Chief Justice.

#### **45 Chief Justice not disqualified**

The fact that the Chief Justice has considered any matter, or exercised or performed any function, duty, or power under this Act in relation to any matter, does not disqualify the Chief Justice from adjudicating in respect of the same matter in the High Court or Court of Appeal.

#### *Fidelity Fund*

#### **46 Fidelity Fund abolished**

- (1) The Fidelity Fund created under the Law Practitioners Act 1993-94 is abolished and the assets of the Fund must be distributed in accordance with this section and any regulations made under this Act.
- (2) No money may be paid into the Fund after this section comes into force.
- (3) Claims against the Fund may be made until 2 years after the date on which this section comes into force, and the Law Society must make all reasonable efforts to settle each claim within 3 years after this section comes into force (the **final claims settlement date**).
- (4) Any claim that is not settled by the final claims settlement date is deemed to be abandoned by the claimant.
- (5) From the money remaining in the Fund after all claims against the Fund have been settled and any other debts and liabilities have been paid, each person who contributed to the Fund is entitled to a refund of their contributions to the Fund that is proportionate to the amount of those contributions.

- (6) The Law Society must make all reasonable efforts to contact contributors to the Fund, and must allow claims for refunds to be made until a date specified by the president of the Society, which must be at least 1 year later than the final claims settlement date.
- (7) If any money remains in the Fund after all claims for refunds have been paid, it must be paid into the Law Society's community account.

*Offences and penalties*

**47 Offence against sections 14 and 27**

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$10,000, if he or she—
  - (a) practises law (as defined in section 14(1)) while not holding practising certificate or temporary practising certificate; or
  - (b) while suspended from practice under section 27, practises law in any capacity to which the suspension relates.
- (2) An information for an offence against subsection (1) may be laid only by the president or secretary of the Law Society.
- (3) In any proceedings for an offence against subsection (1), in the absence of proof to the contrary, a certificate signed by the secretary of the Law Society to the effect that at the time of the alleged offence the defendant was not the holder of a practising certificate or temporary practising certificate, or was suspended from practice in some or all capacities, is sufficient evidence of the matter stated in it.

*Regulations*

**48 Regulations**

The Queen's Representative may, by Order in Executive Council, on the recommendation of the Minister of Justice made after consultation with the Chief Justice and the council of the Law Society, make regulations for all or any of the following purposes:

- (a) prescribing or providing for the approval of forms to be used for the purposes of this Act:
- (b) providing processes relating to admission:
- (c) prescribing requirements relating to applications for practising certificates and temporary practising certificates, and for the issuing of certificates:
- (d) prescribing matters for which fees, other than fees set by the Law Society, are payable under this Act and the amounts of those fees:
- (e) providing for exemptions from, or the waiver or refund of, any fees set by the Law Society or prescribed under paragraph (d), in whole or in part, in any particular case or class of cases on prescribed grounds:
- (f) prescribing, for the purposes of Part 3,—
  - (i) how a complaint can be made about a lawyer or law practice; and
  - (ii) the procedure to be followed by the Registrar on receiving a complaint:
- (g) regulating the procedures and operation of the Law Society:

- (h) providing for the manner in which claims against the Fidelity Fund are to be received and determined for the purpose of section 46:
- (i) providing for the manner in which the Fidelity Fund is to be wound up and its assets distributed:
- (j) providing for the establishment, maintenance, and use of funds held in the Law Society's community account:
- (k) prescribing offences for a breach of regulations made under this Act and fines not exceeding \$10,000 for those offences:
- (l) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

*Transitional and repeal provisions*

**49 Transitional and savings provisions**

- (1) Practising certificates and temporary practising certificates granted under the former Act that are current immediately before the commencement of this section continue in force until the close of 31 January following their date of issue, and the holder may renew the practising certificate or temporary practising certificate as if it had been issued under this Act.
- (2) Any application for admission or for a practising certificate or temporary practising certificate that was received before the commencement of this Act may, after this Act comes into force, be treated as if the application had been made under this Act.
- (3) Every person who was a member of the Law Society immediately before the commencement of this Act remains as a member after commencement until he or she ceases to be a member in accordance with this Act.
- (4) Officers of the Law Society who hold office immediately before the commencement of this Act continue in office as members of the council of the Society for the remainder of their terms of office, as if elected or appointed under this Act.

**50 Enactments repealed**

The following enactments are repealed:

- (a) the Law Practitioners Act 1993-94:
- (b) the Law Practitioners Amendment Act 2008:
- (c) the Law Practitioners (Admission) regulations 1994.

## Schedule Code of Ethics of practitioners

### *Fundamental duties*

- 1 Paramount duty to court and administration of justice**  
A practitioner's duty to the court in its administration of justice is paramount and prevails to the extent that it is inconsistent with any other duty in this code.
- 2 Other fundamental duties**
- (1) A practitioner must also—
- (a) act in the best interests of a client in any matter in which the practitioner represents the client; and
  - (b) be honest and courteous in all dealings in the course of legal practice; and
  - (c) deliver legal services competently, diligently, and as promptly as is reasonably possible; and
  - (d) avoid any compromise to the practitioner's integrity and professional independence; and
  - (e) comply with this code and the law.
- (2) It is a fundamental principle that every practitioner who holds himself or herself out as being available to appear in court has a duty not to refuse instructions to appear in a class of case or matter in which he or she professes to practise on the ground that he or she disapproves of his or her client, of the client's conduct, or of the cause.
- (3) In particular, the practitioner has an obligation not to refuse the instructions either because the client or the cause is unpopular or because acceptance of the brief may, in the eyes of people who do not understand the obligation of the practitioner, cause criticism on that account.
- 3 Dishonest and disreputable conduct**  
A practitioner must not engage in conduct, in the course of practice or otherwise, that—
- (a) demonstrates that the practitioner is not a fit and proper person to practise law; or
  - (b) is likely to a material degree to—
    - (i) be prejudicial to, or diminish the public confidence in, the administration of justice; or
    - (ii) bring the legal profession into disrepute.
- 4 Undertakings**
- (1) A practitioner who has given an undertaking in the course of legal practice must honour that undertaking without qualification, and in accordance with its terms, and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.

- (2) A practitioner must not seek from another practitioner, or that practitioner's employee, associate, or agent, any undertakings in respect of a matter that would require the co-operation of a third party who is not party to the undertaking.

## **5 Communication of advice**

- (1) A practitioner must provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement.
- (2) A practitioner must inform the client or the instructing practitioner about the alternatives to fully contested adjudication of the client's case that are reasonably available to the client, unless the practitioner believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the litigation.

## **6 Client instructions**

- (1) A practitioner must follow a client's lawful, proper, and competent instructions.
- (2) A practitioner must not refuse to accept instructions without good cause.
- (3) In this clause, **good cause** includes a lack of time, the instructions falling outside the practitioner's normal field of practice, instructions that could require the practitioner to breach any professional obligation, and the unwillingness or inability of the prospective client to pay the normal fee of the practitioner concerned for the relevant work.
- (4) A practitioner must only withdraw from a matter if permitted to do so under clause 11.
- (5) It is improper for a practitioner to accept a case unless he or she can handle it promptly and with due competence, and without undue interference by the pressure of work.

## **7 Confidentiality**

- (1) A practitioner must not disclose any information that is confidential to a client and acquired by the practitioner during the client's engagement if the disclosure is to any person who is not—
  - (a) a practitioner who is a partner, principal, director, or employee of the practitioner's law practice; or
  - (b) a barrister or an employee of, or a person otherwise engaged by, the practitioner's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client.
- (2) However, disclosure of the information is permitted if—
  - (a) the client expressly or impliedly authorises disclosure; or
  - (b) the practitioner is permitted or is compelled by law (including by this code) to disclose it; or
  - (c) the practitioner discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the practitioner's legal or ethical obligations; or
  - (d) the practitioner discloses the information for the sole purpose of avoiding the probable commission of a serious criminal 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 to the insurer of the practitioner, law practice, or associated entity.
- (3) A practitioner is not required or permitted to disclose correspondence between the practitioner and any other person if the correspondence is marked “without prejudice”, unless production is required to enforce an agreed settlement.

## **8 Conflicts concerning former clients**

- (1) Practitioners and law practices must avoid conflicts between the duties owed to current and former clients, except as permitted by subclause (2).
- (2) A practitioner or law practice in possession of confidential information of a former client where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, must not act for the current client in that matter unless—
- (a) the former client has given informed written consent to the practitioner or law practice so acting; or
  - (b) an effective information barrier has been established.
- (3) An information barrier is effective when, in all the circumstances, there is a negligible risk that the confidential information in respect of the former client will be or has been disclosed to the new client or to any practitioner acting for the new client.

## **9 Conflicts concerning current clients**

- (1) Practitioners and law practices must avoid conflicts between the duties owed to 2 or more current clients.
- (2) Subclause (1) is subject to subclauses (3) to (6).
- (3) If a practitioner or law practice seeks to act for 2 or more clients in the same or related matters where the clients’ interests are adverse and there is a conflict or potential conflict of the duties to act in the best interests of each client, the practitioner or law practice must not act, except as permitted by subclause (4).
- (4) If a practitioner or law practice seeks to act in the circumstances specified in subclause (3), the practitioner may, subject always to each practitioner discharging their duty to act in the best interests of their client, only act if each client—
- (a) is aware that the practitioner or law practice is also acting for another client; and
  - (b) has given informed consent to the practitioner or law practice so acting.
- (5) In addition to the requirements of subclause (4), if a practitioner or law practice is in possession of confidential information of a client (the **first client**) that might reasonably be concluded to be material to another client’s current matter and detrimental to the interests of the first client if disclosed, there is a conflict of duties and the practitioner and the practitioner’s law practice must not act for the other client, except as follows—
- (a) a practitioner may act where there is a conflict of duties arising from the possession of confidential information, so long as each client has given informed consent to the practitioner acting for another client:

- (b) a law practice (and the practitioners concerned) may act where there is a conflict of duties arising from the possession of confidential information, so long as an effective information barrier has been established.
- (6) An information barrier is **effective** when, in all the circumstances, there is a negligible risk that confidential information in respect of a client will be or has been disclosed to another client or to any practitioner acting for the other client.
- (7) If a practitioner or law practice acts for more than 1 client in a matter and, during the course of the conduct of that matter, an actual conflict arises between the duties owed to 2 or more of those clients, the practitioner or law practice may only continue to act for 1 of the clients (or a group of clients between whom there is no conflict) so long as the duty of confidentiality to other clients is not put at risk and the parties have given informed consent.

**10 Conflict concerning practitioner’s own interests**

- (1) A practitioner must not act for a client if there is a conflict between the duty to serve the best interests of the client and the interests of the practitioner or an associate of the practitioner.
- (2) Subclause (1) is subject to subclauses (3) to (5).
- (3) A practitioner must not exercise any undue influence intended to induce the client to benefit the practitioner in excess of the practitioner’s fair remuneration for legal services provided to the client.
- (4) A practitioner must not borrow any money, nor assist an associate 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 on the advice of the practitioner or of the practitioner’s law practice in relation to the investment of money, unless the client is—
    - (i) an authorised deposit-taking institution; or
    - (ii) a trustee company; or
    - (iii) an associate of the practitioner and the practitioner is able to discharge the onus of proving that a full written disclosure was made to the client and that the client’s interests are protected in the circumstances, whether by legal representation or otherwise; or
    - (iv) the employer of the practitioner.
- (5) A practitioner does not breach subclause (1), (3), or (4) merely by—
  - (a) drafting a will appointing the practitioner or an associate of the practitioner as executor, so long as the practitioner informs the client in writing before the client signs the will—
    - (i) of any entitlement of the practitioner, or of the practitioner’s law practice or associate, to claim executor’s commission; and
    - (ii) of the inclusion in the will of any provision entitling the practitioner, or the practitioner’s law practice or associate, to charge legal costs in relation to the administration of the estate; and

- (iii) if the practitioner or the practitioner’s law practice or associate has an entitlement to claim commission, that the client could appoint as executor a person who might make no claim for executor’s commission; or
- (b) drafting a will or other instrument under which the practitioner (or the practitioner’s law practice or associate) will or may receive a substantial benefit other than any proper entitlement to executor’s commission and proper fees, so long as the person instructing the practitioner—
  - (i) is a member of the practitioner’s immediate family; or
  - (ii) is a practitioner, or a member of the immediate family of a practitioner, who is a partner, an employer, or an employee of the practitioner who is drafting the will or other instrument; or
- (c) receiving a financial benefit from a third party in relation to any dealing where the practitioner represents a client, or from another service provider to whom a client has been referred by the practitioner, so long as the practitioner advises the client—
  - (i) that a commission or benefit is or may be payable to the practitioner in respect of the dealing or referral and the nature of that commission or benefit; and
  - (ii) that the client may refuse any referral; and
  - (iii) the client has given informed consent to the commission or benefit received or which may be received; or
- (d) acting for a client in any dealing in which a financial benefit may be payable to a third party for referring the client, so long as the practitioner has first disclosed the payment or financial benefit to the client.

**11 Completion or termination of engagement**

A practitioner with designated responsibility for a client’s matter must ensure completion of the legal services for that matter unless—

- (a) the client has otherwise agreed; or
- (b) the practitioner or law practice is discharged from the engagement by the client; or
- (c) the practitioner or law practice terminates the engagement for just cause and on reasonable notice; or
- (d) the engagement comes to an end by operation of law.

**12 Client documents**

(1) This clause applies on completion or termination of a law practice’s engagement where the practice holds documents for or relating to—

- (a) a client or former client; or
- (b) another person authorised by the client or former client.

(2) If this clause applies, the practitioner with designated responsibility for the client’s matter must ensure that any client or other person referred to in subclause (1) is given any client documents (or if they are electronic documents, copies of those documents) as soon as is reasonably possible when requested to do so by the client, unless there is an effective lien.

## *Advocacy and litigation*

### **13 Independence**

- (1) A practitioner representing a client in a matter that is before the court must not act as the mere mouthpiece of the client or of the instructing practitioner (if any) and must exercise the judgments called for during the case independently, after the appropriate consideration of the client's and the instructing practitioner's instructions (if applicable).
- (2) A practitioner does not breach the practitioner's duty to the client, and does not fail to give appropriate consideration to the client's or the instructing practitioner's instructions, merely by choosing, contrary to those instructions, to exercise the forensic judgments called for during the case so as to—
  - (a) confine any hearing to those issues that the practitioner believes to be the real issues; or
  - (b) present the client's case as quickly and simply as may be consistent with its robust advancement; or
  - (c) inform the court of any persuasive authority against the client's case.

### **14 Formality before court**

A practitioner must not, in the presence of any of the parties, members of the public, court staff, or practitioners, deal with the court on terms of informal personal familiarity which may reasonably give the appearance that the practitioner has special favour with the court.

### **15 Frankness in court**

- (1) A practitioner must not deceive or knowingly or recklessly mislead the court.
- (2) A practitioner must take all necessary steps to correct any misleading statement made by the practitioner to the court as soon as possible after the practitioner becomes aware that the statement was misleading.
- (3) A practitioner does not make a misleading statement to the court simply by failing to correct an error in a statement made to the court by the opponent or any other person.
- (4) A practitioner seeking any interlocutory relief in an application made without notice must disclose to the court all relevant factual or legal matters that—
  - (a) are within the practitioner's knowledge; and
  - (b) are not protected by legal professional privilege; and
  - (c) the practitioner has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.

### **16 Communication with opponents**

- (1) A practitioner must not knowingly make a false statement of facts to an opponent in relation to a case (including its compromise).
- (2) A practitioner must take all necessary steps to correct any false statement of facts made by the practitioner to an opponent as soon as possible after the practitioner becomes aware that the statement was false.

- (3) A practitioner does not make a false statement of facts to the opponent simply by failing to correct an error on any matter stated to the practitioner by the opponent.
- (4) As soon as possible after the practitioner has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, the practitioner must take steps to inform the opponent of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly.

#### **17 Opposition access to witnesses**

- (1) A practitioner must not take any steps to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in the proceedings.
- (2) A practitioner does not breach subclause (1) merely by—
  - (a) telling a prospective witness or a witness that he or she need not agree to confer or to be interviewed; or
  - (b) advising about relevant obligations of confidentiality.

#### **18 Integrity of evidence**

- (1) A practitioner must not—
  - (a) advise or suggest to a witness that false or misleading evidence should be given or condone another person doing so; or
  - (b) coach a witness by advising what answers the witness should give to questions that might be asked.
- (2) A practitioner does not breach subclause (1) merely by—
  - (a) expressing a general admonition to tell the truth; or
  - (b) questioning and testing in conference the version of evidence to be given by a prospective witness; or
  - (c) drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not encourage the witness to give evidence different from the evidence which the witness believes to be true.

#### **19 Practitioner as material witness in client's case**

- (1) A practitioner may not appear as an advocate for a client in a hearing if it is known, or becomes apparent, that—
  - (a) the practitioner will be required to give evidence material to the determination of contested issues before the court; or
  - (b) the practitioner will become a witness because the lawyer's documents are produced as exhibits in circumstances where the contents of the documents are relevant to the issues in dispute and are subject to interpretation on the disputed issues.
- (2) However, in a case referred to in subclause (1), the practitioner, an associate of the practitioner, or a law practice of which the practitioner is a member may act or continue to act for the client unless doing so would prejudice the administration of justice.

**20 Public comment during current proceedings**

A practitioner must not publish, in any medium, or take steps towards the publication of any material concerning current proceedings that may prejudice a fair trial or the administration of justice.

**21 Prosecutor's duties**

(1) A prosecutor must—

- (a) fairly assist the court to arrive at the truth; and
- (b) seek impartially to have the whole of the relevant evidence placed intelligibly before the court; and
- (c) seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

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

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

(4) A prosecutor must not argue any proposition of fact or law that the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

(5) A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor, or of which the prosecutor becomes aware, that could constitute evidence relevant to the guilt or innocence of the accused other than material subject to statutory immunity, unless the prosecutor believes on reasonable grounds that such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person.

*Miscellaneous duties and obligations*

**22 Unfounded allegations**

A practitioner must not make an allegation against another practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the practitioner believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

**23 Communication with another practitioner's client**

A practitioner must not deal directly, in a professional capacity, with the client or clients of another practitioner unless—

- (a) the other practitioner has previously consented; 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 opponent's client; or
- (c) the substance of the dealing is solely to inquire whether the other party or parties to a matter are represented and, if so, by whom; or

- (d) there is notice of the practitioner's intention to communicate with the other party or parties, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with contact; or
- (e) the practitioner has received email correspondence from the other practitioner who has copied their clients into the email.

**24 Dealing with other persons**

- (1) A practitioner must not, in any action or communication associated with representing a client,—
  - (a) make any statement which grossly exceeds the legitimate assertion of the rights or entitlements of the practitioner's client, and that misleads or intimidates the other person; or
  - (b) threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the practitioner's client is not satisfied; or
  - (c) use tactics that go beyond legitimate advocacy and that are primarily designed to embarrass or frustrate another person.
- (2) In the conduct or promotion of a practitioner's practice, the practitioner must not seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the practitioner at the time when the instructions are sought.

**25 Contracting with third parties**

If a practitioner instructs a third party on behalf of the client, and the practitioner is not intending to accept personal liability for payment of the third party's fees, the practitioner must advise the third party in advance.

**26 Assistance to clients outside Cook Islands**

- (1) A practitioner who undertakes to assist a foreign colleague must always keep in mind that the foreign colleague has to depend on him or her to a much larger extent than in the case of another practitioner of the same country.
- (2) A practitioner's responsibility to a foreign colleague is even greater than his or her responsibility to a local colleague, both when giving advice and when handling a case.

**27 Payment of charges of foreign colleagues**

- (1) A practitioner who engages a foreign colleague to advise on a case or to cooperate in handling it is responsible for the payment of the foreign colleague's charges, in the absence of express agreement to the contrary.
- (2) When a practitioner directs a client to a foreign colleague, the practitioner is not responsible for the payment of the foreign colleague's charges, but neither is he or she entitled to a share of the fee of the foreign colleague.

**28 Soliciting for business**

- (1) A practitioner must never solicit business and must never consent to handle a case other than at the direct request of the party concerned, unless the practitioner is satisfied that the person making the request is authorised by the party concerned to do so.
- (2) However, it is proper for a practitioner to handle a case that is—
  - (a) assigned to him or her by the High Court or a tribunal; or
  - (b) forwarded to him or her by another practitioner.

**29 Settlements out of court**

- (1) A practitioner must, when acting in the client's interests, endeavour to reach a solution by settlement out of court rather than by initiating legal proceedings.
- (2) A practitioner must never stir up litigation.
- (3) Nothing in this clause prevents a practitioner from using his or her name, or that of a law practice, in the course of sponsoring a local sports team or other community initiative.

**30 Financial interests in subject matter of case**

- (1) A practitioner must not directly or indirectly acquire a financial interest in the subject matter of a case or matter that he or she is conducting.
- (2) A practitioner must not directly or indirectly acquire or seek to acquire property about which litigation is pending before the court in which he or she practises.

**31 Retaining funds**

A practitioner must not retain money he or she has received for his or her client for longer than is absolutely necessary.

**32 Requiring deposits**

- (1) A practitioner may require that a deposit is made to cover his or her expenses, but the deposit must be in accordance with the estimated amount of his or her charges and the payable expenses and labour required.
- (2) A practitioner's right to ask for a deposit or to demand payment for his or her services, failing which he or she may withdraw from a case or refuse to handle it, must never be exercised at a moment when the client or prospective client may be unable to find other assistance in time to prevent irreparable damage being done.

**33 Fees**

The practitioner's fees must be fixed on a consideration of the amount involved in or the magnitude of the controversy or matter, and the interest and importance of it to the client, the time and labour involved, the reasonable overheads and degree of experience of the practitioner, and all other personal factual circumstances prevailing.

**34 Practitioners not to allow legal work to be done by unauthorised persons**

A practitioner must not permit his or her professional services or his or her name to be used in any way that would make it possible for persons who are not legally authorised to do so to practise law.

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