

Excerpts

The Law Society of New South Wales Professional Conduct and Practice Rules Legal Profession Act 1987

The Revised Professional Conduct and Practice Rules 1995 commenced on 11 December, 1995.

The Revised Professional Conduct and Practice Rules 1995 were made by the Council of the Law Society of New South Wales, pursuant to its power under section 57B of the Legal Profession Act 1987, on 24 August, 1995.

The Rules replaced those Rules published in the Government Gazette of Friday, 10 June, 1994 and the amendments to those rules subsequently made and published prior to 24 August, 1995.

Introduction

With the exception of the Rules headed “Advocacy Rules”, which have specific application to advocates, the Rules which follow apply principally to legal practitioners practising as solicitors, or as barristers and solicitors. The Rules incorporate, with appropriate amendments applicable to the practice of solicitors in New South Wales, the National Model Rules of Professional Conduct and Practice approved in principle by the Law Council of Australia.

The term “practitioner” is used throughout to refer to persons practising as solicitors, or as barristers, or as barristers and solicitors. The Advocacy Rules apply to all legal practitioners when engaged in advocacy, whether or not their predominant style of practice is that of a solicitor or a barrister.

The Rules are divided into five categories under the following headings:

1. Relations with clients
2. Duties to the court
3. Relations with other lawyers
4. Relations with third parties
5. Legal practice

Each of categories 1 to 4 is preceded by a statement of general principle, which is not intended to constitute by itself a Rule, but is intended to describe the underlying principles and objectives of the Rules which follow.

Definitions

“Associate”

a reference to an associate of a practitioner is a reference to –

- (a) a partner, employee, or agent, of the practitioner;
- (b) a corporation or partnership in which the practitioner has a significant beneficial interest;
- (c) in the case of a solicitor corporation, a subsidiary corporation;
- (d) a member of the practitioner’s immediate family.

“costs”

a reference to costs, unless the context of a rule indicates a contrary intention, includes disbursements.

“immediate family”

means the spouse (which expression may include a de facto spouse or partner of the same sex), or a child, grandchild, sibling, parent or grandparent of a practitioner.

“practitioner”

means a legal practitioner who holds a current practising certificate as a barrister and solicitor, as a solicitor or as a barrister, and includes a practitioner corporation.

For the purposes only of the application of the Advocacy Rules, the following definitions apply:

“case”

means the litigation or proceedings in which the practitioner in question is retained or intending to appear, or the dispute in which the practitioner is advising, as the case may be.

“client”

(for the purposes of the Advocacy Rules) means the client of the practitioner in question and includes a professional acting as such and in Rules A.32, A.34 and A.46 includes those officers, servants or agents of a client, which is not a natural person, who are responsible for or involved in giving instructions on behalf of the client.

“compromise”

includes any form of settlement of the case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

“court”

means any body described as such and all other tribunals exercising judicial, or quasi- judicial, functions, and includes professional disciplinary tribunals, industrial and administrative, statutory or Parliamentary investigations and inquiries, Royal Commissions, arbitrations and mediations.

“current proceedings”

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

“forensic judgments”

do not include decisions as to the commencement of proceedings, the joinder of parties, admissions or concessions of fact, amendments of pleadings or undertakings to a court, or in criminal proceedings as to a plea, but do include advice given to assist the client or the instructing practitioner to make such decisions.

“insurance company”

in Rules 18 and A.55 includes any entity, whether statutory or otherwise, which performs the function of indemnifying in any way civil defendants.

“opponent”

means the practitioner appearing for the party opposed to the client, or the party opposed to the client if that party is unrepresented.

“order”

includes a judgment, decision or determination.

“prosecutor”

means a practitioner who appears for the complainant or Crown in criminal proceedings.

Relations with clients – Rules 1-16

Statement of Principle for Rules 1-16

Practitioners should serve their clients competently and diligently. They should be acutely aware of the fiduciary nature of the relationship with their clients, and always deal with their clients fairly, free of the influence of any interest which may conflict with a client's best interests. Practitioners should maintain the confidentiality of their clients' affairs, but give their clients the benefit of all information relevant to their clients' affairs of which they have knowledge. Practitioners should not, in the service of their clients, engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

1 -Acceptance of retainer – Instructions to act or provide a legal service

- 1.1 A practitioner must act honestly, fairly, and with competence and diligence in the service of a client, and should accept instructions, and a retainer to act for a client, only when the practitioner can reasonably expect to serve the client in that manner and attend to the work required with reasonable promptness.
- 1.2 For the purposes of section 181 of the Act, the circumstances in which a practitioner need not disclose the costs information prescribed by sections 175 and 177, on the grounds that it would not be reasonable to require disclosure, include, but are not limited to, those circumstances:
 - 1.2.1 when a practitioner receives instructions from, or is consulted by, a person who seeks the provision of a legal service which can be, or needs to be, performed immediately or soon after instructions for it are given, and there is no reasonably practicable opportunity to disclose the prescribed information in writing before the practitioner has performed all, or a significant part, of the legal services required; or
 - 1.2.2 when the costs, excluding disbursements, to be charged by a practitioner are, or are reasonably estimated to be:
 - (i) where the client is an individual or a private company, no more than \$750:
and
 - (ii) where the client is a public company, a subsidiary of a public company, a foreign company, a registered Australian body (within the meaning of the Corporations Law), a Minister acting in his or her capacity as such, a government department or a public authority, no more than \$1500;and the client has been advised that costs excluding disbursements will not exceed this amount.
- 1.3 For the purposes of section 181 of the Act, the circumstances in which a practitioner need not disclose the amount, or an estimate of the amount, of the costs to be charged by the practitioner, on the grounds that it would not be reasonable to require that disclosure, will include those circumstances:
 - 1.3.1 when a practitioner has –
 - [a] Agreed to provide to a client legal services, as they are specified and required by the client, and charge for them at a declared rate, or on an agreed basis; and

[b] disclosed to the client the intended billing arrangements and the other information prescribed by section 175 of the Act ;

and the agreement continues in force; or

- 1.3.2 when the calculation or estimation of the total costs of anticipated legal services are contingent on facts or events, not presently ascertainable by the practitioner, and the practitioner has disclosed, and continues to disclose, the costs estimated to be charged up to a particular time or event specified by the practitioner provided that the practitioner discloses the amount, or an estimate of the amount, of the total costs to be charged as soon as it is practicable to do so.

2. Confidentiality ...

3. Acting against a former client ...

4. Practitioners employed otherwise than by a practitioner

A practitioner, who is employed by a corporation (not being a solicitor corporation) or by any other person who is not a practitioner, must not, despite any contrary direction from the practitioner's employer, act as a practitioner in the performance of any legal work or service in breach of any of the provisions of the Legal Profession Act 1987 or these Rules.

5. Termination of retainer ...

- 5.1 A practitioner must complete the work or legal service required by the practitioner's retainer, unless –
- 5.1.1 the practitioner and the practitioner's client have otherwise agreed;
 - 5.1.2 the practitioner is discharged from the retainer by the client; or
 - 5.1.3 the practitioner terminates the retainer for just cause, and on reasonable notice to the client.
- 5.2 ...

9. Acting for more than one party

- 9.1 For the purposes of Rules 9.2 and 9.3 –
- “proceedings or transaction” mean any action or claim at law or in equity, or any dealing between parties, which may affect, create, or be related to, any legal or equitable right or entitlement or interest in property of any kind.
- “party” includes each one of the persons or corporations who, or which, is jointly a party to any proceedings or transaction.
- “practitioner” includes a practitioner's partner or employee and a practitioner's firm.
- 9.2 A practitioner who intends to accept instructions from more than one party to any proceedings or transaction must be satisfied, before accepting a retainer to act, that each

of the parties is aware that the practitioner is intending to act for the others and consents to the practitioner so acting in the knowledge that the practitioner:

- (a) may be, thereby, prevented from –
 - (i) disclosing to each party all information, relevant to the proceedings or transaction, within the practitioner's knowledge, or,
 - (ii) giving advice to one party which is contrary to the interests of another;
and
- (b) will cease to act for all parties if the practitioner would, otherwise, be obliged to act in a manner contrary to the interests of one or more of them.

9.3 If a practitioner, who is acting for more than one party to any proceedings or transaction, determines that the practitioner cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of them, the practitioner must thereupon cease to act for all parties.

10. Avoiding a conflict between a client's and a practitioner's own interest

10.1 A practitioner must not, in any dealings with a client –

10.1.1 allow the interests of the practitioner or an associate of the practitioner to conflict with those of the client;

10.1.2 exercise any undue influence intended to dispose the client to benefit the practitioner in excess of the practitioner's fair remuneration for the legal services provided to the client;

10.2 A practitioner must not accept instructions to act for a person in any proceedings or transaction affecting or related to any legal or equitable right or entitlement or interest in property, or continue to act for a person engaged in such proceedings or transaction when the practitioner is, or becomes, aware that the person's interest in the proceedings or transaction is, or would be, in conflict with the practitioner's own interest or the interest of an associate.

11. Receiving a benefit under a will or other instrument...

Practitioner's Duties to the Court – Rules 17-24

Statement of Principles for Rules 17-24

Practitioners, in all their dealings with the courts, whether those dealings involve the obtaining and presentation of evidence, the preparation and filing of documents, instructing an advocate or appearing as an advocate, should act with competence, honesty and candour. Practitioners should be frank in their responses and disclosures to the Court, and diligent in their observance of undertakings which they give to the Court or their opponents.

17. Preparation of affidavits

17.1 If a practitioner is:

17.1.1 aware that a client is withholding information required by an order or rule of a court, with the intention of misleading the court; or

17.1.2 informed by a client that an affidavit, of the client, filed by the practitioner, is false in a material particular;

and the client will not make the relevant information available, or allow the practitioner to correct the false evidence; the practitioner must, on reasonable notice, terminate the retainer and, without disclosing the reasons to the court, give notice of the practitioner's withdrawal from the proceedings.

17.2 A practitioner must not draw an affidavit alleging criminality, fraud, or other serious misconduct unless the practitioner believes on reasonable grounds that:

17.2.1 factual material already available to the practitioner provides a proper basis for the allegation;

17.2.2 the allegation will be material and admissible in the case, as to an issue or as to credit; and

17.2.3 the client wishes the allegation to be made after having been advised of the seriousness of the allegation.

18. Duty not to influence witnesses

A practitioner must not, in relation to any matter or event which is the subject of adversarial proceedings before a Court, confer with or interview:

18.1 the opposing party in the proceedings including a person who may be represented or indemnified in the proceedings by an insurance company; or

18.2 where the opposing party, or a prospective opposing party, is a corporation, any person authorised to make admissions on behalf of the corporation, or to direct the conduct of the proceedings; unless –

- 18.3 the other person, if unrepresented by a practitioner, has been fully informed of the practitioner's purpose in conducting the interview, has been advised to seek and has had the opportunity of obtaining independent legal advice; or
- 18.4 the practitioner acting for the other person has agreed to the interview on conditions which may include the conduct of the interview in the presence of the practitioners for both parties.

19. Practitioner a material witness in client's case

A practitioner must not appear as an advocate and, unless there are exceptional circumstances justifying the practitioner's continuing retainer by the practitioner's client, the practitioner must not act, or continue to act, in a case in which it is known, or becomes apparent, that the practitioner will be required to give evidence material to the determination of contested issues before the court.

20. Admission of guilt

- 20.1 If a practitioner's client, who is the accused or defendant in criminal proceedings, admits to the practitioner before the commencement of, or during, the proceedings, that the client is guilty of the offence charged, the practitioner must not, whether acting as instructing practitioner or advocate –
- 20.1.1 put a defence case which is inconsistent with the client's confession;
 - 20.1.2 falsely claim or suggest that another person committed the offence; or
 - 20.1.3 continue to act if the client insists on giving evidence denying guilt or requires the making of a statement asserting the client's innocence.
- 20.2 A practitioner may continue to act for a client who elects to plead "not guilty" after admitting guilt to the practitioner, and in that event, the practitioner must ensure that the prosecution is put to proof of its case, and the practitioner may argue that the evidence is insufficient to justify a conviction or that the prosecution has otherwise failed to establish the commission of the offence by the client.

21. Admission of perjury

If a practitioner's client admits to the practitioner, during or after any proceedings, while judgment is reserved, that the client has given materially false evidence or tendered a false or misleading document in the proceedings, the practitioner must –

- 21.1 advise the client that the Court should be informed of the false evidence, and request the client's authority to inform the Court and correct the record; and
- 21.2 if the client refuses to provide that authority, withdraw from the proceedings immediately, and terminate the retainer.

22. Bail

- 22.1 A practitioner must not promote, or be a party to, any arrangement whereby the bail provided by a surety is obtained by using the money of the accused person, or by which the surety is given an indemnity by the accused person or a third party acting on behalf of the accused person.
- 22.2 A practitioner must not become the surety for the practitioner's client's bail.

23. Advocacy Rules

Rules A.15 to A.72 apply to all legal practitioners (whatever may be their predominant style of practice) when they are acting as advocates. The term "practitioner" is used throughout these Rules to refer to legal practitioners acting as advocates whether they are persons who practise only as barristers, or persons, who practise as solicitors, or as barristers and solicitors.

Efficient administration of justice

- A.15 A practitioner must ensure that:
- (a) the practitioner does work which the practitioner is retained to do, whether expressly or impliedly, specifically or generally, in relation to steps to be taken by or on behalf of the client, in sufficient time to enable compliance with orders, directions, rules or practice notes of the court; and
 - (b) warning is given to any instructing practitioner or the client, and to the opponent, as soon as the practitioner has reasonable grounds to believe that the practitioner may not complete any such work on time,
- A.15A A practitioner must seek to ensure that work which the practitioner is retained to do in relation to a case is done so as to:
- (a) confine the case to identified issues which are genuinely in dispute;
 - (b) have the case ready to be heard as soon as practicable;
 - (c) present the identified issues in dispute clearly and succinctly
 - (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.
- A.15B A practitioner must take steps to inform the opponent 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, of the fact and the grounds of the application, and must try with the opponent's consent to inform the court of that application promptly.

Duty to a client

- A.16 A practitioner must seek to advance and protect the client's interests to the best of the practitioner's skill and diligence, uninfluenced by the practitioner's personal view of the client or the client's activities, and notwithstanding any threatened unpopularity or criticism of the practitioner or any other person, and always in accordance with the law including these Rules.
- A.17 A practitioner must seek to assist the client to understand the issues in the case and the client's possible rights and obligations, if the practitioner is instructed to give advice on any such matter, sufficiently to permit the client to give proper instructions, particularly in connexion with any compromise of the case.
- A.17A A practitioner must inform the client or the instructing practitioner about the alternatives to fully contested adjudication of the case which 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.
- A.17B A practitioner must (unless circumstances warrant otherwise in the practitioner's considered opinion) advise a client who is charged with a criminal offence about any law, procedure or practice which in substance holds out the prospect of some advantage (including diminution of penalty) if the client pleads guilty or authorises other steps towards reducing the issues, time, cost or distress involved in the proceedings.

Independence – Avoidance of personal bias

- A.18 A practitioner must not act as the mere mouthpiece of the client or of the instructing practitioner and must exercise the forensic judgments called for during the case independently, after appropriate consideration of the client's and the instructing practitioner's desires where practicable.
- A.19 A practitioner will not have breached the practitioner's duty to the client, and will not have failed to give appropriate consideration to the client's or the instructing practitioner's desires, simply by choosing, contrary to those desires, to exercise the forensic judgments called for during the case so as to:
- (a) confine any hearing to those issues which the practitioner believes to be the real issues;
 - (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.
- A.20 A practitioner must not make submissions or express views to a court on any material evidence or material issue in the case in terms which convey or appear to convey the practitioner's personal opinion on the merits of that evidence or issue.

Frankness in court

- A.21 A practitioner must not knowingly make a misleading statement to a court on any matter.

- A.22 A practitioner must take all necessary steps to correct any misleading statement made by the practitioner to a court as soon as possible after the practitioner becomes aware that the statement was misleading.
- A.23 A practitioner will not have made a misleading statement to a court simply by failing to correct an error on any matter stated to the court by the opponent or any other person.
- A.24 A practitioner seeking any interlocutory relief in an ex parte application must disclose to the court all matters which:
- (a) are within the practitioner's knowledge;
 - (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.
- A.24A A practitioner who has knowledge of matters which are within Rule A.24(c):
- (a) must seek instructions for the waiver of legal professional privilege if the matters are protected by that privilege, so as to permit the practitioner to disclose those matters under Rule A.24; and
 - (b) if the client does not waive the privilege as sought by the practitioner:
 - (i) must inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and
 - (ii) must inform the court that the practitioner cannot assure the court that all matters which should be disclosed have been disclosed to the court.
- A.25 A practitioner must, at the appropriate time in the hearing of the case and if the court has not yet been informed of that matter, inform the court of:
- (a) any binding authority;
 - (b) any authority decided by the Full Court of the Federal Court of Australia, a Court of Appeal of a Supreme Court or a Full Court of a Supreme Court;
 - (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; which the practitioner has reasonable grounds to believe to be directly in point, against the client's case.
- A.26 A practitioner need not inform the court of matters within Rule A.25 at a time when the opponent tells the court that the opponent's whole case will be withdrawn or the opponent will consent to final judgment in favour of the client, unless the appropriate time for the practitioner to have informed the court of such matters in the ordinary course has already arrived or passed.
- A.27 A practitioner who becomes aware of a matter within Rule A.25 after judgment or decision has been reserved and while it remains pending, whether the authority or legislation came into existence before or after argument, must inform the court of that matter by:

- (a) a letter to the court, copied to the opponent, and limited to the relevant reference unless the opponent has consented beforehand to further material in the letter; or
 - (b) requesting the court to re-list 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.
- A.28 A practitioner need not inform the court of any matter otherwise within Rule A.25 which would have rendered admissible any evidence tendered by the prosecution which the court has ruled inadmissible without calling on the defence.
- A.29 A practitioner will not have made a misleading statement to a court simply by failing to disclose facts known to the practitioner concerning the client's character or past, when the practitioner makes other statements concerning those matters to the court, and those statements are not themselves misleading.
- A.30 A practitioner who knows or suspects that the prosecution is unaware of the client's previous conviction must not ask a prosecution witness whether there are previous convictions, in the hope of a negative answer.
- A.31 A practitioner must inform the court in civil proceedings of any misapprehension by the court as to the effect of an order which the court is making, as soon as the practitioner becomes aware of the misapprehension.
- A.31A A practitioner must take all necessary steps to correct any express concession made to the court in civil proceedings by the opponent in relation to any material fact, case law or legislation:
- (a) only if the practitioner knows or believes on reasonable grounds that it was contrary to what should be regarded as the true facts or the correct state of the law;
 - (b) only if the practitioner believes the concession was in error; and
 - (c) not (in the case of a concession of fact) if the client's instructions to the practitioner support the concession.

Delinquent or guilty clients

- A.32 A practitioner whose client informs the practitioner, during a hearing or after judgment or decision is reserved and while it remains pending, 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:
- (a) must refuse to take any further part in the case unless the client authorises the practitioner to inform the court of the lie or falsification:
 - (b) must promptly inform the court of the lie or falsification upon the client authorising the practitioner to do so; but
 - (c) must not otherwise inform the court of the lie or falsification.
- A.33 A practitioner retained to appear in criminal proceedings whose client confesses guilt to the practitioner but maintains a plea of not guilty:

- (a) may cease to act, if there is enough time for another practitioner to take over the case properly before the hearing, and the client does not insist on the practitioner continuing to appear for the client;
- (b) in cases where the practitioner continues to act for the client:
 - (i) must not falsely suggest that some other person committed the offence charged;
 - (ii) must not set up an affirmative case inconsistent with the confession; but
 - (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged;
 - (iv) may argue that for some reason of law the client is not guilty of the offence charged; or
 - (v) may argue that for any other reason not prohibited by (i) and (ii) the client should not be convicted of the offence charged.

A.34 A practitioner whose client informs the practitioner that the client intends to disobey a court's order must:

- (a) advise the client against that course and warn the client of its dangers;
- (b) not advise the client how to carry out or conceal that course; but
- (c) 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 conduct constitutes a threat to any person's safety.

Responsible use of court process and privilege

A.35 A practitioner must, when exercising the forensic judgments called for throughout the case, take care to ensure that decisions by the practitioner or on the practitioner's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:

- (a) are reasonably justified by the material already available to the practitioner;
- (b) are appropriate for the robust advancement of the client's case on its merits;
- (c) are not made principally in order to harass or embarrass the person; and
- (d) are not made principally in order to gain some collateral advantage for the client or the practitioner or the instructing practitioner out of court.

A.36 A practitioner must not allege any matter of fact in:

- (a) any court document settled by the practitioner;
- (b) any submission during any hearing;

- (c) the course of an opening address; or
 - (d) the course of a closing address or submission on the evidence; unless the practitioner believes on reasonable grounds that the factual material already available provides a proper basis to do so.
- A.37 A practitioner must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the practitioner believes on reasonable grounds that:
- (a) available material by which the allegation could be supported provides a proper basis for it; and;
 - (b) the 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 case if it is not made out.
- A.38 A Practitioner must not make a suggestion in cross -examination on credit unless the practitioner believes on reasonable grounds that acceptance of the suggestion would diminish the witness's credibility.
- A.39 A practitioner may regard the opinion of the instructing practitioner that material which is available to the practitioner is credible, being material which appears to the practitioner from its nature to support an allegation to which Rules A.36 and A.37 apply, as a reasonable ground for holding the belief required by those rules (except in the case of a closing address or submission on the evidence).
- A.40 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 robust defence of the client.

Integrity of evidence

- A.43 A practitioner must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.
- A.44 A practitioner will not have breached Rule A.43 by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a prospective witness, including drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.
- A.45 (deleted)
- A.46 A practitioner must not confer with, or condone another practitioner conferring with, more than one lay witness (including a party or client) at the same time, about any issue:
- (a) as to which there are reasonable grounds for the practitioner to believe it may be contentious at a hearing; or
 - (b) which could be affected by, or may affect, evidence to be given by any of those witnesses.

- A.47 A practitioner will not have breached Rule A.46 by conferring with, or condoning another practitioner conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amend ments of pleadings or compromise.
- A.48 A practitioner must not confer with any witness (including a party or client) called by the practitioner on any matter related to the proceedings while that witness remains under cross-examination, unless:
- (a) the cross-examiner has consented beforehand to the practitioner doing so; or
 - (b) the practitioner:
 - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference;
 - (ii) has, if possible, informed the cross-examiner beforehand of the practitioner's intention to do so; and
 - (iii) otherwise does inform the cross-examiner as soon as possible of the practitioner having done so.
- A.49 A practitioner must not take any step to prevent or discourage prospective witnesses or witnesses from conferring with the opponent or being interviewed by or on behalf of any other person involved in the proceedings.
- A.50 A practitioner will not have breached Rule A.49 simply by telling a prospective witness or a witness that the witness need not agree to confer or to be interviewed.

Duty to opponent

- A.51 A practitioner must not knowingly make a false statement to the opponent in relation to the case (including its compromise).
- A.52 A practitioner must take all necessary steps to correct any false statement unknowingly made by the practitioner to the opponent as soon as possible after the practitioner becomes aware that the statement was false.
- A.53 A practitioner does not make a false statement to the opponent simply by failing to correct an error on any matter stated to the practitioner by the opponent.
- A.54 A practitioner must not deal directly with the opponent's client unless:
- (a) the opponent has previously consented;
 - (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 enquire whether the person is represented and, if so, by whom.
- A.55 (deleted)

- A.56 A practitioner must not, outside an ex-parte application or a hearing of which the opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connexion with current proceedings unless:
- (a) the court has first communicated with the practitioner in such a way as to require the practitioner to respond to the court; or
 - (b) the opponent has consented beforehand to the practitioner dealing with the court in a specific manner notified to the opponent by the practitioner.
- A.57 A practitioner must promptly tell the opponent what passes between the practitioner and a court in a communication referred to in Rule A.56.
- A.58 A practitioner must not raise any matter with a court in connexion with current proceedings on any occasion to which the opponent has consented under Rule A.56(b), other than the matters specifically notified by the practitioner to the opponent when seeking the opponent's consent.

Integrity of hearings

A.59 (deleted)

A.60 (deleted)

A.61 A practitioner must not in the presence of any of the parties or practitioners deal with a court, or deal with any practitioner appearing before the practitioner when the practitioner is a referee, arbitrator or mediator, on terms of informal personal familiarity which may reasonably give the appearance that the practitioner has special favour with the court or towards the practitioner.

Prosecutor's duties

A.62 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

A.63 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.

A.64 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

A.65 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

A.66 A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connexion with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:

- (a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and

- (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

A.66A A prosecutor who has decided not to disclose material to the opponent under Rule
A.66 must consider whether:

- (a) the defence of the accused could suffer by reason of such non-disclosure;
- (b) the charge against the accused to which such material is relevant should be withdrawn; and
- (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

A.66B A prosecutor must call as part of the prosecution's case all witnesses:

- (a) whose testimony is admissible & necessary for the presentation of the whole picture;
 - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
 - (c) whose testimony or statements were used in the course of any committal proceedings; and
 - (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case; unless:
 - (e) the opponent consents to the prosecutor not calling a particular witness;
 - (f) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
 - (g) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; provided that:
 - (h) the prosecutor is not obliged to call evidence from a particular witness, who would otherwise fall within (a)-(d), if the prosecutor believes on reasonable grounds that the testimony of that witness is plainly unreliable by reason of the witness being in the camp of the accused;
 - (i) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (f), (g) and (h), together with the grounds on which the prosecutor has reached that decision;
- and
- (j) the prosecutor must call any witness whom the prosecutor intends not to call on the grounds in (h) if the opponent requests the prosecutor to do so for the purpose of permitting the opponent to cross-examine that witness.

A.67 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

- (a) inform the opponent if the prosecutor intends to use the material; and
 - (b) make available to the opponent a copy of the material if it is in documentary form;
 - (c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.
- A.68 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
- A.69 A prosecutor must not inform the court or the 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.
- A.70 A prosecutor who has informed the court of matters within Rule A.69, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
- A.71 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
 - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
 - (c) must assist the court to avoid appealable error on the issue of sentence;
 - (d) may submit that a custodial or non-custodial sentence is appropriate; and
 - (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority,
- A.72 A practitioner who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules A.62, A.64 and A.65 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule A.64.

23A...

Relations with other practitioners – Rules 25-31A

Statement of Principles for Rules 25-31A

In all of their dealings with other practitioners, practitioners should act with honesty, fairness and courtesy, and adhere faithfully to their undertakings, in order to transact lawfully and competently the business which they undertake for their clients in a manner that is consistent with the public interest.

25. Communications

A practitioner, in all of the practitioner's dealings with other practitioners, must take all reasonable care to maintain the integrity and reputation of the legal profession by ensuring that the practitioner's communications are courteous and that the practitioner avoids offensive or provocative language or conduct.

26. Undertakings

A practitioner who, in the course of the practitioner's practice, communicates with another practitioner orally, or in writing, in terms which expressly, or by necessary implication, constitute an undertaking on the part of the practitioner, to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the other practitioner will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised, or, if no precise time limit is specified, within a reasonable time.

27. [Undertakings]

A practitioner must not give to another practitioner an undertaking compliance with which requires the co-operation of a third party, who is not a party to the undertaking, and whose co-operation cannot be guaranteed by the practitioner.

28. [Undertakings]

A practitioner must not, in the course of the practitioner's practice, seek from another practitioner or that practitioner's employee, an undertaking, compliance with which would require the co-operation of a third party who is not a party to the undertaking, and whose co-operation could not be guaranteed by the practitioner or employee asked to give the undertaking.

29. Taking over a matter from another practitioner..

31. Communicating with another practitioner's client

31.1 A practitioner who is acting on behalf of a party in any proceedings or transaction must not communicate directly with any other party for whom, to the practitioner's knowledge, another practitioner is currently acting, unless –

31.1.1 notice of the practitioner's intention to communicate with the other party, in default of a reply from the other practitioner, has been given to that practitioner, who has failed, after a reasonable time, to reply;

31.1.2 the communication is made for the sole purpose of informing the other party that the practitioner has been unable to obtain a reply from that party's practitioner, and requests that party to contact the practitioner; and

31.1.3 the practitioner, thereafter, notifies the other practitioner of the communication.

31.2 ...

Relations with third parties – Rules 32-36

Statement of Principles for Rules 32-36

Practitioners should, in the course of their practice, conduct their dealings with other members of the community, and the affairs of their clients which affect the rights of others, according to the same principles of honesty and fairness which are required in relations with the courts and other lawyers and in a manner that is consistent with the public interest.

32. Contracting for services

A practitioner who deals with a third party on behalf of a client for the purpose of obtaining some service in respect of the client's business, must inform the third party when the service is requested, that the practitioner will accept personal liability for payment of the fees to be charged for the service or, if the practitioner is not to accept personal liability, the practitioner must inform the third party of the arrangements intended to be made for payment of the fees.

33. Undertakings

A practitioner who, in the course of providing legal services to a client, and for the purposes of the client's business, communicates with a third party orally, or in writing, in terms which, expressly, or by necessary implication, constitute an undertaking on the part of the practitioner to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the third party will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised (if any) or within a reasonable time.

34. Communications

A practitioner must not, in any communication with another person on behalf of a client:

- 34.1 represent to that person that anything is true which the practitioner knows, or reasonably believes, is untrue; or
- 34.2 make any statement that is calculated to mislead or intimidate the other person, and which grossly exceeds the legitimate assertion of the rights or entitlement of the practitioner's client; or
- 34.3 threaten the institution of criminal proceedings against the other person in default of the person's satisfying a concurrent civil liability to the practitioner's client; or
- 34.4 demand the payment of any costs to the practitioner in the absence of any existing liability therefore owed by the person to the practitioner's client.

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Legal Practice – Rules 37-45

37...