

GOVERNMENT NOTICE NO. 118 published on 09/03/2018

THE ADVOCATES (PROFESSIONAL CONDUCT AND
ETIQUETTE) REGULATIONS, 2018

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THE ADVOCATES ACT,
(CAP. 341)

THE ADVOCATES (PROFESSIONAL CONDUCT AND
ETIQUETTE) REGULATIONS, 2018

(Made under section 69(b) and (c))

PART I
CITATION AND INTERPRETATION

- Citation 1. These Regulations may be cited as The Advocates (Professional Conduct and Etiquette) Regulations, 2018.
- Purpose and context 2.-(1) These Regulations are made for the purpose of maintaining the proper and efficient administration of justice and thus set out the principles and standards to be observed by all advocates in Mainland Tanzania.
(2) These Regulations are in addition to those imposed by law or required by other laws and or regulations.
- Interpretation
Cap. 341 3. In these Regulations except where otherwise indicated:
“Act” means the Advocates Act;
“advocate” has the meaning ascribed to it by the Act;
“associate” means, except where otherwise stated, a partner or associate in the practice of law and includes one who shares an office or office expenses or both with an advocate;
“client” means a person on whose behalf an advocate renders or undertakes to render professional services and includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ, and retains or employs or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs;
“Committee” has the meaning ascribed to it by the Act;
“competence” includes, in addition to formal qualification to practise law, the sufficiency of the advocate's capability to deal with a particular matter, such as knowledge and skills with respect to that matter and the ability to use such knowledge and

- skills effectively in the interests of a client and extends to not only an understanding of legal principles but also an adequate knowledge of the practice and procedures by which those principles can be effectively applied;
- “confidential information” means information obtained from a client which is not generally known to the public;
- “conflict of interest” includes a situation that has the potential to undermine the impartiality of an advocate because of the possibility of a clash between the advocate’s self-interest and the public interest.
- “court” includes a conventional court of law and, generally, any tribunal whether judicial, quasi-judicial or administrative, where an advocate is permitted to appear or make representation before it;
- Cap. 307 “disciplinary committee” means the ethics committee established under the Tanganyika Law Society Act;
- “integrity” includes soundness of moral principle, the character of uncorrupted virtue, especially in relation to truth and fair dealing, uprightness, honesty, sincerity, and trustworthiness and also extends to the preservation of confidences, the display of impartiality, the taking of full responsibility and the advocate’s competence;
- “person” includes a corporation or other legal entity, including the government, or any political subdivision thereof and also includes an association, partnership or other organization;
- “profession” means the legal profession;
- “regulations of court” includes all regulations of practice governing the process and procedure before courts; and
- Cap. 307 “Society” means the Tanganyika Law Society established by the Tanganyika Law Society Act.

PART II
INTEGRITY

- Integrity 4. For the purposes of meeting the fundamental quality of an advocate, every advocate shall be a person of high integrity.
- Discharge of duty with integrity 5.-(1) Every advocate shall discharge his duties with integrity towards-
- (a) the court and the administration of justice;
 - (b) the client;
 - (c) the public;

- (d) another advocate; and
- (e) the profession.
- (2) Every advocate shall uphold the principles of natural justice.

Lack of
integrity

6.-(1) The following acts shall constitute lack of integrity by an
advocate-

- (a) portraying himself as being competent in an area of law where he is not;
- (b) committing any disgraceful or morally reprehensible act that affects the advocate's integrity;
- (c) committing any act of fraud or dishonesty, making false returns or falsifying documents;
- (d) making untrue representation or concealing material facts from a client with dishonest or improper motive;
- (e) taking undue advantage of the youth, inexperience, lack of education or sophistication, ill health, or un-business-like habits of a client's;
- (f) misappropriating or dealing dishonestly with client's monies;
- (g) receiving monies from or on behalf of a client expressly for a specific purpose and failing, without the client's consent, to pay them over for that purpose;
- (h) knowingly assisting, enabling or permitting any person to act fraudulently, dishonestly, unconscionably or illegally towards the advocate's client;
- (i) failing to be frank and transparent in all dealings with the court, client, fellow advocates and other parties to proceedings, subject always to not betraying the client's cause, abandoning the client's legal rights or disclosing the client's confidence;
- (j) failing, when dealing with a person not legally represented, to disclose material facts or supplying false information, whether the advocate is professionally representing a client or is concerned personally;
- (k) failing to honour the advocate's word when pledged;
- (l) charging and or receiving inappropriate and excessive fees for unnecessary work contrary to law;
- (m) using abusive and or inappropriate language in court or any public setting;
- (n) any conduct in an advocate's private life which brings the advocate's integrity into question and thereby bringing disrepute upon the profession;

- (o) knowingly, or with reckless disregard for the truth, makes any false or disparaging or misleading statement against any judicial officer, fellow advocates, public leaders or any other member of the public;
- (p) being involved in a case before any court, makes any statement that would reasonably be taken to interfere or affect the outcome or impair the fairness of a matter pending or impending in any court; or
- (q) any other act as may be determined by the Committee, the Society or any other disciplinary authority referred to under the Act.

Consequences of lack of integrity

7. The Committee may take such disciplinary measures as permitted by the Act and these Regulations, which may include suspension of the advocate for a specified period.

PART III
COMPETENCE AND QUALITY SERVICE

Principles of competence and quality of service

8.-(1) An advocate shall portray himself as being knowledgeable, skilled and capable in the practice of law and the client, the court and the society are entitled to assume that the advocate has the ability and capacity to deal adequately with every matter the advocate undertakes on the client's behalf.

(2) In the performance of professional services which an advocate has undertaken for the client, the advocate shall exhibit reasonable care, skill and knowledge.

Duty of competence and diligence

9. An advocate shall-

- (a) perform competently and diligently all legal work undertaken on the client's behalf;
- (b) undertake a legal matter which that advocate honestly believes to be-
 - (i) competent to handle; or
 - (ii) capable of becoming competent to handle without undue delay, risk or expense to the client.
- (c) keep abreast of developments in all branches of the law in which he practises;
- (d) where he believes that he lacks the requisite knowledge on a particular legal matter in which he is engaged to undertake, decline to act, consult or collaborate with another advocate who is competent in that field, except that

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such consultation or collaboration shall be upon the consent of the client; and

- (e) where the particular task in which the advocate is engaged requires a specialized non-legal knowledge, collaborate with an expert of that specialized knowledge, except that the advocate shall consult the client and obtain the clients instructions before consulting such expert.

Determina-
tion of
competence

10. In determining whether or not an advocate has exercised duties competently with requisite degree of knowledge and skill, the following factors shall be observed-

- (a) the advocate's general experience;
- (b) the complexity and specialized nature of the matter;
- (c) the advocate's training and experience in the field in question;
- (d) the preparation and study the advocate was able to undertake; and
- (e) whether it was appropriate or feasible to refer the matter to an associate or consult with an advocate of established competence in the field in question.

Consequen-
ces of
incompetence

11. Where an enforcement body has determined that an advocate failed to discharge his duty competently, it shall, in addition to sanctions provided for or an action in negligence taken by a client, require that advocate to pursue further continuing education before his practising certificate is renewed.

Quality
service

12.-(1) An advocate has a duty to provide quality service to his client that is expected of a competent advocate.

(2) Where an advocate reasonably foresees undue delay in providing advice or services, the advocate shall inform the client accordingly.

Lack of
quality
service

13. Failure to provide quality services by an advocate shall include-

- (a) failure to keep a client reasonably informed;
- (b) failure to answer reasonable requests from a client for information;
- (c) self-induced disability, including, disability from the use of intoxicants or drugs, which interferes with or prejudices the advocate's services to the client;

- (d) failure to respond, within a reasonable time, to a client's communication which requires a reply;
- (e) failure to meet prescribed appointments with the client without reasonable explanation and apology;
- (f) failure to make follow-up or execute any matter or thing that is required to be implemented by the advocate;
- (g) unreasonable delay in the implementation of the client's affairs;
- (h) shoddy work, including mistakes or omissions in statements or documents prepared on behalf of the client;
- (i) failure to maintain office administration and facilities sufficient to offer quality service to a client;
- (j) failure to inform a client of a proposal of settlement or to explain the proposal properly;
- (k) withholding relevant information from a client or misleading the client concerning the position of a matter in order to cover up neglect or a mistake by the advocate;
- (l) failure to make a prompt and complete report when the work is finished or, if a final report cannot be made, failure to make an interim report where one might reasonably be expected; and
- (m) acting in a rude manner or any other conduct unbecoming of an advocate.

Consequences of failure to provide quality service

14. An advocate shall not necessarily be liable for professional misconduct if he fails to provide quality service, but he may be held liable in tort or contract.

PART IV HONESTY AND CANDOUR TOWARDS CLIENTS

Duty to explain and advise clients

15. Whenever it becomes apparent that the client has misunderstood or misconceived what is really involved in the matter brought to the advocate, the advocate has a duty to explain as well as advise the client so that the client is truly and fairly informed of the matter at hand.

Duty to be honest and

16. An advocate has a duty to a client who seeks legal advice to give the client a competent opinion that is-

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- | | |
|-------------------------------|--|
| candid on advice | (a) open and undisguised, clearly disclosing what the advocate opines about the merits and probable results; and
(b) based on sufficient knowledge of the relevant facts including the facts obtained from the client, an adequate consideration of the applicable law and the advocate's own experience and expertise. |
| Basis of opinion | 17.-(1) An advocate has a duty to clearly indicate the facts, circumstances and probable presumptions or outcomes upon which the advocate's opinion is based.
(2) Unless the client instructs otherwise, an advocate shall investigate a matter in sufficient detail to be able to express an opinion rather than merely make conjectural comments. |
| Bold and confident assurances | 18. An advocate shall not make bold or confident assurances to a client, especially when the advocate's engagement may depend upon the way in which he advises the client in a matter which is subject to a decision or directive to be made or given by a court or any other institution. |
| Second opinion | 19. Where a client so desires, the advocate has a duty to assist in obtaining a second opinion from another advocate or an expert on the matter. |
| Compromise and settlement | 20. An advocate has a duty-
(a) to advise and encourage the client to compromise or settle a dispute whenever possible on a reasonable basis; and
(b) to discourage the client from commencing or continuing useless legal proceedings. |
| Dishonesty or fraud by client | 21.-(1) When advising the client the advocate shall not knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct and never to instruct the client on how to violate the law and avoid punishment.
(2) The advocate has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with the client who have an interest in the client's matter or its outcome and against engaging in unethical conduct. |
| Test cases | 22. As long as no injury to person or violence is involved, the advocate may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test the law |

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and this can most effectively be done by means of a technical breach giving rise to a test case:

Provided that in all such situations the advocate has a duty to ensure that the client appreciates the consequences of bringing a test case.

Improper
use of
criminal
proceedings

23. In exercising duties, an advocate shall not-

- (a) advise, threaten or bring a criminal or quasi-criminal proceeding in order to secure some civil advantage for the client; or
- (b) advise, seek or procure the withdrawal of a prosecution in consideration of payment of money or transfer of property to or for the benefit of the client.

Advice on
non-legal
matters

24.-(1), An advocate may, in addition to opinions on legal questions, give advice on non-legal matters including business, policy or social implications involved in a question:

Provided that the advocate's experience will be such that his views on non-legal matters will be of benefit to the client.

(2) The advocate who advises on non-legal matters has a duty to disclose that fact to the client and, to the extent necessary, to point out his lack of experience or other qualification in the particular field and to clearly distinguish legal advice from such other advice.

Errors and
omissions

25.-(1) Upon discovering that an advocate has made an error or omission in a matter in which the advocate was engaged which is or may be damaging to the client and cannot readily be rectified, the advocate has a duty to inform the client promptly of the situation without necessarily admitting liability.

(2) When informing the client of an error or omission:

- (a) the advocate must be careful not to prejudice any right of indemnity that either the client or the advocate may have under any insurance, client protection or indemnity plan or otherwise; and
- (b) at the same time, the advocate has a duty to recommend to the client that the client may obtain legal advice elsewhere about any rights the client may have which arise from such error or omission and also whether it is proper for the advocate who made the error or omission to continue to act in the matter for the client.

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(3) An advocate shall give prompt notice of any potential claim to the advocate's insurer and any other indemnitor so that any protection from that source will not be prejudiced, and unless the client objects, the advocate has a duty to assist and cooperate with the insurer or other indemnitor to the extent necessary to enable any claim that is made to be dealt with promptly.

(4) Where an advocate is not indemnified, or to the extent that the indemnity may not fully cover the claim, the advocate shall expeditiously deal with any claim that may be made, and shall not under any circumstances take unfair advantage that might defeat or impair the client's claim.

(5) An advocate has a duty to arrange for payment of the balance in cases where liability is established and the insurer or other indemnitor is prepared to pay its portion of the claim.

Independent
advice or
representa-
tion

26.-(1) Where an advocate is required to provide independent advice or representation to another advocate's client, such advice or representation shall be done in a manner that demonstrates seriousness and not to be lightly assumed or perfunctorily discharged.

(2) For the avoidance of doubt, the advocate's duty to the party for whom the independent advice or representation is required shall be the same as in any other advocate-client relationship.

Dealings
with
unrepresent-
ed persons

27.-(1) An advocate shall not offer advice to an unrepresented person, but shall urge such a person to obtain independent legal advice and, if the unrepresented person does not do so, the advocate shall be responsible to ensure that such person is not proceeding under the impression that the advocate is protecting such person's interests.

(2) If the unrepresented person requests the advocate to advise or act in the matter, the advocate shall be governed by the provisions of Part VI of these Regulations.

(3) The advocate may have an obligation to a person whom the Advocate does not represent, whether or not such person is represented by an advocate.

Dishonesty
or fraud by
client
organization

28.-(1) Where an advocate acting for an organization becomes aware that the organization, employee or agent on behalf of the organization is engaging in or contemplating to engage in dishonest, fraudulent, corrupt or illegal conduct, he shall take reasonable action to discourage the commission of such conduct.

(2) Where an advocate, after taking reasonable action to discourage such activity, receives instructions that amount to a breach of duties under sub-regulation (1), the advocate shall withdraw from the representation of the organization in the particular matter and he may report such conduct to the appropriate authority.

PART V
CONFIDENTIALITY

Confidential-
ity in
professional
service

29. As a general principle-

- (a) an advocate shall not render effective professional service to the client unless there is full and unreserved communication between the advocate and a client; and
- (b) the client's information shall be preserved and secured, unless there is an agreement or understanding with the advocate to the contrary.

Confidential-
ity as to
client's
affairs

30. An advocate shall hold with strict confidentiality all information concerning the business and affairs of a client where the information is acquired by the advocate as a result of the professional relationship with the client, provided that the advocate may disclose information in the following circumstances-

- (a) required by law; or
- (b) information expressly or impliedly authorized by the client.

Duty of
continuing
confidential-
ity

31.-(1) The duty of confidentiality of an advocate survives the professional relationship and continues indefinitely after the advocate has ceased to act for the client, whether or not the client is a continuing or casual.

(2) For the avoidance of doubt, the fiduciary relationship between advocate and client forbids the advocate from using any confidential information acquired by him as a result of the professional relationship for his benefit or a third party to the disadvantage of the client.

(3) An advocate has a duty to impress upon associates, students, interns and employees of the advocate's office the importance of non-disclosure, both during their employment and afterwards, and to take reasonable care to prevent them from disclosing or using any information that the advocate is bound to keep in confidence.

(4) The advocate who engages in literary works such as an autobiography, memoirs and the like has a duty not to disclose

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confidential information in any such work, unless he obtains disclosure permission from the client

(5) An advocate shall not, unless permitted by these Regulations or the client-

- (a) disclose to one client confidential information concerning or received from another client; and
- (b) take up employment that might require such disclosure.

Gossip

32. An advocate shall-

- (a) avoid indiscreet conversations, even with the advocate's spouse or family member, about a client's affairs;
- (b) shun any gossip about a client's affairs even if the client is not named or otherwise identified; and
- (c) not repeat any gossip or information about the client's business or affairs that may be overheard by or recounted to the advocate.

Deemed permission to disclose client's information

33.- (1) An advocate shall be deemed to have been given permission to divulge the client's confidential information where he-

- (a) draft pleadings or other documents delivered in litigation being conducted for the client;
- (b) deals with partners and associates in the firm and, to the extent necessary, to non-legal staff such as secretaries and clerks; and
- (c) uses it in establishing or collecting a fee or defending himself, his firm or his associates or employees against any allegation of malpractice or misconduct, but only to the extent necessary for such purposes.

(2) An advocate has a duty to disclose information necessary to prevent a crime where the advocate has reasonable grounds for believing that the crime is likely to be committed.

(3) The advocate shall, where disclosure is required by law or by order of a court of competent jurisdiction, not give more information respecting a client than is specifically required and to assert the client's privilege.

Duty of former public officer

34. An advocate formerly in the service of any government or public agency who possesses information about a person, has a duty not to represent any client, other than the advocate's former public employer, whose interests are adverse to the person about whom the advocate possesses information in circumstances in which the

information could be used to the material disadvantage of such person.

PART VI
CONFLICT OF INTEREST BETWEEN ADVOCATE AND CLIENT AND
DUTY TO PROTECT THE CLIENT

Advocate's
duty to
client

35.-(1) An advocate shall not act for a client when the interests of the client and the personal interests of the advocate or, the interests of any person in his firm are in conflict.

(2) An advocate shall not enter into or continue a business transaction with a client where it is reasonably obvious that a contentious issue between them may arise or that their interests will diverge as the matter progresses.

(3) An advocate may enter into a business transaction with a client if-

- (a) the advocate does not, by doing so, violate sub-regulation (2) above;
- (b) the transaction is fair and reasonable ; and
- (c) the advocate has the client's informed consent, in writing.

(4) For the purpose of sub-regulation (3), an advocate has a client's informed consent to enter into a business transaction with the client where the client consents in writing, to the transaction after the advocate in writing, has:

- (a) recommended to the client that the client seek independent legal advice respecting the transaction; and
- (b) fully disclosed the terms of the transaction to the client in a manner that is reasonably understood by the client.

(5) An advocate shall not acquire property from a client by way of gift or testamentary disposition unless the client is independently represented in the transaction or the client has confirmed in writing that he has received an independent legal advice with respect to the transaction.

(6) An advocate or a partner or associate shall not prepare an instrument giving the advocate a substantial gift from the client, including a testamentary gift.

(7) Notwithstanding the provisions of this regulation an advocate may prepare a Will in which the client names the advocate as executor or executrix as long as the advocate first discloses to the client the nature of the benefits which would accrue to the advocate as a result of the advocate being so named.

(8) An advocate has a duty not to borrow money from or loan money to a client except where the borrowing or lending does not violate any regulation or rule of the society on such matters.

(9) An advocate who has a personal interest in a joint business venture with others may represent or advise the business venture in legal matters between it and third parties, but has a duty not to represent or advise either the joint business venture or the joint ventures in respect of legal matters as between them.

An
advocate's
associate

36. For the purposes of this Part an associate of an advocate includes-

- (a) a partner, associate or an advocate employed in the law firm of the advocate in the practice of law;
- (b) the advocate's spouse;
- (c) the advocate's child;
- (d) a relative of the advocate or of the advocate's spouse where the relative resides with the advocate;
- (e) a trust or estate in which the advocate has a substantial beneficial interest or for which the advocate acts as a trustee or in a similar capacity; or
- (f) a corporate body of which the advocate is a director or in which the advocate or another person with whom the advocate is associated or in partnership in the practice of law owns or controls directly or indirectly, more than five per cent of the voting rights attached to all outstanding equity shares of the corporate body.

Outside
interests
and the
practice of
law

37.-(1) The advocate who engages in another profession, business or occupation concurrently with the practice of law has a duty not to allow such outside interest to jeopardize the advocate's professional integrity, independence or competence.

(2) The term "outside interest" covers the widest possible range and includes activities which may overlap or be connected with the practice of law, such as engaging in the mortgage business, counselling services, mediation and arbitration, acting as a director of a client corporate body, or writing on legal subjects, as well as activities not so connected, such as a career in public service, business, politics, or media.

(3) In each case, the question of whether the advocate may properly engage in the outside interest and to what extent is subject to any applicable law, regulation or rule of the Society.

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Protecting clients' property

38.-(1) Subject to any other law, an advocate shall, with respect to safekeeping, protection and accounting for a client's money and other property, adhere to the minimum standard set out below in this regulation.

(2) An advocate has a duty to the client to-

- (a) keep client's papers and other property out of sight as well as out of reach of those not entitled to see them
- (b) observe all relevant laws and regulations respecting the protection and safekeeping of the client's property entrusted to the advocate; and
- (c) in cases where there are no such laws or regulations or the advocate is in doubt, to take the same care of such property as would a careful and prudent owner when dealing with property of a like description.

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(3) For the purposes of these Regulations, "property" includes a client's money, securities as defined in the Capital Market and Securities Act, original documents such as Wills, title deeds, minute books, licenses, certificates, and the like and all other papers such as client's correspondence, files, reports, invoices and other such documents as well as personal property including precious and semi-precious metals, jewellery and the like.

Notice to client

39. An advocate shall notify the client upon receiving any property owned by or relating to the client unless the advocate is satisfied that the client knows that the property has come into the advocate's custody.

Separate safekeeping of client's property

40. An advocate shall clearly label and identify the client's property and place it in safekeeping separate and apart from the advocate's own property.

Record of client's property

41. An advocate shall maintain adequate records of the client's property in the advocate's custody so that it may be promptly accounted for or delivered to any other person as may be directed by the client.

Delivery of property to client

42.-(1) An advocate shall ensure that the client's property is delivered to the right person.

(2) Where there is a dispute as to the person entitled to the property, the advocate may have recourse to the courts.

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Prompt return to client 43. Subject to any right of lien, an advocate shall return the client's property to the client upon request or, where appropriate, at the conclusion of the advocate's retainer.

Privilege 44.-(1) An advocate has a duty to claim on behalf of a client any lawful privilege in respect of information about the client's affairs, including the client's files and property where a third party seizes or attempts to seize them.
(2) To be able to meet the duty referred in this regulation, the advocate must be familiar with the nature of clients' privilege and the relevant constitutional and statutory provisions on such matters.

PART VII
IMPARTIALITY AND CONFLICT OF INTEREST BETWEEN CLIENTS

Conflict of interest 45.-(1) A conflict of interest is one that would be likely to affect adversely the advocate's judgment or advice on behalf of, or loyalty to a client or prospective client.
(2) An advocate shall not act or continue to act in a matter where there is or is likely to be at conflict unless the advocate has the informed consent of each client or prospective client for whom the advocate proposes to act.
(3) A conflict of interests includes the duties and loyalties of the advocate to any other client, whether involved in the particular transaction or not, including the obligation to communicate information.

Duty of impartiality 46.-(1) Subject to regulation (38), an advocate shall not-
(a) advise or represent both sides of a dispute;
(b) act in a matter which he had previously acted as a mediator or an arbitrator.
(2) For the purposes of this regulation, an advocate has the client's informed consent to act a matter where the client or prospective client, has consented to the advocate so acting after the advocate, has advised the client or prospective client:
(a) that the advocate intends to act in the matter not only for that client or prospective client but also for one or more other clients or prospective clients;
(b) that no information received from one client respecting the matter may be treated as confidential with respect to any of the others;

- (c) that if a dispute develops in the matter that cannot be resolved, the advocate cannot continue to act for any of the clients and has a duty to withdraw from the matter;
- (d) whether or not the advocate has a continuing relationship with one of the clients and acts regularly for that client; and
- (e) that the client or prospective client obtain independent legal advice where the advocate has a continuing relationship with one or more of those for whom the advocate intends to act.

(3) An advocate in the employment of the government, local government or government agency shall not accept instructions to defend a client in a criminal case or to act for a party in any civil matter in which the government, local government or government agency is a party, where the interests of such client are adverse to the interests of the government, local government or government agency.

(4) Notwithstanding the preceding provisions an advocate shall not act for more than one client where, despite the fact that all parties concerned have given informed consent, it is reasonably obvious that an issue contentious between them may arise or that their interests, rights or obligations will diverge as the matter progresses.

Treatment of contentious issues

47.-(1) An advocate shall be in breach of the rule of impartiality if, after the client involved has given informed consent, a contentious issues between them or some of them arises and that advocate attempts to advise them on that issue.

(2) Where there are contentious issue involved, the advocate shall refer the clients to another advocate.

Effect of rules of impartiality on arbitration, etc.

48.-(1) An advocate acting as an arbitrator, mediator or negotiator has a duty to act impartially.

(2) Subject to the provisions of sub-regulation (1) or any other rule relating to impartiality, an advocate may act as an arbitrator, mediator or negotiator involving two or more persons, so long as-

- (a) the persons are *sui juris*;
- (b) the persons have consented, in writing, to the submission of the dispute to the advocate as arbitrator, mediator or negotiator;
- (c) the advocate, before beginning to act, advises each person that the advocate is not acting as that person's legal adviser in the matter;

- (d) neither the advocate nor the associate of the advocate has acted for any of the clients or advised any of the clients in or with respect to the matter; and
- (e) where the advocate has, prior to beginning to act, had any contact with any of the clients with respect to any other matter, the advocate discloses this fact to all of the other clients.

(3) An advocate and any of his associates shall not act for, or advise any party in respect of a dispute which the advocate arbitrates, mediates or negotiates.

(4) Nothing in this regulation shall prevent an advocate who has previously acted as mediator or arbitrator in a dispute from subsequently acting for any of the parties to such a dispute in any matter completely unrelated to the dispute provided that there is compliance with all other duties in these rules.

(5) An advocate or any associate of the advocate who has acted for a person in a matter has a duty not to act against that person in the same or a related matter.

(6) Nothing in this regulation shall prohibit an advocate from acting against a person in a fresh and independent matter wholly unrelated to any matter in which the advocate previously represented that person.

Duty of impartiality when acting for organizations

49.-(1) An advocate acting for an organization has a duty to make it clear to any person within the organization with whom the advocate is dealing that-

- (a) the organization is the advocate's client;
- (b) the person is not the advocate's client; and
- (c) the advocate may be obliged to provide to the organization any information acquired by the advocate and the information may be used or disclosed by the organization.

(2) The duty referred to in this regulation arises when the advocate perceives that an individual believes or a reasonably informed member of the public could reasonably believe that the advocate owes a duty to the individual not to pass information about the affairs of the individual to the organization.

(3) Where an advocate ought to have provided, but did not provide the clarification described under this regulation and the individual discloses information about the individual's affairs to the advocate, the advocate shall not disclose the information to the

organization and shall not act for either the organization or the individual in a matter to which the information pertains if:

- (a) there is an issue contentious between them;
- (b) their interests, rights or obligations diverge; or
- (c) it is reasonably obvious that an issue contentious between them may arise or that their interests, rights or obligations will diverge as the matter progresses.

(4) If the advocate discloses information to the organization, the advocate has a duty to tell the individual that the information has been disclosed to the organization if the circumstances described in the preceding regulation exist or subsequently arise, unless telling the individual would provide an opportunity to conceal actions that are contrary to law.

**PART VIII
CONFLICT OF INTERESTS ARISING FROM TRANSFER BETWEEN
LAW FIRMS**

Interpretation

50. In this Part-

“client” includes anyone to whom a member owes a duty of confidentiality, whether or not an advocate-client relationship exists between them;

“law firm” includes one or more members practising-

- (a) in a sole proprietorship;
- (b) in a partnership;
- (c) in association for the purpose of sharing certain common expenses but who are otherwise independent practitioners;
- (d) as a professional law corporation;
- (e) in a government, a government department or agency or any other public body; or
- (f) in a corporation or other body.

“matter” means a case or client file but, does not include general knowledge of a matter and, in the case of an advocate employed in public service, does not include policy advice unless the advice relates to a particular case; and

“member” means a member of a law firm.

Application
of conflict of
interest Rule

51.-(1) In this Part, conflict of interest arises where a member moves from one law firm, being the former law firm, to another law firm, being the new law firm, and either the moving member

or the new law firm is aware at the time of the move or later discovers that-

- (a) the new law firm represents a client in a matter which is the same as or related to a matter in respect of which the former law firm represents its client (“former client”);
- (b) the interests of those clients in that matter conflict, and
- (c) the transferring member actually possesses relevant information respecting that matter.

(2) The conflict of interest rule does not apply to a member employed by the office of the Attorney General who, after transferring from one ministry, department or agency to another, continues to be employed by the office of the Attorney General.

Firm
disqualification

52.-(1) Where a moving member possesses relevant information in respect of the former client which is confidential and which, if disclosed to a member of the new law firm, may prejudice the former client, the new law firm shall cease its representation of its client in that matter unless-

- (a) the former client consents to the new law firm's continued representation of its client, or
- (b) the new law firm establishes that-
 - (i) it is in the interests of justice that its representation of its client in the matter continues, having regard to all relevant circumstances, including-
 - (a) the adequacy of the measures taken under (ii) below;
 - (b) the extent of prejudice to any party;
 - (c) the good faith of the parties;
 - (d) the availability of alternative suitable advocate; and
 - (e) issues affecting the national or public interest; and
 - (ii) it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur.

Disqualification
of moving
advocate

53.-(1) Where the moving member possesses relevant information in respect of the former client but that information is not confidential information which, if disclosed to a member of the new law firm, may prejudice the former client-

- (a) the member shall execute an affidavit or statutory declaration to that effect;and

(b) the new law firm shall-

- (i) notify its client and the former client, or if the former client is represented in that matter by a member, notify that member, of the relevant circumstances and its intended action under this regulation; and
- (ii) deliver to the persons referred to in subparagraph (i) a copy of any affidavit or statutory declaration executed under paragraph (a).

(2) A moving member described in sub-regulation (1) shall not, unless the former client consents-

- (a) participate in any manner in the new law firm's representation of its client in that matter; or
- (b) disclose any confidential information in respect of the former client.

(3) A member of the new law firm shall not, unless the former client consents, discuss with a transferring member described in sub-regulation (1), the new law firm's representation of its client or the former law firm's representation of their former client in that matter.

Due diligence

54. A member shall exercise due diligence in ensuring that each member and employee of the member's law firm and each other person whose services the member has retained-

- (a) complies with the conflict of interest rule; and
- (b) does not disclose-
 - (i) confidences of clients of the firm; and
 - (ii) confidences of clients of another law firm in which the person has worked.

PART IX DUTIES OF AN ADVOCATE

General duty
of an
advocate

55.-(1) An advocate, shall-

- (a) represent the client resolutely, honourably and within the limits of the law; and
- (b) make every reasonable effort consistent with the legitimate interests of the client to expedite litigation.

(2) An advocate shall discharge the duties under this regulation by fair and honourable means.

56. An advocate shall, for and on behalf of the client-

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Duty to probe on behalf of the client

- (a) ask every question, raise every issue and advance every argument, however distasteful, that the advocate reasonably thinks will help the client's case; and
- (b) endeavour to obtain for the client the benefit of any and every right, remedy and defence which is authorized by law.

Consent required for abandonment of client's legal rights

57. An advocate has a duty not to waive or abandon a client's legal rights, such as an available defence under a statute of limitations, without the client's informed consent, preferably in writing.

Encouraging settlements

58. An advocate shall advise and encourage the client to settle a case rather than commence or continue legal proceedings where the case can be settled timely, fairly and reasonably.

Alternative dispute resolution

59. The advocate shall consider the appropriateness of alternative dispute resolution (ADR) to the resolution of issues in every case and inform the client of ADR options and advantages and, if so instructed, take steps to pursue those options.

Duties of defence advocate

60.-(1) An advocate shall protect the client to the extent possible from being convicted except by a court of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence charged.

(2) Notwithstanding the advocate's private opinion as to credibility or merits, subject to these Regulations, the advocate may properly rely upon all available evidence or defences not known to be false or fraudulent.

(3) The advocate shall have a duty to inform the accused on the effect on any admissions he wishes to make before him.

(4) Admissions made by the accused to the advocate impose a limit upon the extent to which the advocate may attack the evidence for the prosecution, although the advocate is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the advocate should go no further in the circumstances of these admissions.

Constraints on advocates giving

61. Subject to court rules and practice an advocate shall not be allowed to give evidence in a matter in which the advocate is

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evidence by affidavit involved as advocate, except in circumstances where it is permissible.

Unilateral communication with the court 62. The advocate shall not initiate or indulge in any unilateral communication with the court concerning the matter currently before the court without the consent of all other advocates or clients involved or, without giving copies of such communication to the other advocates or parties.

Withdrawal 63.-(1) An advocate, having accepted a retainer, shall effectively complete the task unless there is justifiable cause for terminating the relationship.

(2) An advocate shall not withdraw services except for good cause and upon written notice to his client and the court.

(3) The advocate who withdraws from employment has a duty to minimize expense and avoid prejudice to the client, doing everything reasonably possible to facilitate the expeditious and orderly transfer of the matter to the successor advocate.

(4) Where withdrawal is required or permitted by these Regulations, the advocate has a duty to comply with all applicable regulations of court.

(5) The advocate is prohibited from using threat of withdrawal as a device to force the client into making a hasty decision on a difficult question.

Obligatory withdrawal 64. An Advocate shall withdraw services and inform the client in cases where-

(a) the advocate is instructed by the client to do something inconsistent with the advocate's duty to the court and, following explanation, the client persists in such instructions;

(b) the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass another person or cause injury or damage to another person or another person's property;

(c) it is clear that the advocate's continued employment will lead to a breach of these Regulations such as a breach of the rules relating to conflict of interest;

(d) the advocate is not competent to handle the matter;

(e) the advocate learns that the client is engaging in or is planning to engage in corrupt practises in relation to the matter;

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- (f) there has been a serious loss of confidence between the advocate and the client which goes to the very basis of the relationship; and

Optional withdrawal

65. The advocate may withdraw if unable to obtain sufficient instructions from the client.

Withdrawal on non-payment of fees

66.-(1) An advocate may withdraw services where there is a failure on the part of the client after reasonable notice to provide funds on account of disbursements or fees.

(2) The advocate shall, before withdrawing from the conduct of the matter, issue a thirty days notice informing the client of his intention to withdraw indicating the likely consequences of his withdrawal and shall advise the client that he should afterwards attend the matter himself or appoint another advocate to take over the matter.

Notice of withdrawal

67.-(1) An advocate who intends to withdraw from a case shall continue to be considered the advocate of the party until a notice of the change or withdrawal is filed with the court and served on every other party.

(2) The notice of withdrawal may be signed on behalf of the party by the former advocate or by the advocate taking his place.

Duty following withdrawal

68.-(1) Upon discharge or withdrawal the advocate has a duty to:-

- (a) deliver in an orderly and expeditious manner to the client or to any other person as may be directed by the client, all property to which the client is entitled;
- (b) give the client all information that may be required about the case or matter;
- (c) account for all funds of the client on hand or previously dealt with and refund any remuneration not earned during the employment;
- (d) promptly render an account for outstanding fees and disbursements; and
- (e) co-operate with the successor advocate so as to minimize delay, disruption and expense in the transition.

(2) The obligation to deliver property is subject to the advocate's right of lien and, in the event of conflicting claims to

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such property, the advocate has a duty to make every effort to have the claimants settle the dispute.

(3) The advocate who is acting for several clients in a case or matter and who ceases to act for one or more of them, has a duty to co-operate with the successor advocate or advocates to the extent permitted by these Regulation and avoid any unseemly rivalry, whether real or apparent.

Lien for unpaid fees

69.-(1) Where, upon the discharge or withdrawal of the advocate, the question of a right of lien for unpaid fees and disbursements arises, the advocate has a duty to pay duly regard to the effect of its enforcement upon the client's position.

(2) Without prejudice to sub-regulation (1), the advocate has a duty not to enforce the lien if such enforcement would materially prejudice the client's position in any uncompleted matter.

(3) An advocate does not have a right of lien on the client's property entrusted to the advocate in one matter with respect to unpaid fees or disbursements in another matter.

Duty as successor advocate

70.-(1) Before accepting engagement, the successor advocate has a duty to be satisfied that the former advocate approves the transfer of the matter or has withdrawn or has been discharged by the client.

(2) The successor advocate may urge the client to settle or take reasonable steps towards settling or securing any account owed to the former advocate, especially if the latter withdrew for good cause or was capriciously discharged:

Provided that the existence of an outstanding account should not be allowed to interfere with the successor advocate acting for the client if a trial or hearing is in progress or imminent, or if the client would otherwise be prejudiced.

Dissolution of a law firm

71.-(1) Dissolution of a law firm may result in the termination of the advocate-client relationship as between a particular client and one or more of the advocates involved.

(2) Although a client usually will prefer to retain the services of the advocate whom the client understood was in charge of the client's affairs prior to the dissolution, the final decision on that matter shall rest in each case with the client.

Fees

72.-(1) An advocate has a duty to-

- (a) stipulate, charge or accept only fees that are fully disclosed, fair and reasonable; and
- (b) not appropriate any funds of a client, held in trust or otherwise and under the advocate's control, for or on account of fees, except with the authority of the client unless the regulations and regulations of the society otherwise provide.

(2) In determining whether a fee is fair and reasonable the following factors should be considered:

- (a) the time and effort required and spent;
- (b) the difficulty and importance of the matter;
- (c) whether special skill or service has been required and provided;
- (d) the customary charges of other advocates of equal standing in the locality in like matters and circumstances;
- (e) in civil cases, the amount involved or the value of the subject matter;
- (f) in criminal cases, the exposure and risk to the client;
- (g) the results obtained;
- (h) scales authorized by the Chief Justice;
- (i) reasonable office overhead;
- (j) such special circumstances as loss of, or adverse effect on other work, urgency and uncertainty of reward; and
- (k) any reasonable agreement between the advocate and the client.

(2) If a fee cannot be justified in the light of all pertinent circumstances, including the factors described in this regulation, or is so disproportionate to the services rendered as to introduce the element of fraud or dishonesty, the fee will be deemed unfair and unreasonable and the circumstances may subject the advocate to disciplinary proceedings.

(3) A fee is not fair and reasonable within the meaning of these Regulations if it is divided with another advocate who is not an associate or any other person, unless-

- (a) a client consents, either expressly or impliedly, to the employment of the other advocate; and
- (b) the fee is divided in proportion to the work done and responsibility assumed.

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Explanation of the basis of the fee	<p>73.-(1) An advocate shall explain to a client the basis of his fee, especially where the client is unsophisticated or uninformed about the proper basis and assessment of fees.</p> <p>(2) An advocate shall give the client an early and fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make an informed decision.</p> <p>(3) The advocate shall, when something unusual or unforeseen occurs that may substantially affect the amount of the fee, explain to the client to avoid misunderstandings or disputes.</p>
Reduction or waiver of fees	<p>74. An advocate may, in keeping with the best traditions of the legal profession, reduce or waive a fee or arrange with a client for delayed payment of a fee in cases of hardship or impecuniosity or where a client or prospective client would otherwise effectively be deprived of legal advice or representation.</p>
Interest on overdue accounts	<p>75. An advocate shall not, unless permitted by law, charge interest on overdue accounts except by prior agreement with the client and then only at a reasonable rate.</p>
Apportionment and division of fees	<p>76. An advocate who acts for two or more clients in the same matter has a duty to apportion the fees and disbursements equitably between or among the clients in the absence of any agreement otherwise.</p>
Hidden fees	<p>77. An advocate shall not take fee, reward, costs, commission, interest, rebate, agency or forwarding allowance or other compensation whatsoever related to the professional employment from anyone other than a client without full disclosure to and consent of the client.</p>
Fees and expenses paid by someone other than client	<p>78. Where an advocate's fees and expenses are being paid by someone other than the client, such as a legal aid agency, a borrower or a personal representative, the written consent of such other person shall first be obtained.</p>
Disbursements	<p>79.-(1) With respect to disbursements, only <i>bona fide</i> specified payments to others and charges customarily made without express permission, such as photocopying, delivery charges, transport costs, facsimile transmissions, long distance</p>

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telephone charges in attending to the client's work, shall be disbursed.

(2) An advocate shall, if financially interested in the entity to whom the disbursements are made, such as an investigating, brokerage or secretarial agency, expressly disclose this fact to the client.

Sharing fees with non-advocates

80.-(1) Any arrangement whereby an advocate, other than by paying a salary, allowances or bonus, directly or indirectly, shares, splits or divides fees with non-advocates including clerks, is improper and constitutes professional misconduct.

(2) An advocate shall not give any financial or other reward to parties in consideration for referring business to the advocate.

(3) An advocate shall not enter into a lease or other arrangement whereby a landlord or other person directly or indirectly shares in the fees or revenues generated by the law practice.

Contingent fees

81. An advocate shall not enter into an arrangement with a client for a contingency fee.

PART X
DUTIES TO OTHER ADVOCATES

Duty to other advocates

82.-(1) An advocate shall treat and deal with other advocates courteously and in good faith.

(2) Each advocate engaged in a matter has a duty to deal with the other advocate in a fair and courteous manner so as to promote the public interest that requires a matter entrusted to an advocate be dealt with effectively and expeditiously.

Objectivity

83.-(1) An advocate has a duty not to allow any ill feeling that may exist or be engendered between clients to influence his or her conduct toward the other advocate or that advocate's client.

(2) An advocate has a duty not to make disparaging remarks to or about another advocate or employ offensive tactics which may interfere with the orderly administration of justice.

Avoidance of technicalities

84.-(1) An advocate has a duty to avoid technicalities and not to take advantage of or act without fair warning on a slip, irregularity or a mistake on the part of another advocate which

does not go to the merits of the case or does not result in any sacrifice or prejudice of the client's rights.

(2) An advocate has a duty to accede to a reasonable request for a trial date, an adjournment, a waiver of a procedural formality and any similar matter that does not prejudice the rights of the client.

(3) An advocate who knows that another advocate has been consulted in a matter has a duty not to proceed by default in the matter without enquiry and warning.

Use of
opponent's
documents

85. An advocate who has access to or comes into possession of a document which the advocate has reasonable grounds to believe belongs to or is intended for an opposing party and was not intended for the advocate to see, has a duty to-

- (a) return the document, unread and uncopied, to the party to whom it belongs; or
- (b) if the advocate reads part or all of the document before realizing that it was not intended for him or her, cease reading the document and promptly returns it, uncopied, to the party to whom it belongs, advising that party-
 - (i) of the extent to which the advocate is aware of the contents; and
 - (ii) what use the advocate intends to make of the content of the document.

Undertakings

86-(1) An advocate shall-

- (a) not give or request an undertaking that cannot be fulfilled;
- (b) fulfil every undertaking given; and
- (c) scrupulously honour a trust condition once accepted.

(2) An advocate has a duty to confirm an undertaking or a trust condition in writing and in unambiguous terms.

Advocate not
to accept
personal
responsibility

87-(1) An advocate who does not intend to accept personal responsibility has a duty to make that intention clear in the undertaking and that, in the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the advocate giving it will honour it personally.

(2) If an advocate is unable or unwilling to honour a trust condition imposed by someone else, the advocate shall immediately return the subject of the trust condition to the person

imposing the trust condition unless the terms can be forthwith amended in writing on a mutually agreeable basis.

Respect for another Advocate's Advocate-Client relationship

88. An advocate has a duty not to communicate with or attempt to negotiate or compromise a matter with a party, including a government official or body, represented by an advocate except through or with the consent of that advocate.

Acting on the instruction of another advocate

89. An advocate who is retained by another advocate as an advocate or adviser in a matter has a duty to act only as an advocate or adviser and to respect the relationship between the other advocate and his or her client.

Acting against another advocate

90.-(1) An advocate has a duty to avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of another advocate, but has a duty when requested, to advise and if appropriate represent a client in a complaint involving another advocate.

(2) An advocate has a duty to comply with this regulation in his conduct toward a lay person lawfully representing himself or another person.

Duties to other advocates in adversary proceedings

91.-(1) In adversary proceedings, an advocate is not obliged, save as required by law or by these Regulations, to assist an adversary or advance matters derogatory to the client's case.

(2) In civil matters, an advocate has a duty to avoid resorting to frivolous or vexatious pre-trial procedures, including examination for discovery objections, or attempting to gain advantage from slips or oversights not going to the real merits, or tactics which will merely delay or harass or impose expensive hardships on the other side.

(3) An advocate has a duty to strictly and scrupulously carry out an undertaking given to another advocate in the course of litigation or other adversarial proceedings and unless clearly qualified in writing, the advocate's undertaking is a personal promise and responsibility.

PART XI
DUTIES TO THE COURT

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Advocate
duty to the
court

92.-(1) As an officer of the court, an advocate shall treat the court with candour, courtesy and respect.

- (2) An advocate shall not-
 - (a) abuse the process of the court by instituting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring another party;
 - (b) knowingly assist or permit the client to do anything that the advocate considers to be dishonest or dishonourable;
 - (c) subject to the rule of impartiality, appear before a judge when the advocate, the advocate's associates or the client have business or personal relationships with the judge that give rise to real or apparent pressure, influence or favouritism affecting the impartiality of the judge or which might place the advocate in a preferred position;
 - (d) attempt or allow anyone else to attempt, directly or indirectly, to influence the decision or actions of a court or any of its officials by any means other than open persuasion as an advocate;
 - (e) deceive, attempt to deceive or participate in the deception of a court or influence the course of justice by-
 - (i) offering false evidence;
 - (ii) misstating facts or law;
 - (iii) presenting or relying upon false, deceptive or exaggerated or inflammatory affidavit;
 - (iv) suppressing what ought to be disclosed; or
 - (v) assisting in any way in the commission of fraud, crime or illegal conduct.
 - (f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or authority;
 - (g) knowingly assert something for which there is no reasonable basis in evidence or the admissibility of which must first be established;
 - (h) deliberately refrain from informing the court of any pertinent adverse authority that the advocate considers to be directly in point and that has not been mentioned by an opponent;
 - (i) dissuade a material witness from giving evidence, or advise such a witness to be absent deliberately;
 - (j) knowingly permit a witness to be presented in a false or misleading way or to impersonate another;

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- (k) abuse, hector or harass a witness;
- (l) needlessly inconvenience the court or a witness; and
- (m) needlessly pursue trivial or irrelevant matters.

(3) Notwithstanding sub-regulation 2(c) an advocate shall be deemed to have acted impartially if the advocate discloses to the judge before whom the matter is to be heard, and all other advocates, the circumstances giving rise to a possible conflict, in so far as it is the judge, not the advocate, who is to decide whether the matter should be heard by the judge.

(4) For the purposes of this Regulation a “judge” includes a magistrates, a chairman or a member of a court.

Scope of application of an advocate as officer of the court

93. The principles in regulation 92 shall apply generally to the practice of an advocate and therefore extend not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals and other quasi judicial proceedings, regardless of their function or the informality of their procedures.

Rectification of error or omissions

94. Any error or omission by an advocate, which, if done knowingly would constitute a breach of the duty to court, shall, subject to the regulations governing confidentiality be disclosed by the advocate in a manner that can be reasonably done with a view to rectify or omit.

Client unsympathetic to disclosure

95. Where a client wishes to adopt a course of action that would involve a breach of the disclosure rule, the advocate is duty bound to-

- (a) refuse to take the course of action;
- (b) do everything reasonable to prevent the adoption of such course of action; and
- (c) withdraw or seek leave of the court to withdraw if the client persists in such a course.

Advocate as a witness

96.-(1) An advocate who appears in a proceeding, and every partner, associate or employee of that advocate in the practice of law has a duty not to submit an affidavit or testify in the proceeding, except as permitted by law or practice or as to purely formal or uncontroverted matters.

(2) An advocate shall not undertake a matter when it is probable that the advocate or a partner or associate of the advocate will be required to give evidence:

Provided that if the engagement is accepted and the improbable occurs, the advocate has a duty to withdraw and the matter should be entrusted to an advocate outside of the original advocate's firm.

(3) Where compliance with this Regulation proves to impose on the client a substantial hardship because of cost, delay or inability in locating alternative advocate, the original advocate shall bring the problem and the client's difficulty to the attention of the court and other advocate to attempt to secure a means for resolving the problem.

(4) An advocate acting in any proceeding shall not-

(a) express personal opinions or beliefs;

(b) assert in those proceedings anything that is subject to legal proof, cross examination or challenge; and

(c) become an unsworn witness or put his own credibility in issue.

(5) An advocate who is a necessary witness in a proceeding has a duty to-

(a) testify; and

(b) entrust the conduct of the case to someone else.

(6) There are no restrictions upon an advocate's right to cross-examine another advocate and the advocate who appears as a witness should not expect to receive special treatment by reason of professional status.

(7) An advocate who has been a witness in a proceeding has a duty not to appear as an advocate in any appeal from a decision in the proceeding.

Interviewing
witnesses

97. An advocate may seek information from any potential witness, whether or not under summons to appear, but has a duty in the course of doing so to-

(a) disclose the advocate's interest; and

(b) take care not to subvert or suppress any evidence or to attempt to prevent a witness from giving evidence by such means, as the removal of the witness from the jurisdiction.

Ex parte
proceedings

98. Where opposing interests are not represented, in *ex parte* or uncontested matters, or in other situations where the full proof and argument inherent in the adversary system cannot obtain, the advocate has a duty to take particular care to be accurate, candid

and comprehensive in presenting the client's case so as to ensure that the court is not misled.

Communica-
ting with
witnesses

99. An advocate who has called a witness has a duty not to communicate with that witness about the matter including the witness' evidence in the matter, without leave of the court, from the time when the witness is called into the witness box until the time when the witness concludes his testimony under examination, cross-examination or re-examination and is discharged from the witness box.

Agreements
guaranteeing
recovery

100. An advocate shall not mislead the court about the position of the client in the adversary process and thus, where an advocate representing a client has made or is party to an agreement made before or during the trial whereby a plaintiff is guaranteed recovery from one or more parties to the proceeding notwithstanding the judgment of the court, the advocate shall disclose full particulars of the agreement to the court and all other parties.

Undertakings

101. An advocate shall strictly and scrupulously carry out any undertaking given to the court in the course of litigation.

Matters that
warrant
disciplinary
action

102. For purposes of these Regulations, contempt of court and breach of ethical or professional duty are not identical and thus a consistent pattern of rude, provocative or disruptive conduct by the advocate, whether considered or not as contempt, shall merit disciplinary action under these Regulations.

PART XII LEGAL SERVICES TO THE PUBLIC

Legal service
to public

103.-(1) An advocate has a duty to make legal services available to the public in an efficient and convenient manner that will command respect and confidence, and by means which are compatible with the integrity, independence and effectiveness of the profession.

(2) An advocate has a duty to make known the availability of legal services to the public and to assist each member of the public in finding an advocate who is competent to deal with his or her particular problem.

Assisting
individuals in
finding an
advocate

104.-(1) An advocate who is unable or unwilling to act for whatever reason, including lack of qualification in the particular field, shall assist the client at no cost in finding another advocate or a practitioner who is qualified and able to work.

(2) An advocate who is already engaged to represent a person in a matter and who is requested by another person to assist that other person in finding an advocate to represent that person in the matter has a duty not to refer that person to another advocate where the advocate has reason to believe that the other advocate is not competent to represent that person in the matter.

(3) An advocate may offer assistance in making legal services available by participating in legal aid schemes, prepaid legal services plans and referral services, by engaging in programs of public information, education or advice concerning legal matters, and by being considerate of those who seek advice but are inexperienced in legal matters or who cannot explain their problems.

Right to
decline
instructions

105.-(1) An advocate has a right to decline instructions other than instructions assigned to him by a court or the Society.

(2) An Advocate shall be slow to exercise the right to decline under sub regulation (1) if the probable result would be to make it very difficult for a person to obtain legal advice or representation.

(3) An advocate shall not exercise the right under sub-regulation (1) merely because the person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the advocate's private opinion about the client.

(4) An advocate who declines a client's instructions may assist the person to obtain the services of another advocate competent in the particular field, willing and able to act.

PART XIII
ADVOCATE IN PUBLIC SERVICE

Advocates (Professional Conduct and Etiquette) Regulations

GN. No. 118 (contd.)

Advocate in public service

106.-(1) An advocate in public service has a duty, in the proper discharge of his duties, to adhere to standards of conduct as high as those which are required of an advocate engaged in private practice.

(2) For purposes of these Regulations, an advocate in public service includes an advocate in the service of a public office or any office of the government, whether established by law or otherwise and whether directly perceived to serve as a legal personnel or otherwise.

Conflict of interest

107.-(1) An advocate in public office has a duty not to allow personal or other interests to conflict with the proper discharge of official duties.

(2) Where any unforeseen conflict arises, the advocate has a duty to declare the interest, terminate the professional relationship, and explain to the client the circumstances which have led to the conflict of interest.

(3) Subject to any special provisions applicable to a particular public office, an advocate holding public office who determines probability of a conflict of interest arising shall declare such interest at the earliest opportunity and take no part in any consideration, discussion or vote with respect to the matter in question.

Appearance before official bodies

108.-(1) Where an advocate or any of the advocate's associates is a member of an official body, the advocate has a duty not to appear professionally before that body.

(2) An advocate has a duty not to advise upon a ruling of an official body of which the advocate either is a member or was a member at the time the ruling was made.

Disclosure of confidential information

109. An advocate who has acquired confidential information by virtue of holding public office has a duty to keep such information confidential and not divulge or use it even after the advocate has ceased to hold such office.

Disciplinary action

110. The conduct of an advocate in public office which reflects adversely on the advocate's integrity or professional competence may subject the advocate to disciplinary action.

Duty after leaving public employment

111. After leaving public employment, the advocate shall not accept employment in connection with any matter in which the advocate had substantial responsibility or confidential information prior to leaving.

PART XIV
THE ADVOCATE AS A PROSECUTOR

- Advocate in service as prosecutor shall-
- 112.-(1) When acting as a private prosecutor, the advocate shall-
- (a) act in the exercise of his prosecutorial function fairly and dispassionately;
 - (b) act in the spirit to seek justice, not merely to strive to obtain a conviction and to present to the court in a firm and fair manner evidence that the advocate considers to be credible and relevant;
 - (c) not prevent or impede one charged with an offence or in peril of such a charge from being represented by advocate or from communicating at reasonable times with advocate; and
 - (d) disclose to defence advocate or to the party charged, if unrepresented, in a full, fair and timely fashion, before, during and after a trial, as circumstances may dictate, all such matters as are required to be disclosed in accordance with the policies and standards of public prosecution disclosure determined, from time to time, by law or by directive of the Director of Public Prosecutions, whether such disclosures may tend to show guilt or innocence or would affect punishment.

PART XV
DUTIES TO THE PROFESSION

- Upholding of professionalism 113. An advocate shall uphold the dignity and integrity of the profession and promote its reputation for fairness, justice and honesty.
- Public confidence 114. An advocate has a duty to maintain public confidence in the profession, respect and zealously guard and promote the values, principles, modes of conduct and behaviour of an advocate as set forth in these Regulations.
- Reporting an unprofessional conduct 115. An advocate has a duty to report to the Society particulars of improper professional conduct by another advocate if it is reasonably perceived by the reporting advocate that such conduct

Advocates (Professional Conduct and Etiquette) Regulations

GN. No. 118 (contd.)

may result in serious damage to a client, the profession or other member of the public:

Provided that the report is made *bona fide* and without malice or ulterior motive.

Prompt replying to communication

116. An advocate shall reply promptly to any communication from the disciplinary body, particularly where such communication relates to a possible breach of these Regulations.

Participation in professional activities

117.-(1) An advocate shall, for the purpose of upholding professionalism, discharge the advocate's public responsibility of providing independent and competent legal services to do everything possible to assist the court, the profession and the national, regional and international bodies of the profession to function properly and effectively.

(2) An advocate shall participate in professional activities including such activities as law reform, continuing legal education, panel discussions, legal aid programmes, law school involvement, *pro bono* legal services, community legal services, Society's governance and committees work, liaison with other professionals and other activities of the Society or its Chapter(s).

Duty to meet financial obligations

118.-(1) An advocate has a duty, apart from any legal liability, to meet financial obligations incurred in the course of practice, such as on client's accounts, professional and society fees or charges.

(2) Where an advocate incurs an obligation on behalf of a client that the advocate is not prepared to pay personally, the advocate has a duty to make his position clear in writing at the time the obligation is incurred.

Dishonourable interests

119. An advocate has a duty to the profession not to become involved in a dishonourable business or occupation.

Human dignity

120. An advocate has a duty to uphold human dignity in the conduct of the advocate's professional practice and that this duty embodies the duty to respect and foster human rights and freedoms including, among other things, those set forth in the Constitution of the United Republic of Tanzania and any other law applicable.

PART XVI

PRACTICE BY UNAUTHORIZED PERSONS

Unauthorized practice of law
Caps. 341 and 268.

121.-(1) An advocate has a duty to assist in preventing the unauthorized practice of law.

(2) For the purposes of this Regulation "unauthorized practice of law" means the provision of legal services by a person who is not qualified to provide such services under the Advocates Act, the Attorney General's Office (Discharge of Duties) Act, or any other relevant law.

Suspended or deferred advocates

122.-(1) An advocate shall not employ a deferred advocate, an advocate without a valid practising certificate or an advocate who is under suspension as a result of disciplinary proceedings or any other reason.

(2) Notwithstanding sub-regulation (1), where an advocate wishes to employ an advocate referred to in sub-regulation (1), the employing advocate shall obtain a prior approval of the Chief Justice to that effect.

Supervision of employees

123. Every advocate has complete professional responsibility for all business entrusted to him and maintain direct supervision over staff and assistants including students, interns, clerks and legal assistants to whom particular tasks and functions may be delegated.

Professional duties by qualified advocate

124. An advocate has a duty to ensure that-

- (a) all matters requiring an advocate's professional skill and judgment are dealt with by an advocate qualified to do the work; and
- (b) legal advice is not given by unauthorized persons, whether in the advocate's name or otherwise.

Legal assistance

125.-(1) Subject to the relevant laws and regulations of the Society, a legal assistant may perform any task delegated and supervised by an advocate where the advocate maintains a direct relationship with the client and assumes full responsibility for the work performed by the assistant.

(2) Legal assistants shall not perform any of the duties which are exclusively reserved for advocates or engaged in matters that only advocates are allowed to perform.

(3) For purposes of sub-regulation (1), a delegated task to a legal assistant shall depend on a special knowledge, experience

and competence of the legal assistant and delegating advocate has to employ careful legal judgment when assigning matters to legal assistants.

(4) A legal assistant is permitted to act only under the supervision of an advocate and that adequacy of supervision depends on the type of legal matter, including the degree of specialisation, standardization and repetitiveness of the matter and the expertise of the legal assistant, both generally and with regard to the particular matter.

(5) The advocate has a duty to educate the legal assistant and supervise, on a continuing basis, the way that the legal assistant carries out duties for the advocate so that the work of the legal assistant is shaped by the advocate's judgement.

Letterheads

126. The letterhead of an advocate shall not list a person who is not a practising advocate.

PART XVII SEEKING BUSINESS

Restriction
against
seeking
business

127.-(1) The Society shall ensure that members of the public know and have access to legal services of their choice without difficulty or delay.

(2) An advocate may seek business in a manner which -

(a) is not inconsistent with public interest;

(b) does not compromise the integrity and dignity of the profession; or

(c) does not contravene these Regulations or regulations of the Society.

(3) For purposes of sub-regulation (2), "seeking business" includes advertising own business, making public appearances for purposes having a bearing on one's business, being interviewed on own business, circulating literature in advertising own business or directly or indirectly initiating contacts with the aim of attracting legal work.

(4) For avoidance of doubt, authorised advertising includes owning websites, giving out profiles, business cards or fliers, displaying indoor pull banners or sponsoring the Society.

Prohibition of
touting

128. No advocate may directly or indirectly apply for or seek instructions for professional business, or do or permit in the

carrying on of his practice any act or thing which can be reasonably regarded as touting or calculated to attract business unfairly.

PART XVIII

DUTY TO UPHOLD AND IMPROVE JUSTICE

Duty to improve justice

129.-(1) An advocate has a duty to encourage public respect for law and justice as well as to uphold and improve the administration of justice.

(2) The admission to, and continuance in the practice of law is considered as basic commitment by the advocate to adhere to the principles of equal justice for all within an open, ordered and impartial system.

Duty to improve the legal system

130. Every advocate has a duty to contribute to the development of the legal system by providing proposals for improvement and *bona fide* criticism to laws or enactments.

PART XIX

PUBLIC APPEARANCES AND PUBLIC STATEMENTS BY ADVOCATES

Advocate's duties when making public appearance or statement

131.-(1) An advocate who makes public appearance or statement has a duty to maintain the same degree of compliance with the regulations of ethical behaviour and professional conduct as would otherwise be observed if the advocate had been in his office or courtroom.

(2) When contemplating a public statement concerning a client's affairs, the advocate has a duty to the client to be satisfied that any public communication is in the best interests of the client and within the scope of the retainer.

(3) An advocate has a duty to the client-

- (a) to be qualified to represent the client effectively before the public;
- (b) to adequately prepare for the public appearance; and
- (c) not to permit any personal interest or other cause to conflict with the client's interests.

(4) An advocate shall not make a misleading statement of law or fact in public.

Advocates (Professional Conduct and Etiquette) Regulations

GN. No. 118 (contd.)

Other duties

132.-(1) An advocate who chooses to comment on a specific case shall not do so without the instruction and consent of the client.

(2) When making public appearance or public statement an advocate has a duty:

- (a) not to disclose confidential information about the client or the client's affairs without the consent in writing of the client;
- (b) to treat other advocates and the court with courtesy and respect; and
- (c) uphold and encourage public respect for the law and administration of justice.

Application of the restrictions on seeking business

133. The restrictions relating to seeking business shall apply to an advocate in the course of making public appearances and statements.

Advocate and the media

134. Where an advocate, by reason of professional involvement or otherwise, is able to assist the media in conveying accurate information to the public, the advocate may do so if-

- (a) there is no infringement of the advocate's obligation to the client, the profession, the court or the administration of justice; and
- (b) an advocate's comments are made *bona fide* and without malice or ulterior motive and are true and not misleading.

Assisting public understanding

135.-(1) Where an advocate is called upon to comment publicly on the effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases or to offer opinion on causes that have been or are about to be instituted, the advocate may provide such commentary in order to assist the public to understand the legal and other issues involved.

(2) An advocate may be engaged as an advocate for special interest groups whose objective is to bring about changes in legislation, government policy or a heightened public awareness about certain issues.

Commenting on cases after final adjudication

136. An advocate may, upon request comment on a specific case after the final determination of the matter and the case report has become a matter of public record:

Provided that, in commenting in any case the advocate shall not malign the court or any officer of the court.

Commenting on cases before the court 137. An advocate shall not comment on a specific case that is pending before the court in a manner that prejudices the outcome of such case.

Guarding against media abuses 138.-(1) When making public appearances or making public statements an advocate shall have due regard to the fact that he has no control over any editing that may follow the context in which the appearance or statement may be used by the media.

(2) For the purpose of avoiding to be misquoted or quoted out of context an advocate who plans a public statement has to issue a written release or give a statement from a prepared text and to retain a reliable record of the statement so that if the advocate is misquoted or quoted out of context or misinterpreted by the media the advocate may readily and effectively correct the error.

(3) An advocate has a duty to a client whose case has been misrepresented or misconstrued by the media to-

- (a) contact the media responsible for the misrepresentation or misconstruction and;
- (b) attempt to correct the errors as soon as such error comes to the advocate's attention.

PART XX

AVOIDING QUESTIONABLE CONDUCT

Maintaining conducts 139.-(1) The advocate has a duty to carry out duties as stipulated in these Regulations and any other laws and regulations governing the conduct of advocates.

(2) An advocate shall, at all times, observe a standard of conduct that reflects credit on the profession and the administration of justice generally, and inspires the confidence, respect and trust of clients, other person with whom the advocate works and the community.

PART XXI

DISCRIMINATION

Restriction on 140.-(1) An advocate has a duty to respect the human dignity and worth of all persons and to treat all persons with equality and without discrimination.

discrimination

(2) An advocate is considered to have discriminated a person under these Regulations if he makes a distinction-

- (a) based on an irrelevant characteristic or perceived characteristic of an individual or group including age, race, colour, religion, creed, sex, disability, ethnicity, nationality, family status, marital status, source of income, political belief or affiliation;
- (b) that has the effect of imposing burdens, obligations or disadvantages on an individual or on a group not imposed on others; or
- (c) that has the effect of withholding or limiting access to opportunities, benefits or advantages available to individuals or groups in society.

(3) This regulation shall not be considered to preclude-

- (a) making distinctions-
 - (i) based on a *bona fide* qualification recognised by the law; or
 - (ii) where such distinction is a reasonable limit prescribed by law as may be justified in a free and democratic society; and
- (b) any programme, activity or affirmative action that has the amelioration of conditions or disadvantages for individuals or groups including those who are disadvantaged because of factors stated by law or policy requiring affirmative action.

Duty of service

141. Every advocate has a duty to ensure that no person is denied services or receives inferior service because of discrimination.

PART XXIII ENFORCEMENT OF THESE REGULATIONS

Enforcement bodies

142. The following authorities shall be responsible for enforcement of these Regulations:

- (a) the Chief Justice;
- (b) Judges of the High Court;
- (c) the Committee; or
- (d) the Ethics Committee established under the Tanganyika Law Society Act;

Cap. 307

- Sanctions for breach of the Regulations
143. In addition to any other sanctions provided by the Act or any other law, any of the enforcement bodies may order the advocate to -
- (a) pay a fine for the misconduct committed;
 - (b) perform his duty or do anything as an advocate under an advocate's client relationship;
 - (c) pay compensation to the client;
 - (d) refund money paid to him by the client for which work done was not commensurate with the fees; or
 - (e) offer an oral, written or published apology.

PART XXII
MISCELLANEOUS PROVISIONS

Right of audience of advocates

144.-(1) The Attorney General, the Director of Public Prosecutions, the Administrator General or the Solicitor General when appearing as such in any matter, whether of his own motion or at the instance of the court, shall have the right of audience in court and shall take precedence over all other advocates; but where only the Attorney General appears as such, the Attorney General shall take precedence.

(2) The provisions of sub regulation (1) shall apply in relation to the Deputy Attorney General, Deputy Director of Public Prosecutions, Deputy Solicitor General, Law Officers, State Attorneys, Legal Officers appearing in court on behalf of the Attorney General, the Director of Public Prosecutions, the Administrator General or the Solicitor General.

(3) In any other case precedence shall follow the order entry of the advocates' names upon the Roll of Advocates.

Advocates to appear in proper attire

145. An advocate should appear in court at all times only in the dress prescribed under these Regulations and his appearance should always be presentable.

Prescribed advocates attire

146.-(1) A male advocate appearing in the High Court or Court of Appeal shall wear a black or heavy blue or grey business suit, and with a white or light blue shirt, white bib and black or brown shoes.

(2) A female advocate shall wear a black or navy blue or heavy grey skirt or trousers (both not tight) and matched coat with a white or blue shirt, white bib or *collarettes* and black or brown shoes.

Advocates (Professional Conduct and Etiquette) Regulations

GN. No. 118 (contd.)

(3) For appearances before subordinate court the position is the same as in (1) and (2) above except that no bib shall be required, but appropriate neckwear, such as a necktie shall be needed.

(4) Female advocates shall-

- (a) not wear sleeveless dresses and shirts;
- (b) not wear knee length skirts or below;
- (c) not wear culottes, shorts or jeans; and
- (d) not wear stiletto shoes.

(5) For appearance in any court on Mainland Tanzania, advocates are expected to produce to the court, whenever so required by the court, a valid identity card issued by the Society.

(6) Any person unable to produce such card when so required may be denied the right of audience before the court.

Dar es Salaam,
29th January, 2018

ELIEZER MBUKI FELESHI,
Chairman Advocates Committee

I APPROVE

Dar es Salaam,
5th February, 2018

IBRAHIM HAMIS JUMA,
Chief Justice