



BERMUDA

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

BR 48 / 1981

[made by the Bar Council and confirmed by the Chief Justice under section 9 of the Bermuda Bar Act 1974 and brought into operation on 7 August 1981]

TABLE OF CONTENTS

1	Citation
2	Definitions
3	<i>[revoked]</i>
4	Integrity
6	Duties
8A	Duties under the 1997 Act
8B	Duties under the 2008 Act
8C	Duties under the 2008 Regulations
9	Advising clients
15	Confidential information
19	Pupillage
22	Impartiality and conflict of interest
30	Outside interests
32	Trading in real estate
33	Care of client's property
39	Conduct at court
51	<i>[revoked]</i>
61	Dress in court
62	Duties when prosecuting a person accused of a crime
65	Duties when defending a person accused of a crime
70	Withdrawal of service
76	Making legal services available
85	Advertising
87	<i>[revoked]</i>
88	<i>[revoked]</i>

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

89	<i>[revoked]</i>
90	Fees
97	Public office
102	Respect for administration of justice
103	Responsibility to profession
105	Unauthorized practice of the law
108	Relationship between barristers
115	Practice outside Bermuda
117	Avoidance of impropriety
126	Rules to be observed in the spirit

Citation

- 1 These Rules may be cited as the Barristers' Code of Professional Conduct 1981.

Definitions

- 2 In this Code—

“the 1974 Act” means the Bermuda Bar Act 1974;

“the 1997 Act” means the Proceeds of Crime Act 1997;

“the 2008 Act” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

“the 2008 Regulations” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

“barrister” means a barrister and attorney admitted to practise in accordance with the provisions of section 51 or section 53 of the Supreme Court Act 1905, and includes, in so far as applicable and with any necessary grammatical changes, a professional company;

“Board” means the Barristers and Accountants AML/ATF Board;

“court” includes any court or tribunal, or any other person or body of persons before whom a barrister appears as an advocate.

[Rule 2(2) revoked and replaced by BR 120 / 2018 rule 2 effective 4 October 2018]

- 3 *[Revoked by BR 120 / 2018]*

[Rule 3 amended by 2009 : 29 s. 18 effective 19 October 2009; Rule 3 revoked and replaced by BR 120 / 2018 rule 2 effective 4 October 2018]

Integrity

- 4 A barrister must discharge his duties to his client, the court, members of the public and his fellow members of the profession with integrity and in accordance with this Code.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

5 The conduct of a barrister within or outside the professional sphere must not be likely to impair a client's trust in him as a professional consultant.

- (a) A barrister must not discriminate directly or indirectly against any person or class of person (including a client or another barrister or a pupil or an employee) who is protected from discrimination under the Human Rights Act 1981.
- (b) A barrister must not discriminate directly or indirectly against any person (including a client or another barrister or a pupil or an employee) because of their sexual orientation.

[Section 5 paragraphs (a) and (b) inserted by BR 84 / 2010 s. 2 effective 1 December 2010]

Duties

6 It is the duty of every barrister—

- (i) to comply with the provisions of this Code;
- (ii) not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession of barrister into disrepute, or which is prejudicial to the administration of justice;
- (iii) to observe the ethics and etiquette of his profession;
- (iv) to be competent, diligent and efficient in all his professional activities;
- (v) within twenty-eight days (unless a longer period has been agreed by the Bar Council) to respond to every enquiry made of him by the Council;
- (vi) to report to the Bar Council any conviction of a criminal offence which may bring the profession into disrepute, or any disciplinary action taken against him in any jurisdiction in respect of his practice as a barrister and attorney.

[Rule 6 amended by BR 51/1994 effective 2 December 1994; Rule 6 amended by BR 120 / 2018 rule 3 effective 4 October 2018]

7 A barrister has a duty to uphold the interest of his client without regard to his own interest or to any consequences to himself or to other person.

8 A barrister must report to the Bar Council if he is convicted of a criminal offence which involves dishonesty or which may bring the profession into disrepute or if any disciplinary action is taken against him in any other jurisdiction in respect of his practice as a barrister and attorney within that jurisdiction.

Duties under the 1997 Act

8A (1) Part V of the 1997 Act applies to all barristers, which are referred to in that Act as "professional legal advisers".

(2) Under section 46(6) of the 1997 Act, the requirement to make disclosures and filings of suspicious activity is subject to legal professional privilege only to the extent that such information is communicated or given to a barrister—

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser;
or
- (c) by any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings,

but no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering a criminal purpose.

(3) Under section 47 of the 1997 Act, except where disclosure is likely to tip-off a client, barristers are required to make disclosures and filings of suspicious activity reports to the FIA of information acquired in the course of their professional relationships with their clients, and in doing so must avoid tipping-off the client that such disclosure or filing will be made or has been made.

(4) All barristers must register with the FIA for the purpose of making disclosures under section 46(A1) of the 1997 Act.

(5) In this rule—

“FIA” means the Financial Intelligence Agency established under section 3 of the Financial Intelligence Agency Act 2007;

“professional legal adviser” has the meaning given in section 42A(1) of the 1997 Act.

[Rule 8A inserted by BR 120 / 2018 rule 4 effective 4 October 2018]

Duties under the 2008 Act

8B (1) Under Part 4A of the 2008 Act, barristers, firms of barristers and professional companies in independent practice are referred to as “firms”.

(2) Under section 30C (Registration of firms) of Part 4A of the 2008 Act, all firms must register with the Board, and provide such information about the nature of the firm’s business and activities as the Board may require.

(3) Under section 30C(3) of the 2008 Act, the Board determines whether or not a barrister, firm of barristers or professional company registered under that Act as a firm is a regulated professional firm.

(4) It is improper conduct—

- (a) under section 17(1)(cb) of the 1974 Act if a barrister fails to comply with a requirement imposed under Part 4A of the 2008 Act;
- (b) under section 17(3)(d) of the 1974 Act if a professional company fails to comply with a requirement imposed under Part 4A of the 2008 Act.

[Rule 8B inserted by BR 120 / 2018 rule 4 effective 4 October 2018]

Duties under the 2008 Regulations

8C (1) The 2008 Regulations apply to barristers, firms of barristers and professional companies as professional legal advisers when participating in financial or real property transactions concerning a specified activity, referred to in those Regulations as “relevant persons”.

(2) Under regulation 9(1)(b) of the 2008 Regulations, a relevant person must not establish a business relationship or carry out occasional transactions with a customer if the relevant person is unable to apply customer due diligence measures in accordance with the 2008 Regulations.

(3) Under regulation 9(1)(c) of the 2008 Regulations, a relevant person must terminate any existing business relationship with a customer if the relevant person is unable to apply customer due diligence measures in accordance with the 2008 Regulations.

(4) Under regulation 18(1)(b) of the 2008 Regulations, a relevant person is required to take measures to regularly train relevant employees on how to recognise and deal with transactions which may be related to money laundering or terrorist financing;

(5) For the purpose of meeting the requirement referred to in paragraph (4), a relevant person must provide training to relevant employees at least once in every two years.

(6) Under regulation 18(1)(c) of the 2008 Regulations, a relevant person must take appropriate measures to screen all relevant employees prior to hiring.

(7) It is improper conduct—

(a) under section 17(1)(ca) if a barrister fails to comply with the 2008 Regulations;

(b) under section 17(3)(ca) if a professional company fails to comply with the 2008 Regulations.

[Rule 8C inserted by BR 120 / 2018 rule 4 effective 4 October 2018]

Advising clients

9 A barrister must be both candid and honest when advising clients and give his clients a competent opinion based on the known facts and the law applicable thereto. It may well be necessary, therefore, for him to investigate the facts as well as research any applicable law before giving an opinion.

10 A barrister should advise and encourage a client to settle a dispute whenever such a course appears to be advantageous for the client.

11 A barrister must never knowingly assist or encourage any dishonesty, fraud, crime or illegal conduct nor advise his client as to how to violate the law.

12 A barrister must not advise, threaten or bring criminal or quasi-criminal proceedings in order to secure some advantage for a client in civil proceedings. Neither should he advise, seek or procure the withdrawal of a prosecution in consideration of the payment of money or transfer of property to or for the benefit of a client.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

13 As soon as a barrister becomes aware that he has made a mistake that will or may damage his client's interest, he must immediately inform the client of the mistake and advise him promptly to seek the advice of an independent barrister. Where the client chooses not to seek such advice, the barrister must do his best to rectify the mistake at no additional expense or risk to the client.

[Rule 13 substituted by BR 51/1994 effective 2 December 1994]

14 If a barrister gives advice relating to non-legal matters, he must distinguish that advice from his legal advice.

Confidential information

15 A barrister shall hold in strict confidence all information acquired in the course of his professional relationship with his client, and he must not divulge any such information unless he is expressly or impliedly authorized to do so by his client or is so required by the law. He may, however, unless expressly forbidden by the client, disclose such information to other members of his firm and to such employees of the firm as may be necessary.

16 A barrister shall not disclose that a particular person has consulted or retained him unless the nature of the matter requires such disclosure.

17 A barrister shall not disclose to one client the confidential information concerning or received from another client and he must decline employment which might require him to do so. When two parties employ the same barrister, communications passing between either party and the barrister, in his joint capacity, must be disclosed to the other party.

18 Notwithstanding the above paragraphs a barrister may be obliged to reveal information about a client's affairs in order—

- (i) to establish or collect his fees;
- (ii) to defend himself, an associate or an employee in any civil, criminal or disciplinary proceedings;
- (iii) to prevent the commission of a crime; or
- (iv) to obey an order of a court.

Pupillage

19 A barrister shall not be entitled to take a pupil unless he has been admitted to practise for a period of five years.

20 A barrister who acts as a pupil master may not seek or accept any pupillage fee, and the barrister acting as pupil master must pay the pupil during his pupillage at least a living wage.

21 A barrister who acts as a pupil master shall comply with the Council's guidelines concerning pupillage, available from the Secretary on request.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

Impartiality and conflict of interest

22 A barrister or firm of barristers must neither advise nor represent both sides to a dispute. Save after adequate disclosure to and with the consent of all clients or prospective clients concerned, he or the firm should not act or continue to act in a matter when there is or there is likely to be a conflict of interest.

23 A barrister may appear for more than one party in a trial provided he satisfies himself that there is not and is not likely to be any conflict of interest.

24 A barrister shall not act for an opponent of a client, or of a former client, in any case in which his knowledge of the affairs of such client or former client may give him an unfair advantage.

24A Where a barrister or a member of his staff who has acted on behalf of a client in a matter, irrespective of the nature of the matter, subsequently joins another firm ("the new firm") which acts or has the opportunity of acting for a party with interests adverse to those of the former client, he or that staff member and the new firm should cease or decline to act in the matter if he or the staff member is by virtue of his former capacity in possession of material information which would not properly have become available to him in his new capacity:

Provided that the Bar Council may, after ascertaining the views of the former client, exempt a barrister or a member of his staff from the above requirement.

[Rule 24A inserted by BR 51/1994 effective 2 December 1994]

24B Where two firms, after previously acting for clients engaged in litigation against each other or with conflicting interests, amalgamate in circumstances such that, if the same barrister had been acting for both clients he would by reason of these Rules be unable to continue to act for either client, then the amalgamated firm must cease to act for any of such clients:

Provided that the Bar Council may, after ascertaining the views of all the clients involved, exempt an amalgamated firm from the above requirement.

[Rule 24B inserted by BR 51/1994 effective 2 December 1994]

25 A barrister shall not act for a client in any case where he has reason to believe that the opponent will be calling as a witness another client or former client and there is a probability that he will have to cross-examine that client or former client with regard to matters which have come to his knowledge as a result of the relationship that has existed between them. If such a witness is called unexpectedly then the barrister should apply for leave of the court to withdraw from the case.

26 A barrister shall not invest or advise the investment of any funds belonging to a client or in which a client has a beneficial interest, in any company, business or other activity in which the barrister has a beneficial interest without full and complete disclosure of his interest.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

27 Before a barrister or firm of barristers accepts employment for more than one client in any matter he or the firm must advise the clients concerned that he or the firm has been asked to act for both or all of them, that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and that if a conflict develops which cannot be resolved he or the firm cannot continue to act for both or all of them and may have to withdraw completely.

28 A barrister may not appear as counsel in a matter in which he himself is a party or has a significant pecuniary interest, except where claiming for his or his firm's professional fees and disbursements.

29 (1) A barrister shall not appear as counsel in a matter in which he is likely to be a necessary witness unless—

- (a) the testimony relates to an uncontested issue; or
- (b) the testimony relates to the nature or value of legal services rendered; or
- (c) the Bar Council, being satisfied that his not appearing would work a substantial hardship on the client, gives its prior approval for him so to appear.

(2) A barrister may properly appear as counsel in a matter in which a partner or employee or employer of his, or a registered associate employed in a practice to which they both belong, is likely to be called as a witness, unless his so appearing would involve a breach of some other provision of this Code.

[Rule 29 substituted by BR 51/1994 effective 2 December 1994]

Outside interests

30 A barrister who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardise his professional integrity, independence or competence.

31 It is the duty of a barrister to ensure when he is involved in an interest outside his legal practice that every client for whom he acts who might be affected by such interest is made aware of the barrister's interest.

Trading in real estate

32 A barrister when trading in real estate as permitted by the Real Estate Brokers' Licensing Act 2017 shall not charge a commission or percentage of the sale price realized on a transaction in real estate or based on the value of real property dealt with by him for his client, by way of alternative to his usual charges.

[Paragraph 32 amended by 2017 : 28 s. 55 & Sch. 3 effective 2 October 2017]

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

32A A barrister shall not engage in investment business as defined in the Investment Business Act 2003 unless the barrister is in possession of a licence granted under that Act.

[Rule 32A inserted by BR 74/1999 effective 10 December 1999; reference to Investment Business Act 2003 substituted on consolidation under 1989:64 s.11]

Care of client's property

33 The barrister shall observe accepted practices, rules and laws regarding the preservation and safekeeping of his clients' property entrusted to him. Where there are no such practices, rules or laws or the barrister is in any doubt, he shall take the same care of such property as a careful and prudent person would take of his own property.

34 A barrister is required in dealing with his clients' money to adhere strictly to the Barristers (Accounts and Records) Rules 1976 *[title 30 item 3(b)]*.

35 A barrister shall clearly identify his client's property and safeguard it apart from his own and other clients' property.

36 A barrister shall promptly notify a client of the receipt of any property of or relating to the client unless he is satisfied that the client is aware that it has come into the barrister's custody.

37 A barrister shall take reasonable steps to keep his clients' papers and other property out of sight of as well as out of reach of those not entitled to see them and should, subject to any rights of lien, promptly deliver them to the client upon request.

38 A barrister shall be alert to claim on behalf of his clients any privilege in respect of their property seized by any other person or authority.

Conduct at court

39 A barrister must at all times act with due courtesy to the court before which he is appearing and to opposing counsel. He must in every case use his best endeavours to avoid unnecessary expense and waste of the court's time. He should, when asked, inform the court of his estimate of the length of his case; and he should also inform the court of any developments which affect the information already provided.

40 Subject to the provisions of this Code, a barrister should conduct cases in such manner as in his discretion he thinks will be most to the advantage of his client.

41 A barrister instructed to settle a pleading is under responsibilities to the court as well as to his client. He may not make any allegation unsupported by his instructions. He may not allege fraud unless—

- (i) he has clear instructions in writing to plead fraud; and
- (ii) he has before him reasonable credible material which, as it stands, establishes a prima facie case of fraud.

42 In an appeal either to the Supreme Court or to the Court of Appeal a barrister should not settle grounds of appeal unless he considers that the proposed appeal is properly arguable.

43 A barrister shall not—

- (i) knowingly assist or permit his client to do anything which the barrister considers to be vexatious, dishonest or dishonourable;
- (ii) appear before a court when he or his associates have business or personal relationships with a member of the court which give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the court unless the member of the court withdraws from the court while it is considering the matter in respect of which the barrister is appearing;
- (iii) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a court or any of its officials whether by bribery, personal approach or any means other than open persuasion as an advocate;
- (iv) knowingly attempt to deceive a court or influence the course of justice by offering false evidence, mis-stating facts or law, presenting or relying upon a false or deceptive affidavit; suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime or illegal conduct. A barrister who has innocently put on the file an affidavit by his client which he has subsequently discovered to be false in a material particular shall withdraw the same and where this is not possible shall inform the court and opposing counsel at the earliest date;
- (v) knowingly mis-state the contents of a document, the testimony of a witness, the substance of an argument or any provision of the law or any case that he cites or refers to;
- (vi) dissuade a material witness from giving evidence or advise such a witness to absent himself;
- (vii) knowingly assist a witness to misrepresent himself or impersonate another;
- (viii) needlessly abuse, hector, harass or inconvenience a witness. in all cases it is the duty of a barrister to guard against being made the channel for questions or statements which are only intended to insult or annoy either the witness or any other person or otherwise are an abuse of counsel's function, and to exercise his own judgment both as to the substance and the form of the questions put or statements made.

44 In both civil and criminal cases, a barrister must ensure that the court and opposing counsel are informed of any relevant decision on a point of law or any legislative provision, of which he is aware and which he believes to be immediately in point, whether it be for or against his contention.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

45 If at any time before judgment is delivered in a civil case, a barrister is informed by his lay client that he has committed perjury or has otherwise been guilty of fraud upon the Court, the barrister may not so inform the Court without his client's consent. He may not, however, take any further part in the case unless his client authorizes him to inform the Court of the perjured statement or other fraudulent conduct and he has so informed the Court,

46 In cross-examination which goes to a matter in issue, a barrister may put questions suggesting fraud, misconduct or the commission of a crime only if he is satisfied that the matters suggested are part of his client's case and he has no reason to believe that they are only put forward for the purpose of impugning the witness's character.

47 Except with the consent of the client or in unavoidable circumstances a barrister may not hand over the conduct of the main trial of an action or prosecution to another barrister as if the latter barrister had himself been instructed.

48 If in a criminal case some procedural irregularity comes to the knowledge of defence counsel before the verdict is returned, he should inform the court as soon as practicable and should not wait with a view to raising the matter later on appeal. Defence counsel is not under any duty to draw matters of fact or law to the attention of the court at the conclusion of the summing-up, but he may do so if he believes it would be to the advantage of his client.

49 Defence counsel has no duty to advise his client to disclose a previous conviction. If the court has been led by the prosecution to believe that an accused has no previous convictions, defence counsel is under no duty to disclose facts to the contrary which are known to him, nor correct any information given by the prosecution if such disclosure or correction would be to his client's detriment; but defence counsel must take care not to lend himself to any assertion that his client has no convictions, or to ask a prosecution witness whether there previous convictions against his client, in the hope that he will receive a negative answer.

50 Every accused person has the right to decide whether to give evidence in his own defence. A barrister may properly advise his client upon this but it is the accused himself who must make the decision.

51 *[revoked]*

[Rule 51 revoked by BR 51/1994 effective 2 December 1994]

52 If an accused person instructs his counsel that he is not guilty of the offences with which he is charged but decides not to give evidence himself, it is the duty of his counsel to put his defence before the court and, if necessary, to make positive suggestions to witnesses. It is the duty of counsel, where instructed to make suggestions of misconduct or dishonesty to witnesses, to warn the client of the risk of adverse judicial comment if the client decides not to give evidence in support of those suggestions.

53 Defence counsel should not, in a plea in mitigation, make any allegation which is merely scandalous or calculated to vilify or insult any person. In any case, the naming in open court of third parties, whose character would thereby be impugned, should if possible be avoided. Where necessary, names, addresses or other such details should be written down and handed in to the court.

54 In normal cases, it is the duty of the defence counsel to see his lay client after conviction and sentence.

55 A barrister shall not in any proceedings in which he is appearing as an advocate express his personal opinion or beliefs as to facts or suggest as a fact anything of which there is no evidence before the court.

56 A barrister should not appear as an advocate at the hearing of any appeal in respect of proceedings in which he gave oral or written evidence other than formal and uncontroversial evidence.

57 A barrister may properly seek information from any potential witness but he should disclose his interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

58 Save with the consent of counsel of the opposing side or of the court, a barrister may not communicate directly or indirectly with a witness, whether or not the witness is his client, concerning the evidence he has given or may give, once the witness has begun to give evidence until his evidence has been concluded.

59 A barrister should never waive or abandon his client's legal right (for example an available defence under a statute of limitations) without his client's informed consent, but in civil matters it is desirable that a barrister should avoid resorting to mere technical objections and attempts to gain advantages from slips or oversights not going to the real merits of the case and he should not be a party to tactics which will merely delay or harass the other side.

60 A barrister should at once inform the court of the possibility of a settlement or of an application for adjournment provided that he can do so without revealing the existence or the content of 'without prejudice' discussions.

Dress in court

61 (1) The dress of barristers appearing in Court should be unobtrusive and compatible with the wearing of robes.

(2) Suits and dresses should be of dark colour. Dresses or blouses should be long-sleeved and high to the neck. Shirts and blouses should be predominantly white or of other unemphatic appearance. Collars should be white and shoes dark.

(3) Wigs should, as far as possible, cover the hair, which should be drawn back from the face and forehead.

- (4) No conspicuous jewellery ornaments should be worn.
- (5) The silk gown is the correct gown for Queen's Counsel.

Duties when prosecuting a person accused of a crime

62 When engaged as a prosecutor the barrister's prime duty is to see that justice is done through a fair trial upon the merits and not primarily to seek for a conviction. The prosecutor must act fairly and dispassionately. He should make timely disclosure to the accused or his barrister (or to the court if the accused is not represented) of all relevant facts and witnesses known to him, whether tending towards guilt or innocence. Where prosecuting counsel has in his possession statements from persons whom he does not propose to call as witnesses, he should regard it as normal practice to show such statements to the defence. Where, however, the defence already know of the existence, identity and whereabouts of any such person and are in a position to call him (as, for example, when a notice of alibi has been served, or when such person is married to a defendant) and in other exceptional circumstances, then prosecuting counsel may, in his discretion, refrain from showing the statement to the defence.

63 It is the duty of prosecuting counsel to assist the court at the conclusion of the summing up by drawing attention to any apparent errors omissions of fact or law which, in his opinion, ought to be corrected.

64 Where an accused person is unrepresented, it is appropriate for prosecuting counsel to inform the court of any mitigating circumstances of which he has knowledge.

[Rule 64 substituted by BR 51/1994 effective 2 December 1994]

Duties when defending a person accused of a crime

65 When defending a client on a criminal charge, a barrister must endeavour to protect his client from being convicted except by a competent court and upon legal evidence sufficient to support a conviction for the offence with which his client is charged. A barrister must not devise facts which will assist in advancing his client's case. accordingly, and notwithstanding the barrister's private opinions as to credibility or merits, a barrister may properly rely upon any evidence or defences including "technicalities" not known to be false or fraudulent.

66 A barrister may not in cross-examination attribute to another person the crime with which his client is charged unless he can properly do so in accordance with paragraph 46; or in any other part of the trial, unless there are facts or circumstances which reasonably suggest the possibility that the crime may have been committed by the person to whom the guilt is imputed.

67 Admissions made by the accused to his barrister may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits the factual and mental elements necessary to constitute the offence, the barrister, even if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, or to the form of the indictment, or

to the admissibility or sufficiency of the evidence, but he must not suggest that some other person committed the offence or call any evidence which, by reason of the admissions, he believes to be false. Nor may he set up an affirmative case inconsistent with such admissions, for example by calling evidence in support of an alibi intended to show that the accused could not have done, or in fact had not done, the act. Such admissions will also impose a limit upon the extent to which the evidence for the prosecution may be attacked. The defence is entitled to test the evidence given by each individual witness for the prosecution and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but it should go no further than that.

68 A barrister may advise his client about pleading guilty to a charge, and such advice may be that a guilty plea showing an element of remorse is a mitigating factor which might enable the court to give a lesser sentence. The client, having received the barrister's advice, must be allowed complete freedom of choice whether to plead guilty or not guilty.

69 It is proper for defending counsel to discuss with the prosecutor the possibility of his client pleading guilty to a lesser charge or to the subsisting charge with the hope of a reduced sentence if—

- (i) he considers it unlikely that his client will be acquitted; and
- (ii) he has discussed the implications and possible consequences with his client; and
- (iii) his client has instructed him to have such discussions,

but the court must not be brought into any such discussions.

Withdrawal of service

70 Subject to paragraphs 71 and 72 a barrister shall not withdraw his services from a client except for good cause and upon notice appropriate in the circumstances.

71 A barrister is required to withdraw his services from a client if—

- (i) to continue his services will require him to act in a manner inconsistent with his duty to a court or with the professional conduct expected of him; or
- (ii) a client is guilty of dishonest or dishonourable conduct in relation to the matter in respect of which the barrister is appearing or acting; or
- (iii) a client wishes to proceed solely to harass or maliciously injure another person; or
- (iv) a client insists on giving evidence either orally or by affidavit which the barrister is satisfied that the client knows to be false in a material respect.

72 A barrister may withdraw his services from a client if—

- (i) he is satisfied that a client has lost confidence in him or when a client does not accept his advice; or

(ii) his fees are not paid within a reasonable time of being demanded,

but he may not withdraw his services at a time that will prejudice his client as for instance shortly before a trial when there is inadequate time for another barrister to be briefed properly, except with the leave Court.

73 Upon his discharge or withdrawal a barrister should—

- (i) subject to any proper lien he may have on them deliver to or to the order of the client all papers and property to which the client is entitled;
- (ii) give the client all information he may require in connection with any outstanding business he has with the client;
- (iii) account for all the funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during his employment;
- (iv) promptly render his account for outstanding fees and disbursements; and
- (v) co-operate with any barrister who succeeds him.

74 A barrister shall not enforce his lien on the papers and property of a client if such a course will materially prejudice the client's position in any pending legal proceedings.

75 A barrister is entitled to make copies at his own expense of all documents given to a client on his discharge or withdrawal from the services of the client.

Making legal services available

76 A barrister shall make his services available to members of the public in an efficient and convenient manner and by means which are compatible with the integrity, independence and effectiveness of the profession.

77 A barrister may decline to act for a prospective client, except where he has been assigned by a court to act for him, but he should be loath to exercise that privilege if the prospective client is likely to have difficulty in obtaining other legal advice or representation.

78 A barrister should not refuse to act for a person merely because that person is unpopular or notorious or because he is espousing an unpopular cause or because he is charged with a particular criminal offence; nor should he be affected by the fact that powerful interests may be involved in the matter in respect of which he is asked to act.

79 A barrister should decline to act for a prospective client if he is not adequately qualified in the field of law in respect of which he is asked to act.

80 Subject to the provisions of this Code, a barrister may not decline to defend any person on whose behalf he is instructed on a criminal charge because of any belief or opinion which he may have formed as to the guilt or innocence of that person.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

81 In any case where a barrister declines to act for a prospective client, he should when requested assist the prospective client in finding a suitable alternative barrister.

82 A barrister should assist in making legal services available to the public by participating in legal aid plans, by engaging in programmes of public information, education or advice concerning legal matters.

83 In legally-aided civil cases a barrister's primary duty remains to his client but circumstances may arise where, for example, a barrister becomes of the opinion that an assisted person no longer has a reasonable prospect of success, or has required the case to be conducted or continued unreasonably in which case a barrister must comply with the provisions of the Legal Aid (General) Regulations 1980 [*title 8 item 37(a)*].

84 It is part of the duty of a barrister instructed for a hearing to be available if necessary for a conference on a day prior to the hearing and for so long as may be required properly to discuss matters with the lay client.

Advertising

85 (1) Barristers may only publicise their practice in accordance with guidelines approved by the Bar Council.

(2) Save in accordance with Bar Council guidelines, a barrister may not do, or cause or allow to be done on his behalf, anything for the purpose of touting, whether directly or indirectly, or anything likely to lead to a reasonable inference that the thing done was done for that purpose.

[Rule 85 substituted by BR 51/1994 effective 2 December 1994; and para (2) substituted by BR 36/1999 effective 4 June 1999]

86 A barrister or firm of barristers shall not list on his or the firm's letterhead the name of any person other than—

- (a) a barrister holding a valid practising certificate; or
- (b) a registered associate; or
- (c) a legal executive who is a Fellow of the Institute of Legal Executives, if he is identified on the letterhead as such an executive and such a Fellow.

[Rule 86 substituted by BR 51/1994 effective 2 December 1994]

87 *[revoked]*

[Rule 87 revoked by BR 51/1994 effective 2 December 1994]

88 *[revoked]*

[Rule 88 revoked by BR 51/1994 effective 2 December 1994]

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

89 *[revoked]*

[Rule 89 revoked by BR 51/1994 effective 2 December 1994]

89A A barrister (hereinafter in this rule called “the Employee”) in the employment of another barrister or firm of barristers (hereinafter in this rule called “the Employer”) shall not during such employment nor after termination of such employment, without justification do nor attempt to do any of the following:

- (a) induce any clients instructing the Employer to terminate such instructions;
- (b) induce any such clients to give their instructions to the Employee upon establishing his own practice or to a barrister or firm whom the Employee is joining, is intending to join or has joined as a member, associate or employee or to any other barrister or firm;
- (c) take or retain any clients' or office files (or copies of them) maintained by the Employer.

Fees

90 A barrister shall not—

- (i) stipulate for, charge or accept any fee which is not fair and reasonable;
- (ii) appropriate any funds of his client held in trust or otherwise under his control for or on account of his fees without the express authority of his client, except as permitted by the Barristers (Accounts and Records) Rules 1976 [*title 30 item 3(b)*] or any other provision of the law; and
- (iii) where a fee is laid down in any provision of the law as the proper fee charge more than that fee.

91 A barrister may reduce or waive fees in cases where payment of his usual fees would involve a client in hardship.

[Rule 91 amended by BR85/2006 effective 15 December 2006]

92 A barrister should, if requested, give his client a fair estimate of the fees and disbursements that are likely if he acts for the client pointing out when necessary where there may be an increase in such fees and disbursements.

93 A barrister shall not divide his fees with another barrister who is not a partner or an associate unless the client, having been informed that a division of fees is proposed, has consented to the employment of the other barrister. In such a case the fees should be divided in proportion to the work done and responsibilities assumed.

94 (1) A barrister shall declare to his client the total sum he has received or will receive as a result of acting for the client and, subject to the following provisions of this rule, shall not accept any hidden commission or reward of any sort.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

(2) Subject to paragraph (4), where a barrister holds or receives for or on account of a client money upon which, having regard to all the circumstances (including the amount of the money and the length of time for which the money is likely to be held), interest ought to be earned for the client, the barrister shall either deposit such money in an interest-bearing account and pay any interest earned to the client or, where he does not deposit the money in an interest-bearing account, pay the client out of his own money a sum equivalent to the interest which would have been earned for the benefit of the client if the money had been so deposited.

(3) Without prejudice to the generality of paragraph (2), it shall be deemed that interest ought to be earned for the client's benefit where money is received for or on account of a client totalling not less than \$10,000 (or the foreign currency equivalent), and at the time of its receipt the money is unlikely within one month of its receipt either to be wholly disbursed or to be reduced below \$10,000 (or the foreign currency equivalent).

(4) Nothing in this rule shall affect any arrangement in writing, whenever made, between a barrister and his client as to the application of the client's money or interest thereon, nor shall it affect any trust money received by a barrister in connection with which he is a trustee.

[Rule 94 substituted by BR 51/1994 effective 2 December 1994]

95 A barrister must disclose to his client any interest he may have in any business receiving disbursements paid for by the client.

96 Except in respect of undefended debt collections or to an extent expressly permitted by the Bar Council, a barrister shall not enter into contingent fee arrangements under which his fees depend upon the results of a case or consist of a pre-arranged share of money recovered on behalf of a client.

Public office

97 A barrister who holds an office of a public nature should in the discharge of his official duties adhere to standards of conduct as high as those which this code requires of a barrister in the practice of law. If the conduct of a barrister holding such office in that office reflects adversely upon his integrity or his professional competence, he may be subject to disciplinary action.

98 A barrister who holds an office of a public nature must not allow his personal or other interests to conflict with the proper discharge of his official duties. If he holds such office on a part-time basis he must not accept any private legal business in which his duty to his client will or may conflict with his official duties, and if some unforeseen conflict arises he should terminate the professional relationship.

99 A barrister holding an office of a public nature should, when he sees that there is a possibility of a conflict of interest between his public and professional duties, declare the possible conflict at the earliest opportunity, and he should not take part in any consideration or discussion of or vote with respect to the matter in question.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

100 If a barrister or any of his partners or associates is a member of an official body, he should not appear professionally before that body or before a committee of it. It is not, however, improper for him to appear before a body a member of which is a partner or associate of his if that partner or associate withdraws from the body while it is considering the matter in respect of which the barrister is appearing. It is also not improper for him to appear before a committee of a body if a partner or associate of his is a member of such a body and such partner or associate is not a member of that committee.

101 A barrister should not represent in the same or any related matter any persons or interests with whom he has been concerned in an official capacity. Likewise, he should not advise upon a ruling of an official body of which he is a member or of which he was a member at the time the ruling was made.

Respect for administration of justice

102 A barrister shall encourage public respect for and shall try to improve the administration of justice.

Responsibility to profession

103 A barrister shall assist in maintaining the integrity and reputation of the Profession.

103A A barrister shall comply with the requirements of such Continuing Legal Education Programme as the Bar Council may from time to time approve.

[Rule 103A inserted by BR 14/2000 r.3 effective 10 March 2000]

104 A barrister shall report to the Bar Council breaches of this Code which come to his knowledge and which he considers to be serious.

Unauthorized practice of the law

105 A barrister shall assist in preventing the unauthorized practice of the law.

106 A barrister shall not without approval of the Bar Council employ in any capacity having to do with the practice of law a barrister who is under suspension as a result of disciplinary proceedings, or a person who has been disbarred or has been permitted to resign while facing disciplinary proceedings and who has not been reinstated.

107 A barrister has professional responsibility for all business entrusted to him. He must maintain direct supervision over any of his staff who are not barristers. He should ensure that all matters requiring a barrister's professional skill and judgment are dealt with by a barrister or registered associate.

Relationship between barristers

108 A barrister shall act with good faith and courtesy in his relationship with other barristers.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

109 A barrister shall give no undertaking he cannot fulfil and he must fulfil every undertaking he gives. Undertakings should be written or confirmed in writing and they should be absolutely unambiguous in their terms. If a barrister giving an undertaking does not intend to accept personal responsibility, he should state this in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given should be deemed to expect that the barrister giving it will honour it personally,

110 A barrister shall not communicate upon or attempt to negotiate or compromise a matter directly with any party who is to the barrister's knowledge represented by a barrister except through or with the consent of that barrister.

111 (1) A barrister shall neither in response to the enquiry of a member of the public nor gratuitously criticize the competence, conduct, advice or charges of other barristers.

(2) The barrister should, however, be prepared when requested by a member of the public to do so, to advise and represent such a person in any complaint or proposed court action against another barrister. Any advice given or pleadings settled in the course of that matter shall be deemed not to be criticism within (1) above.

112 A barrister who finds on receiving a brief or instructions that acceptance of the papers would amount to his replacing another barrister who has previously been instructed in the same matter should inform that barrister that the papers have been delivered to him.

113 (1) A barrister should accede to reasonable requests concerning trial dates, adjournments, waiver or procedural formalities and similar matters which do not prejudice the rights of his client.

(2) Where a barrister knows that another barrister is concerned in a case he should not proceed by default without enquiry and warning.

(3) A barrister shall not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of another barrister not going to the merits or involving the sacrifice of the client's rights.

(4) A barrister should not use a tape-recorder or other device to record a conversation with another barrister without first warning that other barrister.

114 Informal discussions between barristers regarding a case should normally be treated as confidential unless it has been clearly established between them that the discussions are not so intended.

Practice outside Bermuda

115 Subject to the circumstances set out in paragraph 116 the principles set out in this Code shall be applicable to practice by members of the Bermuda Bar whether carried on within Bermuda or elsewhere.

116 In the case of Bermuda barristers practising abroad, they are required to observe the local ethical standards and rules of the appropriate Bar Association or Law Society in

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

the country in which they practise and a breach of their codes will be considered as a breach of this Code and dealt with accordingly.

Avoidance of impropriety

117 A barrister shall not make statements suggesting that he can or will attempt to circumvent the proper administration of justice.

118 A Judge of the Supreme Court, other than an acting judge, who has been on the bench for more than six months and who returns to practice after leaving the bench shall not appear as a barrister in the courts.

[Rule 118 amended by BR 14/2000 r.4 effective 10 March 2000]

119 Without written instructions from the client a barrister shall not insert in the client's will a clause directing the executor to retain his services in the administration of the estate.

120 A barrister has a professional duty, quite apart from any legal liability, to meet the financial obligations incurred in his practice.

121 If a barrister incurs an obligation on behalf of a client which he is not prepared to pay personally, he should make his position clear in writing at the time the obligation is incurred.

122 A barrister who engages a foreign colleague to advise on a case or to co-operate in the handling of it, is responsible for the payment of the latter's charges except in the case of express agreement to the contrary. If a barrister introduces a client to a foreign colleague the barrister is not responsible for the charges of that foreign colleague.

123 Foreign lawyers admitted temporarily to the Bermuda Bar in accordance with section 51 (3) of the Supreme Court Act 1905 shall be subject to the provisions of this Code for the period of their admission as if they were generally admitted to practise as a barrister.

124 A registered associate may not engage in legal practice other than in accordance with section 11 of the Bermuda Bar Act 1974 and every barrister employing a registered associate shall himself be held responsible for due observance by such registered associate of the provisions of this Code.

125 A barrister's conduct when dealing with a person who is not represented professionally should not depart from the conduct required of him when dealing with another barrister. He should not undertake to advise the unrepresented person but should urge him to obtain independent legal advice and, if the unrepresented person does not do so, the barrister must take care to see that such person is not proceeding under the impression that his interests will be protected by the barrister.

BARRISTERS' CODE OF PROFESSIONAL CONDUCT 1981

Rules to be observed in the spirit

126 A barrister shall observe these rules in the spirit as well as to the letter.

[Amended by:

BR 51 / 1994

BR 36 / 1999

BR 74 / 1999

BR 14 / 2000

2009 : 29

BR 84 / 2010

2017 : 28

BR 120 / 2018]