

**RULES OF PROFESSIONAL CONDUCT  
FOR LAW PRACTITIONERS  
1<sup>ST</sup> EDITION**

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of the Chief Justice on 7th June 2002.

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**DEFINITIONS**

In this publication:

"the Act" means the Law Practitioner's Act 1989.

"the Society" means the Tonga Law Society.

"law practitioner" means any person enrolled as a law practitioner as defined by the Act.

"counsel" is used where appropriate to refer to a practitioner carrying out the functions of counsel.

Tonga Law Society  
P.O.Box 2815  
Nuku'alofa  
Kingdom of Tonga

Ph (676) 27671

Fax (676) 27675

South Pacific Islands

**CHAPTER 1**

**Practitioners' Rights, Duties and Responsibilities Generally:**

**Independence of Practitioners:**

**Conflicts of Interest**

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**Rule 1.01**

The relationship between practitioner and client is one of confidence and trust, which shall not be abused.

**Rule 1.02 (a)**

A practitioner as a professional person shall be available to the public and shall not, without good cause, refuse to accept instructions for services within the practitioner's fields of practice from any particular client or prospective client or any client who is poor and is referred to the practitioner by the Society on a pro bono basis.

**Rule 1.02 (b)**

A practitioner shall not put first his right to compensation for services rendered or to be rendered, but rather the interests of his client and the exigencies of the administration of justice.

**Rule 1.03**

A practitioner shall not act for more than one party in the same transaction or matter without the prior informed consent of both or all parties.

**Rule 1.04**

A practitioner shall not act for a client against a former client of the practitioner when through prior knowledge of the former client or of his affairs which may be relevant to the matter, so to act would be or would have the potential to be to the detriment of the former client or may put the practitioner in a position of professional embarrassment.

**Rule 1.05**

Where a practitioner advises a client on either an appropriate investment of the client's moneys or the borrowing of moneys by a client, the

practitioner shall act as an independent adviser and where appropriate advise the client on a representative range of investments or sources of loan moneys as the case may be. He shall also disclose any commission or fee he may derive from any third person as a result of the transaction.

#### Rule 1.06

1. In the event of a conflict or likely conflict of interest among clients, a practitioner shall forthwith take the following steps:

- (a) advise all clients involved of the areas of conflict;
- (b) advise the clients involved that they should take independent advice, and arrange such advice if required;
- (c) decline to act further for any party in the matter where so acting would or would be likely to disadvantage any of the clients involved.

2. Once a situation of the type described in paragraph 1.06 (1) (iii) arises, it shall not be acceptable for practitioners in the same firm to continue to act for more than one client in a transaction, even though a notional barrier known as a Chinese Wall may or may be or may have been constructed. Such a device shall not overcome a conflict situation.

#### Rule 1.07

A practitioner shall have a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and shall not divulge such information except where:

- (a) the client expressly authorises the disclosure;
- (b) the practitioner is defending himself or his associates or employees against an allegation by the client of malpractice or misconduct or against a criminal charge;
- (c) the information relates to the anticipated or proposed commission of a crime (and where the anticipated crime is one involving the possibility of physical injury to another person,

disclosure is mandatory);

- (d) the information is or has become public knowledge and only to the extent it has become so;
- (e) disclosure is required by law;
- (f) disclosure is required by order of a court;
- (g) disclosure to the practitioner's professional indemnity insurer is required in order to maintain or secure the practitioner's cover;
- (h) the practitioner forms the view that there is a serious and imminent risk to the health or safety of the client.

**Rule 1.08**

A practitioner shall disclose to the client all information received by the practitioner which relates to the client's affairs, except where such information relates to the affairs of another client.

**Rule 1.09**

A client's address and any information which might indicate the client's residence or business are part of the confidential information held by a practitioner on behalf of the client. They shall not be disclosed without the client's consent.

**Rule 1.10**

A practitioner who is a director or member of a body corporate (which term includes, but without any attempt to be exhaustive, a local authority or a public board or authority) shall not, without the consent of the body corporate, make use of information received in that capacity.

**Rule 1.11**

A practitioner shall be prepared to meet any liability arising out of any act, error or omission in the course of his professional duties or business. He shall not exclude by contract his liability to a client except as provided by this rule.

A practitioner shall be able, on inquiry by the Law Society:

- (a) to demonstrate that any contract of limitation between himself and his client is fair and conscionable, having regard to the parties involved, the nature of the transactions and any other relevant circumstances which were or ought reasonably to have been known or in contemplation when the contract was made;
- (b) to demonstrate that the practitioner took all reasonable steps to ensure that the client understood and accepted the terms of any contract of limitation;

**Rule 1.12**

A practitioner shall not directly or indirectly offer to, or receive from, a third party, a reward or inducement, whether financial or otherwise, in respect of services rendered or to be rendered to the client.

## **CHAPTER 2**

### **Conduct of Practice Generally**

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#### **Rule 2.01**

The name of a practitioner's firm shall be one, which is not likely to:

- (a) be misleading as to the nature or structure of the firm;
- (b) bring the profession into disrepute; or
- (c) be unfair to other practitioners or the public.

#### **Rule 2.02**

On the firm's letterhead or any other document issued by or within the control of a firm, a firm shall see that neither the public nor other practitioners are misled about the structure of the firm or the status of any person named in such letterhead or document.

#### **Rule 2.03**

1. A practitioner shall not, while being the holder of a practising certificate as a Law Practitioner, engage in a business or professional activity other than the practice of law unless the business or professional activity:
  - (a) will not detract or have the potential to detract from the standards of independence and professionalism a client is entitled to expect from a practitioner;
  - (b) does not have nor has the potential to have a harmful effect on the privilege or confidentiality attaching to communications between a practitioner and a client;
  - (c) would not of itself have the potential to create a conflict of interest on the part of a practitioner.

A practitioner who engages in a business or professional activity other than the practice of law shall immediately make full disclosure of such business or activity to the Chief Justice and to the Society.

2. If a practitioner intends to engage in a business or activity in terms of paragraph 1 of this rule, and any of the conditions will or may not be complied with, the practitioner shall surrender his practising certificate to the Court. If there is doubt as to whether any of the conditions will be complied with, the practitioner shall refer the matter to the Society for a decision as to whether he may engage in such business or activity while retaining a practising certificate.
3. Without limiting the general application of paragraph 1 of this rule, a practitioner shall not become a partner of a firm or shareholder in a company that practises a profession other than law, or that proposes to practise another profession as well as law, except that practice as a registered patent attorney or as a principal of a firm practising as patent attorneys, shall not be a breach of this rule, so long as the firm practises no profession other than law or that of patent attorneys.
4. Where a practitioner or firm provides or intends to provide to clients, services ancillary to legal services, such ancillary services shall be solely in connection with and concurrent to the provision of legal services, and be provided by the practitioner or firm or by an entity in which the practitioner or firm has a controlling interest so that the activities of a practitioner in the provision of such services shall be and shall remain subject to the provisions of the Act and all rules and regulations made under the Act.

The provision of such ancillary services shall be subject to the provisions of paragraphs 1 and 2 of this rule.

#### **Rule 2.04**

A practitioner shall ensure that each separate place of business of his is at all times under effective and competent management by a practitioner who is qualified, in terms of the Act, to practise on his own account, whether in partnership or otherwise.

## **CHAPTER 3**

### **Relations: Practitioners and Clients**

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#### **Rule 3.01**

A practitioner shall charge a client no more than a fee which is fair and reasonable for the work done, having regard to the interests of both client and practitioner.

#### **Rule 3.02**

A practitioner shall not receive a reward, whether financial or otherwise, of which a client is unaware, in respect of services rendered to the client.

#### **Rule 3.03**

If a practitioner has reasonable grounds to doubt the bona fides of a client, then the practitioner is entitled to make inquiries, the form and extent of which would be a matter for the professional judgement of the practitioner in the circumstances of each case.

#### **Rule 3.04**

Any law practitioner who is employed on a full time basis shall not engage in any legal work for any person other than his employer provided that he shall not contravene this rule if he performs legal work as part of a duty roster organized by the Society.

#### **Rule 3.05**

1. A practitioner shall not act as the mere mouthpiece of the client and shall exercise the forensic judgements called for during the case independently, after appropriate consideration of the client's desires where practicable.
2. A practitioner shall not have breached his duty to his client, and shall not have failed to give reasonable consideration to the client's desires, simply by choosing, contrary to those desires, to exercise the forensic judgements called for during a case so as to:



- a) confine any hearing to those issues which the practitioner believes to be the real issues;
- b) present the client's case as quickly and simply as may be consistent with its robust advancement; or
- c) inform the court of persuasive authority against the client's case.

## **CHAPTER 4**

### **Information about Legal Services : Dissemination**

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#### **Rule 4.01**

Advertisements to or any other communications with any person relating to the services of a practitioner or of a firm of practitioners shall be consistent with the maintenance of proper professional standards.

#### **Rule 4.02**

A practitioner shall not, in any advertisement to, or any other communication with any person, claim to be a specialist or to have special expertise in any field or fields or practice.

#### **Rule 4.03**

In offering services directly to members of the public other than by normal advertising channels, a practitioner shall ensure that approaches to persons who are not existing clients are made in a manner which does not bring the profession into disrepute. Approaches must be made in accordance with proper professional standards and not in a way that is intrusive, offensive, or inappropriate.

#### **Rule 4.04**

A practitioner shall not, without the specific consent of a client, give any interview or make any public statement relating to the client or the affairs of the client, whether or not the client is involved in a matter of public knowledge.

#### **Rule 4.05**

A practitioner shall not, either by advertisement or personal representation, give clients or the general public the impression that the practitioner is running a financing or banking business rather than or as well as providing legal services.

## **CHAPTER 5**

### **Relations between Practitioners**

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#### **Rule 5.01**

A practitioner shall promote and maintain proper standards of professionalism in relations with other practitioners.

#### **Rule 5.02**

A practitioner shall not knowingly communicate either orally or in writing with the client of another practitioner without notifying the other practitioner in advance unless it is a proper step in the pursuit of his client's interests.

#### **Rule 5.03**

Subject always to the rights and duties pertaining to practitioner and client privilege there shall be an obligation on every practitioner, who has grounds to suspect defalcations or other improper acts by another practitioner, to make a confidential report at the earliest possible time to the President or the Council of the Law Society.

#### **Rule 5.04**

A practitioner shall not:

- (a) stop a cheque payable to another practitioner; or
- (b) cancel or reverse or amend an order for payment made to another practitioner.

#### **Rule 5.05**

A client has an unequivocal right to change from one practitioner to another.

#### **Rule 5.06**

Where a practitioner becomes aware of a potential claim for negligence against himself, he shall advise the client to seek independent advice in connection with the matter and shall inform the client that he can no longer act in the matter from which the claim of negligence arises unless the client, having been independently advised, requests it.

If the matter from which the claim of negligence arises is a court proceeding, it shall be his duty to advise his client before taking any further step in the action.

**Rule 5.07**

Every practitioner shall have a professional duty to honour an undertaking, written or oral, given in the course of legal proceedings or in the course of practice; and this rule applies whether the undertaking is given by the practitioner personally or by a partner or employee in the course of the practice.

**Rule 5.08**

A practitioner who instructs another practitioner in the role of counsel or in any other capacity in any matter shall, unless agreement to the contrary is reached, become responsible personally for the prompt and full payment of the fee of the instructed practitioner.

**Rule 5.09**

1. A practitioner (practitioner A) who is closely related to another practitioner (practitioner B) shall not act for a client in a matter directly adverse to a person who practitioner A knows is represented by practitioner B, except upon consent by the client after consultation and full disclosure regarding the relationship.
2. For the purposes of this rule:
  - (a) two practitioners are closely related if one is to the other the parent or sibling or if they are married or living as partners on a domestic basis;
  - (b) a practitioner shall not be regarded as 'acting for a client' solely because a partner in his firm or any employee reporting to another partner in his firm is acting for that client. This rule applies only where the practitioner with the close relationship is himself engaged in the matter, whether directly or as supervisor or adviser.

3. Where practitioner A and practitioner B are both retained by their respective clients before the conflict is known, then, in the absence of clients' consent to their continuing to act, the practitioner retained later in time shall cease to act. With the client's consent that practitioner may hand the instruction to another partner in his firm (if any), provided the practitioner so handing does not thereafter in any way act for the client or as briefing counsel or instructing solicitor.

## **CHAPTER 6**

### **Relations with Third Parties**

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#### **Rule 6.01**

A practitioner when acting for a client in a matter where the other party is acting in person, shall treat the other party with courtesy and fairness.

#### **Rule 6.02**

A practitioner, if allowed by law to administer oaths and declarations shall not administer oaths or declarations in respect of a matter or proceeding in which he is involved personally or as practitioner.

#### **Rule 6.03**

A practitioner who instructs another person:

- (a) to prepare an assessment valuation or report or to provide other services; or
- (b) to appear as witness

shall, in the absence of any agreement to the contrary, be personally liable for the prompt payment of the proper fee of the person so instructed.

#### **Rule 6.04**

A practitioner shall make all reasonable efforts to ensure that legal processes are used for their proper purposes only and that their use is not likely to cause unnecessary embarrassment, distress or inconvenience to another person's reputation, interests or occupation.

## **CHAPTER 7**

### **Court Proceedings and Practice**

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#### **Rule 7.01**

Every practitioner is an officer of the court.

#### **Rule 7.02**

In the interests of the administration of justice, the overriding duty of a practitioner acting in litigation shall be to the court or the tribunal concerned. Subject to this, the practitioner shall have a duty to act in the best interests of the client.

#### **Rule 7.03**

A practitioner shall exercise care in court about naming persons not involved in the proceedings, and shall refrain particularly from making scandalous or unnecessary allegations against such person.

#### **Rule 7.04**

Subject to the interests of the client, a practitioner shall in the conduct of litigation, as in all legal dealings, treat other practitioners with courtesy.

#### **Rule 7.05**

A practitioner shall not attack a person's reputation without good cause.

#### **Rule 7.06**

No practitioner engaged in a proceeding, criminal or civil, shall have the sole right to call or discuss the case with a witness.

#### **Rule 7.07**

A practitioner shall not act as both counsel and witness in the same matter, except by leave of the court.

#### **Rule 7.08**

In litigation matters, as in the course of other aspects of practice, a practitioner shall avoid a conflict of interest.

**Rule 7.09**

Subject to any question of privilege which may arise in a particular case, a practitioner shall disclose to all interested parties such information regarding the execution of a will and the circumstances surrounding it as he would be obliged to give if subpoenaed as a witness.

**Rule 7.10**

A practitioner appearing for a party shall not seek or agree to a consent order without the client's express authority.

**Rule 7.11**

Counsel shall not in the course of making submissions say, or cause a witness to say, anything that might mislead the court. In particular, counsel shall not make any statement to the court or put any proposition to a witness that is not supported by reasonable instructions, or that lacks factual foundation by reference to the information available to the court.

**Rule 7.12**

A practitioner shall take all necessary steps to correct any misleading statement made by the practitioner to a court as soon as possible after the practitioner becomes aware that the statement was misleading.

A practitioner shall not confer with any witness on any matter related to the proceedings after that witness has commenced giving evidence unless leave has been granted by the court.



## **CHAPTER 8**

### **Advocate for Prosecution**

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#### **Rule 8.01**

A practitioner prosecuting a criminal case shall fairly assist the court to arrive at the truth, shall seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and shall seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

#### **Rule 8.02**

A practitioner prosecuting a criminal case shall not press the prosecution's case beyond a full and firm presentation of that case.

#### **Rule 8.03**

A practitioner prosecuting a criminal case shall not, by language or other conduct, seek to inflame or bias the court against the accused.

#### **Rule 8.04**

A practitioner prosecuting a criminal case shall not file any indictment or argue any proposition of fact or law which he does not believe on reasonable grounds to be capable of being proved or properly contributing to a finding of guilt.

#### **Rule 8.05**

A practitioner prosecuting a criminal case shall disclose to the opponent as soon as practicable all material available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:

- a) such disclosure would threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
- b) the prosecutor believes that such a threat could not be avoided by confining such disclosure to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

## **CHAPTER 9**

### **Advocate for Defence**

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#### **Rule 9.01**

1. On a plea of not guilty counsel for the defence shall have a duty to see that the prosecution discharges the appropriate onus to prove the guilt of the accused, and to put before the court any proper defence in accordance with the client's instructions.
2. Counsel shall not wantonly or recklessly attribute to another person the crime or offence with which the client is charged, provided that if facts or circumstances arising out of the evidence or reasonable inferences drawn from them raise a reasonable suspicion that the crime or offence may have been committed by another person, such a line of defence may be proper.

#### **Rule 9.02**

Subject to Rules 1.02 (a), and 1.03 counsel shall, on receiving instructions, have a duty to defend a person on a criminal charge, whether or not counsel has formed a belief or opinion about the guilt or innocence of that person.

#### **Rule 9.03**

1. Where counsel has been instructed to defend a criminal charge and before or after the proceedings have started the client makes a confession of guilt to counsel, counsel shall bear in mind:
  - (a) a trial is for the purpose of finding whether the accused person is guilty or not guilty of the offences charged, and not whether the accused is innocent;
  - (b) it is for the prosecution to call evidence to justify a verdict of guilty;
  - (c) a 'crime' is a defined offence committed by a person of sound mind and understanding.

## **CHAPTER 10**

### **Continuing Legal Education**

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#### **Rule 10.01**

It is the duty of a practitioner to remain informed about changes to practice and developments in the law.

#### **Rule 10.02**

1. A practitioner shall attend a continuing legal education course if and when provided for and in as many hours as shall be directed by the Society.
2. A practitioner may, in substitution for the compulsory continuing legal education course, attend another relevant course. The practitioner shall seek the Society's approval of his exemption from attending the compulsory course and shall inform the Society of the nature and duration of the course attended.
3. Failure to attend any such course or obtain exemption may result in the Disciplinary Committee recommending the withholding of, or attaching special conditions to, a practicing certificate.