

CHAPTER 11

RELATIONS WITH OTHER SOLICITORS

11.01 Duty to act in good faith

1. Deceitful conduct
2. Solicitor's undertaking
3. Be courteous
4. Offensive letters
5. Recording conversations
6. Personal responsibility for solicitor agent's fees
7. Stopping client account cheques
8. When another solicitor has been retained
9. Copying vendor's title deeds

11.02 Contact with client of another solicitor

1. Writing to client of another solicitor
2. May be justified
3. Litigation proceedings-service of documents
4. Own client may contact client of other solicitor
5. Instructing an enquiry agent
6. Clients of solicitors not in private practice
7. 'Client' in corporations or Government authorities
8. Interviewing employee of organisation
9. Second opinion

11.03 Duty to report misconduct

1. Financial difficulties of another solicitor
2. Misconduct within the firm
3. Solicitor charged with criminal offence
4. Breach of undertaking

11.04 References

- Full and frank assessment
1. Proper person

Appendix

Circular 99-160 'Solicitors' Undertakings - Duty to Report Misconduct'

11.01 Duty to act in good faith

A solicitor must act towards other solicitors with frankness and good faith consistent with his overriding duty to his client.

Commentary

1. Any fraudulent or deceitful conduct by one solicitor towards another will render the offending solicitor liable to disciplinary action, in addition to the possibility of civil or criminal proceedings.
2. This Principle also requires that a solicitor must honour any undertaking given either personally, or by partners or by another member of his firm and whether or not in writing. Solicitors' undertakings are dealt with in Chapter 14.
3. A solicitor must at all times maintain his personal integrity and observe the requirements of good manners and courtesy towards other members of the profession and their staff, no matter how bitter the feelings between clients. He must not behave in a manner which is acrimonious or offensive or otherwise inconsistent with his position as a solicitor.
4. This Principle also applies to correspondence. A solicitor must not write offensive letters to other members of the profession, whatever the degree of bad feeling existing between the respective clients.
5. While a solicitor will normally warn the other party to a telephone conversation if he proposes to record it, he may dispense with this warning in cases where he believes that considerations of courtesy are outweighed by other factors.
6. In the absence of an agreement, a solicitor is personally responsible for paying the proper costs of solicitor agents whom he instructs on behalf of his client.
7. A client account cheque should not be stopped (see Principle 13.03).
8. When another solicitor has been retained, a solicitor generally must not accept instructions in the same matter (see Principle 5.11).
9. Note also Practice Direction A.8. which states:
'(1) It is unethical for a purchaser's solicitor to make certified copies of title deeds or certified copies thereof supplied by the vendor's solicitor unless such copies are made:
 - (a) with the express consent of the vendor's solicitors; or
 - (b) on the instructions and for the purpose of that purchaser who has already paid the vendor's solicitor for the certified copies supplied.'

11.02 Contact with client of another solicitor

In general, a solicitor who has been instructed in a matter should not interview or otherwise communicate with anyone on that matter who to his knowledge has retained another solicitor to act in that matter except with that other solicitor's consent.

Commentary

1. A solicitor who has been instructed by a client should not write directly to a client of another solicitor where he has reason to believe that the other solicitor's retainer has not been determined.
2. Despite this Principle, a solicitor may be justified in writing direct to a client of another solicitor if that solicitor has failed to reply to letters, or where the solicitor has refused for no adequate reason to pass on a message to his client. However, this step should only be taken after warning the other solicitor of the intention to write directly to his client. It is also courteous to copy such correspondence to the other solicitor.
3. Where there are proceedings and solicitors are on the record, subsequent correspondence and documents should be served on the solicitors and not on the clients unless the court orders otherwise or personal service is required by the *Rules of the High Court* (Cap. 4 leg. sub. A).
4. This Principle does not prevent a solicitor suggesting to a client that he should communicate directly with the client of the solicitor on the other side.
5. Where a solicitor considers it appropriate and his client agrees, this Principle does not prevent a solicitor from instructing an enquiry agent in an endeavour to ascertain for example the whereabouts or means of the other side or to serve documents. However, where the third party is already represented a solicitor should not instruct an enquiry agent to approach the other party to obtain a statement until he has given reasonable notice of his intention to do so to the other party's solicitor.
6. This Principle extends to a client of a solicitor who is not in private practice.
7. For the purposes of this Principle, only those employees or officers of a corporation or government authority who are responsible for the giving of instructions are to be regarded as the client.

8. Save as stated in Commentary 7, it is not a breach of the Principle to interview employees of an organisation on the other side in a matter. When contemplating interviewing such an employee, the solicitor should have regard to the employee's position *qua* employee and in appropriate circumstances should advise the employer or its solicitor of the intention to interview the employee. This would enable the employee to be advised as to his or her position. The interviewing solicitor should have regard to:
 - (a) the liability of the employee; and
 - (b) the fact that the information sought may be confidential to the employer which, if disclosed, may place the employee in breach of his/her contract or the common law, or statute, such as the *Personal Data (Privacy) Ordinance* (Cap. 486)(see also Principle 10.12).
9. For guidance on giving a second opinion to another solicitor's client (see Principle 5.11 Commentary 2).

11.03 Duty to report misconduct

A solicitor is under a duty to report to the Council, where necessary after having obtained his client's consent, any professional misconduct or dishonesty on the part of another solicitor or a member of his staff, or of any other person purporting to represent or to be in the employment of another solicitor or firm.

Commentary

1. Where a solicitor has reason to believe that another solicitor is in financial difficulty or where his integrity is in question, he should report the facts to the Council.
2. The Principle that a solicitor must maintain the highest standards of professional conduct and ensure that those in his employment do likewise, extends to a duty to inform the Council of professional misconduct or dishonesty in his own or any other firm.
3. A solicitor should inform the Law Society where he is charged with an offence involving dishonesty or deception or any other serious criminal offence.
4. A solicitor should report a breach of undertaking by another solicitor promptly (see Circular 99-160).

11.04 References

Where a solicitor signs a certificate or otherwise gives a reference concerning another solicitor, he must give a full and frank assessment of that other solicitor and must not mislead.

Commentary

1. This Principle particularly applies when a solicitor is asked to sign a certificate to the effect that an individual is a proper person:
 - (a) to be admitted as a solicitor;
 - (b) to be restored to the Roll; or
 - (c) to be employed as a solicitor.

APPENDIX

PRINCIPLE 11.03 COMMENTARY 4

CIRCULAR 99-160

21 June 1999

SOLICITORS' UNDERTAKINGS

Duty To Report Misconduct

Principle 11.03 of *The Hong Kong Solicitors' Guide to Professional Conduct*, Volume 1, 2nd Edition, states:

'A solicitor is under a duty to report to the Council, where necessary after having obtained his client's consent, any professional misconduct or dishonesty on the part of another solicitor or a member of his staff, or of any other person purporting to represent or to be in the employment of another solicitor or firm.'

The necessity to comply with the Principle is highlighted in the Judgment of the Court of Appeal in a recent case: *The Law Society of Hong Kong v. Re: Solicitors* CACV24/1999. Members should note the Judgment indicates that a solicitor should under normal circumstances report a breach of undertaking by another solicitor within 24 hours of the breach coming to his notice. Should he fail to do so, he would himself be guilty of professional misconduct in failing to report the breach.