

person had committed the offence charged, or to call any evidence, which he must know to be false having regard to the confession, such, for instance, as evidence in support of an alibi, which is intended to show that the accused could not have done or in fact had not done the act; that is to say, an advocate must not (whether by calling the accused or otherwise) set up an affirmative case inconsistent with the confession made to him.

8. A more difficult question is within what limits, in the case supposed, may an advocate attack the evidence for the prosecution either by cross-examination or in his speech to the tribunal charged with the decision of the facts. No clearer rule can be laid down than this, that he is entitled to test the evidence given by each individual witness, 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. Further than this he ought not to go.

9. The foregoing is based on the assumption that the accused has made a clear confession that he did “commit the offence charged,” and does not profess to deal with the very difficult questions which may present themselves to counsel when a series of inconsistent statements are made to him by the accused before or during the proceedings, nor does it deal with the questions which may arise where statements are made by the accused which point almost irresistibly to the conclusion that the accused is guilty but do not amount to a clear confession. Statements of this kind must hamper the defence, but the questions arising on them are not dealt with here. They can only be answered after careful consideration of the actual circumstances of the particular case.

MADE this 9th day of December, 2010.

YADA HASHIM WILLIAMS,
Chairman
General Legal Council.

STATUTORY INSTRUMENT

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THE LEGAL PRACTITIONERS ACT, 2000
(Act No. 15 of 2000)

THE LEGAL PRACTITIONERS (CODE OF CONDUCT) RULES, 2010 Short title.

IN EXERCISE of the powers conferred upon it by section 53 of the Legal Practitioners Act, 2000, the General Legal Council hereby makes these Rules—

PART I—INTERPRETATION

1. In these Rules unless the context otherwise requires:— Interpretation.
 - “chambers” means premises or offices used by one or more legal practitioners to carry on their practice;
 - “Court” includes any court, committee or tribunal or any other person or body whether sitting in public or private before whom a legal practitioner appears.

PART II—GENERAL OBLIGATIONS OF LEGAL PRACTITIONERS

2. Every legal practitioner, whether in practice or not, shall uphold at all times the standards, dignity and high standing of the legal profession including those set out in these Rules. Legal practitioners to uphold standards.
3. A legal practitioner— Duties of legal practitioner.
 - (a) is responsible for acts and omissions by his clerk or any employees when acting on his behalf;
 - (b) who takes a pupil shall supervise his professional conduct during pupilage;

- (c) shall not engage in conduct, whether in pursuit of his profession or otherwise, which is dishonest or which may otherwise bring the legal profession into disrepute or which is prejudicial to the administration of justice;
- (d) shall observe the ethics and etiquette of the legal profession and act with competence in his professional activities;
- (e) shall ensure that a pupil serves the requisite period of his pupillage before the certificate referred to in section 12 of the Act is issued.

Acts of legal practitioners.

4. (1) Every legal practitioner shall act with–
- (a) honesty, competence, and professionalism as is reasonably necessary for the preparation and conduct of a case;
 - (b) independence in the performance of his functions and shall not engage in any activity which compromises his independence or which reasonably creates the appearance of such compromise;
 - (c) integrity to ensure that his actions do not bring the administration of justice into disrepute.

(2) A legal practitioner shall act courteously and respectfully towards all persons with whom he has professional contact, including judges, other legal practitioners, court staff, litigants, witnesses, victims and clients.

Deception by legal practitioners.

5. (1) A legal practitioner shall not deceive or knowingly or recklessly mislead the Court or a judge.
- (2) A legal practitioner shall take all necessary steps to correct an erroneous statement made by him as soon as possible after becoming aware that the statement was erroneous.

6. A legal practitioner shall not, unless permitted by these Rules or a Judge– Contacts with judges.

- (a) make contact with a judge concerning the proceedings in which the legal practitioner is involved, except within the proper context of the proceedings;
- (b) submit to a judge information, notes or documents concerning the proceedings in which the legal practitioner is involved, except through the court’s Registrar and after service of the information, notes or documents on Counsel on the other side; or
- (c) make contact with a judge in the absence of the other side except the other side has expressly communicated his refusal to meet the judge or has given his consent for the legal practitioner to meet with the Judge in his absence.

7. (1) A legal practitioner shall not communicate with litigants on the other side in proceedings if that side is represented by a legal practitioner except through or with the permission of the litigant’s legal representative. Communication with litigants.

(2) A legal practitioner communicating with a person who is not represented by counsel shall inform that person of his right to counsel, the role of counsel in a matter and the nature of legal representation in general.

8. (1) A legal practitioner shall not offer any monetary or other incentive to any person for the purpose of unduly encouraging or influencing the testimony of a witness. Offering of incentives to witness etc.

(2) A legal practitioner shall not coerce, threaten, intimidate, humiliate or harass a witness or his relatives or acquaintances.

Legal practitioner to accept briefs.

9. (1) Subject to sub-rule (2), a practicing legal practitioner shall accept any brief to appear before a Court in the field in which he professes to practice at his usual fee having regard to the type, nature, length and difficulty of the case.

(2) Special circumstances such as a conflict of interest or the possession of relevant and confidential information may justify his refusal to accept a particular brief.

Giving of legal advice to the public.

10. A legal practitioner shall not, whether or not he is acting for a fee, give legal advice or service to the public or to a section of the public otherwise than in the course of his practice except in the following circumstances:—

- (a) supplying legal advice or service in any country outside Sierra Leone if the rules in force in that country permit legal practitioners to do so;
- (b) lecturing, teaching, writing or editing of legal text-books or of articles in newspapers or journals;
- (c) giving advice on legal matters free to a friend or relative;
- (d) participating in a Legal Aid or Advice Scheme;
- (e) acting as unpaid or honorary legal adviser to any charitable, benevolent or philanthropic institution;
- (f) giving as a non-executive director of a company or a trustee or governor of a charitable, benevolent or philanthropic institution or a trustee of any private trust to the other directors, trustees or governors, as the case may be, the benefit of his learning and experience on matters of general policy and of general legal principles applicable to the affairs of the company, institution or trust;

- (g) giving advice on legal matters free in a scheme or program established to further the purpose of promoting among the public greater awareness of their legal rights or respect for the rule of law or otherwise promoting the objects of the Sierra Leone Bar Association.

11. A legal practitioner who is a pupil shall, between the hours of 9 a.m. and 5 p.m. apply himself full-time to his pupillage. Responsibilities of pupil legal practitioners.

12. A legal practitioner who is a member of chambers shall— Display of name of legal practitioner.
- (a) display his name at the chambers and in the case of a firm, the name of the firm under which he practices;
 - (b) have the right to make such use of the chambers, and of its administration and facilities, as his practice requires.

13. A legal practitioner may belong to two chambers provided that both chambers are not in Sierra Leone. Membership of two chambers.

14. (1) Legal practitioners may engage in partnerships. Partnership.

(2) Two or more legal practitioners may agree to share professional expenses, either in proportion to their receipts or in any other way and may agree to share professional receipts or agree that any one or more of them shall assume responsibility for the professional work of the other or others.

PART III—PUPILS AND PUPILAGE

15. (1) A pupil master shall—
- (a) give specific and detailed teaching instruction in the drafting of pleadings and other documents; Obligations of pupil master.
 - (b) ensure that the pupil is well grounded in the rules of conduct and etiquette of the Bar and

follows such guidelines for pupils as may be approved from time to time by the General Legal Council;

- (c) require his pupil to read his papers and draft pleadings and other documents, including opinions, and shall discuss the drafts personally with the pupil;
- (d) require his pupil to accompany him to court on sufficiently frequent occasions, take proper notes of the proceedings during those occasions and discuss the proceedings with the pupil afterwards;
- (e) require his pupil to attend conferences and to do the necessary preparation to conduct such conferences.

(2) In requiring his pupil to do the work mentioned in paragraphs (c), (d) and (e) of sub-rule (1), the Pupil Master shall ensure that his pupil has the opportunity to do such work and gain such experience as is appropriate for a person commencing practice in the type of work done by the Pupil Master.

(3) If the opportunity referred to in sub-rule (2) can also be obtained from other members of the chambers, the Pupil Master may occasionally arrange for his pupil to see the work of such other members.

(4) The Pupil Master shall—

- (a) provide the pupil opportunities to engage in a variety of court-related work and arrange for the pupil from time to time to accompany other members of his chambers or other legal practitioners to other courts;
- (b) take steps to enable the pupil to understudy the work done by junior members of the chambers so that the Pupil may have an idea of the type of work which a legal practitioner would do when commencing practice.

- (c) encourage a relationship between himself, his chambers, his colleagues and his pupil whereby his pupil is encouraged to receive and share information on matters relating to practice and etiquette;
- (d) encourage the pupil to attend such activities as the Sierra Leone Bar Association and the General Legal Council may from time to time arrange;
- (e) ensure that the pupil does not accept briefs or instructions which are beyond the pupil's capacity;
- (f) ensure that his pupil serves the requisite period of pupillage exclusively from within his chambers;
- (g) not, at the end of the relevant period of pupillage, issue a certificate under section 12 of the Act, unless he is satisfied that the pupil has served pupillage in compliance with the Act and these Rules.

(5) Although a pupil has no right or expectation to receive a salary from his Pupil Master, a Pupil Master shall remunerate his pupil where the pupil has done work of value for him at any stage of his pupillage.

16. (1) A pupil shall—

- (a) apprise himself of and comply with the provisions of the Act relating to admission to the Bar and pupillage;
- (b) treat his pupillage as a training period during which he must comply with these Rules;
- (c) be bound by these Rules and such other rules or guidelines as may be made from time to time by the General Legal Council;

Duties of pupils.

- (d) acquaint himself generally with the etiquette of the Bar;
- (e) maintain a positive attitude towards his pupillage, be conscientious in receiving the instruction given by his Pupil Master and apply himself to it full time with all care and attention as if his Pupil Master's work were his own;
- (f) have the initiative to ask for instruction from his Pupil Master and where appropriate, to seek the consent of his Pupil Master to see the work of or go to Court with other members, in particular junior members of his Pupil Master's chambers;
- (g) seek guidance from his Pupil Master and, where appropriate, other members of his Pupil Master's chambers as to the type of work which he is likely to do when he commences practice and as to how such work ought to be done.
- (h) have the initiative to discuss with and receive information from his Pupil Master on all matters relating to practise and etiquette at the Bar;
- (i) preserve the confidentiality of the affairs of his Pupil Master, his Pupil Master's clients or the clients of any member of his Pupil Master's chambers;
- (j) not render professional advice to or do work for his Pupil Master's clients on behalf of his Pupil Master at any stage of his pupillage without the approval of his Pupil Master; and
- (k) in the course of his pupillage, ensure that he performs with diligence all work given to him by his Pupil Master.

- (l) serve the requisite period of pupillage exclusively from within the chambers of his Pupil Master.

(2) A Pupil and Pupil Master shall take reasonable steps to ensure that the Pupil is exposed to work of sufficient quantity and diversity during his pupillage

(3) A Pupil Master shall not seek or accept any pupillage fee, and shall use his best endeavours to ensure that his pupil complies with the requirements of this rule.

PART IV –ACCEPTANCE OF BRIEFS OR INSTRUCTIONS

17. (1) A legal practitioner shall not accept any brief or instructions which limit or seek to limit his authority or discretion. Acceptance of instructions.

(2) The papers in any brief or instructions delivered to a legal practitioner are normally the property of the client.

(3) A legal practitioner shall not, without the consent of the client, lend the papers of any brief or instructions delivered to him by a client or reveal their contents to any person otherwise than as may be necessary for the proper discharge of his duties as counsel or Pupil Master.

(4) A legal practitioner who finds, on receiving a brief or instructions that acceptance of the papers would amount to his replacing another legal practitioner who has previously been instructed in the same matter shall inform that legal practitioner that the papers have been delivered to him; except where the brief or instructions have been returned by that legal practitioner or the person instructing him in the matter has already informed that legal practitioner of the termination of his services or there has been no reasonable opportunity to inform him before the hearing.

18. (1) No legal practitioner shall accept a brief–

- (a) if he has previously advised or drawn pleadings or appeared for another person on or in connection with the same matter;

Acceptance of previous briefs.

- (b) if he would be embarrassed in the discharge of his duties.

(2) Where the legal practitioner has received any brief or instructions inadvertently, he shall return it.

Conflict of interest between clients.

19. If, after receiving a brief or instructions on behalf of more than one client, there appears to be a conflict of interest between them, a legal practitioner shall not continue to act for any of them, unless all the clients consent to his so acting and he is able to do so without embarrassment.

Legal practitioner's connection with client.

20. A legal practitioner shall not accept a brief or instructions in any case where by reason of his connection with the client it would be difficult for him to maintain his professional independence.

Legal practitioner's connection with court.

21. A legal practitioner shall not accept a brief or instructions in any case where by reason of his personal connection with the Court the impartial administration of justice might appear to be prejudiced.

Legal practitioner likely to be witness.

22. (1) A legal practitioner may not accept instructions in a case in which he has reason to believe that he is likely to be a witness.

(2) If, being engaged in a case, it becomes apparent that he is likely to be a witness on a material question of fact the legal practitioner shall not continue to appear as counsel if he can retire without jeopardizing his client's interest.

PART V—WITHDRAWAL OF REPRESENTATION

Briefs or instructions beyond legal practitioner's competence etc.

23. (1) If a legal practitioner receives a brief or instructions which he believes to be beyond his competence, he shall decline that brief or those instructions.

(2) If a legal practitioner receives instructions and it is or becomes apparent to him that he cannot do the work within a reasonable time, he shall inform the client in writing forthwith.

(3) If a legal practitioner receives instructions where a time limit has been set for the completion of the work and the legal practitioner sees no reasonable prospect of his being able to finish

the work within that time limit, he shall either return the instructions forthwith or obtain further time in the matter forthwith.

24. (1) A legal practitioner shall inform the person instructing him in a matter as soon as there is an appreciable risk that he may not be able to undertake a brief which he has accepted; and he shall return that brief in sufficient time to allow for another legal practitioner to be engaged and to master the brief.

Inability to undertake a brief etc.

(2) When a legal practitioner has accepted a brief for the defence of a person charged with an offence he shall so far as practicable ensure that the risk of a conflicting professional engagement does not arise.

(3) A legal practitioner shall not return a brief for a fixed date, which he has accepted in order to attend a social or other non-professional engagement.

(4) A legal practitioner who is on record as a solicitor for one or more of the parties in a civil matter shall, where the circumstances so demand, make a formal application for withdrawal of representation in accordance with the High Court Rules, 2007.

C. I. No. 25 of 2007.

PART VI—ADMINISTRATION OF PRACTICE

25. (1) A legal practitioner shall at all times ensure that his practice is efficiently and properly administered and shall, in particular take all reasonable and practicable steps to ensure that professional engagements are fulfilled or that early notice is given if they cannot be fulfilled.

Management of legal practitioner's practice.

(2) In the interest of the efficient administration of justice and respect for the Court, a legal practitioner shall use his best endeavours always to be punctual.

(3) A legal practitioner who is the head of chambers is responsible for ensuring—

(a) that the chambers are administered competently and efficiently;

(b) that the affairs of the chambers are conducted in a manner which is fair and equitable for all members and pupils.

(4) All other members shall use their best endeavours to achieve these objects.

PART VII—DELEGATION OF WORK AND REMUNERATION

Prohibition of handing over of brief.

26. (1) Except as provided in these Rules or with the consent of the client, a legal practitioner shall not hand over his brief to another legal practitioner to take his place and conduct the case.

(2) A legal practitioner who has been instructed to draft any document or advice in writing shall not delegate this responsibility to another legal practitioner unless the client consents, but he may obtain assistance in the performance of such work without the consent of his client if he takes personal responsibility for the contents of the completed work.

(3) A legal practitioner who arranges for another legal practitioner other than a person employed in his firm to do some work in order to increase his own skill or experience shall—

- (a) pay proper financial remuneration for the work done;
- (b) make payment within a reasonable time and in any event within two months after the work has been done, unless otherwise agreed in advance with the legal practitioner concerned;
- (c) deal with payment for such work himself and not delegate responsibility to anyone else.

Quantum of remuneration.

27. Financial remuneration in respect of the conduct of hearings involving evidence or argument, or the execution of paper work which has been delegated shall not ordinarily be less than half the fee charged by the principal.

Legal practitioner to comply with instructions.

28. A junior legal practitioner may accept a brief to take notes for a party to an action or for some person interested in it but, if so instructed he shall not take any part in the trial or hearing or do anything other than comply with the instructions.

PART VIII—RELATION BETWEEN LEGAL PRACTITIONERS AND PERSONS OR BODIES INSTRUCTING THEM

29. A legal practitioner shall not give a commission to any person who introduces professional work to him. Prohibition of giving of commission.

30. (1) A legal practitioner shall not lend to any person authorized to instruct him or the company, firm or other body of which such person is a director, partner, member or employee any sum of money for the purpose of financing the practice of such person, company, firm, or other body, or for any other professional purpose. Prohibition of lending of money to directors etc. of company

(2) Subject to the rules against advertising or touting, a legal practitioner may accept social invitations from persons authorized to instruct him, companies or any other bodies of which he is a director, partner or employee and may also extend invitations to them.

PART IX—ADVERTISING, TOUTING AND PUBLICITY

31. (1) A legal practitioner shall not do or cause or allow to be done on his behalf, anything for the purpose of touting whether directly or indirectly, or which is likely to lead to the reasonable inference that it was done for that purpose. Prohibition of advertising, touting etc.

(2) Subject to this Part, a legal practitioner shall not write for publication, broadcast by radio, or television or publish in a film or otherwise cause or permit to be published, the particulars of any matters on which he has been or is currently engaged as counsel unless he can do so without disclosing confidential information and without giving publicity to his own part in the matter.

32. A legal practitioner who has retired from practice may write memoirs of his experiences at the Bar, mindful of these Rules, the confidence which has been reposed in him and the feeling of the persons who were concerned in the cases, or of their relatives. Writing of memoirs.

33. (1) The description “legal practitioner” may be used by a legal practitioner with articles, interviews and discussions on legal topics, or where his being a legal practitioner is relevant. Use of “legal practitioner” in articles etc.

(2) In the case of radio or television broadcasts, a legal practitioner participating in the broadcast may allow himself to be described as a legal practitioner only if the subject matter of the broadcast is such that the fact of his being a legal practitioner tends to lend weight to the opinion he expresses or facts he states in the course of the broadcast.

Appearance in robes. 34. A legal practitioner shall not appear in robes in any film or television program without leave of the General Legal council.

Use of complimentary cards and robes. 35. (1) A legal practitioner other than a pupil barrister may use a complimentary card which bears the following details:–

- (a) the word “Legal practitioner:” or initials “SA” as appropriate;
- (b) other professional and academic qualifications;
- (c) professional and electronic mail address, telex, facsimile, document exchange and telephone numbers.

(2) A legal practitioner shall not use his complimentary card in any way that would amount to touting or publish or provide for publication a photograph of himself in robes.

(3) A legal practitioner may agree to the taking of a photograph for publication in connection with his membership of the Bar if it does not take place in robes.

(4) A legal practitioner may allow the press or professional photographers to take photographs of him in public on their initiative.

Legal practitioners seeking public office. 36. (1) A legal practitioner who is a candidate for election to a public office may be described as such in an election address to constituents but the legal practitioner’s chambers address shall not be mentioned, nor shall there be any advertisement of the candidate’s work as a legal practitioner.

(2) The words “Lawyer”, “Legal practitioner” or “Senior Advocate” shall not appear in election posters or banners immediately preceding or following the candidate’s name, but the candidate’s

profession as a legal practitioner may be mentioned in the body of a poster or other promotional material.

PART X–DUTY OF LEGAL PRACTITIONERS TO CLIENTS

37. (1) A legal practitioner has a duty to uphold the interest of his client without regard to his own interests or to any consequences to himself or to any other person. Duty to uphold interest of client.

(2) A legal practitioner has the same privilege as his client of asserting and defending the client’s rights by the statement of every fact and the use of every argument that is permitted by the principles and practice of the law.

38. (1) A legal practitioner instructed to settle a pleading is under responsibility to the Court and his client and as such he shall not make any allegation unsupported by his instructions. Settlement of pleadings etc.

(2) A legal practitioner shall not allege fraud unless–

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

(3) In an appeal to the Court a legal practitioner shall not settle grounds of appeal unless he considers that the proposed appeal is properly arguable.

39. (1) A legal practitioner employed as counsel shall not communicate to any third person information which has been entrusted to him in confidence or use such information to his client’s detriment or to his own or another client’s advantage. Prohibition of giving or using information.

(2) This duty continues after the relation of counsel and client has ceased.

(3) A legal practitioner’s duty not to divulge confidential information without the consent of his client subsists unless he is

compelled to do so by order of a Court or enactment or the circumstances give rise to a public duty of disclosure or the protection of the legal practitioner's professional integrity requires it.

PART XI-FEES

Legal practitioner to be remunerated.

40. (1) A legal practitioner shall be remunerated for work which he undertakes.

(2) Refreshers, if any, shall be agreed before the hearing and may, be marked on the brief.

(3) A legal practitioner may undertake to represent any person, authority or organization for a fixed salary; and he may accept a fixed fee for advising over a fixed period.

(4) When a brief has been accepted with knowledge of its contents and other matters relevant to the fee, no request shall be made for the fee to be increased unless circumstances arise which increase substantially the burden and responsibility on the legal practitioner concerned; but where an increase of the original fee is considered to be justified the client shall be so informed without delay

(5) A legal practitioner shall not accept a brief or instructions on terms that payment of fees shall depend upon or be related to a contingency.

(6) Nothing in sub-rule (5) shall prevent a legal practitioner from accepting payment of his fees by installments and payment of interest on his fees as agreed or allowed on taxation.

Remuneration of staff.

41. A legal practitioner shall remunerate his staff as may be agreed between them, but a legal practitioner shall not share or agree to share with any person his fees by paying a commission or a percentage of the legal practitioner's earnings.

PART XII-CONDUCT OF LEGAL PRACTITIONERS IN COURT

42. A legal practitioner shall 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 in court or otherwise are an abuse of the practitioner's function and shall exercise his own judgment both as to the substance and the form of the questions put or statements made.

Questions or statements intended to offend.

43. A legal practitioner shall-

Courtesy to court.

(a) at all times act with due courtesy to the court before which he is appearing;

(b) in every case use his best endeavours to avoid unnecessary expense and waste of the Court's time;

(c) when asked, inform the court of the probable length of his case; and

(d) inform the court of any developments which affect the information already provided.

44. A legal practitioner shall at the earliest, inform the Court of a settlement or of an intention to apply for an adjournment if the adjournment will not prejudice his client's interest or of any other matter which may affect the estimated length of hearing.

Court to be informed of settlement etc.

45. Subject to these Rules, a legal practitioner shall conduct cases in such manner as in his opinion is most advantageous to his client.

Conduct of cases to be advantageous to clients.

46. (1) In civil and in criminal cases, a legal practitioner shall ensure that the court is informed of any relevant decision on a point of law or enactment, of which he is aware whether it be for or against his contention.

Court to be informed of points of law etc.

(2) It at any time before judgment is delivered in a civil case, a legal practitioner is informed by his client that he has committed perjury or has otherwise been guilty of fraud upon the Court, the

legal practitioner may not so inform the Court without his client's consent; and he shall not take any further part in the case unless his client authorizes him to inform the court of the perjured statement or other fraudulent conduct.

Cross-examination in questions of fraud, misconduct etc.

47. (1) In cross-examination which goes to a matter in issue, a legal practitioner may put questions suggesting fraud, misconduct or the commission of a crime 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.

(2) A legal practitioner shall not put questions which affect the credibility of a witness by attacking his character but which are otherwise not relevant to the actual inquiry, unless there are reasonable grounds to support the imputation conveyed by the questions.

Possession of document belonging to other side.

48. (1) If before or during a case, a document belonging to the other side comes into the possession of counsel or solicitor, he shall, if he intends to make any use of it inform his opponent that it has come into his possession.

(2) This information shall be communicated in sufficient time for the opponent to raise an objection to the use of the document.

PART XIII—CONFERENCES AND CONSULTATIONS

Legal practitioner to attend conferences.

49. (1) A legal practitioner who has been briefed for a hearing shall be available, if it is necessary and practicable, for a conference on a day prior to the hearing and for as long as may be required properly to discuss matters with the lay client.

(2) If the person instructing him in the matter does not arrange such a conference then the legal practitioner shall make himself available for such a conference on the hearing date at the place of hearing.

PART XIV—DUTIES WHEN DEFENDING A PERSON ACCUSED OF A CRIME

50. (1) When defending a client charged with an offence, a legal practitioner shall 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.

Legal practitioner's duty towards persons charged with an offence.

(2) A legal practitioner shall not devise facts which will assist in advancing his client's case.

(3) A legal practitioner shall 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 these Rules 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 attributed.

(4) Subject to these Rules a legal practitioner shall defend any person on whose behalf he is instructed on a criminal charge irrespective of any belief or opinion which he may have formed as to the guilt or innocence of that person.

(5) A legal practitioner to whom a confession of guilt has been made by his client shall observe the following rules:-

- (a) if the confession is made before commencement of proceedings he may continue to act only if the plea is to be one of guilty, or if the plea is to be one of not guilty he acts in accordance with the rules set out in the Schedule which impose strict limitations on the conduct of the defence;
- (b) if the legal practitioner is instructed to act otherwise than in conformity with this rule he shall return his brief;
- (c) if the confession is made during the proceedings or in such circumstances that he cannot withdraw without compromising the position of his client, he shall continue to act and to do all he honourably can for him;

(d) shall not set up an affirmative case inconsistent with the confession.

(6) Defence counsel shall advise his client generally about his plea to the charge and it should be made clear that whether he pleads “nor guilty” or “guilty”, the client has the responsibility for and complete freedom of choice in his plea.

(7) Where a defendant tells his counsel that he did not commit the offence with which he is charged but nonetheless insists on pleading guilty to it for reasons of his own, counsel shall continue to represent him, but only after he has advised what the consequences will be and that what can be submitted by counsel in mitigation will have to be on the basis that the client is guilty.

(8) It is the duty of defending Counsel to ensure that an accused person is never left unrepresented at any stage of his trial

(9) Where an accused is represented by only one counsel, that Counsel shall as much as possible be present throughout the trial and may only absent himself in exceptional circumstances which he could not reasonably have been expected to foresee and after making arrangements for a competent deputy to take his place.

(10) For the purposes of sub-rule (9) a deputy is not to be regarded as competent unless he is well informed about the case and able to deal with any question which might reasonably be expected to arise.

(11) Every accused person has the right to decide whether to give evidence in his own defence and a legal practitioner may properly advise his client upon this but it is the accused himself who shall make the decision.

(12) If an accused person instructs his counsel that he is not guilty of the offences for 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.

Legal practitioner to appear for more than one defendants.

51. A legal practitioner may appear for more than one defendant in a criminal trial provided he satisfies himself there is no conflict of interest.

52. It is the duty of defence counsel to see or communicate with his client after conviction and sentence, or if he is unable to do this, ensure that the person instructing him in the matter or his representative does so.

Duty of legal practitioner after conviction and sentence.

PART XV–DUTIES WHEN PROSECUTING A PERSON ACCUSED OF A CRIME

53. (1) It is not the duty of prosecuting counsel to obtain a conviction by all means at his command but rather to lay before the jury fairly and impartially the whole of the facts which comprise the case for the prosecution and to see that the jury are properly instructed in the law applicable to those facts.

Duty to conduct prosecutions fairly and impartially.

(2) Where prosecuting counsel has in his possession a statement from a prosecution witness which differs in a material respect from the evidence being given by the witness or his statement at the committal proceedings, the statement should be disclosed to the defence.

(3) Prosecuting Counsel shall –

- (a) be present throughout the trial of an accused person including the summing-up and the return of the jury;
- (b) may not absent himself without leave of the Court, but if two or more legal practitioners appear for the prosecution, the attendance of one shall be sufficient.

(4) 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 or omissions of fact or law which, in his opinion, ought to be corrected.

PART XVI–DRESS IN COURT

54. (1) The dress of legal practitioners appearing in Court should be unobtrusive and compatible with the wearing of robes.

Dress in court for all legal practitioners.

(2) All legal practitioners shall wear plain gowns except legal practitioners who have been conferred with the status of ‘Senior Advocate’.

(3) Female legal practitioners may wear suits, trouser suits and dresses in either dark gray, navy blue or black.

(4) Male legal practitioners may wear suits, jackets or cut waistcoats in either dark gray, navy blue or black.

(5) Shirts, tunic shirts and blouses should be predominantly white or of other unemphatic colour and collars should be white and shoes black.

(6) Dresses or blouses should not be sleeveless and blouses should be of modest cut.

(7) No ostentatious jewellery or ornaments shall be worn in Court.

PART XVII—DISCIPLINARY PROCEEDINGS

Disciplinary proceedings.

Act No. 15 of 2000.

55. Failure to comply with these Rules shall be regarded as unprofessional, dishonorable or unworthy conduct and, if so found by a Disciplinary Committee, shall render the legal practitioner liable to be punished in accordance with the provisions of the Legal Practitioners Act, 2000.

SCHEDULE (Rule 50)

CONFESSION OF GUILT

1. In considering the duty of counsel retained to defend a person charged with offence who confesses to Counsel himself that he committed the offence charged, it is essential to bear the following points clearly in mind:—

(1) that every punishable crime is a breach of the common or statute law committed by a person of sound mind and understanding;

(2) that the issue in a criminal trial is always whether the accused is guilty of the offence charged, never whether he is innocent;

(3) that the burden of proof rests on the prosecution.

2. Upon the clear appreciation of these points depends broadly the true conception of the duty of the advocate for the accused.

3. His duty is to protect his client as far as possible from being convicted except by a competent tribunal and upon legal evidence sufficient to support a conviction for the offence with which he is charged.

4. The ways in which this duty can be successfully performed with regard to the facts of a case are—

(a) by showing that the accused was not responsible at the time of the commission of the offence charged by reason of insanity or want of criminal capacity; or

(b) by satisfying the tribunal that the evidence for the prosecution is unworthy or lacks credence, or, even if believed, is insufficient to justify a conviction for the offence charged; or

(c) by setting up in answer an affirmative case.

5. It follows that the mere fact that a person charged with a crime has in the circumstances mentioned above made such a confession to his counsel, is no bar to that advocate appearing or continuing to appear in his defence, nor indeed does such a confession release counsel from his imperative duty to do all he honourably can do for his client.

6. But such a confession imposes very strict limitations on the conduct of the defence.

7. A legal practitioner must not assert that which he knows to be a lie. He must not connive at, much less attempt to substantiate, a fraud.

8. While, therefore, it would be right to take any objection to the competence of the Court, to the form of the indictment, to the admissibility of any evidence or to the sufficiency of the evidence admitted, it would be absolutely wrong to suggest that some other