

CHAPTER XIX**AVOIDING QUESTIONABLE CONDUCT**

RULE

The lawyer should observe the rules of professional conduct set out in the Code in the spirit as well as in the letter.¹

Commentary

Guiding Principles

1. Public confidence in the administration of justice and the legal profession may be eroded by irresponsible conduct on the part of the individual lawyer. For that reason, even the appearance of impropriety should be avoided.²
2. Our justice system is designed to try issues in an impartial manner and decide them upon the merits. Statements or suggestions that the lawyer could or would try to circumvent the system should be avoided because they might bring the lawyer, the legal profession and the administration of justice into disrepute.³

Duty after Leaving Public Employment

3. After leaving public employment, the lawyer should not accept employment in connection with any matter in which the lawyer had substantial responsibility or confidential information prior to leaving, because to do so would give the appearance of impropriety even if none existed. However, it would not be improper for the lawyer to act professionally in such a matter on behalf of the particular public body or authority by which the lawyer had formerly been employed.⁴ As to confidential government information acquired when the lawyer was a public officer or employee, see commentary 14 of the Rule relating to confidential information.

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Retired Judges

4. A judge who returns to practice after retiring or resigning from the bench should not, subject to the Rules of The Law Society of Saskatchewan, appear as a lawyer before the court of which the former judge was a member or before courts of inferior jurisdiction thereto. If in a given case the former judge should be in a preferred position by reason of having held judicial office, the administration of justice would suffer; if the reverse were true, the client might suffer. There may, however, be cases where a governing body would consider that no preference or appearance of preference would result, for example, where the judge resigned for good reason after only a very short time on the bench. In this paragraph "judge" refers to one who was appointed as such under provincial legislation or section 96 of the *Constitution Act*, 1982 and "courts" include chambers and administrative boards and tribunals.⁵

5. Conversely, although it may be unavoidable in some circumstances or areas, generally speaking the lawyer should not appear before a judge if by reason of relationship or past association, the lawyer would appear to be in a preferred position.⁶

Inserting Retainer in Client's Will

6. Without express instructions from the client, it is improper for the lawyer to insert in the client's will a clause directing the executor to retain the lawyer's services in the administration of the estate.⁷

Duty to Meet Financial Obligations

7. The lawyer has a professional duty, apart from any legal liability, to meet financial obligations incurred or assumed in the course of practice when called upon to do so. Examples are agency accounts, obligations to members of the profession, trade accounts directly related to the lawyer's practice, fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials as well as the deductible under a governing body's errors and omissions insurance policy.⁸

Dealings with Unrepresented Persons

8. The lawyer should not undertake to advise an unrepresented person, but should urge such a person to obtain independent legal advice and, if the unrepresented person does not do so, the lawyer must take care to see that such person is not proceeding under the impression that the lawyer is protecting such person's interests. If the unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in the Rule relating to impartiality and conflict of interest between clients.⁹ The lawyer may have an obligation to a person whom the lawyer does not represent, whether or not such person is represented by a lawyer.

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Bail

9. The lawyer shall not stand bail for an accused person for whom the lawyer or a partner or associate is acting, except where there is a family relationship with the accused in which case the person should not be represented by the lawyer but may be represented by a partner or associate.

[Commentary 9 Amended April 15, 1994]

Standard of Conduct

10. The lawyer should try at all times to observe a standard of conduct that reflects credit on the legal profession and the administration of justice generally and inspires the confidence, respect and trust of both clients and the community.

NOTES

1. Cf. CBA-COD 17; CBA 5(6): "...[T]he oath of office...is not a mere form, but is a solemn undertaking." ABA Canon 9: "A lawyer should avoid even the appearance of professional impropriety."
Cf. dictum of Hewart, L.C.J. in *The King v. Sussex Justices* (1924), 1 K.B. 256 at 259 (K.B.D.): "...[It] is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."
2. Cf. ABA EC 9-1. In *Re Novak and Law Society* (1973) 31 D.L.R. (3d) 89 (B.C.S.C.) (sustaining the disbarment of a lawyer who had negotiated a reward through the police for the return of stolen securities) the Discipline Committee said (at p. 95): "In exposing himself to these situations the Respondent divested himself of the dignity and forthright dealing that one may expect of a lawyer, gave rise to the reasonable conclusion that he was associated with the possessors of the goods, and that he was participating in some way in the reward... Whether in fact he was doing so is perhaps not important."
3. Cf. ABA EC 9-4: "There should be the very contrary to the secrecy and subterfuge which marks every step of this transaction, dishonourable alike to counsel and the magistrate.", per Baxter, C.J. in *The King v. LeBlanc and Long* (1938-39) 13 M.P.R. 343 at 357 (N.B. App. Div.).
4. Cf. ABA DR 9-101(B).
5. Cf. Ont. 15: "...[I]f a man should step down [from the Bench] and... perhaps challenge the decisions which he pronounced, or even fail to support them in argument, he will shake the authority of the judicial limb of government, and mar the prestige and dignity of the Courts of Justice...", per Kennedy, C.J. in *Re Solicitors Act and O'Connor* (1930) I.R. 623 at 631 (Irish H.C.).
6. Cf paragraph 1(c) of the Rule relating to the lawyer as advocate; *Orkin* at p. 43.

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7. Cf. Alta. 28. Such a direction does not bind the executor: *Re Croft* (1960) O.W.N. 171 (Ont. H.C.).
8. Art. 19 of the International Code of Ethics provides: "A lawyer who engages a foreign colleague to advise on a case or to cooperate in handling it, is responsible for the payment of the latter's charges except express agreement to the contrary. When a lawyer directs a client to a foreign colleague he is not responsible...".
Cf. also IBA D-10.
9. Cf. *Orkin* at pp. 127-28.
"In every case where there is the least doubt...as to whether the other party is capable of protecting himself, it is the duty of [the] solicitor...to see, if possible, that the other party is adequately represented; and, in the absence of such independent representation, it is the duty of the Court to scrutinize...to see whether...there has been any overreaching or unconscionable dealing.", per Orde, J. in *Chait & Leon v. Harding* (1920-21) 19 O.W.N. 20 at 21 (Ont. H.C.). "It was [the solicitor's] duty to see that the infirm person was adequately protected or had independent advice. If [he] regarded himself as the adviser of the aged plaintiff, he should have insisted that proper arrangements protecting [him] were entered into...", per Middleton, J. in *Finney v. Tripp* (1922) 22 O.W.N. 429 at 430 (Ont. H.C.).