

2. Confidentiality

2.1 A practitioner must not, during, or after termination of, a retainer, disclose to any person, who is not a partner or employee of the practitioner's firm, any information, which is confidential to a client of the practitioner, and acquired by the practitioner during the currency of the retainer, unless

2.1.1 the client authorises disclosure;

*2.1.2 the practitioner is permitted or compelled by law to disclose;
or*

2.1.3 the practitioner discloses information in circumstances in which the law would probably compel its disclosure, despite a client's claim of legal professional privilege, and for the sole purpose of avoiding the probable commission or concealment of a felony.

2.2 A practitioner's obligation to maintain the confidentiality of a client's affairs is not limited to information which might be protected by legal professional privilege, and is a duty inherent in the fiduciary relationship between the practitioner and client.

17. Preparation of affidavits

17.1 If a practitioner is:

17.1.1 aware that a client is withholding information required by an order or rule of a court, with the intention of misleading the court; or

17.1.2 informed by a client that an affidavit, of the client, filed by the practitioner, is false in a material particular; and the client will not make the relevant information available, or allow the practitioner to correct the false evidence; the practitioner must, on reasonable notice, terminate the retainer and, without disclosing the reasons to the court, give notice of the practitioner's withdrawal from the proceedings.

17.2 A practitioner must not draw an affidavit alleging criminality, fraud, or other serious misconduct unless the practitioner believes on reasonable grounds that:

17.2.1 factual material already available to the practitioner provides a proper basis for the allegation;

17.2.2 the allegation will be material and admissible in the case, as to an issue or as to credit; and

17.2.3 the client wishes the allegation to be made after having been advised of the seriousness of the allegation.

20. Admission of guilt

20.1 If a practitioner's client, who is the accused or defendant in criminal proceedings, admits to the practitioner before the commencement of, or during, the proceedings, that the client is guilty of the offence charged, the practitioner must not, whether acting as instructing practitioner or advocate —

20.1.1 put a defence case which is inconsistent with the client's confession;

20.1.2 falsely claim or suggest that another person committed the offence; or 20.1.3 continue to act if the client insists on giving evidence denying guilt or requires the making of a statement asserting the client's innocence.

20.2 A practitioner may continue to act for a client who elects to plead "not guilty" after admitting guilt to the practitioner, and in that event, the practitioner must ensure that the prosecution is put to proof of its case, and the practitioner may argue that the evidence is insufficient to justify a conviction or that the prosecution has otherwise failed to establish the commission of the offence by the client.

21. Admission of perjury

If a practitioner's client admits to the practitioner, during or after any proceedings, while judgment is reserved, that the client has given materially false evidence or tendered a false or misleading document in the proceedings, the practitioner must —

21.1 advise the client that the Court should be informed of the false evidence, and request the client's authority to inform the Court and correct the record; and

21.2 if the client refuses to provide that authority, withdraw from the proceedings immediately, and terminate the retainer.

A.15A. A practitioner must seek to ensure that work which the practitioner is retained to do in relation to a case is done so as to:

(a) confine the case to identified issues which are genuinely in dispute:

(b) have the case ready to be heard as soon as practicable;

(c) present the identified issues in dispute clearly and succinctly

(d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case; and

(e) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.

A.18. A practitioner must not act as the mere mouthpiece of the client or of the instructing practitioner and must exercise the forensic judgments called for during the case independently, after appropriate consideration of the client's and the instructing practitioner's desires where practicable.

A.19. A practitioner will not have breached the practitioner's duty to the client, and will not have failed to give appropriate consideration to the client's or the instructing practitioner's desires, simply by choosing, contrary to those desires, to exercise the forensic judgments called for during the 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 any persuasive authority against the client's case.

A.29. A practitioner will not have made a misleading statement to a court simply by failing to disclose facts known to the practitioner concerning the client's character or past, when the practitioner makes other statements concerning those matters to the court, and those statements are not themselves misleading.

A.30. A practitioner who knows or suspects that the prosecution is unaware of the client's previous conviction must not ask a prosecution witness whether there are previous convictions, in the hope of a negative answer.

A.32. A practitioner whose client informs the practitioner, during a hearing or after judgment or decision is reserved and while it remains pending, that the client has lied in a material particular to the court or has procured another person to lie to the court or has falsified or procured another person to falsify in any way a document which has been tendered:

(a) must refuse to take any further part in the case unless the client authorises the practitioner to inform the court of the lie or falsification:

(b) must promptly inform the court of the lie or falsification upon the client authorizing the practitioner to do so; but

(c) must not otherwise inform the court of the lie or falsification.

A.33. A practitioner retained to appear in criminal proceedings whose client confesses guilt to the practitioner but maintains a plea of not guilty: (a) may cease to act, if there is enough time for another practitioner to take over the case properly before the hearing, and the client does not insist on the practitioner continuing to appear for the client;

(b) in cases where the practitioner continues to act for the client: (i) must not falsely suggest that some other person committed the offence charged;

(ii) must not set up an affirmative case inconsistent with the confession; but (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged;

(iv) may argue that for some reason of law the client is not guilty of the offence charged; or

(v) may argue that for any other reason not prohibited by (i) and (ii) the client should not be convicted of the offence charged.

A.35. A practitioner must, when exercising the forensic judgments called for throughout the case, take care to ensure that decisions by the practitioner or on the practitioner's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:

(a) are reasonably justified by the material already available to the practitioner;

(b) are appropriate for the robust advancement of the client's case on its merits;

(c) are not made principally in order to harass or embarrass the person;

and (d) are not made principally in order to gain some collateral advantage for the client or the practitioner or the instructing practitioner out of court.

A.36. A practitioner must not allege any matter of fact in:

(a) any court document settled by the practitioner;

(b) any submission during any hearing;

(c) the course of an opening address; or

(d) the course of a closing address or submission on the evidence; unless the practitioner believes on reasonable grounds that the factual material already available provides a proper basis to do so.

A.37. A practitioner must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the practitioner believes on reasonable grounds that:

(a) available material by which the allegation could be supported provides a proper basis for it; and

(b) the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the case if it is not made out.

A.40. A practitioner who has instructions which justify submissions for the client in mitigation of the client's criminality and which involve allegations of serious misconduct against any other person not able to answer the allegations in the case must seek to avoid disclosing the other person's identity directly or indirectly unless the practitioner believes on reasonable grounds that such disclosure is necessary for the robust defence of the client.

A.43. A practitioner must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.

A.44. A practitioner will not have breached Rule A.43 by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a prospective witness, including drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.

A.46. A practitioner must not confer with, or condone another practitioner conferring with, more than one lay witness (including a party or client) at the same time, about any issue:

(a) as to which there are reasonable grounds for the practitioner to believe it may be contentious at a hearing; or

(b) which could be affected by, or may affect, evidence to be given by any of those witnesses.

A.47. A practitioner will not have breached Rule A.46 by conferring with, or condoning another practitioner conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.

A.48. A practitioner must not confer with any witness (including a party or client) called by the practitioner on any matter related to the proceedings while that witness remains under cross-examination, unless:

(a) the cross-examiner has consented beforehand to the practitioner doing so; or

(b) the practitioner:

(i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference; (ii) has, if possible, informed the cross-examiner beforehand of the practitioner's intention to do so; and

(iii) otherwise does inform the cross-examiner as soon as possible of the practitioner having done so.

A.49. A practitioner must not take any step to prevent or discourage prospective witnesses or witnesses from conferring with the opponent or being interviewed by or on behalf of any other person involved in the proceedings.

A.50. A practitioner will not have breached Rule A.49 simply by telling a prospective witness or a witness that the witness need not agree to confer or to be interviewed.