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FIJI LAW SOCIETY

Code of Ethics

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Code of Ethics

FIJI LAW SOCIETY

as at 1 October, 1984

CONTENTS

0	INTRODUCTION
1	RELATIONS WITH CLIENTS AND THE PUBLIC
1.1	General
1.2	Touting, advertising, stationery, signs
1.3	Commissions and costs
1.4	Name of firm
2	PROPER PRACTICES WITHIN LAW FIRMS
2.1	Practitioners engaging in business or practising in other capacities
2.2	Supervision of practices
3	RELATIONS WITH OTHER PRACTITIONERS
3.1	General
3.2	Duty of practitioner to report suspected defalcations
3.3	Payment of goodwill on appointment to judiciary
3.4	Stopping of Trust Account cheque
3.5	Change of Solicitors
3.6	Undertakings
4	CONDUCT OF PROCEEDINGS
4.1	Practitioner acting as member of Tribunal
4.2	Practitioner acting for or against a local body of which he is a member
4.3	Practitioner appearing as counsel in a matter in which he has made an affidavit.
4.4	Representation of separate interests by counsel from the same firm.
4.5	Representation of accused jointly charged
4.6	Administration of Oath – Refusal
4.7	Abuse of winding up procedures – issue of notices under s 221(a) of the Companies Act 1955.
5	CONDUCT AT COURT
6	INTERNATIONAL CODE OF ETHICS

0 Introduction

0.1

It is the duty of all members of the Fiji Law Society to make themselves familiar with the contents of this Code of Ethics, and to observe the rules not only in the letter but also in the spirit.

The standards that this Code is designed to maintain are for the benefit of the public in general and the client in particular, and for the maintenance of fair and honourable conduct between practitioners and on their part towards the courts.

The rules, in this booklet have all been adopted by the Council of the Society. For guidance on matters not covered herein, see

A Guide to the Professional Conduct of Solicitors. London, The Law Society.
BOULTON, W. Guide to Conduct and Etiquette at the Bar of England and Wales. London, Butterworths.

TEECE, R.C. Law and Conduct of the Legal Profession in New South Wales. Sydney, Law Book Co.

"Barristers" in 3 Halsbury's Laws of England. 4 ed. pp. 585-677. London, Butterworths, 1973.

"Solicitors in 36 Halsbury's Laws of England. 3 ed. pp. 1-254. London, Butterworths, 1961.

0.2

INTERPRETATIONS. In this Code –

(a) the words "the Society" mean the Fiji Law Society.

(b) the word "practitioner" shall, unless the context requires a different construction, include a barrister and a solicitor as defined in the Legal Practitioners Act Chapter 254 – of the Laws of Fiji.

0.3

Where there is no specific provision and/or unless there is a contrary intention appearing the relevant Code of conduct of practice in England shall be applicable to Fiji.

0.4

Where anything herein contained is in conflict with the Legal Practitioners Act or the regulations thereunder then in that case the provisions of the latter shall prevail.

0.5

ADDITIONS AND ALTERATIONS. New or amended rules, interpretations and notes as introduced by the Council of the Society will be published as new pages to supplement or replace those in this volume. A new contents page and/or index page will be issued as necessary.

1 Relations with clients and the public

See also: 4 CONDUCT OF PROCEEDINGS

1.1

GENERAL

1.1.1

DISCLOSURE OF A PERSONAL INTEREST. A practitioner who has a personal interest in any matter shall not act for any party concerned therein without first disclosing his interest to that party, and advising that party of his right to seek independent advice. In this rule, "practitioner" includes any partner, employee or employer of the practitioner.

1.1.2

ACTING FOR MORE THAN ONE PARTY.

(1) A practitioner acting in any matter shall not act for any other party in the same matter without the prior consent of both parties.

(2) Where a practitioner is acting for both parties in any matter wherein a difference or conflict of interest arises between them, it shall be the duty of the practitioner to advise each party of this right to seek independent advice and the practitioner may no longer act for both parties; He may, however, continue to act for one party unless and until by reason of information derived by the practitioner from the other, that other may be prejudiced.

(3) In this rule, "practitioner" includes any partner, employee or employer of the practitioner.

1.1.3

RIGHT TO REFUSE TO ACT

(1) A practitioner shall not, without good cause, refuse to accept instructions in his field of practice unless one or more of the following factors are present:

- (a) his commitments prevent him from doing so;
- (b) a proper fee is not available;
- (c) he is affected by the provisions of Rule 1.1.1 or any other provision in these Rules.

(2) The fact that a client is legally aided or intends to apply for legal aid shall not be a ground for refusing to act.

1.2

TOUTING, ADVERTISING, STATIONERY, SIGNS

The rules in this section apply to persons practising as solicitors or as barristers and solicitors; and to persons practising as barristers only.

1.2.1

TOUTING. A practitioner shall not directly or indirectly invite or seek instructions for professional business or do or permit in the carrying on of his practice or otherwise any act or thing which is likely or intended to attract business unfairly or can by reason of time, manner, circumstance, frequency or otherwise be regarded as touting or advertising or unbecoming a practitioner.

1.2.2

EMPLOYEE BARRISTER OR SOLICITOR

A barrister employed by another barrister or a practitioner employed as a clerk in a law office shall not display his name alongside the entrance to the office where he is employed or do any other act or thing which could lead members of the public or clients to believe that he is in practice on his own account.

1.2.3

RELATIONS WITH THE PRESS, RADIO AND TELEVISION

(including the supply of biographical material)

Subject to Rule 1.2.1 (Touting), where a practitioner –

- (A) (i) broadcasts on radio or television; or
- (ii) gives a talk or lecture;
- (iii) gives an interview to the press, radio or television; or
- (iv) supplies information to the press, radio or television; or
- (v) writes an article or letter for publication; or
- (vi) edits or writes a book or other publication –

on a legal or non-legal subject –

- (a) he may be identified by name, profession and town;
- (b) particulars may be given of any special qualifications or specialised knowledge directly relevant to the subject matter of the publication or appearance;
- (c) he may do any of the above on a client's business only when so instructed by that client and in such case he may allow his own name or that of his firm to be used only with the prior consent of the Council of the Society.
- (d) he shall not answer questions asked by members of the public seeking legal advice or information where his name is directly or indirectly disclosed or liable to be disclosed in public except for or with the consent of the Council of the Society.

- (B) Supplies biographical material for publication:
- (a) he shall neither directly nor indirectly solicit a request for such material;
 - (b) he shall take all reasonable steps to ensure that the proposed script does not contain statements laudatory of the practitioner's past professional achievements or present professional abilities;
 - (c) he shall, where reasonable doubt could arise whether his conduct is in breach of either Rule 1.2.1 or this Rule, seek in advance the ruling of the Council of the Society upon the propriety of the proposed script.

Note:

- (i) The Council of the Society may by resolution grant to its President for the time being or to any other officer, officers, or members of the Council as may be specified in the resolution the powers conferred on the Council by this Rule.
- (ii) It is emphasised that conduct which complies strictly with this Rule may nevertheless involve a breach of other rules in this Code and in particular the provisions of this Rule are subject to provisions of Rule 1.2.1
- (iii) The Council of the Society is of the view that to comply with that part of the Rule numbered (B) (b) it would be necessary in most cases for the practitioner to stipulate as a condition of providing any biographical material information that he peruse the script before publication.

1.2.4

PROFESSIONAL NOTICES IN NEWSPAPERS circulating among members of the public may include the matters set out in Rule 1.2.7 (Letterheads) (i), (ii), (iii), (iv), (v) and (vi) but no other. Such notices shall be limited to those of practitioners commencing practice, moving into new offices, opening branch offices, and entering into or dissolving partnership, and shall be of reasonable size not exceeding one column in width and shall not continue for longer than one week.

1.2.5

PROFESSIONAL NOTICES IN LAW LISTS OR LEGAL DIRECTORIES may include the information referred to in Rule 1.2.7 (Letterheads) (i), (ii), (iii), (iv), (v) and (vi) and also the dates of admission of the practitioner or the partners, but no other information save in the case of overseas or international law lists or directories where such information as the circumstances may reasonably justify may be included. Practitioner's names, addresses and the words "Barrister, Solicitor/s" or "Barristers and Solicitors" and "Notary Public" may be inserted in a telephone directory or other similar directory approved by the Society.

1.2.6

GENERAL ADVERTISEMENTS, such as for the purpose of engaging staff or advertising auction sales or for witnesses or the like, may include the following information but **no other**:

- (i) the name and address of the firm
- (ii) the fact that the members of the firm are practising as barristers and/or solicitors.
- (iii) the address and/or telephone number to which replies are to be made
- (iv) particulars of the position offered or other matter to be advertised.

1.2.7

LETTERHEADS may include the following information but **no other**:

- (i) the name, address, location of office, description, hours of business and telephone number (including residential address), post office box number and cable and telex address of the firm
- (ii) the heading "Barristers and Solicitors" where the firm comprises members of both branches of the profession or "Solicitors" where the firm comprises solicitors only
- (iii) the names of the partners, their honours, their decorations and their professional qualifications, such as university degrees and the fact that a partner is a Notary Public or Commissioner for Oaths, or a Crown Solicitor, or a Member of Parliament, or a Patent Attorney. Specialist qualifications such as "legal consultant in taxation" may not be included.
- (iv) under the heading "Associate" or "Associates" the name, honours, decorations and professional qualifications such as university degrees of any person who has held a practising certificate as a solicitor or as a barrister and solicitor for not less than three years or who is eligible to practise on his own account and in either event is in the continuous full-time employment of the practitioner **provided that** where such heading is adopted, the letterhead shows in the case of a sole practitioner printed above his name the word "Principal" and in the case of a firm, printed above the partners' names the word "Partners" **and** No such addition shall be permitted where the name of the firm includes the word "Associates" **and** Nothing in this rule shall authorise an associate to institute proceedings in his own name as a solicitor on the record.
- (v) under the heading "Consultant" the name, honours, decorations and professional qualifications such as university degrees of any person who holds a current practising certificate and who was but is no longer a partner in the firm on whose letterhead the name appears or who formerly carried on the business of that firm alone provided that where such heading is adopted the letterhead shows in the case of a sole practitioner printed above his name the word "Principal" and in the case of a firm printed above the partners' names the word "Partners"

- (vi) the words "Consultant Partner" which may appear preceding the names and particulars of one or more of the partners of the firm.
- (vii) the location of any branch office and a notification of the names of resident partners and times of visits.
- (viii) subject to the provisions of Rule 1.4.2 (Appointment to judicial office or as Queen's Counsel), a reference to any other firm incorporated in the firm
- (ix) provision for a reference to the matter under discussion in the letter and to the name of the person dealing with it.

1.2.8

ENVELOPES. A firm's name, address and description may appear in reasonable lettering on the outside of envelopes used for professional correspondence.

1.2.9

BUSINESS CARDS may be used by practitioners but shall be limited to containing the practitioner's name, honours, decorations and professional qualifications such as university degrees, the fact that he is a solicitor and/or barrister and solicitor or notary public, his business and private addresses and his business and private telephone numbers, and the name of his firm.

1.2.10

NAME-PLATES may include the following information but **no other**.

- (i) the name of the firm.
- (ii) the matters set out in Rule 1.2.7 (Letterheads) (iii), (iv), (v), (vi), (vii) and (viii)
- (iii) the location of the firm's office in the building
- (iv) the hours of the business of the firm.

The term "name-plates" shall include any lettering on buildings or windows and shall be of reasonable size sufficient only to enable clients to find the offices referred to.

1.3

COMMISSIONS AND COSTS

1.3.1.

RETAINERS AT REDUCED FEES FOR ASSOCIATIONS, ETC.

A practitioner shall not accept a retainer from a corporation or other association of persons upon terms that he should act for the individual members of such corporation or association at reduced fees.

1.3.1.1

WAIVER OF FEES. While the preparation of a will or other document for a client without charge in any particular case where it is reasonable so to do does not amount to professional misconduct, a practitioner shall not hold out in any way the fact that he is willing to prepare wills or documents without charge.

1.3.1.2

TRUSTEES – COMMISSION TO PRACTITIONER TRUSTEES. A practitioner, when preparing a will which appoints himself or a partner an executor, shall not incorporate therein, in addition to the usual “power to charge” clause, a provision entitling the executor to any additional remuneration by way of commission or otherwise for his services as an executor or trustee. The proper course for a practitioner who is an executor and who feels that he is entitled to additional remuneration is to apply to the Court under the Rules.

1.3.2.

SHARING OF COSTS. With the exception that there is to be no apportionment between principal and agent of a solicitor's agency charges, a practitioner may share his costs with another practitioner, but with no other person.

1.3.3.

LIFE INSURANCE COMMISSIONS ON PREMIUMS. A practitioner shall not under any circumstances receive a commission from a life or endowment policy for which a client is a proponent.

1.3.4

OTHER COMMISSIONS

(i) Nothing in this rule shall detract from the rule that a practitioner's first duty is to his client and that he is under a strict obligation to advise his client in accordance with that client's best interests.

(ii) A practitioner shall not receive a commission or other benefit from the Government, from a local body or from a borrowing company, Building Society or bank in relation to the lodgment of a client's funds unless he discloses to the client that the practitioner or his firm will be receiving such commission or other benefit and the client agrees.

1.3.4.1

PROCURATION FEES

(1) It is unprofessional for a solicitor to enter into an arrangement with a lending institution the purpose or effect of which is to give clients of that solicitor preferential treatment in obtaining loans from that institution.

1.4
NAME OF FIRM

1.4.1.
USE OF WORDS "&" CO". A sole practitioner shall not use the words "&" Co", or any other words suggestive of a partnership after his name except where

- (a) the practice has an association with some former practice by purchase or succession, and the words "&" Co." are used in conjunction with a name clearly identified with the former practice; or
- (b) the Society approves their use.

1.4.2.
APPOINTMENT TO JUDICIAL OFFICE OR AS QUEEN'S COUNSEL
When a practitioner is elevated to judicial office or is granted the patent of Queen's Counsel his name shall not be retained in his firm's name without the approval of the Society which shall be granted only in special circumstances.

1.4.3
FORMER PARTNER STRUCK OFF ROLLS. When a practitioner is struck off the Rolls for professional misconduct or conduct unbecoming a barrister or a solicitor his name shall not be retained in his firm's name.

2 Proper practices within law firms

2.1

PRACTITIONERS ENGAGING IN BUSINESS OR PRACTISING IN OTHER CAPACITIES

2.1.1

PRACTITIONERS ENGAGING IN BUSINESS AND OTHER ACTIVITIES.

A practitioner shall not carry on or hold himself out as carrying on any other profession, calling or business which in the opinion of the Society is incompatible with the carrying on of his profession as a barrister or a solicitor or otherwise adversely affects his professional responsibilities. Without limiting the general application of this rule, a practitioner shall not:

- (a) carry on the profession of an accountant
 - (b) act as a valuer, life insurance agent, or land agent
 - (c) act or advertise himself as a registered moneylender
 - (d) act as an agent for a trustee company
 - (e) act as director of or be a shareholder in a private company whose business is or includes land agency except in special circumstances with the consent of the Society, such consent to be subject to review by the Society.
- Note: The principal factors in determining whether in any case any profession, calling or business is incompatible are (a) whether it accords with the standing of the profession of a barrister or solicitor and (b) whether it is calculated to or may attract business unfairly.

2.1.1.1

AGENCIES

A practitioner may:

- (a) act as an agent for an insurance company in fire and accident business but he shall not advertise his agency in any way other than by intimation on his office premises.
- (b) act as an agent for a building society.

2.1.2

INVESTMENT AND FINANCE COMPANIES FORMED BY A LEGAL FIRM

A practitioner shall not cause or permit moneys of any client to be deposited with or lent to any company in respect of which the principal financial benefit or the effective control is vested directly or indirectly in the practitioner, his wife, child or children or in any partner of such practitioner or the wife, child or children of any such partner **provided that** this rule shall not apply to solicitors nominee companies formed with the consent of the society.

2.1.3.

DEBT, RENT AND MORTGAGE INTEREST COLLECTION COMPANIES FORMED BY A LEGAL FIRM.

A practitioner shall not cause or permit debts, rent, interest or instalments due to a client to be collected by a company in respect of which the principal financial benefit or the effective control is vested directly or indirectly in the practitioner, his wife, child or children or in any partner of such practitioner or the wife, child or children of any such partner **provided that** this rule shall not apply to solicitors nominee companies formed with the consent of the society.

2.2 SUPERVISION OF PRACTICES

2.2.1.

ATTENDANCE AT OFFICE, BRANCH OFFICE, AND OFFICE SHARING

- (1) Every solicitor or firm of solicitors shall either personally or by some other solicitor entitled to practice in Fiji attend at his or their office regularly upon each day during the hours on which his or their office is open except in case of temporary absences of short duration.

- (2) Any solicitor or firm of solicitors may in addition to his or their principal office, have a branch office or offices provided that he or some other solicitor entitled to practise in Fiji, is in charge of each branch office and attends there regularly upon each day during the hours on which such office is open except in case of temporary absences of short duration.

- (3) It is improper for any solicitor or firm of solicitors to share, occupy, or use or hold himself or themselves out as sharing, occupying, or using an office or offices jointly with any company or person or persons not being practitioners of the Supreme Court provided this rule shall not apply in case of branch office not open to business regularly but only at intervals of no more than two days a week.

- (4) Subject to due compliance with Rule 3 hereof the following rules shall apply to the solicitor's branch offices:—
 - (a) It is not improper to maintain an office not used by any other person not being a practitioner and which bears a reasonable notice by plate or otherwise, stating the name of the solicitor or firm and the days and hours when such office is open.

 - (b) It is not improper for a solicitor or firm to occupy or use a room or office in an institute, hotel, bank or other public building, provided that during the hours when such solicitor or firm is in attendance thereat, such room or office is in the sole occupation of the solicitor.

 - (c) In the last mentioned case, it is not improper for a reasonable notice, by plate or otherwise, to be affixed to such building stating the name of the solicitor or firm and the days and hours during which such solicitor or firm is in attendance.

3 Relations with other practitioners

See also: Conduct of Proceedings

3.1.1

A practitioner shall treat professional colleagues with the utmost courtesy and fairness.

3.1.2

A practitioner shall not discriminate against nor treat unfairly any practitioner by reason of the colour, race, ethnic or national origins, sex, marital status, or religious or ethnical belief of that other practitioner.

3.2

DUTY OF PRACTITIONER TO REPORT SUSPECT DEFALCATIONS

There is a duty on every practitioner who has grounds to suspect defalcations by another practitioner to make (subject to the reservation stated later) a confidential report immediately to the Council of the Society.

Practitioners may not always be free to make this disclosure. They may receive information in professional confidence or when acting for the solicitor concerned or for relatives of his, and they must respect the duty of silence imposed on them in such circumstances. This ruling followed consideration of cases where defalcations of solicitors have extended over a period and where some of their fellow practitioners have had reason to suspect that things were wrong such as by an extravagant mode of living, dishonour of cheques or delay or procrastination in effecting settlements.

3.3

PAYMENT OF GOODWILL ON APPOINTMENT TO JUDICIARY

There is no objection to a practitioner who is both a barrister and a solicitor or a solicitor only accepting from his partners or from the purchaser of his practice on appointment to any judicial office involving cesser of practice, payment for his interest in all assets of the practice including the goodwill thereof provided:

- (a) the basis of valuation of and the time for payment of these items be agreed on before he takes the oath of office
- (b) his name is not used in the continuing firm except in such circumstances as are provided for in the rulings of the Society
- (c) this rule does not entitle a practitioner so appointed to any payment except such as may be agreed upon him and his former partners or the purchaser of his practice.

3.4

STOPPING OF TRUST ACCOUNT CHEQUE. Because of the implied undertaking that a trust account cheque tendered to another solicitor will not be stopped, it is prima facie professional misconduct for a solicitor to stop a cheque he has drawn on his trust account to the order of another solicitor.

3.5

CHANGE OF SOLICITORS

(i) A firm, on receipt of an authority to uplift specific documents, has a duty to make them available without undue delay, subject only to any right of lien that the firm may have. It is recognised that documents may be required for a short time to cost the file.

(ii) A solicitor has no proprietary interest in a client and, while it is permissible for a former firm to inquire from a client as to why he is changing his solicitor, it is unprofessional to exert persuasion, influence or pressure on the client to return to the firm.

3.5.1

Where there has been a change of solicitor and the former firm is holding a file under its lien until costs are paid and the new firm needs the file urgently but is not in a position to pay the costs, the firm claiming the lien should be as reasonable and constructive as the circumstances permit in the interests of the client and the profession generally. Where practicable the solicitor claiming the lien should endeavour to meet the situation by accepting an appropriate undertaking or by arranging to take security for payment of the costs.

3.5.2

With regard to documents and papers to be handed over on the change of solicitor, practitioners are referred to:

36 Halsbury (3rd Ed.) page 73

Cordery on Solicitors (6th Ed.) page 118

The Law Society (U.K.) "A Guide to the Professional Conduct of Solicitors" 1974 page 38.

(see also **Marshall v Macalister** [1952] NZLR 278)

3.5.3

With regard to a solicitor's lien for unpaid costs on a change of solicitor, practitioners are referred to:

36 Halsbury (3rd Ed.) pages 71 and 178

24 Halsbury (3rd Ed.) page 147

Cordery on Solicitors (6th Ed.) page 426

The Law Society (U.K.) "A Guide to the Professional Conduct of Solicitors" 1974 page 36.

3.5.4.

Where there has been a change of solicitor and the former firm is holding a file under its lien until costs are paid and the new firm needs the file urgently but is not in a position to pay the costs (the Council considers that) the firm claiming the lien should be as reasonable and constructive as the circumstances permit in the interests of the client and the profession generally. Where practicable the solicitor claiming the lien should endeavour to meet the situation by accepting an appropriate undertaking or by arranging to take security for payment of the costs.

3.6

SETTLEMENT STATEMENTS AND UNDERTAKINGS

- (1) An undertaking should be given expressly and not merely by implication and in particular a settlement statement in itself cannot be relied upon as an undertaking.
- (2) A solicitor should not give an undertaking which he may not be able to fulfil.
- (3) Failure to honour an undertaking may amount to professional misconduct and render the solicitor liable to disciplinary action.

4. Conduct of proceedings

4.1

PRACTITIONER ACTING AS MEMBER OF TRIBUNAL. No practitioner who is a member of any tribunal shall act as such member either in contested or uncontested matters in which his firm is interested.

4.2

PRACTITIONER ACTING FOR OR AGAINST A LOCAL BODY OF WHICH HE IS A MEMBER. No practitioner who is a member of a local authority or of any board or authority constituted by or set up under or pursuant to any statute shall act or, as the case may be, continue to act for or against such local authority, council, board, or authority in any proceeding or matter where there exists or may reasonably arise a conflict of interest between his duties or obligations as such member and his duties or obligations as a practitioner. This provision shall apply to any partner or employee of such practitioner's firm in the same manner as if such partner or employee were himself a member of such local authority.

4.2.1

(1) Where there exists or may reasonably arise a conflict of interest between his duties or obligations as a member of a local authority and his duties and obligations as a practitioner then the practitioner has a clear duty to disqualify himself or otherwise take such steps as may be necessary to avoid the conflict. The question of whether or not a conflict exists or may reasonably arise must rest, at least in the first instance, with the practitioner.

(2) If a practitioner has acquired knowledge or information as a member of a local authority he should not subsequently act for a client against that local authority. In such circumstances he would be misusing information entrusted to him in another capacity.

(3) Further, a practitioner member should not act for a client when the fact that he is a member of a local authority might convey the impression to a third party or to the public that he was in a position to make use of his membership for the private advantage of his client.

4.3

PRACTITIONER APPEARING AS COUNSEL IN MATTER IN WHICH HE HAD MADE AN AFFIDAVIT

(1) Subject possibly to very exceptional cases, the nature of which it is difficult and inadvisable to attempt to lay down, it is improper for a practitioner to act as both counsel and witness in the same matter.

(2) If a practitioner knows, or has any reason to think, that he may be required as a witness he should not appear as counsel, and if he decides in such circumstances to act as counsel he should not afterwards tender himself as a witness.

(3) The same general principles apply to affidavits in contentious matters as to oral evidence. It is not proper that a practitioner should appear in any proceeding in which he has made and filed an affidavit on any facts in dispute. If having commenced to act as counsel, he finds it necessary to make and file an affidavit in respect of any such matter he should retire from his position as counsel.

(4) The fact that in Fiji a practitioner may be acting as both solicitor and counsel makes no difference. The above principles nevertheless apply.

(5) It has never been considered objectionable for a practitioner to appear in a matter in respect of which he has made and filed an affidavit as to a formal or non-contentious fact, nor is there any objection to that practice.

Nevertheless, it is desirable that even that practice should not be adopted where it is possible for the affidavit to be made by some clerk or other person than the practitioner himself.

4.4

REPRESENTATION OF SEPARATE INTERESTS BY COUNSEL FROM THE SAME FIRM

Separate counsel from the same legal firm should not act for separate parties in any civil proceedings in Court where there is, or there is likely to arise, any conflict of interest between such parties.

4.5

REPRESENTATION OF ACCUSED JOINTLY CHARGED

Where two or more persons are charged jointly and there is separate representation, counsel should not be from or instructed by the same legal firm.

4.6

ADMINISTRATION OF OATH – REFUSAL

A solicitor as an officer of the Court owes a duty to take an affidavit or declaration unless he has a sufficient excuse for refusing to perform that duty.

4.7

ABUSE OF WINDING UP PROCEDURE – ISSUE OF NOTICES UNDER SECTION 221 (a) OF THE COMPANIES ACT 1983

(1) It is unethical and conduct unbecoming a solicitor to be knowingly party to the preparation of a petition and affidavit for winding-up based on a debt that is bona fide disputed.

(2) A solicitor instructed to issue a notice under s 221 (a) is under an ethical duty before issuing the notice to satisfy himself at least to the extent of making reasonable inquiry from the client that there is no bona fide dispute in relation to the debt before issuing the notice and that the debt can properly support the subsequent issue of a winding-up petition.

5 Conduct at Court

5.1

A practitioner must not knowingly deceive or mislead the Court.

5.2

In all cases it is the duty of a barrister to 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 or otherwise are an abuse of Counsel's function, and to exercise his own judgment both as to the substance and the form of the questions put or statements made.

5.3

A practitioner must not when conducting his case, assert his personal opinion of the facts or the law to the Court.

5.4

A practitioner must at all times act with due courtesy to the Court before which he is appearing. He must in every case use his best endeavours to avoid unnecessary expense and waste of the Court's time. He should, when asked inform the Court of the probable length of his case; and he should also inform the Court of any developments which affect the information already provided.

5.5

A practitioner should at once inform the Court of the possibility of a settlement or of an application for adjournment provided that he can do so without revealing the existence or the content of "without prejudice" discussions.

5.6

Subject to the provisions of this Code, a barrister should conduct cases in such manner as in his discretion he thinks will be most to the advantage of his client.

5.7

A barrister must ensure that the Court is informed of any relevant decision on a point of law or any legislative provision, of which he is aware and which he believes to be immediately in point, whether it be for or against his contention.

5.8

If at any time before judgment is delivered in a civil case, a barrister is informed by his lay client that he has committed perjury or has otherwise been guilty of fraud upon the Court, the barrister may not so inform the Court without his client's consent. He may not, however, take any further part in the case unless his client authorises him to inform the Court of the perjured statement or other fraudulent conduct and he has so informed the Court.

5.9

In cross-examination which goes to a matter in issue, a barrister 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.

5.10

(a) Questions which affect the credibility of a witness by attacking his character, but which are otherwise not relevant to the actual inquiry, may not be put in cross-examination unless there are reasonable grounds to support the imputation conveyed by the questions.

(b) A barrister may regard instructions from his solicitor that the imputation is well-founded as reasonable grounds to support an imputation conveyed by such questions; but he may not rely on a statement from any other person unless he has ascertained so far as is practicable that the person can give satisfactory reasons for his statement.

5.11

If before or during a case, a document belonging to the other side should come into the possession of counsel, he should if he intends to make any use of it inform his opponent that it has come into his possession. This information should be communicated in sufficient time for the opponent to raise an objection to the use of the document if he so wishes.

5.12.1

NOTES FOR GUIDANCE ON DRESS IN COURT

(1) The dress of practitioners appearing in Court should be unobtrusive and in case of the Supreme Court and Fiji Court Appeal compatible with the wearing of robes.

(2) In Supreme Court and Fiji Court of Appeal

(a) Suits and dresses should be of dark colour.

(b) Dresses or blouses should be long-sleeved and high to the neck.

(c) Shirts and blouses should be predominantly white or of other unemphatic appearance.

(d) Collars should be white and shoes black.

(3) Wigs should, as far as possible, cover the hair, which should be drawn back from the face and forehead, and if long enough should be put up.

(4) No conspicuous jewellery or ornaments should be worn.

Queen's Counsel.

5.12.2

The silk gown is the correct gown for the Queen's Counsel except when the Court is in mourning. However, mourning gowns are now commonly worn by Queen's Counsel.

6 International code of ethics

Adopted at Oslo on 25 July 1956 and amended by the General Meeting at the International Bar Association at Mexico City, 29 July 1964 and which is adopted by the Society.

6.1

This international Code of Ethics in no way is intended to supersede existing national or local rules of legal ethics or those which may from time to time be adopted.

A lawyer shall not only discharge the duties imposed upon him by his own national or local rules, but he shall also endeavour when handling a case of an international character to adhere to the rules of this Code subject necessarily to the rules existing in those other countries.

6.2

A lawyer shall at all times maintain the honour and dignity of his profession. He shall, in his practice as well as in his private life, abstain from any behaviour which may tend to discredit the profession of which he is a member.

6.3

A lawyer shall preserve independence in the discharge of his professional duty. A lawyer, practising on his own account or in partnership where permissible, shall not engage in any other business or occupation if by doing so he may cease to be independent.

6.4

A lawyer shall treat his professional colleagues with the utmost courtesy and fairness.

A lawyer who undertakes to render assistance to a foreign colleague shall always keep in mind that his foreign colleague has to depend on him to a much larger extent than in the case of another lawyer of the same country. Therefore his responsibility is much greater, both when giving advice and when handling a case. For this reason it is improper for a lawyer to accept a case unless he can handle it promptly and with due competence, without undue interference by the pressure of other work. To the fees in these cases, Rule 19 applies.

6.5

Except where the law or custom of the country concerned otherwise requires, any oral or written communication between lawyers shall in principle be accorded a confidential character as far as the Court is concerned, unless certain promises or acknowledgements are made therein on behalf of a client.

6.6

A lawyer shall always maintain due respect towards the Court. A lawyer shall without fear defend the interests of his client and without regard to any unpleasant consequences to himself or to any other person.

A lawyer shall never knowingly give to the Court incorrect information or advice which is to his knowledge contrary to the law.

6.7

It shall be considered improper for a lawyer to communicate about a particular case directly with any person whom he knows to be represented in that case by another lawyer without the latter's consent.

6.8

It is contrary to the dignity of a lawyer to resort to advertisement.

6.9

A lawyer should never solicit business and he should never consent to handle a case unless at the direct request of the party concerned. However, it is proper for a lawyer to handle a case which is assigned to him by a competent body, or which is forwarded to him by another lawyer or for which he engaged in any other manner permissible under his local rules or regulations.

6.10

A lawyer shall at all times give his client a candid opinion on any case. He shall render his assistance with scrupulous care and diligence. This applies also if he is assigned as counsel for an indigent person.

A lawyer shall at any time be free to refuse to handle a case, unless it is assigned to him by a competent body. (see 1.1.4).

A lawyer should only withdraw from a case during its course for good cause, and if possible in such a manner that the client's interests are not adversely affected.

The loyal defence of a client's case may never cause an advocate to be other than perfectly candid, subject to any right or privilege to the contrary which his clients choose him to exercise, or knowingly to go against the law.

6.11

A lawyer shall when in the client's interest endeavour to reach a solution by settlement out of court rather than start legal proceedings. A lawyer should never stir up litigation.

6.12

A lawyer should not acquire financial interest in the subject matter of a case which he is conducting. Neither should he, directly or indirectly, acquire property about which litigation is pending before the court in which he practises.

6.13

A lawyer should never represent conflicting interests in litigation. In non litigation matters, the lawyer should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This rule also applies to all lawyers in a firm.

6.14

A lawyer should never disclose, unless lawfully ordered to do so by the Court or as required by statute, what has been communicated to him in his capacity as lawyer, even after he has ceased to be the client's counsel. This duty extends to his partners, to junior lawyers assisting him and to his employees.

6.15

In pecuniary matters a lawyer shall be most punctual and diligent. He should never mingle funds of others with his own and he should at all times be able to refund money he holds for others.

He shall not retain money he received for his client for longer than is absolutely necessary.

6.16

A lawyer may require that a deposit is made to cover his expenses, but the deposit should be in accordance with the estimated amount of his charges and the probable expenses and labour required.

6.17

A lawyer should never forget that he should put first not his right to compensation for his services but the interest of his client and the exigencies of the administration of justice.

The lawyer's fee should, in the absence of non-applicability of official scales, fixed on a consideration of the amount involved in the controversy and the interest of it to the client, the time and labour involved and all other personal and factual circumstances of the case.

6.18

A contract for a contingent fee, when sanctioned by the law or by professional rules and practice, should be reasonable under all circumstances of the case, including the risk and uncertainty of the compensation and subject to supervision of a court as to its reasonableness.

Note: Contracts for contingency fees are not sanctioned in Fiji.

6.19

A lawyer who engages a foreign colleague to advise on a case or to co-operate 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 for the payment of the latter's charges, but neither is he entitled to a share of the fee of this foreign colleague.

6.20

No lawyer should permit his professional services or his name to be used in any which would make it possible for persons to practice law who are not legally authorised to do so.

No lawyer shall delegate to a legally unqualified person not in his employ and control any functions which are by the law or custom of the country in which he practises only to be performed by a qualified lawyer.

This Code of Ethics was adopted by the Fiji Law Society of its Annual General Meeting held on the 23rd day of September 1984.

M.S. Sahu Khan
(President)