



Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2015

Pursuant to section 103 of the Lawyers and Conveyancers Act 2006, the New Zealand Law Society, with the approval of the Minister of Justice and after consultation in accordance with that section, makes the following rules.

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Rules

- 1 Title**
These rules are the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2015.
- 2 Commencement**
These rules come into force on 1 July 2015.
- 3 Principal rules**
These rules amend the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **principal rules**).
- 4 Schedule amended**
 - (1) In the Schedule, chapter 3, replace rules 3.4 to 3.10 and the headings above rules 3.4, 3.8, 3.9, and 3.10 with the rules set out in Part 1 of the Schedule of these rules.

- (2) In the Schedule, chapter 14, replace rules 14.4 to 14.13 and the headings above rules 14.4, 14.6, and 14.9 with the rules set out in Part 2 of the Schedule of these rules.

Schedule

Rules of conduct and client care for lawyers amended

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Part 1

Amendments to chapter 3

Provision of information

- 3.4 A lawyer other than a barrister sole must, in advance¹, provide in writing to a client information on the principal aspects of client service including the following:
- (a) the basis on which the fees will be charged, when payment of fees is to be made, and whether the fee may be deducted from funds held in trust on behalf of the client (subject to any requirement of regulation 9 or 10 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008);
 - (b) the professional indemnity arrangements of the lawyer's practice. This obligation is met if it is disclosed that the practice holds indemnity insurance that meets or exceeds any minimum standards from time to time specified by the Law Society. If a lawyer or a practice is not indemnified, this must be disclosed in writing to the client;
 - (c) the coverage provided by the Lawyers' Fidelity Fund and if the client's funds are to be held or utilised for purposes not covered by the Lawyers' Fidelity Fund, the fact that this is the case;
 - (d) the procedures in the lawyer's practice for the handling of complaints by clients, and advice on the existence and availability of the Law Society's complaints service and how the Law Society may be contacted in order to make a complaint.

¹ The expression 'in advance' is contained in section 94(j) of the Act. Accordingly, lawyers are recommended to provide the information set out in rule 3.4 prior to commencing work under a retainer.

- 3.4A A barrister sole must, in advance², provide in writing to a client information on the principal aspects of client service including the following:
- (a) The basis on which the fees will be charged, and when payment of fees is to be made.
 - (b) The professional indemnity arrangements of the barrister sole. This obligation is met if it is disclosed that the barrister sole holds indemnity insurance that meets or exceeds any minimum standards from time to time specified by the Law Society. If a barrister sole is not indemnified, this must be disclosed in writing to the client.
 - (c) The fact that the Lawyers' Fidelity Fund does not provide any cover in relation to a barrister sole as he or she does not hold client's funds.
 - (d) The procedures in the barrister sole's practice for the handling of complaints by clients, and advice on the existence and availability of the Law Society's complaints service and how the Law Society may be contacted in order to make a complaint.
- 3.5 A lawyer other than a barrister sole must, prior to undertaking significant work under a retainer, provide in writing to the client the following:
- (a) a copy of the client care and service information set out in the preface to these rules; and
 - (b) the name and status of the person or persons who will have the general carriage of, or overall responsibility for, the work; and
 - (c) any provision in the retainer that limits the extent of the lawyer's or the practice's obligation to the client or limits or excludes liability. The terms of any limitation must be fair and reasonable having regard to the nature of the legal services to be provided and the surrounding circumstances.
- 3.5A A barrister sole must, prior to undertaking significant work under a retainer, provide in writing to the client the following:
- (a) a copy of the client care and service information set out in the preface to these rules; and
 - (b) any provision in the retainer that limits the extent of the barrister sole's obligation to the client or limits or excludes liability. The terms of any limitation must be fair and reasonable having regard to the nature of the legal services to be provided and the surrounding circumstances.
- 3.6 If information provided by a lawyer in terms of rule 3.4 or 3.5 becomes inaccurate in a material respect, the lawyer must ensure that the information is upda-

² The expression 'in advance' is contained in section 94(j) of the Act. Accordingly, lawyers are recommended to provide the information set out in rule 3.4 prior to commencing work under a retainer.

ted with due expedition. Rules 3.4 and 3.5 are complied with where a lawyer has previously provided a client with the information required and the information remains accurate.

- 3.6A If information provided by a barrister sole in terms of rule 3.4A or 3.5A becomes inaccurate in a material respect, the barrister sole must ensure that the information is updated with due expedition. Rules 3.4A and 3.5A are complied with where a barrister sole has previously provided a client with the information required and the information remains accurate.
- 3.7 Rules 3.4, 3.4A, 3.5, and 3.5A do not apply—
- (a) where the lawyer is instructed by another lawyer or by a member of the legal profession in an overseas country, unless the fee information or other advice is requested by the instructing lawyer or member of the legal profession, as the case may be; or
 - (b) if it is, in the circumstances, impracticable for the lawyer to provide the information referred to in those rules; or
 - (c) if there is no reasonable likelihood that the client will understand the information because the client—
 - (i) is of a young age; or
 - (ii) is a person with a mental health issue or disability; or
 - (d) in respect of regulated services rendered by an in-house lawyer to his or her employer where the in-house lawyer is engaged under an employment agreement.

Complaints mechanisms

- 3.8 Each lawyer must ensure that the lawyer's practice establishes and maintains appropriate procedures for handling complaints by clients with a view to ensuring that each complaint is dealt with promptly and fairly by the practice. When a lawyer owns a sole practice, the complaints procedure may include the reference of complaints to an independent lawyer for consideration. This rule does not bind a lawyer whose status in a practice is solely that of an employee.

Continuing education

- 3.9 A lawyer must undertake the continuing education and professional development necessary to ensure an adequate level of knowledge and competence in his or her fields of practice.

Retainers entered into prior to 1 August 2008

- 3.10 Rules 3.4, 3.4A, 3.5 and 3.5A do not apply to a retainer entered into by a lawyer before 1 August 2008.
- 3.11 The foregoing rules 3.4 to 3.10 come into force on 1 July 2015. They replace the previous rules 3.4 to 3.10, which previous rules remain in force until that date.

Part 2

Amendments to chapter 14

Intervention rule

- 14.4 Subject to rule 14.5, a barrister sole must not accept instructions to act for another person other than from an instructing lawyer.

Direct instructions

- 14.5 A barrister sole may accept instructions from a person who is not an instructing lawyer if the barrister sole is—

14.5.1 instructed or appointed by:

- (a) a person acting in a judicial or quasi-judicial capacity; or
- (b) a person acting as an arbitrator, mediator, or in any similar capacity; or
- (c) a court³; or
- (d) the Law Society; or
- (e) a registered patent attorney; or
- (f) a member of the legal profession in an overseas country; or
- (g) an Official Assignee; or
- (h) a body, officer, or person approved by the Law Society under rule 14.6, which approval may be given with such restrictions and/or subject to such terms and conditions as the Law Society may determine.

14.5.2 instructed to act or acting in any of the following capacities or matters:

- (a) in a judicial or quasi-judicial capacity or as counsel to assist any court⁴; or
- (b) as an arbitrator, mediator, or in any similar capacity; or
- (c) as a revising barrister pursuant to any enactment; or
- (d) representing a person charged with any offence other than in any prosecution by the Serious Fraud Office, the Financial Markets Authority or the Commerce Commission; or
- (e) for any person who has been granted or has a pending application for legal aid under the Legal Services Act 2011 or any re-enactment; or

³ Under rule 1.2 'court' means a court or tribunal.

⁴ Under rule 1.2 'court' means a court or tribunal.

- (f) in a family law matter that is capable or was initially capable of being brought within the jurisdiction of a Family Court other than in respect of any aspect of the matter which involves complex property issues⁵; or
- (g) in an employment law matter that does not involve proceedings in the Employment Court in the first instance, or proceedings in or an appeal to the High Court, Court of Appeal, or Supreme Court; or
- (h) in any civil matter (other than a family law or employment law matter as provided for under rules 14.5.2(f) and (g)) which is not a proceeding before the Supreme Court, the Court of Appeal, the High Court or a District Court⁶; or
- (i) providing a legal opinion; or
- (j) as a duty solicitor; or
- (k) providing assistance to a legal advice service operating on a non-profit basis or acting pro bono on work referred by such a service; or
- (l) as a specialist adviser to the Ministry of Justice; or
- (m) in a refugee status matter pursuant to the United Nations Convention relating to the Status of Refugees, adopted on 28 July 1951; or
- (n) representing a client under the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (o) representing a prisoner in an internal disciplinary hearing; or
- (p) moving the admission by the court of a person as a barrister and solicitor⁷.

14.6 The Law Society may, after consultation with the New Zealand Bar Association, publish a list of approved bodies, officers, and persons for the purposes of rule 14.5.1(h), together with any restrictions, terms or conditions which may be applicable.

⁵ Irrespective of whether there are complex property issues, implementing the transfer or assignment of any interest in land or other property pursuant to an agreement or Court order must not be carried out by a barrister sole—see rule 14.2(b).

⁶ The reference to ‘courts’ in rule 14.5.2(h), without limitation, does not extend to the Environment Court, the Māori Land Court, the Waitangi Tribunal, Coroners Courts, the Accident Compensation Appeals District Court Registry, and all other specialist courts, tribunals and authorities.

⁷ Each paragraph in rules 14.5.1 and 14.5.2 comprises a separate and discrete exemption from the Intervention Rule and is not limited by the terms of any other exemption.

- 14.7 A barrister sole may not accept direct instructions under rules 14.5.2(d) to (h) unless he or she:
- 14.7.1 is practising on his or her own account, in accordance with the provisions of section 30 of the Act or is entitled to do so;
 - 14.7.2 has completed any prescribed training requirements set by the Law Society after consultation with the New Zealand Bar Association and has satisfied the Law Society that he or she is a suitable person to accept direct instructions from clients; and
 - 14.7.3 has provided in writing to the prospective client the information required by rules 3.4A and 3.5A and has informed the prospective client in writing of his or her:
 - (a) capacity and experience in performing the requested service; and
 - (b) advocacy experience as a barrister; and
 - (c) any disadvantage which the barrister believes may be suffered by the prospective client if no instructing lawyer is retained.
- 14.8 A barrister sole must not accept direct instructions under rules 14.5.2(d) to (i) if he or she considers that, in all the circumstances, it would be in the best interests of the client or in the interests of justice for an instructing lawyer to be retained.
- 14.9 Where a barrister sole has accepted direct instructions under rules 14.5.2(d) to (i), he or she must not continue to act if at any stage he or she considers that, in all the circumstances, it would be in the best interests of the client or in the interests of justice, for an instructing lawyer to be retained, but the client is not prepared to retain one. Such a situation is good cause for the purposes of rule 4.2(c).
- 14.10 Where a barrister sole accepts direct instructions under rules 14.5.2(d) to (i), all money in advance of such work must be paid into a trust account of a fund holder who must be either:
- (a) a practice⁸; or
 - (b) a person or entity approved for that purpose by the Law Society.
- The moneys must be held and dealt with in accordance with terms to be prescribed by the Law Society.
- 14.11 Nothing in these rules requires a barrister sole to accept direct instructions from a person who is not an instructing lawyer.
- 14.12 The Law Society may at any time or times carry out a review of the intervention provisions set out in rules 14.4 to 14.11 and determine whether and to

⁸ Under Rule 1.2 'practice' means a law practice, whether conducted by one lawyer, a partnership of lawyers, or an incorporated law firm.

what extent those provisions are to remain in force. In carrying out any review, the Law Society must consult with the Ministry of Justice, the New Zealand Bar Association, and such other organisations, groups, or persons as the Law Society considers have an interest in the issue.

General

- 14.13 A barrister sole must not do anything to induce persons to suppose that the barrister sole retains a connection with any practice of which he or she was previously a member, or to suppose that there is any connection between the barrister sole and that practice or any other practice.
- 14.14 A barrister sole must not have an arrangement that restricts the complete freedom of an instructing lawyer to instruct any counsel the instructing lawyer or the client selects.
- 14.14.1 This rule does not affect the right of a barrister sole to accept a general retainer from an instructing lawyer on behalf of a particular client.
- 14.15 Except where a barrister has accepted direct instructions under rule 14.5:
- 14.15.1 A barrister sole must keep his or her instructing lawyer reasonably informed of the progress of the brief. A barrister sole should normally seek the consent of the instructing lawyer before interviewing the client or any witness.
- 14.15.2 Correspondence between parties on matters relating to litigation should normally be carried out between the instructing lawyers.
- 14.15.3 A barrister sole's rooms or chambers may be shown as an address for service along with the offices of the instructing lawyer.
- 14.16 In rules 14.4 to 14.15, the term 'instructing lawyer' means a person who holds a practising certificate as a barrister and solicitor.
- 14.17 The foregoing rules 14.4 to 14.16 come into force on 1 July 2015. They replace the previous rules 14.4 to 14.13, which previous rules remain in force until that date.

Dated at Wellington this 10th day of April 2015.

Christopher Moore,
President of the New Zealand Law Society.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **principal rules**). They amend the principal rules by replacing rules 3.4 to 3.10 with *new rules 3.4 to 3.11* and replacing rules 14.4 to 14.13 with *new rules 14.4 to 14.17*.

The rules are published in the Legislative Instruments series in accordance with section 106 of the Lawyers and Conveyancers Act 2006. They were made on 10 April 2015. The rules (incorporating supplementary rules made on 5 June 2015) have been published on the New Zealand Law Society website.

The rules add new circumstances in which barristers sole may take instructions directly from clients (**direct instructions**). However, a barrister sole may only take direct instructions in these circumstances if he or she complies with the conditions set out in the rules.

The additional circumstances in which barristers sole may take direct instructions include the following:

- if the barrister sole is representing a person charged with an offence other than a prosecution by the Serious Fraud Office, the Financial Markets Authority, or the Commerce Commission:
- if the barrister sole is representing a person who has been granted Legal Aid or has a pending application for Legal Aid:
- if the barrister sole is representing a person in a family law matter that is capable, or was initially capable, of being brought within the jurisdiction of the Family Court other than in respect of any aspect of the matter that involves complex property issues:
- if the barrister sole is representing a person in an employment law matter that does not involve proceedings in the Employment Court in the first instance, or proceedings in or on appeal to the High Court, Court of Appeal, or Supreme Court:
- if the barrister sole is representing a person in a civil matter (other than a family or employment law matter of the type described above) that is not a proceeding before the Supreme Court, Court of Appeal, High Court, or a District Court.

A barrister sole may only take direct instructions in the circumstances set out above if he or she complies with the following conditions:

- the barrister sole is practising on his or her own account as a barrister sole; and
- the barrister sole has completed particular training requirements; and
- the barrister sole has obtained approval from the New Zealand Law Society.

**Lawyers and Conveyancers Act (Lawyers: Conduct and
Client Care) Amendment Rules 2015**

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