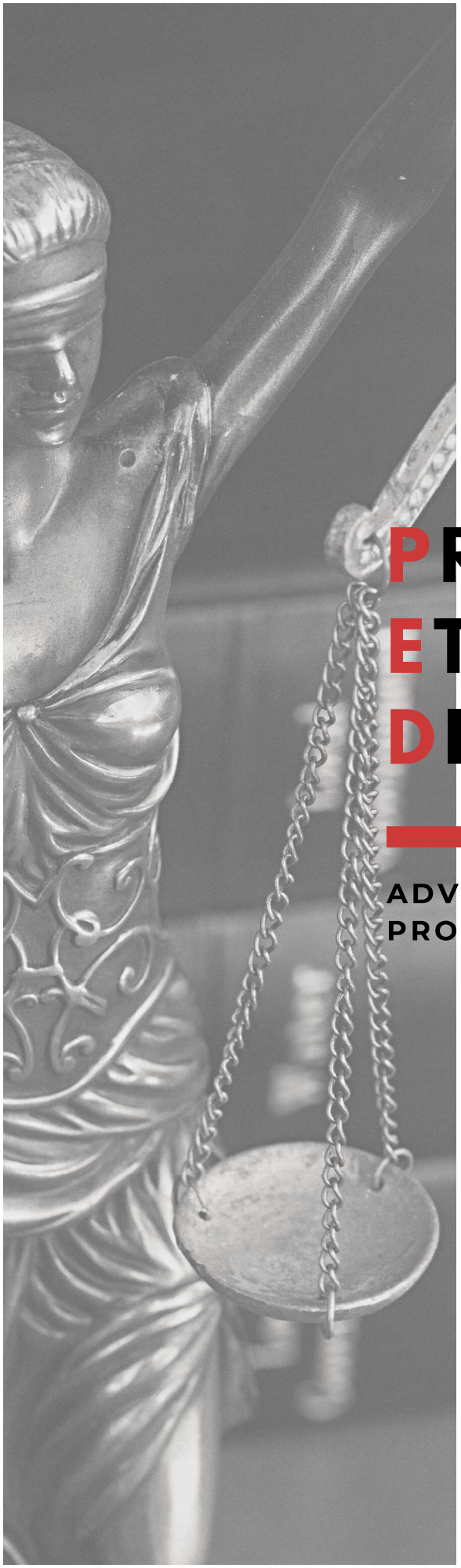

THE LAW SOCIETY OF SINGAPORE

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Abbreviations

General	
Council of the Law Society of Singapore	Council
Advisory Committee of the Professional Conduct Council	Advisory Committee
Legislation	
Legal Profession (Professional Conduct) Rules 2015 (GN No S 706/2015)	PCR
Legal Profession (Professional Conduct) Rules (Cap 161, 2010 Rev Ed)	PCR 2010
Legal Profession Act (Cap 161, 2009 Rev Ed)	LPA
Practice Directions & Guidance Notes	
Law Society's Practice Directions & Guidance Notes 2018/2019[1]	PDR 2019
Court Rules	
Rules of Court (Cap 322, R5, 2014 Rev Ed)	Rules of Court

[1] Please refer to the Law Society's Ethics and Professional Responsibility page at https://www.lawsociety.org.sg/for-lawyers/ethics-and-professional-responsibility/. A consolidated copy of the Law Society's Practice Directions and Guidance Notes can be accessed here. Other ethics resources can be found at the Law Society's Ethics Resources page at https://www.lawsociety.org.sg/for-lawyers/ethics-resources/.

The Advisory Committee

I. Function and Composition

1. The Professional Conduct Council (the "PCC") is established under section 71(1) of the LPA, with the Chief Justice as its Chairman.

2. Pursuant to section 71(2) of the LPA, the PCC may, amongst others, make rules for regulating the professional practice, etiquette, conduct and discipline of every regulated legal practitioner and every person admitted under section 15 of the LPA (collectively known as, "legal practitioners"). The PCC may do so by way of such practice directions, guidance notes and rulings as the PCC thinks appropriate (section 71(6) of the LPA).

3. The PCC appoints the Advisory Committee to better regulate and manage the ethical obligations of legal practitioners (section 71(10) of the LPA), and may delegate all or any of its functions and powers under section 71(6) of the LPA to the Advisory Committee.

4. The Advisory Committee is made up of Singapore legal practitioners and foreign lawyers, appointed by the Chief Justice. Members of the Advisory Committee are appointed for a two-year term, headed by their Chairman and Vice-Chairman

II. Terms of Reference

5. The Terms of Reference of the Advisory Committee are approved by the Chief Justice. Members of the Advisory Committee are bound by the Terms of Reference:

   (a) To advise the Council in providing guidance on the ethical obligations of legal practitioners;

   (b) To collect, organize and publish, with the assistance of the Council, from time to time in such form as it thinks fit the advice and guidance given under paragraph 5(a) above;

   (c) To keep under review the ethical obligations of legal practitioners and to make recommendations for the development, codification, amendment or reform of such ethical obligation from time to time to the PCC and/or the Council; and

   (d) To work with the Council and/or Committees of the Law Society to raise awareness and knowledge amongst lawyers of their ethical obligations.

III. Enquiries to the Advisory Committee

6. All enquiries to the Advisory Committee must comply with Part C, Practice Direction 2.1.3 on 'Enquiries to Relevant Committee'.

A. Seeking the Advisory Committee's Guidance

7. The Advisory Committee does not issue rulings but only (non-binding) guidance on ethical issues.

8. Guidance from the Advisory Committee should only be sought if the following guidelines are complied with:

(a) The ethical matter is not clearly dealt with by legislation (including subsidiary legislation), practice directions in force or common law, or there is some genuine ambiguity or no other available guidance in respect of the ethical matter;

(b) The request should not be hypothetical – it must deal with a real ethical issue which has arisen or which it is reasonably expected will arise in the enquirer's professional practice;

(c) The request should be a genuine inquiry and not a disguised complaint against another legal practitioner. In particular, requests for guidance should not be used to malign, harass or pressurise opposing parties or counsel or to gain tactical advantage; and

(d) The request should not be made in respect of matters which should properly be dealt with either by the court or between the parties.

B. Information to Provide when Seeking Guidance

9. The written request for guidance should set out for the Advisory Committee's consideration:

(a) A full and accurate account of all material facts, bearing in mind the need to observe any obligation of confidentiality;

(b) A summary of the ethical issues involved;

(c) All relevant authority bearing on the point such as legislation (including subsidiary legislation), practice directions, text books, articles and cases, whether from Singapore or elsewhere; and

(d) The specific question or questions upon which the enquirer is asking the Advisory Committee to express its views.

10. When sending the written request to the Secretariat for the Advisory Committee, the enquirer must also comply with the following:

(a) Queries to the Advisory Committee must be sent by the lead counsel or solicitor-in-charge of the matter. This would typically refer to the partner or director of the law practice.

(b) The identities of all parties and their solicitors must be disclosed to the Advisory Committee. This is required, *inter alia*, for internal conflict-checking processes, and to ascertain that the scenario is a non-hypothetical one.

(c) If the query touches upon the conduct of another solicitor and/or law practice, the other solicitor and/or law practice must be copied in the request for the Advisory Committee's guidance. This is to ensure that the Advisory Committee is apprised of both sides of the issue. If there has been any correspondence exchanged between the parties on the subject matter of the query, a copy of the same must be forwarded to the Advisory Committee.

(d) If there are any urgent or scheduled hearings taking place with regard to the subject matter of the query, the Advisory Committee must be informed immediately. This will affect the timelines in the Advisory Committee's

consideration of the query. If applicable, the enquirer must also clarify whether the subject matter of the query has been placed before the court.

11. Where a joint request for guidance by at least two law practices is made, or where there are at least two law practices involved in the request, the Advisory Committee may invite all parties to make submissions or comments before issuing any guidance. In this regard:

(a) Where a deadline has been fixed for submissions by either party to the Advisory Committee, no further submissions are to be made after the deadline without the permission of the Secretariat. In addition, the parties must not copy the Secretariat on any further correspondence exchanged between them after the deadline.

(b) If either party requires an extension of time to make submissions to the Advisory Committee, the relevant party must obtain the permission of the Secretariat to do so at least one working day before the expiry of the deadline.

12. The Advisory Committee reserves the right to seek further information or clarification from the enquirer or any third parties involved in the subject matter before issuing any guidance. If any additional information or clarification is not forthcoming, or if the enquirer does not consent to the Advisory Committee seeking the further information or clarification from relevant third parties, the Advisory Committee reserves the right not to provide guidance on the inquiry.

13. The Advisory Committee also reserves the right not to provide guidance on the inquiry if the Advisory Committee would only be able to provide general pointers because the enquirer will have to assess the situation based on facts within his or her personal knowledge.

B. Significance of Guidance Provided by the Advisory Committee

14. The Advisory Committee's guidance is well-researched and generally entails substantial consideration and discussion by the Advisory Committee's members. The Advisory Committee aims to respond with a formal guidance within three to six weeks from the date that the Advisory Committee accepts a request for guidance.

15. The Advisory Committee provides guidance, not rulings. Neither you nor any affected third party is bound by the said guidance. Only the courts can provide rulings on the scope and extent of legal practitioners' professional obligations and bind legal practitioners or third parties with those rulings. Having said that, the courts do give some weight to the Advisory Committee's guidance representing, as it does, the professional body's view. The weight which will be given will depend to a large extent on the completeness and accuracy with which all relevant material has been placed before the Advisory Committee together with the request for guidance.

IV. A Note on Confidentiality

16. Any guidance given is confidential and is intended only for the enquirer's benefit. The Advisory Committee may publish anonymised versions of the inquiry and the guidance where the subject-matter of the request is one of general application or interest.

17. While the Law Society's and the Advisory Committee's starting point is that all inquiries are confidential, if the inquiry is in respect of completed conduct (as opposed to future conduct) and discloses potential professional misconduct or criminal wrongdoing, the

Advisory Committee may be under a duty to report that misconduct through the relevant channels.

Acknowledgements

The publication of the Professional Ethics Digest 2020 would not have been possible without the assistance of a great many people. Special thanks go out to the members of the Advisory Committee (2017-2019 and 2019-2021).

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- Ms Zhang Yu Fu, Ms Lee Yee Teng and Mr Ahvineesh s/o Nanoo Nagendra Das, interns with the Law Society's Legal Research and Development department.

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Summaries of Advisory Committee's Guidances from May 2018 – December 2019

Disclaimer:

The summaries are intended to allow legal practitioners to understand how ethical rules are applied to real-life ethical scenarios placed before the Advisory Committee for guidance. As the summaries have omitted facts which are not considered crucial to the ethical obligations of the legal practitioner in question or to the guidance given, legal practitioners are advised to write to the Advisory Committee for a specific opinion on their query. Neither the Advisory Committee nor the Law Society shall be liable for anything a legal practitioner does or omits based on the summaries without seeking a formal opinion on the facts of his or her case from the Advisory Committee.

Chapter 1: Client Confidentiality

[**General Editor's Note**: *The rule relating to a legal practitioner's duty of confidentiality to the client is found in Rule 6 PCR.*]

1 Rule 6(1) PCR – Team of legal practitioners left law practice to set up new law practice – Dispute over agreement on access to emails addressed to exited legal practitioners through former law practice's email account – Whether former law practice should read such emails before forwarding them to exited legal practitioners

Facts

1.1. A team of legal practitioners left Law Practice A (the "Exited Team") to set up Law Practice B. Upon their departure, the Exited Team's position was that both law practices had agreed on certain terms (the "Agreement"), pursuant to which Law Practice A would: (a) give members of the Exited Team access to emails sent to their respective Law Practice A email addresses for a particular period of time; and (b) forward all correspondence sent to members of the Exited Team, including emails sent to their respective Law Practice A email addresses, to Law Practice B and their respective new email addresses for the period in question.

1.2. However, Law Practice A stated that it had not agreed to grant members of the Exited Team access to any emails addressed to them, but was only agreeable to forward such emails to Law Practice B subject to compliance with all relevant legal and professional obligations.

1.3. It came to Law Practice B's attention that emails forwarded by Law Practice A to members of the Exited Team had first been screened by Law Practice A's Managing Partner and were only so forwarded with the latter's permission. Law Practice B's position was that Law Practice A should not open and read emails addressed to the relevant member(s) of the Exited Team because they might contain sensitive and confidential information and client confidentiality could thereby be compromised.

1.4. Law Practice A's position was that it would not be appropriate to automatically forward such emails to Law Practice B as Law Practice A had a legal and professional duty to consider whether it would be appropriate to forward any such emails and if so, whether any further action was required of Law Practice A pertaining to these emails before they were forwarded to Law Practice B.

1.5. Law Practice B also expressed a concern about a likelihood of delay or human error arising from Law Practice A's actions. Law Practice A informed that it had a system to deal with emails sent to members to the Exited Team via their respective Law Practice A email addresses.

Query

1.6. Law Practice B asked how the parties should proceed in this matter, so as to avoid any allegations of misconduct, professional or otherwise.

Guidance (6 May 2019)

1.7. Both Law Practice A and Law Practice B were referred to rule 6(1) of the PCR[2] and/or to paragraphs 3, 7 and 9 of Guidance Note 7.3.1[3] ("Guidelines for Handling of Clients' Files When A Legal Practitioner Leaves a Law Practice to Practise In Another Law Practice") in PDR 2019 when coming to and/or executing the Agreement. Guidance Note 7.3.1 provided guidelines on how to safeguard the duty of confidentiality owed by the lawyers who leave a firm.

1.8. The Advisory Committee was in no position to resolve the factual dispute as to what Agreement (if any) existed between Law Practice A and members of the Exited Team in Law Practice B on continual access to the latter's email accounts or the contents thereof. This issue was not within the ethical purview of the Advisory Committee. Any guidance on the matter was therefore given on the assumption that the terms of the Agreement were permissible under the PCR and PDR 2019.

1.9. Law Practice B was right in being mindful of its duties of confidentiality owed to its clients. Emails from its existing clients should rightly be forwarded directly to Law Practice B without first being read by Law Practice A. As section 2(1) of the LPA defines a "client" to include prospective clients, duties of confidentiality should be upheld.

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[2] This rule sets out the principle that a legal practitioner's duty to act in the best interests of the client includes a responsibility to maintain confidentiality of any information which he or she acquires in the course of his or her professional work.

[3] These paragraphs state:

> "3. The guidelines are based on the following principles:
>
> (a) **The primary consideration in all cases is that the Exiting Legal Practitioner and the Current Law Practice must act in the best interests of the Client and ensure that the Client's interests are not prejudiced by the Exiting Legal Practitioner's leaving the Current Law Practice**.
>
> (b) The Client has at all times the right to decide on the law practice that will represent the Client, which could be the Current Law Practice, the New Law Practice or a third law practice ('Third Law Practice').
>
> (c) **The Client must be promptly notified in a professional manner of the Exiting Legal Practitioner's departure and given sufficient information in order to decide on the law practice that will represent the Client**.
>
> (d) **The Client is the client of the Current Law Practice and the Current Law Practice has a right to retain the Client**.
>
> (e) **The Exiting Legal Practitioner must comply with all such contractual, fiduciary and confidentiality obligations that the Exiting Legal Practitioner may owe to the Current Law Practice despite leaving the Current Law Practice**.
>
> 7. **The Current Law Practice and the Exiting Legal Practitioner should jointly and promptly notify the Client of the Exiting Legal Practitioner's proposed departure. If this is not possible, the Current Law Practice or the Exiting Legal Practitioner may unilaterally notify the Client**, but the notification to the Client should be professional and especially should not solicit or suggest (as the case may be) that the Client has an obligation to retain the Exiting Legal Practitioner's New Law Practice or that the Client has an obligation to stay with the Current Law Practice. **The contents of the notification must be in accordance with the principles stated in paragraph 3 above**.
>
> 9. **If the Current Law Practice receives no instructions from the Client to transfer the file(s) to the New Law Practice or the Third Law Practice, it is assumed that the Client intends to continue with the Current Law Practice and the Exiting Legal Practitioner must not take the Client's file to the New Law Practice** or otherwise undermine the existing legal practitioner-client relationship between the Current Law Practice and the Client in any way. The Client remains the client of the Current Law Practice and the Current Law Practice must continue to represent the Client in accordance with the required professional standards." [emphasis added]

1.10. However, the situation presented should not even arise. Based on rule 6 of the PCR, the responsibility to maintain the confidentiality of information arises from the course of the retainer, and continues after the termination of the retainer. As such, the confidential documents that Law Practice B sought to protect should be limited to those that arose from retainers that members of the Exited Team in Law Practice B had with their clients during their employment at Law Practice A, and which have since been transferred to Law Practice B. Transfer of the files should be in accordance with Guidance Note 7.3.1. If the transfer of retainers was duly done, Law Practice B's clients should have been duly notified of the transfer and should already send their emails directly to Law Practice B.

1.11. It was also envisaged that not all emails sent to Law Practice A that were addressed to members of the Exited Team might have come from the latter's existing clients, which created difficulties in executing the Agreement on a practical basis. Although both Law Practice A and Law Practice B were bound by duties of confidentiality depending on which law practice the retainer belonged to, a person in Law Practice A still had to read through incoming emails addressed to members of the Exited Team to determine whether each email was from Law Practice A's or Law Practice B's clients, and then to forward only emails from Law Practice B's existing clients (which included prospective clients) to Law Practice B.

1.12. There was no ethical breach in not automatically forwarding the emails received by Law Practice A to members of the Exited Team in Law Practice B in that the email accounts would generally be regarded as property of Law Practice A, and Law Practice A might wish to know what correspondence was being received through them, including whether any of the correspondence was in fact meant for it (for instance, if it related to a matter that remained in Law Practice A, or an issue that Law Practice A was still expected to deal with e.g. where Law Practice A's client wished to tax a bill rendered by Law Practice A before the departure of the Exited Team).

1.13. Furthermore, Law Practice A had confirmed (and Law Practice B had acknowledged) that it forwarded emails promptly and had a system to deal with the emails.

1.14. Paragraph 3(a) of Guidance Note 7.3.1 made it clear that the duty to ensure that clients' interests are not prejudiced by the exit of the members of the Exited Team falls on both Law Practice A and Law Practice B. It was suggested that in view of the above-mentioned practical difficulties in executing the Agreement, Law Practice A and members of the Exited Team in Law Practice B might wish to rework the terms of the Agreement, responsibly and professionally, to give practical effect to their duties of confidentiality owed to their respective clients.

1.15. It would be preferable if parties could reach an agreement that did not involve the continued use of such "historical" email accounts for correspondence intended for a new law practice. Additionally, all such communications between Law Practice A and members of the Exited Team in Law Practice B should be done in writing. Meanwhile, as the parties reworked the terms of the Agreement, Law Practice A should endeavour to inform senders of emails that were not intended for Law Practice A, that it would keep the emails confidential.

Chapter 2: Responsibilities of Legal Practitioners to Each Other

[**General Editor's Note***: The general rule relating to a legal practitioner's responsibilities to other legal practitioners is found in Rule 7 PCR. Specific rules governing a legal practitioner's relationship with other practitioners pertaining to practice in the Singapore courts are found in Rules 27 to 31 PCR.*]

2 Rule 7(3) PCR – Legal practitioner acting for the defendants in a suit was suspended from practice – Plaintiff's legal practitioner unable to ascertain where plaintiff's future correspondence concerning the suit should be directed to – Whether plaintiff's legal practitioner could correspond directly with the defendants

Facts

2.1 Law Practice A acted for the Plaintiff in a District Court suit ("Suit") and Lawyer B was the solicitor on record for the Defendants. Following Lawyer B's suspension from practice for 3 years, Law Practice A had written to Lawyer B to inquire where the Plaintiff's future correspondence concerning the Suit should be directed to. However, Law Practice A did receive any reply from Lawyer B.

2.2 Law Practice A informed that no Notice of a Change of Solicitors or Notice of Intention to Act in Person had been filed.

Query

2.3 Law Practice A was concerned with how due or proper notice of a proposed application for Summons for Further Directions to be taken out by the Plaintiff and other related documentation should be effected. It might not be proper for Law Practice A to correspond directly with either or both of the Defendants, especially if the Defendants were represented by counsel.

Guidance (9 April 2019)

2.4 Law Practice A was referred to rule 7(3) of the PCR. In view of rules 7(3)(b)[4] and possibly 7(3)(c)[5] of the PCR, it was recommended that Law Practice A contact the Defendants directly on the matter. In particular, it might be said that upon Lawyer B's suspension, he would no longer be a legal practitioner representing the Defendants for the purposes of rule 7(3)(a)[6] of the PCR.

[4] In summary, rule 7(3)(b) provides that a legal practitioner (*A*) may communicate with a person represented by another legal practitioner (*B*) if: (i) there is a reasonable basis for *A* to communicate directly with that person; and (ii) prior to the communication, *A* has taken reasonable steps to notify *B* of *A*'s intention to communicate directly with that person, but *B* does not respond within a reasonable time after *A*'s notification.

[5] In summary, rule 7(3)(c) provides that a legal practitioner (*A*) may communicate with a person represented by another legal practitioner (*B*) if the interests of *A*'s client will be severely prejudiced if the communication is delayed.

[6] In summary, rule 7(3)(a) provides that a legal practitioner (*A*) may communicate with a person represented by another legal practitioner (*B*) if *A* has the prior consent (whether express or implied) of *B* to communicate directly with that person.

2.5 Law Practice A was further cautioned that its first letter to the Defendants should be couched carefully, as it would be effectively addressed to lay persons, and Law Practice A should not be seen to be taking advantage of the circumstances.

2.6 As to where to serve documents for the Defendants, Law Practice A should refer to Order 64 rule 4 of the Rules of Court that sets out the procedure where a solicitor who has acted for a party has been suspended from practising and the party has not given notice of change of solicitor or notice of intention to act in person.

3 Rule 7(3) PCR – Legal practitioner acting for the defendants in a suit was suspended from practice – Plaintiffs entered default judgment against defendants – Plaintiffs' legal practitioner unable to ascertain where plaintiffs' future correspondence concerning the suit should be directed to – Whether plaintiffs' legal practitioner could serve default judgment directly on the defendants

Facts

3.1 Law Practice A acted for the Plaintiffs in a Magistrate's Court suit ("Suit") and Lawyer B was the solicitor on record for the Defendants.

3.2 Law Practice A had written to Lawyer B to give the Defendants 2 working days' notice under rule 28(1) of the PCR for the Defendants to file and serve their Defence, failing which Judgment in Default of Defence would be entered against them.

3.3 A few days later, Lawyer B was suspended from practice for 3 years. Law Practice A, which was unaware of Lawyer B's suspension, informed Lawyer B that the Plaintiffs would proceed to enter Judgment in Default of Defence if no Defence was filed by the end of the next working day. The Plaintiffs thereafter entered default judgment as no Defence was filed. Law Practice A informed that no Notice of a Change of Solicitors or Notice of Intention to Act in Person had been filed subsequently.

3.4 Law Practice A sought guidance on whether it could correspond directly with the Defendants to inform and serve on them the Judgment in Default of Defence and other related documents, even though the Defendants appeared on record to be still represented by counsel.

3.5 The Advisory Committee provided Law Practice A with the same guidance as per paragraphs 2.4 to 2.6 of Illustration 2 above.

3.6 Subsequently, Law Practice A informed the Advisory Committee that it had not received any further instructions from the Plaintiffs to commence enforcement proceedings or other further court proceedings against the Defendants.

Query

3.7 Whether Law Practice A could, without prior application to the Magistrate's Court with regard to Order 64 rule 4 of the Rules of Court, write to the Defendants by way of letter sent via registered post to:

(a) notify them of Lawyer B's suspension; and
(b) serve the Judgment in Default of Defence.

Guidance (3 June 2019)

3.8 In line with the Advisory Committee's previous guidance, in view of rules 7(3)(b) and possibly 7(3)(c) of the PCR, Law Practice A could notify the Defendants in writing of Lawyer B's suspension and ask if the Defendants intended to appoint new lawyers to handle the matter. Law Practice A could also serve the Judgment in Default of Defence.

3.9 However, Law Practice A must also comply with Order 64 rule 4 of the Rules of Court. As such, if no new opposing lawyers were appointed by the Defendants, Law Practice A must comply with Order 64 rule 4 of the Rules of Court for the removal of Lawyer B as the lawyer on record before it proceeded with any further legal action in the form of enforcement proceedings against the Defendants.

4 Rule 29 PCR — Legal practitioner acted for defendant in a suit — Defendant made vague allegations against another legal practitioner who was not involved in the suit – Legal practitioner would have to set out allegations against other legal practitioner in the Defence — Whether rule 29 PCR applies to pleadings — Whether other legal practitioner's response had to be included in the Defence — Whether legal practitioner had to specify if other legal practitioner's response was an admission or a denial in the Defence

Facts

4.1. Lawyer A acted for a defendant in a High Court suit ("Suit"). Lawyer A's client had made vague allegations against another lawyer, Lawyer B, who had been involved in the transaction that was the subject matter of the Suit. However, Lawyer B was not acting for the plaintiff in the Suit, nor was Lawyer B a party to the proceedings.

4.2. Lawyer A would have to set out the facts in the Defence that was to be filed, which would contain the allegations made against Lawyer B. Lawyer A noted that rule 29 of the PCR would require him to give Lawyer B an opportunity to respond to the allegations.

Query

4.3. Lawyer A asked:

(a) whether rule 29 of the PCR applied to pleadings (which would include the Defence); and

(b) if so, whether Lawyer B's response must be included in the Defence. Lawyer A noted that it did not appear to be practicable to do so.

Guidance (7 November 2019)

Issue 1: Whether rule 29 of the PCR applied to pleadings

4.4. As rule 29 applies to "any document filed on behalf of *A*'s client in any court proceedings", it would include the Defence which Lawyer A intended to file on behalf of his client. As an incidental point, rule 29 refers to an allegation made against "another legal practitioner", who is not limited to a legal practitioner acting for an opposing party. Therefore, rule 29 would also apply to Lawyer B, who originally advised Lawyer A's client on the transaction.

Issue 2: Whether Lawyer B's response must be included in the Defence

4.5. Rule 29 is a rule of professional etiquette and courtesy between members of the Bar. It requires Lawyer A to give Lawyer B an opportunity to respond to the allegations of Lawyer A's client. Based on the wording of rule 29(a) ("*must not permit the allegation to be made…in any document filed…unless*"), Lawyer A must give Lawyer B the opportunity to respond **before** filing the Defence. Lawyer A should therefore provide the draft Defence to Lawyer B as soon as possible, so that Lawyer B could respond to the same in a timely manner.

4.6. Rule 29(b) provides that "where practicable", Lawyer B's response (if any) must be disclosed to the court. It was noted that Lawyer A had not provided any reasons as to why it did not appear practicable for him to include Lawyer B's response in the Defence.

4.7. The Advisory Committee was also not privy to the exact nature of the allegations that had been made against Lawyer B or Lawyer B's response if any, to fully assess the practicability of referencing Lawyer B's response in the Defence.

4.8. Nevertheless, the Advisory Committee provided the following general cautions that Lawyer A should take into account in construing his specific obligations under rule 29(b).

4.9. Firstly, as Lawyer A's client had made "vague allegations" against Lawyer B, Lawyer A should assess, at the outset, if the allegations were indeed material and relevant before they were included in the pleadings. Lawyer A should not merely follow his client's instructions without exercising his own professional judgment as to whether the allegations were material facts to be pleaded in the Defence.

4.10. Secondly, if Lawyer A took the position that the allegations were material facts to be pleaded in the Defence, it would logically follow that Lawyer B's response (or non-response) to those allegations would also be material (whether as admissions or denials) and must be pleaded. Otherwise, the court might assume that there was no response from Lawyer B. If there was a response by Lawyer B to the allegations, the court should have sight, at the earliest opportunity, of the response. This view was supported by academic commentary which noted that the requirement in rule 29(b) "ensures that the lawyer [against whom the allegation is made] is treated fairly and that the court is able to consider the issue in the broader and more immediate context of both the allegation and response".[7] Lawyer B's response should not be simply excluded on the basis that it was not relevant to the case, as this would call into question whether the allegations should have been made in the Defence in the first place.

4.11. Indeed, it would also logically follow that Lawyer B's response must appear in the same document containing the allegations unless there were clear and cogent reasons to the contrary. It would be unfair and embarrassing to Lawyer B to have such allegations stand in a public document (such as the Defence) unrebutted up to and until the point Lawyer B's response was disclosed at a much later stage of the proceedings, e.g. through the filing of an AEIC. This would result in severe prejudice to Lawyer B's position.

4.12. In this case, Lawyer B's response could be pleaded in the Defence in the following manner:

(a) summarily plead the invitation for a response from Lawyer B to the allegations; and

[7] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015 – A Commentary* (2016) at [29.003].

(b) state that Lawyer B responded (or did not respond), without specifying the details of the response (whether an admission or a denial).

4.13. If it was not practicable to even refer to the fact that Lawyer B had made a response to the allegations, clear and sound reasons should be stated in the Defence. In addition, Lawyer B should be informed as to why it was not practicable to include his response in the Defence.

4.14. Thirdly, if Lawyer B's response to the allegations was received by Lawyer A, Lawyer A would need to assess and decide whether or not to amend, or indeed remove, the allegations in the Defence. This would be in line with Practice Direction 8.1.1 ("Allegation Against Another Legal Practitioner in Court Documents") at paragraph (a): "After [lawyer] *B* gives his/her reply, [lawyer] *A* may then withdraw or modify his/her allegation".

Follow-Up Query

4.15. Following the Advisory Committee's guidance cited above, Lawyer A informed that he intended to include the following paragraph in the Defence:

> "*Pursuant to Rule 29 of the Legal Profession (Professional Conduct) Rules 2015 and Practice Direction 8.1.1 of The Law Society of Singapore, X has been given a copy of this Defence & Counterclaim before filing on the allegations made against him/her by the 2nd Defendant and has been given the opportunity to respond. X has responded (and has admitted/denied the allegations) or has not responded.*"

4.16. Lawyer A sought clarification on whether he should state in the Defence that any response given by Lawyer B at Lawyer A's invitation was an admission or a denial. Lawyer A noted that there appeared to be a difference in the guidance set out at paragraphs 4.10 and 4.12 cited above, in that paragraph 4.10 suggested that Lawyer A should state whether Lawyer B's response was an admission or a denial, while paragraph 4.12 suggested otherwise.

Further Guidance (12 November 2019)

4.17. There was no inconsistency between paragraphs 4.10 and 4.12. In paragraph 4.12, the phrase in parenthesis "(whether an admission or a denial)" was only intended to qualify the word "response", and not "the details of the response". It was therefore not intended to proscribe Lawyer A from stating in the Defence whether Lawyer B's response was an admission or denial.

4.18. Nevertheless, whether Lawyer A should plead that Lawyer B's response was an admission or denial of the allegations in question was ultimately a matter to which Lawyer A should exercise his professional judgment.

Chapter 3: Conduct in Relation to Other Persons

[**General Editor's Note**: *The rule relating to a legal practitioner's conduct in relation to other persons is found in Rule 8 PCR.*]

5 Rules 8(4) and 19 PCR; First Schedule, PCR — Legal practitioner acted for client with unpaid invoices due from tenants — Client engaged debt collectors to collect debts from tenants — Client wished to claim costs of debt collectors' fees from tenants — Whether legal practitioner could act for client to claim debt collectors' fees

Facts

5.1. Lawyer A acted for a client who had unpaid invoices pertaining to several lease agreements with its tenants (the "Debts"). Lawyer A's client had, of its own volition, engaged registered legal debt collectors ("Debt Collectors") to collect the Debts. The Debt Collectors successfully obtained payment of the Debts for Lawyer A's client.

5.2. Lawyer A's client now wished to claim against its tenants for the costs of the Debt Collectors' fees.

Query

5.3. Whether Lawyer A could help its client claim for the recovery of the outstanding Debt Collectors' fees against the client's tenants.

Guidance (4 April 2019)

5.4. The PCR prohibits legal practitioners from engaging in the debt collection business (First Schedule to the PCR).[8] Further, rule 19 of the PCR prohibits the sharing of a legal practitioner's fees with, or payment of commission to, any unauthorised person for any legal work performed by the legal practitioner. The Law Society's Practice Direction 5.4.1 ("Use of Debt Collectors for the Recovery of Legal Fees and Expenses") also states that "*legal practitioners and law practices are not to engage, directly or indirectly, the services of debt collectors to recover outstanding legal fees and expenses*".

5.5. However, in this instance, Lawyer A's clients engaged the Debt Collectors of their own volition. Hence, there was no ethical restriction against Lawyer A's firm claiming on its client's behalf, the outstanding Debt Collectors' fees from Lawyer A's client's tenants, as with other general debt collection work conducted by legal practitioners.

5.6. The Advisory Committee nevertheless highlighted rule 8(4) of the PCR, which in essence provides that in a letter of demand issued by a legal practitioner, no demand must be made of anything that is not recoverable by due process of law. Lawyer A's firm would therefore need to satisfy itself as to the basis of the claims. The Advisory Committee expressed no views in this regard.

[8] **General Editor's Note**: The First Schedule should be read together with rule 34(1)(e) of the PCR which provides that a legal practitioner must not accept any executive appointment associated with any business set out in the First Schedule.

6 Rules 8(3)(a) and 8(5) PCR — Law practice was instructed to institute a civil claim against a property agent and his affiliated agency — Law practice was instructed to highlight a paragraph in proposed letters to the agent and his agency — Whether the paragraph amounted to threatening the institution of disciplinary proceedings against the agent — Whether the paragraph should be included in the letter to the agency

Facts

6.1. Law Practice A had recently been instructed by its clients (the "Clients") to institute a civil claim against a property agent (the "Agent") as well as the agency that he was currently with (the "Agency").

6.2. The claim was one of breach of duty (both fiduciary as well as care). Law Practice A was instructed to highlight the following paragraph (the "Paragraph") in a letter (to be sent to both the Agent and the Agency):

> *"Our clients are seriously disappointed in X's conduct, which unquestionably amounts to a breach of his ethical and professional obligations under the Estate Agents Act (Cap. 95A) and its subsidiary legislation. Notwithstanding so, our clients want to provide X with the opportunity to resolve this matter by supplying us with full details and documents of all his dealings with the tenants at the Property … so that compensation for our clients can be discussed. Our clients hope that this matter can be resolved amicably without the need for acrimonious litigation."*

6.3. Law Practice A's letter did not demand for the payment of any sum of damages, as the Clients were still in the midst of quantifying their claim. Law Practice A's main intention was to put the Agent and the Agency on notice of the Clients' intention to hold them liable for such losses and expenses incurred in restoring the property to its former glory and, as against the Agent, an account of the secret profits that he had allegedly made.

6.4. Law Practice A indicated that it was aware of Practice Direction 9.1.2 ("Letters Threatening Criminal Proceedings/Offensive Letters") and had referred to the decision in *Law Society of Singapore v Terence Tan Bian Chye* [2007] SGDSC 10. Law Practice A stated that the purpose of including the Paragraph was to pressure the Agent into negotiating a settlement with the Clients and not to coerce or threaten him into settling any claim for damages.

Query

6.5. Law Practice A asked:

(a) whether it would be in breach of any ethical obligations by including the Paragraph in its letters to the Agent and the Agency; and

(b) whether it would make a difference if the Paragraph was: (i) omitted from its letter to the Agency; but (ii) included in its letter to the Agent.

Guidance (13 November 2019)

Letter to the Agent

6.6. The Paragraph could be included in Law Practice A's letter to the Agent, but only if the Agent's alleged professional and ethical breaches of the Estate Agents Act (Cap. 95A) ("EAA") and its subsidiary legislation were relevant and material to the claim against him by the Clients.

6.7. Rule 8(5) of the PCR prohibits a legal practitioner from threatening the institution of any criminal or disciplinary proceedings against a person when a civil claim by the legal practitioner's client against that person remains unsatisfied. As explained in Practice Direction 9.1.2, it is unbefitting for a legal practitioner to write letters containing threats of criminal proceedings to coerce the other party to act in accordance with the legal practitioner's demands.

6.8. The Advisory Committee referred to a portion of the Paragraph which states: "*Our clients are seriously disappointed in X's conduct, which unquestionably amounts to a breach of his ethical and professional obligations under the Estate Agents Act (Cap. 95A) and its subsidiary legislation.*" Although this portion did not use language or a tone that was *expressly* intimidating, coercive, or offensive, it could be included in Law Practice A's letter to the Agent only if the Agent's alleged breaches of his ethical and professional obligations under the EAA were relevant and material to the Clients' claim against him. This would be the case if, for example, the Agent owed the Clients an express or implied obligation not to act in breach of his ethical and professional obligations under the EAA, such that the Agent's breaches of the EAA would entail a concurrent breach of his obligation(s) to the Clients. If that was the Clients' position, it should be made clear in the Paragraph.

6.9. If, however, the Agent did not owe any such obligation not to act in breach of his ethical and professional obligations under the EAA, this portion should be excluded from the letter to the Agent as it was not material or relevant to the Clients' case. Otherwise, this portion, when read together with the subsequent phrase "*Notwithstanding so, our clients want to provide X with the opportunity to resolve this matter*", could be construed as an oblique threat to commence disciplinary proceedings against the Agent if he did not accede to the Clients' request to settle the matter. Such language might be perceived by a reasonable recipient of the letter as crossing the line between legitimate pressure and wrongful intimidation, which would be contrary to rule 8(5) of the PCR and/or Practice Direction 9.1.2.

Letter to the Agency

6.10. The Paragraph should be excluded from Law Practice A's letter to the Agency, as including the Paragraph could amount to exerting undue pressure on the Agent and/or taking unfair advantage of the Agent.

6.11. Law Practice A had asked whether the position would be different if the Paragraph was omitted from the letter to the Agency. In this regard, the Advisory Committee highlighted the disciplinary cases of *Law Society of Singapore v Peter Pang Xiang Zhong* [2006] SGDSC 21 ("*Peter Pang*") and *Law Society of Singapore v Tan Au-Beng Carolyn* [1999] SGDSC 6 ("*Carolyn Tan*"), in which letters of demand were circulated to third parties such as the complainant's immediate superior (*Peter Pang*), and bankers and auditors (*Carolyn Tan*).

6.12. Including the Paragraph in the letter to the Agency could:

(a) be construed as exerting undue pressure on the Agent to settle the dispute with the Clients, as there was a distinct possibility that the Agency, as a potential co-defendant, would pressure the Agent into acceding to the Clients' demands and settling the dispute quickly to avoid being dragged into litigation. This might amount to illegitimate pressure, even though no direct threat was made against the Agent (unlike the facts of *Peter Pang*); and

(b) amount to taking unfair advantage of the Agent under rule 8(3)(a) of the PCR. Similar to the facts in *Carolyn Tan*, there appeared to be no legal basis here that the Agency was liable for the allegedly unethical conduct of the Agent. Moreover, although no express threat was conveyed by the Paragraph, the act of sending letters containing the Paragraph to both the Agent and the Agency might adversely affect their relationship.

Chapter 4: Conflict of Interest in Proceedings before Court or Tribunal

[**General Editor's Note***: The rule relating to conflicts of interest in proceedings before a court or tribunal is found in Rule 11 PCR.*]

7 Rule 11(3) PCR — Legal practitioner represented wife in various proceedings — Legal practitioner witnessed husband being intimate with a third party in public and took pictures — Legal practitioner arranged for another legal practitioner in her law practice to take over the conduct of one of the proceedings — Whether legal practitioner could continue to represent wife in all the proceedings — Whether legal practitioner's law practice could continue to represent wife in all the proceedings

Facts

7.1. Lawyer A was the primary counsel who represented the wife for various court matters, including applications made in the Syariah Court (for, *inter alia*, divorce proceedings) and the Family Justice Courts, as well as applications for Personal Protection Orders (PPOs) and maintenance. Lawyer A was subsequently appointed a co-counsel for the conduct of the Syariah Court proceedings.

7.2. The documents and issues pertaining to the applications in the Family Justice Courts and the Syariah Court were connected as most of these applications referred to affidavits and positions taken in both courts.

7.3. While attending a social/non-work event, Lawyer A witnessed the husband being intimate in public with a third party. Lawyer A took pictures and proceeded to inform her superior and updated the wife accordingly.

7.4. After reviewing her ethical obligations, Lawyer A arranged for another colleague in her law practice to have full conduct of the PPO proceedings and intended to discharge herself from acting for the wife in the same proceedings. During this period, the wife indicated that she wished to use the evidence obtained by Lawyer A for the Syariah Court proceedings and was considering to use the same evidence for the PPO proceedings.

Query

7.5. The two key queries were:

(a) Even if Lawyer A was not to be a witness for the PPO proceedings, whether Lawyer A should discharge herself from acting for the wife in the PPO, maintenance and Syariah Court proceedings and render no assistance in any of the proceedings. In particular, Lawyer A highlighted that the evidence obtained by her was material to the determination of a contested issue in the Syariah Court proceedings and all the proceedings were connected because of the overlapping documents and positions; and

(b) whether another legal practitioner in Lawyer A's law practice could continue to act for the wife in the PPO, maintenance and Syariah Court proceedings.

Guidance (5 April 2019)

7.6. Lawyer A should discharge herself and not be further involved in all the proceedings. Lawyer A's colleague could continue to act for the wife in the PPO, maintenance and Syariah Court proceedings, but only so long as rule 11(3) of the PCR was satisfied. Lawyer A's law practice would have to satisfy itself that the continued representation of the wife would not hamper the administration of justice. This could be achieved by, for example, establishing a Chinese wall within the law practice.

8 Rules 11(2)(a) and 11(3)(b) PCR – Legal practitioner was director and sole shareholder of law practice – Legal practitioner was also a principal director and shareholder of some companies – Companies intended to commence action against various parties – Whether law practice could commence and run the intended litigation if law practice's employee had full conduct of the matters

Facts

8.1. Lawyer A was the director and sole shareholder of Law Practice C. Lawyer B had recently joined Law Practice C and had been called to the Bar a few years ago.

8.2. Lawyer A was also the principal director and shareholder of some companies (the "Companies"). The Companies intended to commence action against various parties for multiple contentious matters (the "Contemplated Litigation").

8.3. It was envisaged that Lawyer B would have sole conduct of the Contemplated Litigation. Lawyer A would only be a witness and plaintiff in the matters and would not work on or be involved in the conduct of the matters from a professional angle.

Query

8.4. Whether Law Practice C: (a) could commence and run the Contemplated Litigation, with Lawyer B being the solicitor on record and having full conduct of the matters; or (b) would need to instruct an external law practice to conduct the Contemplated Litigation.

Guidance (18 November 2019)

8.5. Lawyer B should not act for Lawyer A and the Companies in the Contemplated Litigation as it was unlikely that she would have the independence and objectivity necessary for her to: (a) discharge her duties to the court; and (b) advise Lawyer A and the Companies in keeping with her professional obligations under rules 11(2)(a) and 11(3)(b) of the PCR.

Rule 11(3)(b) PCR

8.6. The key issue was whether it would "prejudice the administration of justice" for Lawyer B to represent Lawyer A and the Companies in the Contemplated Litigation, since it was known or appeared to be known that Lawyer A would be required to give evidence which was material to the determination of contested issues before the court.

8.7. Academic commentary had noted that the judicial observations made in *Then Khek Khoon v Arjun Permanan Samtani* [2012] 2 SLR 451("*Then Khek Khoon*") on rule 64(2) of the PCR 2010 continue to be relevant under rule 11(3)(b) of the PCR.[9] The High Court in *Then Khek Khoon* had extended the ambit of rule 64(2) of the PCR 2010 (which was expressly limited to the individual solicitor) to prohibit the solicitor's whole firm from acting in a matter where the subconscious shaping of evidence to suit the solicitor's interest against that of his client and the duty to the court "was of genuine concern" and "enveloped the whole firm".[10]

8.8. On this point, two guideposts are:

(a) the mischief that rule 64(2) is meant to avoid (i.e. the subconscious shaping of evidence); and

(b) whether the heart of the client's case touches upon the correctness or otherwise of an act or document generated or soundness of advice given by the advocate's partner or other member of his firm.[11]

8.9. In this case, insufficient information was provided by Lawyer A to ascertain if these criteria were applicable to his case, in particular, whether the risk of subconscious shaping of the evidence in the Contemplated Litigation enveloped Law Practice C.

8.10. However, Lawyer A should be mindful that the phrase "prejudice the administration of justice" in rule 11(3)(b) was also used in equivalent Australian ethical rules and the current test in Australia was an objective one. The test, as laid down in *Kallinicos and Another v Hunt and Ors* (2005) 64 NSWLR 561 (a case on the court's inherent jurisdiction to restrain a lawyer from representing a client) at [76], was of "whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a legal practitioner should be prevented from acting." This test had been cited with approval by the Singapore High Court in *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugan*i [2018] 5 SLR 894 at [81], a case concerned with the court's supervisory jurisdiction in restraining a lawyer from acting against a former client.

8.11. Academic commentary has also noted that rule 11(3)(b) is predicated on the assumption that "the lawyer who is personally involved in the proceedings must not have any role whatsoever, however slight, in the handling of the case."[12] In this case, Lawyer B was an employee of Law Practice C and likely lacked the experience to have truly independent conduct of the Contemplated Litigation as the solicitor on record. Therefore, Lawyer B naturally would have to consult Lawyer A and/or obtain Lawyer A's clearance on many aspects of the conduct of the Contemplated Litigation after receiving instructions from Lawyer A in his capacity as principal director and shareholder of the Companies. As such, Lawyer A would be in a position to heavily influence the conduct of the Contemplated Litigation even if Lawyer A did not intend to work directly on the Contemplated Litigation from a "professional angle".

8.12. Moreover, as an employee of Law Practice C, Lawyer B would have a personal interest in carrying out the Contemplated Litigation in accordance with Lawyer A's wishes, instead of exercising her independent judgment as required by her overriding duty to the court.

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[9] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [11.018].
[10] *Then Khek Koon* at [47] – [48].
[11] *Then Khek Koon* at [48].
[12] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [11.015].

8.13. For these reasons, a "fair-minded, reasonably informed member of the public" would likely conclude that the administration of justice would be prejudiced if Lawyer B acted for Lawyer A and the Companies in the Contemplated Litigation. Academic commentary has also noted that "[i]n the event of any doubt, lawyers should act consistently with their positions as officers of the court by declining to act".[13]

Rule 11(2)(a) of the PCR

8.14. The issue here was whether Lawyer B's employment relationship with Lawyer A (and the influence arising from that relationship) would compromise her professional independence and with that, her duty to the court and her clients.

8.15. In this case, there was a significant risk that Lawyer B would be unable to *objectively advise* Lawyer A and/or the Companies, as Lawyer A was effectively both Lawyer B's employer at Law Practice C, and the Companies' representative instructing her in the Contemplated Litigation.

Other observations

8.16. If, notwithstanding the Advisory Committee's guidance, Law Practice C, through Lawyer B, decided to act for Lawyer A and the Companies in the Contemplated Litigation, Law Practice C should bear the following in mind:

(a) Lawyer A and the Companies might be prejudiced if Law Practice C was compelled to discharge itself in the course of the Contemplated Litigation. Law Practice C, through Lawyer B, should therefore advise Lawyer A and the Companies on the possibility that Law Practice C might have to discharge itself depending on future developments. This would allow Lawyer A and the Companies to make an informed decision on whether to continue retaining Law Practice C for this matter.

(b) Law Practice C had a continuing duty to exercise its professional judgment to objectively assess its position as the Contemplated Litigation progressed. In particular, Law Practice C, through Lawyer B, should remain vigilant to ensure that there was no risk of subconscious shaping of evidence or that the administration of justice would otherwise be prejudiced.

[13] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [11.018].

Chapter 5: Conflict, or Potential Conflict, Between Interests of 2 or More Clients

[**General Editor's Note***: The rule relating to conflicts or potential conflicts between the interests of 2 or more clients is found in Rule 20 PCR.*]

9 Rule 20(3) PCR — Legal practitioner acted for the plaintiff in a motor accident case — Legal practitioner approached by the defendant in the motor accident case to act for him in an unrelated industrial accident matter — Whether legal practitioner could act for both parties concurrently in separate legal proceedings

Facts

9.1. Law Practice C acted for A against B in a motor accident case, where A was injured in an accident whilst a passenger in a lorry driven by B. B was unrepresented and an Interlocutory Judgment had been granted in the matter. The matter was proceeding for Summons for Directions.

9.2. At the same time, B had approached Law Practice C to act for him in an industrial accident matter, which was unrelated to the motor accident case. The nature of B's involvement in the industrial accident matter was unknown.

Query

9.3. Whether Law Practice C was in a position of conflict of interests under rule 20 of the PCR, should it accept the industrial accident matter from B, whilst still acting for A in the motor accident case.

Guidance (24 May 2018)

9.4. Generally, the principles guiding such a scenario were found in rule 20(1) of the PCR, which states that a legal practitioner and his law practice:

(a) owe duties of loyalty and confidentiality to each client; and
(b) must act prudently to avoid any compromise of the lawyer-client relationship between himself [or his law practice] and the client by reason of a conflict, or a potential conflict, between the interests of two or more clients.

9.5. In particular, the standard of skill and care expected of a legal practitioner when acting for multiple parties vis-à-vis each client must be at least equivalent to that of a legal practitioner acting for a single party (as stated in *Lie Hendri Rusli v Wong Tan & Molly Lim* [2004] 4 SLR(R) 594).

9.6. Academic commentary provided the following guidance which was helpful in this instance:[14]

[14] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [20.056].

> "*X* has been run down by a car and consequently passed away. *X*'s wife ("*W*") seeks legal advice from *L1* with a view to commencing proceedings against the driver of the car ("*D*"). Previously, *D* approached *L1* for the purpose of representing his interests in potential criminal proceedings against him. *L1* informs *W* that he cannot represent her and refers *W* to *L1*'s partner ("*L2*") in the same law practice. As *W* intends to pursue an action which would potentially involve *D*, **there is a potential conflict of interests between the clients even though *D* is not yet indicated in *W*'s expected action. The fact that *W* and *D* are represented by different lawyers within the law practice does not resolve this ethical issue. *L1* ought to advise *W* to seek separate representation by a different law practice**." [emphasis added]

9.7. The same commentary also cited the Disciplinary Tribunal's decision in *Law Society of Singapore v Surinder Singh Dhillon* [2010] SGDT 8 ("*Surinder Singh*"), which stated at [4.1.5] that:

> "… if one considers the policy underlying the conflict of interest rules, it is clear that the **relationship of trust and confidence that must subsist** between a solicitor and a client is undermined when the solicitor's partner acts for a criminal defendant in circumstances such as these." [emphasis added]

9.8. As such, it appeared that where there was a potential conflict of interests, a legal practitioner should not accept the subsequent matter in view of the relationship of trust and confidence between the legal practitioner and his client.

9.9. In Law Practice C's current scenario, even though there appeared to be no direct conflict of interests, there might be a potential conflict of interests, which the conflict of interests rules operated to prohibit. The Disciplinary Tribunal in *Surinder Singh* stated at [4.1.3] that:

> "… the conflict of interests rules operate not just to prohibit actual or potential direct conflicts but **also to prohibit, obviously within the bounds of reason, ostensible or perceived conflicts**. Further, we reiterate that the cases show that the facts are not to be dissected carefully to see whether there is a conflict." [emphasis added]

9.10. The Disciplinary Tribunal in *Law Society of Singapore v Harjeet Singh* [2016] SGDT 9, a case that was in relation to the Court of Appeal decision in *Mahidon Nichiar bte Mohd and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62 ("*Dawood*"), reiterated the point made by the Court of Appeal that there is no blanket rule against a legal practitioner acting for multiple clients with divergent and potentially conflicting interests, provided that the legal practitioner obtains the informed consent of all the clients he is acting for jointly.

9.11. Further, the Advisory Committee highlighted rule 35 of the PCR, which states that the management of a law practice has the responsibility to act reasonably in ensuring that it has in place *"adequate systems, policies and controls"* to prevent conflicts of interests.

9.12. As such, Law Practice C could accept the industrial accident matter from B, whilst still acting for A in the motor accident case, provided that it directly communicated the potential conflicts of interests to each relevant party; and subsequently obtained each relevant party's informed consent in writing for it to so act.

9.13. In particular, Law Practice C might come across information from its representation of B, which might reasonably affect the interests of A (see rule 5(2)(b) of the PCR). Such information might even extend to Law Practice C's knowledge of B's disposition in litigation. Law Practice C would have a duty to disclose such information to A, unless A had agreed in writing that it need not be disclosed (see rule 5(2)(b)(ii) of the PCR).

9.14. Further, A might also need reassurances that:

(a) Law Practice C would not disclose to B, any confidential information received from A in the motor accident matter; and
(b) Law Practice C would not advise B concerning the motor accident matter.

9.15. As a matter of prudence, Law Practice C should familiarise itself with rule 20(3) of the PCR which places a duty on the legal practitioner to communicate directly with each relevant party, amongst others, of the following:

(a) an explanation of the potential conflict of interests and of the legal practitioner's duty if such conflict arises;
(b) to advise each relevant party to obtain independent legal advice; and
(c) obtain each relevant party's written informed consent acting for all relevant parties, despite the relevant parties' divergent interests.

9.16. Law Practice C should also refer to *Dawood* (at paragraphs 142 to 158) on how a legal practitioner should go about obtaining informed consent.

9.17. Finally, Law Practice C should also be mindful that if it was not confident of advising A competently, evenly and consistently in the motor accident matter because of its representation of B in the industrial accident matter, it would need to cease to act for A and/or B in the respective matters.

10 Rule 20(1),(3),(4) and (7) PCR; Rule 21(1)-(5) PCR — Legal practitioner acted for two separate claimants against the same company — Respondent company requested to engage legal practitioner to resist claims from other creditors — Whether legal practitioner could act for respondent company

Facts

10.1. Lawyer C acted for two local related companies, A and B. Lawyer C successfully obtained judgment on behalf of A and B, against X, another company.

10.2. A's claim against X: Lawyer C had commenced winding up proceedings on behalf of A, against X. However, Lawyer C had successfully negotiated an instalment plan with X in favour of A. Lawyer C expected to withdraw the winding up proceedings against X in about a month's time, once X's debts to A were paid in full.

10.3. B's claim against X: B instructed Lawyer C to withhold pressing X to pay its debts due to B, to allow X to fulfil its obligations to A first. B had demanded, through Y that had been advising X on the management of its debts, that X provide B with a suitable instalment plan, failing which B would commence winding up proceedings against X.

10.4. Solicitors of various creditors of X had contacted Lawyer C to enquire about the status of A's winding up proceedings against X.

10.5. Y had informed Lawyer C that X would like to engage Lawyer C's services to act for X and resist the claims from the other creditors, apart from A and B.

10.6. A and B had given their written consent for Lawyer C to meet up with X to explore ways in which Lawyer C could assist X to resist the claims from the other creditors at a meeting ("the Meeting"). Subsequently, the management of X would decide on whether to engage Lawyer C to act for X. Further, B had given Lawyer C instructions to discuss an instalment plan from X during the Meeting.

10.7. Lawyer C did not anticipate that he would disclose any confidential information about A and B to X, since X had not applied to challenge the judgments / awards. Further, Lawyer C believed that any assistance rendered by Lawyer C to X to resist any claims from potential creditors would be in favour of A and B, since Lawyer C believed that it might take X up till April 2019 to discharge its debts to B.

Query

10.8. Lawyer C sought clarification on:

(a) whether Lawyer C could act for X to resist claims from other creditors, other than A and B; and

(b) whether it would help if A and B instructed another law firm to handle their respective matters, in order to allow Lawyer C to act for X, on the basis that Lawyer C would not be advising X in respect of any matters against A and B.

Guidance (21 September 2018)

<u>Issue 1: Whether Lawyer C could act for X to resist claims from other creditors, other than A and B</u>

Rule 20(1) of the PCR

10.9. Lawyer C could be in breach of rule 20(1) of the PCR, since Lawyer C owed duties of loyalty and confidentiality to each client, and must act prudently to avoid any compromise of the lawyer-client relationship by reason of a conflict or potential conflict between the interests of two or more clients.

10.10. Further, since B had given Lawyer C instructions to discuss an instalment plan from X during the Meeting, this would also involve multiple representations caught by rule 20 of the PCR. At the Meeting, Lawyer C was presumably expected to advance B's interests and yet X would be expected to ask Lawyer C about, for example:

(a) proposing a payment plan to B that was favourable to X;
(b) how to deal with X's debts owed to other creditors that might impact on the viability of any payment plans which might or might not include those for A and/or B; and/or
(c) how to resist claims by other creditors that might impact the viability of any payment plans.

10.11. However, the exceptions to rule 20(1) (as stated at rules 20(3), 20(4) and 20(7) of the PCR) permitted Lawyer C's acceptance of X's retainer, if Lawyer C communicated directly with and explained to each relevant party the required information set out in the above-mentioned rules:

(a) Lawyer C must advise each relevant party to obtain independent legal advice. Where a particular relevant party did not obtain independent legal advice, Lawyer C must obtain a written confirmation from the relevant party that it declined to do so. Further, Lawyer C must obtain each relevant party's informed consent in writing.

(b) Lawyer C must throughout the course of the retainer continue to be vigilant of any conflict or potential conflict of interests and inform each relevant party of the same.

(c) Under rule 20(7) of the PCR, Lawyer C could continue to act for a relevant party if Lawyer C ceased to act for all other relevant parties whose interests diverged and all of those other relevant parties gave their informed consent in writing for Lawyer C to continue acting in the matter.

Issue 2: Whether it would help if A and B instructed another law firm to handle their respective matters, so that Lawyer C could act for X, on the basis that Lawyer C would not be advising X in respect of any matters against A and B

Rules 21(1) and 21(2) of the PCR

10.12. In such a circumstance, rule 21 of the PCR might apply since Lawyer C's duties of loyalty and confidentiality to A and/or B would continue after the termination of the retainer (rule 21(1) of the PCR). Further, the general rule under rule 21(2) of the PCR meant that Lawyer C must not act for X, if the following three criteria are all met:

(a) Lawyer C held confidential information relating to A and/or B;
(b) X's interest was, or might reasonably be expected to be, adverse to A's and/or B's interests; and
(c) The confidential information held by Lawyer C might reasonably be expected to be material to the representation of X in the matter.

10.13. However, the exception in rule 21(4) of the PCR might allow Lawyer C to act for X, where:

(a) there were "adequate safeguards" in place to protect A's and/or B's confidential information;
(b) Lawyer C had made reasonable efforts to bring those safeguards to A's and/or B's attention; and
(c) Lawyer C had made reasonable efforts to notify A and/or B that Lawyer C was acting, or was continuing to act, for X.

Further observations

10.14. Although the PCR provided for exceptions to rules 20 and 21, the Advisory Committee had some concerns with Lawyer C's proposed arrangements.

10.15. For instance, although A and B had given their written consent for Lawyer C to meet up with X to explore ways in which Lawyer C could assist X to resist the claims from the other creditors, the scope of consent appeared narrow and did not appear to cover the proposed engagements. It was also unclear as to:

(a) whether A had given Lawyer C its consent to represent B in negotiations with X for an instalment plan; and/or
(b) whether A and/or B would eventually agree to Lawyer C ultimately acting for X.

10.16. Further, in relation to the question of whether all relevant persons understood the risks involved, the proposed arrangements appeared to be premised on a number of key assumptions. For example:

(a) That X would fully pay all remaining instalments owed to A and A would indeed withdraw its winding up application;
(b) That B and X would actually be able to agree on a proposed payment plan and if so, that X would fully meet its obligations under such a plan; and/or
(c) That X did not subsequently reveal any confidential information relating to A and/or B.

10.17. It was unclear to the Advisory Committee whether Lawyer C had advised all relevant parties and/or that they all understood the risks involved, including the consequences to each of them. As such, the Advisory Committee urged Lawyer C to carefully consider whether the proposed arrangements were workable or feasible, and whether all relevant persons (whether prospective or former clients) understood the risks involved, assuming that Lawyer C had attempted to seek consent from A, B and X on the proposed arrangements.

11 Rule 20 PCR – Law practice acted simultaneously for one party to a dispute over the equitable ownership of 2 units in a commercial property and the Collective Sale Committee appointed in respect of the same commercial property – Whether law practice was in a position of conflict of interest

Facts

11.1. Law Practice A and Law Practice B submitted a joint query on whether Law Practice B was in a position of conflict of interest by simultaneously acting for: (a) a party to a dispute over the equitable ownership (the "Ownership Dispute") of 2 units in a commercial property ("Property"); and (b) the Collective Sale Committee ("CSC") appointed in respect of the same Property (the "En Bloc Matter").

11.2. The parties to the Ownership Dispute were X (represented by Law Practice A) and Y (represented by Law Practice B). In the Ownership Dispute, X and Y were equal (legal) tenants-in-common of the units of the Property. Y's position was that his equitable tenancy-in-common of the Property units was more than 50% (possibly 100%) due to, *inter alia*, his contributions to the purchase price, while X asserted that he was also an equal tenant-in-common at equity.

11.3. Subsequently, Law Practice B was appointed to act for the CSC in respect of the Property in the En Bloc Matter. The solicitors from Law Practice B acting in the Ownership Dispute were part of Law Practice B's team acting in the En Bloc Matter. No collective sale order had yet been made in respect of the Property.

11.4. Law Practice A intimated that X would be commencing suit against Y for X's share of rent allegedly due from the Property Units and other properties that were the subject of the Ownership Dispute (the "Rent Dispute").

Query

11.5. Law Practice B took the view that it was not in a position of conflict of interest for the following reasons:

(a) It did not act for any of the subsidiary proprietors (including X) in the En Bloc Matter. Hence, rule 20 of the PCR did not apply.

(b) Even if rule 20 of the PCR applied, the interests of X and Y in the Ownership Dispute and the En Bloc Matter were separate and distinct. In the Ownership Dispute, the issue between X and Y was the proportion of equitable ownership of the Property. In the En Bloc Matter, the likely issue was whether X and Y agreed to jointly sell the Property on a collective basis with the other subsidiary proprietors. Even if X and Y were unable to agree, they might be compelled by the Sale Order to join in the collective sale.

(c) In acting in the En Bloc Matter, it would not have access to any confidential information which would compromise or assist either X or Y in the Ownership Dispute. In the En Bloc Matter, only information which pertained to the conveyance of the Property to the Purchaser would be relevant. Hence, there would be no confidential information obtained in the En Bloc Matter which would be relevant for the Ownership Dispute.

Guidance (7 August 2019)

11.6. There appeared to be no conflict of interest in this situation. Therefore, at this point, Law Practice B might act for both Y and the CSC in the Ownership Dispute and the En Bloc Matter respectively (and eventually, in the dispute with X over the rent due from the Property Units in the Rent Dispute, if legal proceedings were commenced), for the following reasons.

(a) Rule 20 of the PCR did not apply in this case because Law Practice B was acting for different clients in two different matters, and not for multiple clients in the same matter where a diversity of interests arises or may arise.

(b) There appeared to be no common element between the two matters (other than the fact that they involved the same commercial property) that could give rise to a conflict of interest under the common law. There was nothing to suggest an actual or potential conflict between the interests of Y and the interests of the CSC. The Ownership Dispute concerned the equitable ownership of, *inter alia*, the Property units between X and Y *inter se*. The Rent Dispute appeared to be related to the Ownership Dispute, insofar as Y was withholding X's alleged share of rental, seemingly due to the disputed ownership of the Property units and other property. On the other hand, the En Bloc Matter appeared to be an advisory matter in which the CSC was obtaining legal advice from Law Practice B on the conduct of the collective sale process.

(c) There was nothing to suggest that any confidential information acquired by Law Practice B in the En Bloc Matter would be material or relevant to the Ownership Dispute and *vice versa*. Assuming that the En Bloc Matter would typically only require Law Practice B to advise the CSC on the steps for putting up the Property for collective sale, this was unlikely to reveal information that would need to be disclosed to Y for the Ownership Dispute and *vice versa*.

11.7. That said, it would be prudent for Law Practice B to inform the CSC in writing that Law Practice B was acting for Y in the Ownership Dispute (if it had not already done so), and extend a copy of the Advisory Committee's guidance on a strictly private and confidential basis to the CSC.

11.8. Should Law Practice B eventually be instructed to act for all the subsidiary proprietors in the collective sale in future, Law Practice B would need to reassess the applicability of rule 20 of the PCR and consider whether it might have obtained any confidential information during the course of acting in the Ownership Dispute which might be of interest to the other subsidiary proprietors of the Property.

11.9. Law Practice B should also bear in mind its duty of confidentiality to Y if questioned by the subsidiary proprietors, pending any collective sale going through, about the Ownership Dispute.

Chapter 6: Conflict, or Potential Conflict, Between Interests of Current Client and Former Client

[**General Editor's Note***: The rule relating to conflicts or potential conflicts between the interests of the current client and the former client is found in Rule 21 PCR.*]

A. Matrimonial Matters

12 Rule 21(2) PCR — Legal practitioner retained by husband to act for him in divorce proceedings which were later withdrawn — Wife approached same legal practitioner about 19 years later to commence divorce proceedings against husband — Whether legal practitioner was in a position of conflict of interest

Facts

12.1. In 1999, Lawyer A in Law Practice X had been retained by the husband ("H") to act for him in divorce proceedings commenced by the wife ("W"), who was represented by Law Practice Y. The proceedings were subsequently withdrawn after the parties had reconciled.

12.2. In 2018, W approached Law Practice X to instruct it to commence divorce proceedings against H. Law Practice X agreed to act for W. Based on copies of pleadings provided by Law Practice X, W was represented by the same Lawyer A in the present divorce proceedings.

12.3. H, which was now represented by Law Practice Z, contended that Law Practice X was in a position of conflict of interest in view of its retainer with H for the aborted divorce about 19 years ago.

12.4. Law Practice X took the position that there was no conflict of interest as there was no "information which may reasonably be expected to be material to the representation of the current client" as the present divorce proceedings were based on entirely different and subsequent facts. Law Practice X also confirmed that the file pertaining to H's retainer no longer existed.

12.5. Pending the Advisory Committee's guidance, Law Practice X had, as a matter of prudence and without any admission of the alleged conflict, arranged for another law practice to handle the matter.

Query

12.6. Whether any conflict of interests arose from Law Practice X acting for W in the present divorce proceedings.

Guidance (17 August 2018)

12.7. Law Practice X should decline to continue to act for W in the present divorce proceedings on account of the following:

(a) Lawyer A had acted for H 19 years ago and would have knowledge of his personal thinking about the marriage and assets. W would have to go back more than a decade in her own account of events. In the absence of any confirmation that H did not intend to raise any facts occurring before 2004 in the present divorce proceedings, there existed a potential for a conflict of interest.

(b) Even though it had been 19 years, the subject matter remained the same, (i.e. the divorce). In matrimonial matters, the entire period of marriage and the assets acquired during the tenure of the marriage would be matters raised at the hearing and in affidavits. Hence, the history of the parties might come into play as the courts would consider the financial and non-financial contribution of the parties during the tenure of the marriage. This would inevitably include the matters that had transpired in 1999 and before.

(c) It would therefore be difficult for the Advisory Committee to rule out Lawyer A holding confidential information relating to the former client (rule 21(2)(a) of the PCR), whose interest was adverse to the current client (rule 21(2)(b) of the PCR), which might reasonably be expected to be material to the representation of the current client (rule 21(2)(c) of the PCR).

13 Rule 21(2) PCR — Law practice acted for husband and wife in purchase of several properties — Law practice now engaged by wife in filing for uncontested divorce — Whether law practice could concurrently advise husband on the making of his will

Facts

13.1. Law Practice A had previously acted for the wife ("W") and her husband ("H") in their purchase of several properties and other property-related transactions.

13.2. Currently, Law Practice A was acting for W in filing for an uncontested divorce. At the same time, H had asked Law Practice A to advise him on the making of his will.

Query

13.3. Law Practice A asked:

(a) whether any potential conflict of interests would arise if it advised H on the making of his will; and

(b) what steps should be taken to mitigate such potential conflict.

Guidance (1 November 2018)

Rule 21(2) of the PCR

13.4. Under rule 21(2) of the PCR, a lawyer would only be prohibited from acting against a former client if he or she held confidential information of the former client.

13.5. Since Law Practice A had acted for both H and W in their purchases of the properties, it was unlikely that there would be information about the purchases that would not be known to W already. However, if there was other communication between Law Practice A and H that could be confidential in nature and was material to the divorce, Law Practice A could not act for W in the divorce. The given facts alone were insufficient for the Advisory Committee to definitively opine whether Law Practice A could or could not act for W against H in the divorce.

13.6. However, the position would be different if Law Practice A acted for H in preparing his will. When preparing a will, H would disclose information that was confidential. As such, Law Practice A would be in possession of confidential information that was likely to be material in any divorce. If Law Practice A acted for W in the divorce, it could not act for H in preparing his will. If Law Practice A acted for H in preparing the will, it could not act for W in the divorce. The Advisory Committee could not see any way to mitigate this.

14 Rule 21(2)-(4) PCR — Legal practitioner acted for former client in divorce proceedings — Former client remarried and instructed another law practice to act in divorce proceedings for second marriage about 5 years later — Former client's wife wished to instruct same legal practitioner to represent her in divorce proceedings — Former client alleged that legal practitioner's law practice had acquired his confidential information from the previous retainer — Whether legal practitioner could represent former client's wife in divorce proceedings for second marriage

Facts

14.1. In 2014, Lawyer A from Law Practice X represented B in a divorce application ("First Divorce") against C. The Certificate of Final Judgment for the First Divorce was extracted sometime in 2015.

14.2. Subsequently, B and D registered their marriage in Singapore. Due to a strain in the parties' relationship, B intended to commence divorce proceedings to dissolve his marriage with D ("Contemplated Divorce Proceedings").

14.3. B instructed Law Practice Y to act for him in the Contemplated Divorce Proceedings, while D intended to instruct Lawyer A from Law Practice X to represent her in the matter. D was already a client of Law Practice X since 2012, before Law Practice X represented B in the First Divorce.

14.4. B had expressed his discomfort with Law Practice X representing D in the Contemplated Divorce Proceedings as, being a former client of Law Practice X, he alleged that Law Practice X had acquired his confidential information ("Confidential Information") in the previous retainer for the First Divorce. Specifically, the Confidential Information included, *inter alia*, B's family background, income, earning capacity, property and other financial resources, as well as the terms of his settlement from the First Divorce.

14.5. However, Law Practice X's position was that:

(a) the Confidential Information that it acquired from B was not relevant to the issues in the Contemplated Divorce Proceedings;
(b) the Confidential Information referred to in Law Practice Y's letter "lack[ed] specificity";
(c) even if the Confidential Information was relevant, it would be "obsolete" as it dated back to proceedings that had occurred five years ago; and

(d) following the First Divorce, B had not been in contact with Law Practice X nor was Law Practice X aware of the fact that B was married to D. It was only through D that Law Practice X had come to know of B's second marriage.

Query

14.6. Both Law Practice X and Law Practice Y submitted a joint request for guidance to the Advisory Committee on whether rule 21 of the PCR affected Law Practice X's ability to represent D in the Contemplated Divorce Proceedings and whether Lawyer A from Law Practice X should or should not represent D in the Contemplated Divorce Proceedings.

Guidance (28 August 2019)

14.7. It would be prudent for Law Practice X, and Lawyer A in particular, not to act for D in the Contemplated Divorce Proceedings unless Law Practice X could avail itself of the exceptions under rule 21(3) or 21(4) of the PCR.

14.8. Two key issues arose in the query:[15]

(a) Whether Law Practice X held Confidential Information about B from the First Divorce under rule 21(2)(a) of the PCR; and
(b) If Law Practice X had acquired such Confidential Information, whether it "may reasonably be expected to be material to the representation of [D]" in the Contemplated Divorce Proceedings under rule 21(2)(c) of the PCR.

Confidential Information

14.9. Although Law Practice Y had identified several aspects of the Confidential Information that Law Practice X had allegedly acquired, it was unclear to what extent such information had been disclosed in the proceedings for the First Divorce such that it might cease to have the quality of confidentiality, and therefore relevance (see *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [52]- [53], and [55]). The Advisory Committee had not been informed as to, for example, whether B's financial resources in 2014 and the terms of his settlement with C had been disclosed in the relevant affidavits/court orders relating to the First Divorce.

14.10. Further, Law Practice X had referred to B's obligation to fully disclose his financial information in his Affidavit of Assets and Means. If such information disclosed would be identical to the Confidential Information allegedly acquired by Law Practice X, it would certainly lose the quality of confidentiality. However, this did not preclude Law Practice X from possessing other non-financial, non-documentary Confidential Information belonging to B.

[15] As for rule 21(2)(b) of the PCR, the Advisory Committee noted that D's interests might reasonably be expected to be adverse to B's, particularly in respect of ancillary matters such as the division of matrimonial assets and spousal maintenance.

14.11. Therefore, Law Practice X would need to assess whether it possessed Confidential Information about B that continued to be confidential. This could cover matters that might not have been disclosed in the proceedings relating to the First Divorce e.g. B's family background, his bank and credit card statements, income tax returns and other documents relevant to B's finances and expenses, as well as attendance notes and solicitor-client correspondence. However, the Advisory Committee did not consider that information about B's character, personality or litigation disposition constituted confidential information under rule 21(2)(a) of the PCR as there was currently no Singapore case law that supported this view.

Materiality

14.12. Assuming that Law Practice X possessed Confidential Information about B that continued to be confidential, such Confidential Information might reasonably be expected to be material to Law Practice X's intended representation of D in the Contemplated Divorce Proceedings. Such Confidential Information could not be said to be irrelevant or insignificant to the Contemplated Divorce Proceedings or to have become obsolete due to the time gap between the First Divorce and the Contemplated Divorce Proceedings because:

(a) although neither party had commented on this in their correspondence, it was likely that the terms of the First Divorce would at least have to be placed before the court as a background fact if and when issues of the division of matrimonial assets and spousal maintenance arose in the Contemplated Divorce Proceedings. It was also likely that arguments might ensue on the impact of the terms of the First Divorce on these issues in the Contemplated Divorce Proceedings; and

(b) although the 4 to 5-year gap between the First Divorce and the Contemplated Divorce Proceedings could not be said to be insignificant and the two retainers involved different marriages, the fact remained that the same lawyer, Lawyer A from Law Practice X, was involved in both retainers. Significant prejudice to B or significant benefit to D might result by the conscious or subconscious use of B's Confidential Information, given that both retainers were likely to be concerned with the same subject-matter (i.e. division of matrimonial assets and spousal maintenance). Law Practice X should also bear in mind its competing duties to disclose all relevant information to D in the conduct of the Contemplated Divorce Proceedings (see rule 5(2) of the PCR), and to keep confidential B's Confidential Information.

Other observations

14.13. As the Advisory Committee had not been informed of any safeguards put in place by Law Practice X to protect any Confidential Information that it might have acquired, it was unable to comment further on the application of rule 21(3) or (4) of the PCR at this point.

14.14. Quite apart from rule 21 of the PCR, should the former client apply to the court for an injunction to restrain a legal practitioner from acting for the current client in the particular circumstances, the court could take into account considerations beyond protecting the former client's confidential information.

15 Rule 21(2)-(4) PCR — Legal practitioner (A) acted for the wife in a concluded divorce matter – Another legal practitioner (B) who acted for the husband in the same divorce matter joined A's law practice — Wife requested A to act for her in enforcing the maintenance orders against the husband — Whether A could represent the wife in the maintenance proceedings

Facts

15.1. Lawyer A of Law Practice X acted for the wife (the "Plaintiff") in a divorce matter (the "Divorce") which had concluded. Final judgment for the Divorce was granted in 2018. The Plaintiff had asked Lawyer A to act for her in enforcing the maintenance orders (the "Maintenance Proceedings") against the husband in the Divorce (the "Defendant").

15.2. Lawyer B had acted for the Defendant in the Divorce when she was employed by Law Practice Y. Lawyer B joined Law Practice X within two months after the final judgment for the Divorce was granted.

Query

15.3. Lawyer A asked whether she could continue to act for the Plaintiff in the Maintenance Proceedings now that Lawyer B was an employee of Law Practice X. Lawyer A informed that:

(a) Lawyer B would not be assisting Lawyer A in the Maintenance Proceedings;
(b) Lawyer A would ensure that Lawyer B did not have any access to any communications in respect of the Maintenance Proceedings; and
(c) Lawyer A had taken the further precaution of asking the Plaintiff to inform the Defendant of the situation involving Lawyer B.

Guidance (2 December 2019)

15.4. The Advisory Committee was of the view that Law Practice X would be in a position of conflict of interest if Lawyer A acted for the Plaintiff against the Defendant in the Maintenance Proceedings. Therefore, Lawyer A should not act against the Defendant in the Maintenance Proceedings unless:

(a) Law Practice X had adequately advised the Defendant to obtain independent legal advice and the Defendant had given his written informed consent to Law Practice X to continue to act for the Plaintiff; or

(b) In the event that the requirements in paragraph 15.4(a) above were not met despite Law Practice X's reasonable efforts, Law Practice X had put in place adequate safeguards to protect the Defendant's confidential information, and had made reasonable efforts to notify the Defendant of the presence of such safeguards and Law Practice X's intention to act for the Plaintiff in the Maintenance Proceedings.

Rule 21(2) of the PCR

15.5. The Advisory Committee was of the view that all the requirements of rule 21(2) of the PCR had been satisfied in this case:

(a) *Former client*: The term "former client" referred to in rule 21(2)(a) is sufficiently wide to include a client of a former law practice of a legal practitioner. Although the term "former client" is not specifically defined in the PCR, a purposive interpretation of the term should be adopted. In accordance with the principle stated in rule 21(1)(a), a legal practitioner's duties of loyalty and confidentiality to a client continue after the termination of the retainer. Such duties should not cease to exist merely because a legal practitioner has moved to another law firm.

(b) *Confidential information*: Since the Divorce had concluded relatively recently in 2018, Lawyer B (and therefore, Law Practice X) would still have likely been holding confidential information relating to the Defendant (e.g. knowledge of the Defendant's financial resources).

(c) *Adverse interests*: The Plaintiff (as the current client) had an interest that was or might reasonably have been expected to be adverse to an interest of the Defendant (as the former client) in the Maintenance Proceedings, since she intended to enforce the maintenance orders made in the Divorce against the Defendant.

(d) *Materiality*: Since the Maintenance Proceedings had arisen from orders made during the Divorce, the confidential information relating to the Defendant obtained during the Divorce (currently held by Lawyer B/Law Practice X) might also be reasonably expected to be material to the representation of the Plaintiff in the Maintenance Proceedings.

15.6. Accordingly, Law Practice X could not act for the Plaintiff against the Defendant in the Maintenance Proceedings unless any of the exceptions in rule 21(3)–(5) applied. The pertinent exceptions in this case were set out in rules 21(3) and 21(4).

Rule 21(3) of the PCR

15.7. Based on the facts provided, Law Practice X had not satisfied the requirements of rule 21(3). The Advisory Committee noted that Lawyer A had told the Plaintiff to inform the Defendant that, *inter alia*, Lawyer B had joined Law Practice X and that she would not be assisting Lawyer A on this matter or have access to communications pertaining to the Maintenance Proceedings. Lawyer B had also informed all her former clients that she would be joining Law Practice X. However, these steps did not meet the requirement in rule 21(3)(a) to advise the former client to obtain independent legal advice, in order for the former client to appreciate the significance and consequences of allowing the confidential information to be disclosed.[16]

15.8. Additionally, Lawyer A had not provided any information on whether the Defendant had given his written informed consent to Law Practice X acting for the Plaintiff, in keeping with rule 21(3)(b).

15.9. Even if the requirements of rule 21(3) were satisfied, it would also be prudent for Lawyer A to obtain the Plaintiff's written consent that although Lawyer B might have confidential information relevant to the Plaintiff's case in the Maintenance Proceedings, Lawyer B would be unable to disclose such information to Lawyer A or Law Practice X.

[16] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [21.015].

Rule 21(4) of the PCR

15.10. If Law Practice X was unable to meet the requirements of rule 21(3) despite its reasonable efforts, Law Practice X could still act for the Plaintiff in the Maintenance Proceedings if it could satisfy the requirements of rule 21(4).

15.11. On the applicability of rule 21(4) to lawyers who leave a law practice to work at a law practice acting for another party, academic commentary had noted as follows:[17]

> *Where a lawyer who acted for a party leaves the law practice for another law practice which acts for another party, the latter law practice may continue to act if there is no breach of confidentiality. For example, a lawyer ("L") was employed by Firm X and is now employed by Firm Y. During the course of his work at Firm X, L acted for the defendant in a case. L's conduct of this case was taken over by another lawyer when he left Firm X. Firm Y acts for the plaintiff in the matter that was handled by L (when he was employed by Firm X). L is not at all involved in the conduct of this case after joining Firm Y.* ***Firm Y may continue to act for the plaintiff against the defendant if L remains completely uninvolved and strictly observes his obligation not to disclose any confidential information which he acquired when working in Firm X. The confidential information in L's mind must be sealed for all time from all persons. The law practice has a specific responsibility under Rule 35 of the PCR to ensure that there is no disclosure****."* (emphasis added)

15.12. On what constitutes "adequate safeguards" in rule 21(4), academic commentary had noted that "the safeguards put in place must be iron-tight and properly managed in order to be effective".[18] Recent Singapore case law suggested that the adequacy of the steps taken to prevent disclosure of confidential information would depend on factors such as: (a) the nature of the work done for the former client; (b) the timing of the creation of the information barrier; (c) the size of the law firm; (d) the physical locations of departments within the firm; and (e) the number and seniority of tainted lawyers.[19] Further, rule 35(4) requires the management of a law practice to take reasonable steps to ensure that "adequate systems, policies and controls" are in place for ensuring compliance with the relevant laws relating to, *inter alia*, client confidentiality.

15.13. Therefore, if Lawyer A wished to continue acting for the Plaintiff in the Maintenance Proceedings, the Advisory Committee took the view that Law Practice X would need to implement an information barrier (a.k.a. a "Chinese Wall") within the practice to prevent the flow of information between Lawyer A (and other staff involved in the Maintenance Proceedings) and Lawyer B. Such an information barrier could entail all of the following:[20]

(a) Lawyer A and any other staff in Law Practice X involved in the Maintenance Proceedings would be prohibited from discussing the matter with, or disclosing anything relating to the matter to, Lawyer B or any other staff or lawyer in Law Practice X under any circumstances;
(b) All files and materials relating to the Maintenance Proceedings should be labelled with "Restricted File" and "Only authorised persons are permitted access to this file"; and
(c) No files, documents or other materials relevant to the Maintenance Proceedings should be left unattended in commonly accessible areas.

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[17] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [21.017].
[18] Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (2016) at [21.018].
[19] *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [68].
[20] *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [70].

Other observations

15.14. As there was currently no judicial authority on the interpretation of rule 21(2)–(4), the court could take a different interpretation from that taken by the Advisory Committee in this guidance. The only definitive way of determining the scope of rule 21(2)–(4) would be to make an application to court for this issue to be decided.

15.15. Quite apart from rule 21 of the PCR, the court could, on the former client's application, exercise its powers to restrain a legal practitioner or a law practice from continuing to act for the current client in the particular circumstances. In considering the application, the court could take into account considerations beyond protecting the former client's confidential information.

B. Property Matters

16 Rule 21(2)-(4) PCR — Law practice acted for three joint tenants in redemption of private property — One of the joint tenants subsequently instructed another law practice to act in the severance of the joint tenancy — Two remaining tenants objected to the severance — Whether first-mentioned law practice can act for the two remaining tenants against the tenant seeking severance

Facts

16.1. Law Practice X acted for three joint tenants (A, B and C) and two other tenants-in-common in the redemption of a private property.

16.2. Subsequently, A instructed Law Practice Y to act for him in the severance of the joint tenancy. Law Practice Y notified B and C of this fact in writing and of its intention to lodge the Statutory Declaration to Change Manner of Holding within seven days from the date of its letter. B and C informed Law Practice X that they wished to object to the severance because:

(a) A did not contribute to the outstanding mortgage loan equivalent to one third of the joint tenancy (which he would get pursuant to the severance); and

(b) there was no agreement when the loan was taken out that A should have a one third share in the property.

Query

16.3. Law Practice X asked whether it could act for B and C in the matter against A in the circumstances, and if not, whether it might write to Law Practice Y to ask whether its client (i.e. A) would object to Law Practice X acting for B and C in the matter.

Guidance (25 June 2018)

16.4. It appeared that Law Practice X was caught by rule 21 of the PCR, having represented all three parties in the redemption. In particular, Law Practice X should consider whether rules 21(2)(a) and 21(2)(c) applied to the present situation, i.e. whether Law Practice X holds any confidential information relating to the former client which "may reasonably be expected to be material to the representation of the current client".

16.5. If rule 21(2) applied to the present situation, Law Practice X could still represent B and C if it so wished, but only if it satisfied the conditions in rule 21(3) or 21(4) of the PCR.

17 Rule 21 PCR — Legal practitioner had acted for a housing developer in his previous law practice for a particular project — Legal practitioner subsequently joined another law practice that had acted for a few buyers in the same project — Housing developer approached the legal practitioner's current law practice to act in matters relating to a requisition for the first general meeting by subsidiary proprietors in the project — Whether law practice would be in a position of conflict of interest

Facts

17.1. Under his previous law practice, Lawyer A had acted for a residential housing developer ("Developer") for a particular project ("the Project"). Subsequently, Lawyer A joined Law Practice X.

17.2. Law Practice X had acted for a few buyers ("the Buyers") in the purchase of two of the units in the Project. As the purchases had been completed, the retainers with each of the Buyers had since ceased. Law Practice X was not aware of any claims that the Buyers might have against the Developer in the Project. As far as Law Practice X was aware, the Buyers had not made any claims against the Developer with regard to their respective purchases.

17.3. Various subsidiary proprietors in the Project had now requisitioned for the first general meeting of the MCST. The Developer was unware of the reason for the subsidiary proprietors requisitioning the first general meeting of the MCST.

17.4. The Developer had requested Law Practice X to act for the Developer in matters relating to that requisition, and generally for Law Practice X to act as its solicitors in all matters with the MCST.

Query

17.5. Law Practice X asked whether it would be in a position of conflict of interest by acting for the Developer, given that Law Practice X had previously acted for the Buyers and Lawyer A had acted for the Developer while he was with his former law practice.

17.6. Law Practice X took the position that it should be able to act for the Developer as the purchases by the Buyers had been completed, and its retainers with the Buyers had been completed and terminated.

Guidance (30 October 2019)

17.7. As the Advisory Committee did not have sufficient information on the issues involved in the requisition, and whether they might relate to the past matters on which Law Practice X had acted on or Lawyer A's past representation of the Developer, the Advisory Committee was unable to comment further on whether the facts disclosed might give rise to a potential conflict of interest under rule 21 of the PCR.

17.8. The Advisory Committee therefore could not give a blanket clearance for future general representation on the matter, without knowledge of the issues which might arise.

17.9. Even though Law Practice X had taken the view that no actual or potential conflict of interest arose at this point, it should remain vigilant and closely monitor any issues which might give rise to a potential conflict of interest if it decided to act for the Developer and as the Developer's matter unfolded.

C. Civil and Commercial Litigation Matters

18 Rule 21(3)-(5) PCR — Law practice acted for the plaintiff against three defendants in a suit, including the defendant company — Whether law practice had acted for the defendant company when initiating the suit — Whether law practice was in a position of conflict of interest

Facts

18.1. Law Practice X represented the Plaintiff in a High Court Suit (the "Suit") involving a claim for misrepresentation. Initially, Law Practice Y represented the 1st, 2nd and 3rd Defendants in the Suit (collectively, the "Defendants"). The 1st and 2nd Defendants were individuals, while the 3rd Defendant was a company ("the Company").

18.2. The Plaintiff and the 2nd Defendant were currently the only two directors and shareholders of the Company, holding equal shares in the Company.

18.3. Before the Defence in the Suit was due, the 2nd Defendant approached the enquirer, Law Practice Z, to act for the Company, in place of Law Practice Y. Law Practice Z then obtained a warrant to act from the Company ("Warrant to Act"), which was signed by the 2nd Defendant.

18.4. Law Practice Z thereafter filed a Notice of Change of Solicitors, as well as a Defence for the Company. Law Practice Z also wrote to Law Practice X, taking objection to Law Practice X continuing to act for the Plaintiff against the Company. Law Practice Z cited a letter written by Law Practice X to the 2nd Defendant before the start of the proceedings ("the Letter"), which had stated as follows:

> *"We are instructed that our client as the director of the Company* ***and on behalf of the Company*** *to demand…"* and *"Meanwhile,* ***our client reserves all the Company's rights against you*** *for…"* [emphasis added]"

18.5. Law Practice Z's objection was made on the basis that it appeared that Law Practice X was in effect suing its former client, the Company.

18.6. Subsequently, Law Practice X questioned the standing of Law Practice Z to act for the Company and insisted that the Company's EOGM Resolution to appoint Law Practice Z to act in the Suit was required. Law Practice Z responded that this position was erroneous as it would leave the Company without legal representation.

Query

18.7. Law Practice Z asked:

(a) whether Law Practice X was allowed to continue to represent the Plaintiff in the Suit vis-à-vis the Company, given that Law Practice X had stated in the Letter that it had acted for the Company; and

(b) whether it could continue to act for the Company based on the Warrant to Act signed by the 2nd Defendant.

Guidance (21 September 2018)

Issue (a): Rule 21 of the PCR

18.8. The Advisory Committee suggested that based on a review of the relevant correspondences between Law Practice X and Law Practice Z, Law Practice Z's assertion that Law Practice X had previously acted for the Company was questionable. For example, Law Practice X had stated in the Letter that it was acting for the Plaintiff. On the face of the Letter, Law Practice X arguably did not hold itself out as acting for the Company.[21]

18.9. It was therefore likely that Law Practice X had not acted for the Company when it initiated the Suit. As such, there was no conflict of interests pursuant to rule 21 of the PCR, and Law Practice X was allowed to continue acting for the Plaintiff in the Suit.

18.10. Further, even if there was a conflict of interests issue, the exceptions to the general prohibition could be found in rule 21(3)-(5) of the PCR. Therefore, where the former client (in this case, the Company) did not obtain independent legal advice despite Law Practice X's reasonable efforts, and did not consent to the disclosure of confidential information, Law Practice X might still act or continue to act for the Plaintiff if the following three criteria were satisfied:

(a) "adequate safeguards" had been put in place to protect the Company's confidential information;
(b) Law Practice X had made reasonable efforts to bring those safeguards to the Company's attention; and
(c) the Company had been notified that Law Practice X would continue to act for the Plaintiff.

18.11. Such matters would have to be determined by Law Practice X, before Law Practice X could continue to act for the Plaintiff. The Advisory Committee would, however, leave it to Law Practice Z and/or Law Practice X on whether to seek a determination by the court, on the disputed issues, namely:

(a) whether Law Practice X could continue to represent the Plaintiff; and/or
(b) Whether Law Practice Z could continue to act for the Company.

Issue (b): Authority to act for the Company

18.12. It was questionable as to whether Law Practice Z had been validly and/or properly retained by the Company. The onus would be on Law Practice Z to determine so, based on the facts. Further, the Plaintiff was entitled to apply to court for its determination on whether Law Practice Z had obtained proper and valid authorisation for the Warrant to Act.

[21] **General Editor's Note**: In the interests of brevity, the references to other correspondences considered by the Advisory Committee have been omitted from this summary.

18.13. Determining whether Law Practice Z was properly authorised to represent the Company would depend on various factors, which were outside of the Advisory Committee's purview. As the role of the Advisory Committee was to provide guidance on ethical issues, it would not be appropriate for the Advisory Committee to express any views on this issue.

19 Rule 21(3)-(5) PCR — Law practice engaged by professional indemnity insurer to act for insurer and the insurer's clients in claim against third party — Law practice expressly informed insurer's clients that law practice was engaged by insurer — Insurer subsequently repudiated liability under insurance policy against insurer's clients — Insurer informed law practice to cease acting for insurer's clients — Whether law practice may advise insurer against insurer's clients on issue of repudiation

Facts

19.1. The owners of two houses brought claims against the contractors (the "Contractors") of a building project in a neighbouring plot of land (the "Project"), *inter alia*, for damage allegedly caused to their properties as a result of the Project.

19.2. The Contractors, represented by Law Practice X, thereafter asserted a claim for contribution and/or indemnity against the engineering firm, Firm A, and Firm A's professional engineer, B, who were involved in the Project. In this regard, the Contractors alleged negligence and/or breaches of contractual duties on the part of Firm A and B.

19.3. The professional indemnity insurers for Firm A and B, Company C, engaged Law Practice Y to act for Firm A, B and Company C in the above matter. Law Practice Y proceeded to do so and, amongst others:

(a) met and communicated with B to take his instructions;
(b) received numerous documents and records from Firm A and B in relation to the Project;
(c) corresponded with Law Practice X in this matter; and
(d) attended a without prejudice meeting and a mediation session with Law Practice X and other interested parties.

19.4. From the outset of the engagement, Law Practice Y had expressly informed Firm A and B that:

(a) Law Practice Y was engaged by, and acted for and advised, Company C; and
(b) Law Practice Y's communications with them were not to be deemed as a representation that Company C was liable under the policy in respect of the claim, or that the policy was engaged, as these were issues which Company C needed to determine.

19.5. Subsequently, Company C decided to repudiate liability under the policy against Firm A and B on certain grounds, and directly notified Firm A and B of its decision to repudiate. Company C also instructed Law Practice Y to cease acting for Firm A and B, which it did.

19.6. Through their new solicitors, Law Practice Z, Firm A and B responded to challenge the grounds for the repudiation. Company C then requested Law Practice Y's views and advice on the issue of repudiation and its responses to the arguments by Firm A and B challenging the repudiation.

Query

19.7. Law Practice Y asked whether it was entitled to advise Company C on the issue of repudiation of the policy against Firm A and B, given that it had acted for Firm A and B (albeit upon Company C's engagement) in respect of the claim by the Contractors.

Guidance (12 December 2018)

19.8. Law Practice Y should decline to act if it had received information from Firm A and B that should be kept confidential from the insurers, and might reasonably be expected to be material to Law Practice Y's representation of Company C on the issue of repudiation (unless any of the exceptions in rule 21(3)–(5) of the PCR applies).

19.9. Law Practice Y was also referred to the English Court of Appeal case of *TSB Bank v Robert Irving & Burns* [2000] 2 AER 826.

D. Corporate Matters

20 Rule 21 PCR – Legal practitioner engaged by different parties to prepare a term sheet to incorporate a new company – Legal practitioner subsequently engaged by one of the parties and a counterparty to prepare an agreement to implement the arrangement in the term sheet – Outstanding issues arose between these two parties — Whether legal practitioner may attend meeting between these parties to attempt to resolve the issues

Facts

20.1. Lawyer A, a sole proprietor of Law Practice X, had been engaged by B, Company C and Company D to prepare a Term Sheet involving the incorporation of a new company ("Company E") and the purchase by Company E of various businesses. One of these businesses pertained to Company F's business, which was substantially owned and controlled by G.

20.2. At the time when the Term Sheet was executed, Company F and G were represented by Law Practice Y.

20.3. Subsequently, Lawyer A was approached by B and G to prepare a business sale, subscription and shareholders agreement ("the Agreement") so as to implement the arrangement as set out in the Term Sheet. Under the Agreement, Company E would be Law Practice X's client. Law Practice X prepared the draft and the Agreement was subsequently executed.

20.4. A few years later, Lawyer A came to know that there had been outstanding issues between B and G, although Lawyer A did not have the details. Lawyer A was informed that B and G would be meeting to try to resolve these outstanding issues. Lawyer A had also received a request that this meeting be held at Law Practice X's offices, but no details of Lawyer A's role at the meeting had been provided.

Query

20.5. Lawyer A asked:

(a) whether it was appropriate for the proposed meeting to be held at Law Practice X's offices; and

(b) what Lawyer A's appropriate role was if the meeting was held at Law Practice X's offices or elsewhere.

Guidance (10 May 2019)

20.6. The Advisory Committee was unable to give specific advice as it was unclear as to which parties or parties (if any) intended to appoint/instruct Lawyer A in connection with the proposed meeting or what the scope of those proposed instructions (if any) would be.

20.7. Lawyer A should ask the person who requested the meeting to state the purpose and agenda for the meeting, and to clarify in advance which party or parties (if any) Lawyer A was supposed to represent or advise at the meeting. Lawyer A would then be able to better assess whether or not Lawyer A can act.

20.8. Lawyer A should also attempt to ascertain what the outstanding issues to be discussed were, so that Lawyer A could assess as to whether any conflict of interest would arise if Lawyer A participated in the meeting. Lawyer A would need to bear in mind that as both B and Company E were at some point Law Practice X's clients, Lawyer A would need to be mindful of potential conflicts.

20.9. If Lawyer A assessed that a conflict could arise, the meeting should not be held at Law Practice X's offices as there was always the possibility of misunderstandings arising later as to Lawyer A's role, even if Lawyer A did not attend the meeting. If there was no apparent conflict, Lawyer A would have to ascertain who Lawyer A was to represent at the meeting. If this representation was made clear to all the parties attending the meeting beforehand, there should not be an issue with Lawyer A attending the meeting.

Chapter 7: Conflict, or Potential Conflict, Between Interests of Client and Interests of Legal Practitioner or Law Practice

[**General Editor's Note***: The general rule relating to conflicts between the client's interests and the legal practitioner's or law practice's personal interest is found in Rule 22 PCR. More specific rules in this regard are set out at Rules 23, 24 and 25 of the PCR.*]

21 Rule 22(2)-(4) PCR – Legal practitioner drafted will for client – Legal practitioner appointed as sole executor and trustee of will – Legal practitioner to be paid trustee fee from client's estate – Address of property stated in will found to be incorrect following client's death – Client's wife executed warrant to act for law practice to apply for grant of probate and to rectify the will – Whether legal practitioner was in a position of conflict of interest

Facts

21.1. A and his wife, B, approached Law Practice X to draft and prepare a Will for A. Lawyer C from Law Practice X drafted the Will for A and was also appointed as the sole Executor and Trustee of the Will. A had sought a professional Executor for the Will as B was illiterate in English and uneducated. It was orally agreed that Lawyer C would receive a trustee fee of $10,000 payable from A's Estate ("the Estate") after A's death.

21.2. Under the Will, A's HDB flat ("the Property") was bequeathed to B. However, as B was a foreign citizen, she would only be entitled to the proceeds from the sale of the Property.

21.3. Subsequently, A passed away and B approached Law Practice X with A's original Will. She was attended to by Lawyer C.

21.4. When reading out the Will, it was discovered that the address of the Property stated in the Will was incorrect. The address in the Will was that of a tenanted address that had been set out in A's identification card given to Lawyer C at the time of preparing the Will. A had stayed at the tenanted address previously while the Property was undergoing cleaning work.

21.5. Lawyer C subsequently verified the Property's correct address through various documents and further wrote to HDB to confirm that Client A had owned and purchased the Property.

21.6. B sought assurance from Lawyer C that the Will would not be invalidated as a result of the error in the Property's address. She also agreed to Lawyer C acting as both solicitor-in-charge of the application for grant of probate for the Estate, as well as Trustee of the Will to apply to court to rectify the Will to reflect the correct address of the Property.

21.7. In this regard, B executed a Warrant to Act for Law Practice X, and also agreed to pay the sum of $2,000 as disbursements. She further agreed that Lawyer C would receive the $10,000 out of the Estate as the trustee fee, and that a further $2,000 would be payable if HDB required Law Practice X to act in the sale of the Property.

Query

21.8. Law Practice X asked whether a conflict of interests would arise out of Lawyer C's dual roles in:

(a) acting as solicitor-in-charge for the common interests of Lawyer C as the trustee, and B as the sole beneficiary, vis-à-vis the application of grant of probate and rectification of the Will; and
(b) acting as the sole executor and trustee of the Will vis-à-vis the process of application for grant of probate and the execution of probate (if so granted).

Guidance (14 November 2019)

21.9. Law Practice X and Lawyer C should not continue to act as the solicitor-in-charge for B, in view of a potential conflict of interest under rule 22 of the PCR. Rule 22(2) prohibits a legal practitioner or law practice from acting for a client if there may reasonably be expected to be a conflict between the duty to serve the client's best interests and the interests of the legal practitioner or law practice, unless the exceptions in rule 22(3) or 22(4) apply.

21.10. Lawyer C (and hence Law Practice X) appeared to have a personal interest in acting for B, since Lawyer C had a claim to the trustee fee of $10,000 that was to be payable out of the Estate in accordance with the oral agreement. It was likely that Lawyer C's (and Law Practice X's) interest in the trustee fee would be construed as an interest in B's matter under rule 22(3) or 22(4) of the PCR.

21.11. Assuming that this was the case, the interests of Lawyer C and Law Practice X were not adverse to B's interests (at least, not at the point when guidance was sought). This was because, on Lawyer C's account, B had agreed that Lawyer C was entitled to the $10,000 trustee fee. Nevertheless, rules 22(3)(b) and 22(4)(b) would apply to require Lawyer C and Law Practice X to make full and frank disclosure of their interest and obtain B's written informed consent to continue to act for her.

21.12. On the facts provided, it appeared that Lawyer C and Law Practice X had complied with the requirements set out in rules 22(3)(b) and 22(4)(b), as B had in fact executed a Warrant to Act, pursuant to which, she agreed to Lawyer C being paid $10,000 out of the Estate after the Property was sold.

21.13. However, given that B was an unsophisticated and possibly a vulnerable client, it was not clear whether all the necessary precautions had been taken to ensure that B had provided written informed consent. For example, as B was illiterate in English and uneducated, it would have been prudent for Lawyer C to have arranged for a neutral party to be an interpreter to explain the contents of the Warrant to Act to B in the language that she was familiar with. If it turned out that B had not, in fact, provided written informed consent, Lawyer C and Law Practice X could not continue to act for B.

21.14. Even if Lawyer C and Law Practice X had made full and frank disclosure of their interest and obtained B's written informed consent to continue to act for her, it would be prudent for them not to continue to act for B given the following considerations:

(a) It was possible that the Will might not be rectified by the court and should such a scenario arise, other (unnamed) beneficiaries' interests might need to be considered under the Intestate Succession Act. As the sole Executor and Trustee of the Will, it would therefore be prudent for Lawyer C to maintain a neutral position and not be placed in a position of conflict (see e.g. rule 20 of the PCR) should Lawyer C continue to act for B.

(b) While no allegation of negligence had been made at the point when guidance was sought, Lawyer C and Law Practice X could also be liable to a professional negligence claim for the error in reflecting the address of the Property to be given to B under the Will. In such a situation, Lawyer C and Law Practice X would have a more significant personal interest in the matter, which would be adverse to B's interests. It would then be necessary to advise B to obtain independent legal advice in accordance with rules 22(3)(a) and 22(4)(a). In such a scenario, it would also be prudent for Lawyer C and Law Practice X to cease acting for B as soon as they were alerted of the possibility that they might have been negligent.[22]

Other observations

21.15. Lawyer C had also suggested handing the matter over to Lawyer D, the other solicitor in Law Practice X, should Lawyer C be in a position of conflict of interest. Based on the above analysis, this would not cure any conflict of interest arising.

General Editor's Note:

21.16. This Illustration should be read in the light of subsequent case law on the operation of rule 22 of the PCR e.g. *Law Society of Singapore v Tan Chun Chuen Malcolm* [2020] 5 SLR 946 ("*Tan Chun Chuen Malcolm*") and *Law Society of Singapore v Govindan Balan Nair* [2020] 5 SLR 988 ("*Govindan Balan Nair*").

21.17. In *Tan Chun Chuen Malcolm*, the Court of Three Judges found that the respondent solicitor had placed himself in a position where his duty to serve the client's interests was in conflict with his own interests under rule 22 of the PCR. The respondent solicitor had procured and/or instructed the client to pay an investment sum in connection with two investment schemes to a company ("the Company"), of which the respondent solicitor was the sole shareholder and director. The respondent solicitor had given the client the impression that he would protect the client's interests, pursuant to letters of engagement pertaining to the investment schemes that were signed by the client with the respondent solicitor's law practice. This case was "a very serious conflict of interest and an abuse of trust", as the respondent solicitor had convinced the client to enter into a transaction that furthered the respondent solicitor's own interests under false pretences. Notwithstanding the conflict, the respondent solicitor had, contrary to rule 22(3)(a) of the PCR:

(a) failed to make **full and frank disclosure** of his interest in the matter to the client;
(b) failed to advise the client to obtain **independent legal advice** or, alternatively, to ensure that the client was not under the impression that he was protecting the client's best interests; and
(c) failed to obtain the client's **informed consent in writing** for him to continue acting as the client's solicitor despite the conflict.

21.18. The Court of Three Judges held that the requirement of full and frank disclosure seeks to ensure that:

[22] See *Ho Kon Kim v Betsy Lim Gek Kim* [2001] SGHC 75 at [60]; see also the Court of Appeal's observations at [2001] 3 SLR(R) 220 (CA) at [61]-[63].

(a) "the client is apprised of the nature, extent and implications of the conflict of interest such that a decision as to whether or not to obtain independent legal advice can be made"; and
(b) "if such legal advice is not sought, the client is *not* under the impression that the legal practitioner is protecting the client's interests".

21.19. The Court of Three Judges also emphasised that "whether independent legal advice has been sought cannot be viewed in a technical manner – instead, the crux of the matter is whether the client has been placed in a position to assess whether he should allow the conflicted solicitor to continue acting for him".

21.20. On the facts, the Court of Three Judges held that the respondent solicitor had not adequately disclosed his conflict of interest to the client as "the very premise on which [the client] had agreed to invest in those two investment schemes was false and not corrected". In this regard, the respondent solicitor had failed to disclose the critical fact that his law practice would not supervise the client's investments. Moreover, the respondent solicitor had failed to advise the client to obtain adequate independent legal advice and had given the client the false impression that his interests were protected by the respondent solicitor. The Court of Three Judges was of the view that "this conflict was so fundamental" that it was "difficult to see how it could have been resolved at all".

21.21. In *Govindan Balan Nair*, the respondent solicitor had failed to file the client's Defence as instructed by the client. Subsequently, default judgment was entered against the client. The respondent solicitor sought to persuade the client to set aside the default judgment, but did not withdraw from acting for the client timeously. Instead, the respondent solicitor had continued to act for the client without complying with the procedure set out in rule 22(3)(a) of the PCR.

21.22. The High Court held that the respondent solicitor's interest was "adverse" to the client's interest, after it was discovered that default judgment had been entered against the client. The word "adverse" in rule 22(3)(a), read with rule 22(2), includes "*any* reason that would detract a legal practitioner from his duty to serve the best interests of his client".

21.23. On the facts, the High Court found that the respondent solicitor's interest was "adverse" to the client's interest because he had an interest not to inform and advise the client "of the circumstances of [his] negligence and breach, as well as its rights in that situation". Giving such information and advice would serve the client's best interests, but "would expose [the respondent solicitor] to potential liability, disciplinary action, or simply a decision by the client not to engage [his] services any longer".

21.24. Once this adverse interest arose, the respondent solicitor should have: (a) first made full and frank disclosure to the client of the adverse interest; (b) advised the client to obtain independent legal advice; and (c) thereafter obtain the client's informed consent to continue acting. Without this process, rule 22(3) mandates that the respondent solicitor should withdraw from acting for the client timeously.

21.25. The High Court also made a number of other important observations on rule 22(3). Firstly, the fact that the interests of the respondent solicitor and the client were aligned in that both wanted to set aside the default judgment did not preclude adverse interests. This is because "[a]lignment on one issue could co-exist with a lack of alignment on other issues".

21.26. Secondly, harm need not be caused for an adverse interest to arise, because rule 22(3) is concerned with "potential as well as actual adverse interests". Moreover, in considering harm in this context, the Court would consider "the impact of the legal practitioner's misconduct upon (a) those directly or indirectly affected by the misconduct; (b) the public; and (c) the reputation of the legal profession."

21.27. Thirdly, a common sense approach must be taken in distinguishing between minor errors (which would generally not amount to a conflict of interest) and more serious ones which would occasion a conflict of interest (such as failing to enter a default judgment).

21.28. Finally, whilst a legal practitioner is permitted to put any negligence in context in making full and frank disclosure to the client, the choice to seek independent legal advice ultimately belongs to the client.

21.29. Given the broad meaning of an "adverse" interest enunciated in *Govindan Balan Nair*, the Advisory Committee's guidance in paragraph 21.11 above should be reassessed as the applicable rules may well be rule 22(3)(a) and rule 22(4)(a) instead. In such a scenario, both *Tan Chun Chuen Malcolm* and *Govindan Balan Nair* have emphasised the obligations of a legal practitioner (or a law practice) to: (a) make full and frank disclosure; (b) advise the client to obtain adequate independent legal advice or otherwise ensure that the client is not under the impression that the client's interests are being protected; and (c) obtain the client's written informed consent. In certain cases, as suggested by *Tan Chun Chuen Malcolm*, the conflict may be of such a fundamental nature that even the procedure set out above cannot obviate the conflict.

21.30. For further commentary on *Tan Chun Chuen Malcolm* and *Govindan Balan Nair*, please refer to the following articles:

(a) "Business Transactions between Solicitors and Their Clients" (November 2020, Singapore Law Gazette); and

(b) "Professional Ethics – An Update" (January 2021, Singapore Law Gazette).

Chapter 8: Completion of Retainer and Withdrawal from Representation

[**General Editor's Note**: *The rule relating to completion of retainer and withdrawal from representation is found in Rule 26 PCR.*]

22 Rule 26(7)(a) PCR – Law practice represented client in two matters and filed appeals – Client appointed another law practice to take over conduct of the appeals – Both law practices disputed the transfer of client's documents – Whether incoming law practice had to furnish outgoing law practice with reasonable security in addition to an undertaking

Facts

22.1. Law Practice X had defended Company A in two matters. Judgment was granted in favour of the Plaintiff/s in both matters. After the Notices of Appeal for both matters had been filed and served by Law Practice X, Company A appointed Law Practice Y to take over the conduct of the appeals.

22.2. There were several items of contention between Law Practice X and Law Practice Y regarding the transfer of Company A's original documents, which pertained, *inter alia*, to the issue of the solicitor's lien and the sufficiency of the undertaking by Law Practice Y to protect a solicitor's lien on costs.

22.3. Law Practice X's position was that Law Practice Y had not complied with rule 26(7)(a) of the PCR as Law Practice Y had not made an offer to provide security for Law Practice X's costs. Law Practice Y had also not offered to pay or offered any agreement with Company A about the payment of Law Practice X's costs.

22.4. Law Practice Y's position was that it had sufficiently complied with rule 26(7)(a) of the PCR by undertaking to protect Law Practice X's lien on costs as seen in its letters to Law Practice X. Law Practice X was, however, of the opinion that an undertaking alone was insufficient and that Law Practice Y ought to also furnish reasonable security for Law Practice X's costs as per rule 26(7)(a)(i) of the PCR.

Query

22.5. Law Practice X asked whether an undertaking was sufficient to protect a solicitor's lien on costs under rule 26(7) of the PCR.

Guidance (26 July 2019)

22.6. Rule 26(7)(a) of the PCR, which came into effect on 18 November 2015, changed the position under the predecessor rule which required the incoming solicitor to give only an undertaking to protect the outgoing solicitor's lien on the documents. If the incoming solicitor refuses to comply with the conditions in either rule 26(7)(a)(i) or 26(7)(a)(ii), the outgoing solicitor is not obliged under rule 26(7) to release the documents subject to a lien on the documents only. The outgoing solicitor can either decline to release the documents or try to come to some arrangement with the incoming solicitor to grant him access to the documents without losing his lien. The latter option involved legal issues that the Advisory Committee could not advise on. "Reasonable security" must therefore be provided under rule 26(7) of the PCR, in addition to the "undertaking".

22.7. Law Practice Y appeared to have disregarded the words "and provides reasonable security" under rule 26(7)(a)(i) of the PCR, which must be read conjunctively. The academic commentaries cited by Law Practice Y had interpreted the predecessor provision under PCR 2010, which had only required an "undertaking". However, the PCR had added the requirement for "reasonable security", in order to enhance the protection for the outgoing solicitor's fees, while balancing potential hardship to the client.

22.8. Preserving a lien over documents had practical value in the period before photocopiers, computers and e-filing became prevalent. However, the practical value of such a lien today had been much diminished, and in that context, it made sense that in addition to preserving the lien, some further reasonable security would need to be provided.

Chapter 9: Executive Appointments

[**General Editor's Note**: *The rule relating to executive appointments is found in Rule 34 PCR, which should be read together with the First Schedule, Second Schedule, Third Schedule and Fourth Schedule to the PCR where appropriate.*]

23 Rules 34(1)(b)(i) and 34(5) PCR — Executive appointment — Legal practitioner intended to operate a fund management company as its Chief Executive Officer — Legal practitioner concurrently a legal consultant in a law practice — Whether legal practitioner can take up appointment with the company

Facts

23.1. Lawyer A, a consultant in Law Practice X, intended to operate a fund management company ("the Company") concurrently. Once the license had been granted, Lawyer A intended to operate the Company full-time as its Chief Executive Officer.

23.2. In his personal time, it was envisaged that Lawyer A would give Law Practice X "general strategic advice … and insight on trends relating to the wealth management industry and the needs of high net worth individuals".

Query

23.3. Whether Lawyer A's proposed concurrent appointment with the Company raised concerns pertaining to conflicts of interest or was incompatible with the practice of law.

Guidance (11 May 2018)

23.4. It could be determined from the facts provided that the intention was for Lawyer A to run his own fund management company and to also retain his position as a consultant with Law Practice X. This arrangement placed Lawyer A in breach of rule 34(1)(b)(i) of the PCR, and might also give rise to potential issues under rules 34(1)(b)(ii) and 34(1)(c) of the PCR.

23.5. In keeping with the dignity of the profession, a practicing solicitor should devote his professional time, energy and attention fully and solely to the practice of law. If Lawyer A's primary occupation was no longer that of a practicing lawyer, he should avoid putting himself in a position where he would give legal advice, or mislead or confuse clients in the market for legal services. It would therefore be best if Lawyer A relinquished his position as consultant in Law Practice X to avoid these complications.

23.6. For completeness, rule 34(5) of the PCR provided that the restrictions in rule 34(1)(b) (i.e. primary occupation etc.) do not apply to a locum solicitor. This implicitly supported the proposition that full-time Practicing Certificate holders should devote their professional time, energy and attention fully and solely to the practice of law.

24 Rules 34(1) and 34(9) PCR – Executive appointment – Legal practitioner a sole practitioner – Legal practitioner offered appointment of part-time legal consultant in F&B company and would be paid a "retainer fee" – Applicability of rule 34 of the PCR

Facts

24.1. Lawyer A, the sole proprietor of Law Practice X, was offered a legal consultant position (the "Proposed Appointment") in a F&B company ("the Company"). Lawyer A would be paid a "retainer fee" for providing legal services to the Company.

24.2. Lawyer A would not be a full-time employee of the Company, but would continue to practise at Law Practice X and would only render legal advice to the Company on an ad hoc basis.

Query

24.3. Whether Lawyer A could accept the Proposed Appointment whilst continuing to practise in Law Practice X.

Guidance (18 December 2019)

24.4. It was noted that Lawyer A had not provided sufficient information on: (i) the kind of work or tasks that Lawyer A would be carrying out as a legal consultant; and (ii) the business area or type of business carried out by the Company. The guidance was therefore limited to highlighting in general the relevant provisions (in particular, rule 34 of the PCR) and concerns to Lawyer A.

24.5. Based on the limited facts provided, the Proposed Appointment would appear to be an "executive appointment" within the meaning of rule 34(9) of the PCR, since Lawyer A intended to work in the Company as an in-house counsel on a part-time basis.

24.6. As such, Lawyer A would only be able to take up an executive appointment in the Company if the Company was not a business prohibited by rule 34(1)(a) to (f) of the PCR. In particular:

(a) rule 34(1)(b) prohibits executive appointments in any business which materially interferes with: (i) Lawyer A's primary occupation of practising as a lawyer; (ii) Lawyer A's availability to those who may seek Lawyer A's services as a lawyer; and (iii) the representation of Lawyer A's clients; and

(b) rule 34(1)(c) prohibits executive appointments in any business that is likely to unfairly attract business in the practice of law.

24.7. With regard to rule 34(1)(b), the Advisory Committee's view was that a legal practitioner should devote his or her professional time, energy and attention fully and solely to the practice of law, in keeping with the dignity of the profession.

24.8. In the absence of further details, Lawyer A was cautioned against taking up the Proposed Appointment. It was also unclear why Lawyer A wished to accept the Proposed Appointment when the Company could have, for example, obtained the same legal advice from Lawyer A in Lawyer A's capacity as a legal practitioner practising at Law Practice X.

25 Rules 34(1)(b) and 34(5) PCR; Third Schedule, PCR — Executive appointment — Whether lawyer can accept an executive appointment in wife's company — Whether lawyer can take up adjunct lecturing positions or part-time executive position in a Voluntary Welfare Organisation

Facts and Query

25.1. Lawyer A, who was employed by Law Practice X, asked whether he could:

(a) accept an executive role (e.g. legal counsel) in his wife's company ("the Company"); and

(b) take up adjunct lecturing positions, or a part-time executive position in a charity or Voluntary Welfare Organisation ("VWO").

Guidance (25 June 2018)

Issue 1: Executive Role in the Company

25.2. Based on the facts presented, the Advisory Committee assumed that the Company was not a legal-related business. In keeping with the dignity of the profession, a practicing solicitor should devote his professional time, energy and attention fully and solely to the practice of law. Taking on the position of legal counsel in a company while still under the employ of Law Practice X would put Lawyer A in breach of rule 34(1)(b)(i) of the PCR, and might also give rise to potential issues under rules 34(1)(b)(ii) and 34(1)(c) of the PCR.

25.3. For completeness, rule 34(5) provided that the restrictions in rule 34(1)(b) (i.e. primary occupation etc.) did not apply to a locum solicitor. This implicitly supported the proposition that full-time Practicing Certificate holders should devote their professional time, energy and attention fully and solely to the practice of law.

Issue 2: Adjunct Lecturing Positions or Part-time Executive Position in a Charity/VWO

25.4. The Third Schedule to the PCR ('Third Schedule') provided a list of institutions at which a practitioner can accept any appointment. Given the type of position that Lawyer A was considering, it would be permissible for Lawyer A to assume a role that he wished to undertake as long the position taken was within the ambit of the institutions listed in the Third Schedule. However, it was stressed that any position taken with a VWO would have to be with a charity registered under the Charities Act.

Chapter 10: Touting and Publicity

[**General Editor's Note***: The rules relating to touting and publicity are found in Part 5 of the PCR, specifically Rules 37- 49 PCR*.]

26 Rule 44(1)(a)-(c) PCR – Legal practitioner intended to advertise his law practice through a deck of playing cards together with members of other industries/professions – Playing cards would be distributed to only members of the Singapore chapter of legal practitioner's international business networking organisation – Whether such publicity was permitted

Facts

26.1. Lawyer A was a member of the Singapore chapter of an international business networking organisation ("the Organisation") that helped its members from different industries get business referrals.

26.2. Lawyer A intended to advertise his law practice alongside that of fellow chapter members using the medium of a deck of playing cards (the "Proposed Collateral"). The playing cards would be distributed to members of the Singapore chapter only. Industries or professions represented in the chapter included: insurance, nutrition, video services, jewellery, photography, real estate, tailoring, automotive services, architecture, dentists, accounting, and interior design.

Query

26.3. Lawyer A asked whether the proposed medium of publicity through the Proposed Collateral would contravene the PCR, given that playing cards could be used for, *inter alia*, gambling.

Guidance (20 September 2019)

26.4. The Proposed Collateral was not permissible, in view of rules 44(1)(a) and 44(1)(b) of the PCR. As rule 44(1)(c) of the PCR fell outside the purview of the Advisory Committee, the guidance would not address this rule.

Applicable Principles

26.5. Rule 37 guides the interpretation of rule 44 (and the rest of Part 5) of the PCR and provides that a legal practitioner "must not engage in publicity, or procure any work or engagement" for the legal practitioner or the legal practitioner's law practice "in circumstances which affect the dignity and standing of the legal profession".

26.6. Under rule 46 of the PCR, a legal practitioner's practice may be publicised in, or in conjunction with, the publicity of any third party, whether or not that party is the legal practitioner's client. However, such third party publicity is subject to the LPA and the PCR.

Rule 44(1)(b) – Unbefitting the dignity of the legal profession

26.7. The manner of publicising of Lawyer A's practice via the distribution of playing cards to the chapter members might reasonably be regarded as unbefitting the dignity of the legal profession under rule 44(1)(b) of the PCR. Rule 42(1) of the PCR requires Lawyer A to ensure that the publicity of Lawyer A's practice complies with the PCR, even if such publicity is by any other person on his behalf. Given that Lawyer A had not given any assurance as to how the chapter members would utilise the Proposed Collateral, it would be unbefitting the dignity of the legal profession to allow third parties to use the Proposed Collateral as they saw fit, when Lawyer A had no way of ensuring that these parties complied with the PCR.

Rule 44(1)(a) – Likely to diminish public confidence in the legal profession

26.8. As Lawyer A had acknowledged, the Proposed Collateral connoted a close association with gambling. Given that certain types of gambling were illegal in Singapore and the social evils arising from excessive gambling, the profession should not be associated with what might be viewed by members of the public as a socially undesirable pastime. Moreover, there had been cases in Singapore where lawyers had resorted to misappropriation of their client's monies in order to settle their gambling debts. Hence, the Proposed Collateral was likely to diminish public confidence in the legal profession.

Rule 44(1)(b) – Potential to mislead

26.9. The Proposed Collateral took the form of a set of playing cards. While Lawyer A had informed that the cards would be distributed to the chapter members only, it was highly likely that chapter members would re-distribute the cards outside the chapter when networking in order to bring in referrals for their chapter members. This was because based on publicly available information, the Organisation was a referral generating organisation where every chapter member's role was to help fellow chapter members get referrals.

26.10. Unlike a regulated multi-disciplinary practice ("MDP") (which Singapore currently did not permit), Lawyer A had no control over or responsibility for the actions of the chapter members. Neither were the chapter members (apart from Lawyer A) bound to observe the PCR in conducting their referrals.

26.11. Hence, there was a significant risk that due to the appearance of uniform branding engendered by the Proposed Collateral, the recipient of a set of cards might wrongly perceive that Lawyer A's services were affiliated to those of other professional service providers (e.g. insurance agent, real estate agent, accountant), or that Lawyer A's services were part of an entity's service offerings in an arrangement akin to a MDP. At the very least, the recipient could be given a false sense of security based on his/her impression that Lawyer A's services were being provided by a larger entity or a formal association, which would suggest a higher level of protection for the consumer.

27 Rules 39(2) and 40 PCR – Law practice approached by third party to be featured on an affiliate marketplace platform – Fixed fee payable by law practice to third party for advertisements on platform – Participation in platform limited to a maximum of 10 law practices – Whether such publicity was permitted

Facts

27.1. Law Practice X was approached by an online property search portal ('Portal') to be one of a maximum of 10 law practices to be featured on an affiliate marketplace platform ('AMP') run by the Portal. The AMP "seeks to connect current and potential new home or business owners to established law practices with expertise in property law for legal services, giving consumers the tools to make better informed decisions by directing them to transparent and affordable legal services".

27.2. Law Practice X intended to pay a fixed fee to the Portal for advertisements on the AMP. The features to be displayed on the AMP for law practices consisted of:

(a) the law practice's banner;
(b) customised URL;
(c) the law practice's profile;
(d) enquiry form; and
(e) backlink to the law practice's website.

Query

27.3. Law Practice X asked:

(a) whether its proposed participation in the AMP for a fee payable to the Portal contravened rule 39(2)(b) of the PCR and Practice Direction 6.1.2 on Referrals/Hyperlinking of Websites; and

(b) whether the limited number of participating law firms on the AMP constituted touting (rule 39(1) of the PCR) and/or was an undesirable manner of publicity (rule 44(1) of the PCR).

Guidance (15 January 2019)

Issue 1: Fee payment to Portal

27.4. The Advisory Committee was concerned about the nature and content of the publicity on the AMP, and cautioned Law Practice X to ensure that the relevant publicity rules in the PCR were complied with when doing so, to ensure that users of the AMP were not misled.

27.5. Further, depending on the nature and content of the publicity on the AMP, the Advisory Committee had reservations on whether it could constitute touting and/or be in contravention of rule 39(2) and/or rule 40 of the PCR. There was insufficient information provided to the Advisory Committee in this regard.

27.6. The Advisory Committee also drew Law Practice X's attention to the following practice direction and guidance note issued by the Law Society:

(a) Practice Direction 6.1.2 ("Referral / Hyperlinking of Websites")

"*Websites (eg, property agents' websites) that hyperlink to law practices' websites for the purposes of assisting the property agents' potential clients are not prohibited, provided there is no form of financial arrangement between the property agent and the law practice. However, the description of the hyperlink must not mislead viewers by suggesting that the property agent is in a position to give legal advice, or that the law practice is formed by the property agent to provide legal consultation on the real estate matters, or that the viewer has to exclusively use the services of the law practice. Otherwise, this may constitute an offence under section 33(1)(b) of the Legal Profession Act (Cap 161, 2009 Rev Ed).*"

(b) Guidance Note 6.1.1 ("Ethics and Information Technology")

"**F. Online Referral and Introduction Schemes**

33. Under sections 83(2)(d) and 83(2)(e) of the LPA, it is an offence if a solicitor (as defined by the Act) has "tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself, of any other advocate and solicitor" or "directly or indirectly, procured or attempted to procure the employment of himself, of any advocate and solicitor … to whom any remuneration for obtaining such employment had been given by him or agreed or promised to be so given".

34. Members are reminded that, under rule 39(2) of the PCR 2015, the legal practitioner must not, inter alia, reward a referrer by the payment of any commission or other form of consideration.

35. There are prohibitions against a law practice rewarding any person for referring work to them. The participation in any Internet referral schemes which requires the law practice to pay a fee or share fees paid for legal services referred would be a breach of the LPA.

36. Even if no fees are paid or shared, any participation in an online introduction service or referral service carried out in such a way as to 'unfairly attract work' to the law practice would be improper given the terms of section 83(2)(b) and/or section 83(2)(h) of the LPA.

37. The Council has also ruled that it is improper for a law practice to demand a referral fee from another law practice for merely referring work to it as this would be tantamount to 'brokering'."

Issue 2: Limited number of participating firms on Portal

27.7. The limit on 10 participating firms impliedly (if not expressly) gave users the impression that these law practices had been selected or endorsed by the Portal, which was currently one of the dominant online property search portals.

27.8. However, such a limit alone might not sufficiently constitute touting. Ultimately, if neutral language was used, with clear statements to users stating that the list of participating firms was not an endorsement of such firms, the issue of touting might be averted. Again, this was an issue that Law Practice X would need to look into very cautiously, and to bear in mind Practice Direction 6.1.2 and Guidance Note 6.1.1 when doing so.

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