

# Guidance Note of the Law Society on Ethics and Information Technology

This guidance note issued by the Council takes effect from 1 October 2001 and is an attempt to provide members with both ethical and practice guidance on the use of IT in their practice.

## Introduction

The advance of technology has impacted on the practice of law.

The Law Society's Ethics Committee ('the Committee'), with the assistance of representatives of the Information Technology ('IT') Committee, has reviewed the practice guidelines on ethics and IT recently issued by jurisdictions such as the United States, Canada and England.

In recognition of the ever evolving nature of technology and legal practice, the guidelines, contained herewith, should not be regarded as definitive, final or exhaustive and the Council invites comments and feedback at any time and, where appropriate, the guidance can be modified to meet concerns raised.

This guidance note covers the following topics:

- 1 e-mail;
- 2 practising law on the internet;
- 3 publicity; and
- 4 online referral and introduction schemes.

## General

Members are reminded that when considering these guidelines, they must have reference to the current editions of the Legal Profession Act (Cap 161) ('the Act'), the Legal Profession (Professional Conduct) Rules, the Legal Profession (Publicity) Rules ('Publicity Rules'), Legal Profession (Solicitors' Accounts) Rules and the Practice Directions of the Council.

Members are also advised to be aware of the laws against software piracy and not use, in their practices, any unlicensed software.

All references to a law firm include a lawyer and a law corporation.

## E-mail

### Adoption of an e-mail policy for the law firm

Electronic mail is a communications system. It is particularly suitable for short communications and for the sending of documents that can be printed by the recipient.

Members must comply with any relevant directions of the Council about correspondence with regard to the use of e-mail. In particular, e-mails should not contain particulars that a law firm will not include in its correspondence. E-mails should identify the sender and his designation in the law firm.

The Council will also advise law firms to draft their own office e-mail policy having regard to the Professional Conduct Rules and this guidance note.

Under r 8 of the Professional Conduct Rules, a lawyer must 'exercise proper supervision over his employees and other staff.'

The adopted e-mail policy by a law firm should ensure the proper supervision of all staff over the use of e-mail in their practice.

It is recommended that law firms ensure that if e-mail is used as a communication system that the system is checked regularly for incoming e-mail and e-mails are distributed promptly to recipients. There should be an automated out-of-office response used when a lawyer or critical staff is away from the office for a day or more.

It is also recommended that a record of all outgoing and incoming e-mails sent under a client's file be kept whether as a paper record on file or stored by electronic means.

Finally, it is also recommended that, as a matter of courtesy to a fellow lawyer, important or urgent messages, notices or documents are not sent by e-mail without prior notification of their dispatch.

The law firm should consider policies for the sending and receiving of private e-mail, giving legal advice or opinions via e-mail, sending privileged documents via e-mail and adequate supervision for incoming and outgoing e-mail.

As e-mails can transmit viruses to or from a law firm's computer system, every law firm should install and maintain anti-virus software to ward against such risks.

### Client confidentiality and e-mail

Under r 24 of the Professional Conduct Rules, a lawyer must not disclose any confidential information received as a result of the retainer or contents of documents recording clients' instructions. Therefore, care must be taken to ensure e-mail containing confidential information is protected.

A law firm must be aware of the risks of using e-mail. It is an insecure medium that may be subject to possible interception by hacking or inadvertent disclosure.

A law firm should consider and take appropriate measures to preserve confidentiality. Possible means of protecting confidentiality include the use of encrypted e-mail or secured lines.

If the law firm cannot ensure or has doubts as to the secured nature of communication via e-mail, then the law firm should obtain the prior informed consent of his client on the use of e-mail as a means of communication.

Confidential warnings should be added to all e-mails sent by the law firm in the course of its practice to warn unintended recipients of the confidential nature of the e-mail message. It is recommended that the warning be attached to all mail sent so that the law firm would not have the burden of considering whether to include the warning in each e-mail sent.

A suggested example of an automated confidential warning modified from the Law Society of England's e-mail guidance note is as follows:

Information in this message is confidential and may be legally privileged. It is intended solely for the person to whom it is addressed. If you are not the intended recipient, please notify the sender, and please delete the message and any other record of it from your system immediately.

#### *Giving professional undertakings via e-mail*

When a law firm accepts a professional undertaking via e-mail, it may not be apparent on the face of the e-mail if the purported sender sent the undertaking.

A law firm will be advised to exercise caution when accepting a professional undertaking via e-mail and to take steps to verify that the purported sender had in fact sent the undertaking given via e-mail.

#### **Practising Law on the Internet**

##### *Virtual law firm*

The current Act (2000 Ed) and the rules made thereunder do not prohibit a lawyer practising law via the internet through the law firm's own website.

The Act in s 25(1)(a), however, requires every practising lawyer to declare the 'principal and any other address or addresses at which he practises in Singapore'. This information is recorded under s 27(1) of the Act in the annual register of practitioners maintained by the Registrar of the Supreme Court and the Council of the Law Society.

Given the terms of s 25 of the Act, law firms must have a place of business at which clients may meet their lawyers and where mail and telephone calls are received. Therefore, a 'virtual office' where the business of a law firm is conducted entirely online is not allowed.

##### *Client identification on the internet*

The Professional Conduct Rules do not require you to meet your clients 'face to face'. However, if a law firm wishes to give online advice, there is a possibility that the law firm may not meet its client. It is advisable and, at times, may be essential that a law firm takes necessary steps to verify their client's identity and their legal capacity.

In the case of taking instructions from an agent, there is an obligation under r 23 of the Professional Conduct Rules for the lawyer to ensure there is evidence of the agent's authority to act on behalf of the client. In the absence of any evidence, the rule requires the lawyer must 'within a reasonable time thereof, confirm the instructions with the client'.

##### *Client care*

The requirements of the Professional Conduct Rules on the standards of adequate professional service apply when lawyers conduct their clients' businesses on the internet. Accordingly the clients must receive adequate information on costs, progress of the case, e-mails must, with reasonable dispatch, be responded to and proposals of settlement and positions taken by other parties explained in a clear manner.

#### **Payment of Legal Fees by Credit Card**

The Council has approved the use of credit cards for the payment of a law firm's bill of costs from 1 October 2001 only if the law

firm complies with the Practice Direction of the Council. The law firm must ensure the agreement, between the Bank and the law firm, contains terms to preserve clients' confidentiality and that payment of service charge is not deducted from the law firm's bill. This is necessary, as there can be no sharing of fees with an unauthorised person. Please refer to the Council's Practice Direction on the use of credit cards.

#### **Publicity and s 33 of the Act**

Under the Publicity Rules, publicity conducted through the internet is subject to the rules that govern publicity in Singapore.

A law firm's website can be used as an advertising tool or to provide generic legal information that can be accessed by the general public or clients of the law firm. If legal advice is given, a law firm must realise that it could give rise to attendant obligations and risks in law. A law firm may wish to, therefore, consider appropriate disclaimers.

Given the further liberalisation of the Publicity Rules, with the amendment of r 9 on 1 September 2001, a law firm's website can be hyperlinked to a client's or third party's website, subject to the general principles described in rr 6 and 7 of the Publicity Rules.

If legal advice is given or a document is prepared and dispatched through a third party, the law firm must be aware of the terms of s 33 of the Act. Authorised persons, as defined under the Act, can provide the legal services described in s 33; for example, if your client requested you to prepare a letter of demand threatening legal proceedings for a debt owed and requested the same be dispatched to them via e-mail to enable them to forward the same to the debtor via e-mail, you should refuse to do so.

#### **Online Referral and Introduction Schemes**

Under the Act, it is an offence if a lawyer 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 or any other advocate and solicitor' (s 83(2)(c) of the Act) or 'directly or indirectly, procured the employment of himself or any person to whom any remuneration for obtaining such employment had been given by him or agreed or promised to be so given' (s 83(2)(d) of the Act).

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

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 firm would be improper given the terms of s 83(2)(b) and/or s 83(2)(h) of the Act.

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

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