



# **THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES**

## **RIGHTS OF AUDIENCE**

### **CONDUCT RULES**

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## **1. Introduction**

For the purpose of maintaining the proper and efficient administration of justice, these Rules set out the standards to be observed by all members of The Chartered Institute of Legal Executives (CILEx) when exercising rights of audience. These obligations are in addition to those imposed by law or by other professional rules of CILEx or The Law Society and where necessary take precedence over any instruction given to CILEx Advocates by their employers.

## **2. Definitions**

In these Rules, except where otherwise indicated:

"the Act" means the Legal Services Act 2007 and, where the context permits, includes any orders or regulations made under that Act

"advocacy services" means the exercise of a right of audience as defined in Section 12 of the Act

"authorised person" means an authorised person as defined in Section 18 of the Act

"client" means the employer's lay client and also (where there is a professional intermediary) the employer's professional client; where the context permits, the expression also includes a prospective client

"court" means:

- (a) the High Court and any County Court, Crown Court, Magistrates' Court or Coroner's Court; and
- (b) any tribunal which is under the direct supervision of the Council on Tribunals.

"Chartered Legal Executive Advocate" means any Chartered Legal Executive exercising a right of audience pursuant to a Rights of Audience Certificate issued by the Institute

"the Institute" means The Chartered Institute of Legal Executives

"The Law Society" means The Law Society of England and Wales

"right of audience" means a right of audience as defined in Section 12 of the Act

"Rights of Audience Certificate" means any of the following certificates issued by the Institute as an authorised body under Section 20 of the Act:

- (a) A Civil Proceedings Certificate
- (b) A Family Proceedings Certificate
- (c) A Criminal Proceedings Certificate

### **Fundamental Duties**

3. Upon accepting instructions to act in the capacity of a Chartered Legal Executive Advocate, the Chartered Legal Executive Advocate must at the earliest opportunity, disclose that status to the client and all other interested parties.
4. CILEx Advocates have a primary and an overriding duty to the court to ensure in the public interest, that the proper and efficient administration of justice is achieved. They must assist the court in the administration of justice, and must not deceive the court or knowingly or recklessly mislead it.
5. CILEx Advocates must not engage in conduct, whether in the exercise of their rights of audience or otherwise, which is:
  - (a) dishonest or otherwise discreditable to an advocate;
  - (b) prejudicial to the administration of justice; or
  - (c) likely to diminish public confidence in the legal profession or the administration of justice, or otherwise bring the legal profession into disrepute.
6. CILEx Advocates must promote and fearlessly protect clients' best interests by all proper and lawful means and without regard to their own or their employer's interests or to any consequences to themselves, their employer, or any other person (including professional clients (see below), fellow advocates or other members of the legal profession).
7. As between a lay client and a professional client, CILEx Advocates owe their primary duty to the lay client, and must not permit a professional

- client to limit their discretion in deciding how the interests of the lay client may best be served.
8. CILEx Advocates must act in good faith towards clients at all times.
  9. CILEx Advocates must not discriminate against, nor treat any person (including a client or another advocate) less favourably because of their race, colour, ethnic or national origin, sex, sexual orientation, religion or political persuasion than they would treat others.
  10. When accepting instructions in the course of their employment to act as an advocate, and from time to time as the matter proceeds, CILEx Advocates must consider whether the client's best interests would be served by another advocate providing the advocacy services. In making this assessment, CILEx Advocates should consider in consultation with their employer or another solicitor employed by their employer:
    - (a) the circumstances of the case, including its gravity and complexity, and the likely costs;
    - (b) the nature of their employer's practice;
    - (c) their own ability and experience; and
    - (d) their own or their employer's relationship with the client.
  11. CILEx Advocates must not decline to accept instructions in the course of their employment to act as an advocate:
    - (a) on grounds relating to the race, colour, ethnic or national origin, sex, sexual orientation, religion or political persuasion of the client;
    - (b) on the grounds that the nature of the case is objectionable to them or to any section of the public;
    - (c) on the grounds that the conduct, opinions or beliefs of the client are unacceptable to them or to any section of the public;
    - (d) on any ground relating to the source of any financial support which may properly be given to the client for the proceedings in question (for example, on the grounds that such support will be provided through the Community Legal Service or the Criminal Defence Service under the Access to Justice Act 1999).

12. CILEx Advocates are individually and personally responsible for their own conduct in the exercise of their rights of audience and must exercise their own personal judgement in all their activities as an advocate.

### **The Decision to Appear**

13. CILEx Advocates must not accept instructions either from clients or from their employer which will require them to exercise rights of audience for which they do not hold a current and appropriate Rights of Audience Certificate.
14. CILEx Advocates must not accept instructions in the course of their employment to exercise a right of audience if to do so would cause them or their employer to be professionally embarrassed. For this purpose, professional embarrassment occurs:
  - (a) if they lack sufficient experience or competence to handle the matter;
  - (b) if, having regard to their other professional commitments, they will be unable to do (or will not have adequate time and opportunity to prepare for) what they are required to do;
  - (c) if the instructions seek to limit the ordinary authority or discretion of an advocate in the conduct of proceedings in court, or to impose on an advocate an obligation to act otherwise than in accordance with these Rules;
  - (d) if the matter is one in which -
    - (i) they have reason to believe that they are likely to be witnesses; or
    - (ii) it will be difficult for them to maintain professional independence, or where the administration of justice might be or appear to be prejudiced because of any connection of the advocate (or of the advocate's employer, colleague or other associate) with the client, or with the court or any member of it, or for any other reason;
  - (e) if there is or appears to be some conflict, or a significant risk of some conflict, either between the interests of the advocate (or of the advocate's employer, colleague or other associate) and some other person, or the interests of any clients; or

- (f) if the matter is one in which there is a risk of a breach of confidence entrusted to them (or to their employer, colleague or other associate) by another client, or where the knowledge which they possess of the affairs of another client would give an undue advantage to the new client.
15. CILEx Advocates, whether they are instructed on their own or with another authorised advocate, must in each case consider whether the best interests of the client are served by them being instructed or continuing to be instructed. In making this assessment, the advocate must consult with their employer or a solicitor employed by their employer and have regard to:
- (a) the proper and efficient administration of justice;
  - (b) the circumstances of the case, including its gravity and complexity, and the likely costs;
  - (c) the nature of their employer's practice;
  - (d) their ability, experience and seniority (including in particular the need or desirability of having studied appropriate specialist papers in the Institute's Part II Membership examination syllabus); and
  - (e) their relationship with the client.
16. If CILEx Advocates consider that the best interests of the client would not be served by their continuing to represent the client, they must immediately advise their employer or the solicitor by whom they are instructed and the lay client accordingly.
17. CILEx Advocates must have or have ready access to library, research and information facilities which are adequate having regard to the nature of the rights of audience they propose to exercise.

### **Ceasing to Act as an Advocate**

18. CILEx Advocates must consult with their employer or the solicitor by whom they are instructed:
- (a) if continuing to act would cause them or their employer to be professionally embarrassed within the meaning of rule 14 (provided that if the professional embarrassment arises only because it

appears to them that they are likely to be witnesses on a material question of fact they may retire or withdraw only if they can do so without jeopardising the client's interests);

- (b) if, instructions having been accepted on behalf of more than one client, and there is or appears to be:
  - (i) a conflict, or a significant risk of a conflict, between the interests of any one or more of them; or
  - (ii) a risk of a breach of confidence; and
  - (iii) the clients do not all consent to them continuing to act;
- (c) if in any publicly funded case (whether civil or criminal) it has become apparent to them that:
  - (i) funding has been wrongly obtained by false or inaccurate information, and action to remedy the situation is not immediately taken by the client; or
  - (ii) the certificate has been discharged and their employer or the instructing solicitor has not received instructions direct from that formerly legally funded client;
- (d) if the circumstances set out at rules C30 and C31 of the Funding Code arise at a time when it is impracticable for the Legal Services Commission or a Committee appointed by the Commission for the purposes of these rules to meet in time to prevent an abuse of the Fund;
- (e) if the client refuses to authorise them to make some disclosure to the court which their duty to the court requires them to make;
- (f) if, having become aware during the course of a case of the existence of a document which should have (but has not) been disclosed on discovery, the client fails forthwith to disclose it or to permit disclosure of the same, or
- (g) if -
  - (i) having improperly come into possession of a document belonging to another party;

- (ii) having read it before they realised that it ought to have been returned unread to the person entitled to possession of it; and
  - (iii) they would be professionally embarrassed in the discharge of their duties by their knowledge of the contents of the document.
- 19. CILEx Advocates must withdraw from a case where (after consultation with their employer or the instructing qualified litigator) they are satisfied that:
  - (a) the instructions have been withdrawn or their employer's retainer terminated;
  - (b) their professional conduct, or that of their employer or a colleague, is being impugned; or
  - (c) there is some other substantial reason for doing so.
- 20. Having consulted with their employer or the instructing solicitor, CILEx Advocates must not:
  - (a) cease to act as an advocate unless their reasons for doing so have first been explained to the client;
  - (b) pass on the instructions to another advocate without the consent of the client.

### **Conduct of Work**

- 21. In consultation with their employer or the instructing solicitor, CILEx Advocates must take all reasonable steps to ensure that:
  - (a) the advocacy services for which they are responsible, are administered competently and efficiently, and are properly staffed having regard to the nature of the matters being handled;
  - (b) proper records are kept;
  - (c) all colleagues for whom they are responsible, or who are engaged in matters in respect of which the advocate will exercise a right of audience -



- (i) carry out their duties in a correct and efficient manner; and
- (ii) are made clearly aware of such provisions of these Rules and of The Law Society's Code for Advocacy as may affect or be relevant to the performance of their duties.

22. In exercising their rights of audience, CILEx Advocates must:

- (a) in all their professional activities -
  - (i) be courteous and act promptly, conscientiously, diligently and with reasonable competence; and
  - (ii) take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time, and to ensure that professional engagements are fulfilled;
- (b) not undertake any task which -
  - (i) they know or ought to know they are not competent to handle;
  - (ii) they do not have adequate time and opportunity to prepare for or perform; or
  - (iii) they cannot discharge within a reasonable time, having regard to the pressure of other work;
- (c) promptly read all instructions and papers delivered to them;
- (d) have regard to any relevant written standards adopted by the Institute or by The Law Society for the conduct of professional work;
- (e) inform their employer or the instructing solicitor and, if appropriate, the client forthwith if -
  - (i) it becomes apparent that they will not be able to do the work within a reasonable time after receiving the instructions; or

- (ii) there is an appreciable risk that they may not be able to fulfil the instructions or any other professional engagement which they have accepted.
- 23. Whether or not CILEx Advocates continue to exercise rights of audience in respect of any particular matter, they:
  - (a) must preserve the confidentiality of the client's affairs;
  - (b) must not (without the client's prior consent or as permitted by law) lend or reveal the contents of the instructions or any papers;
  - (c) must not communicate to any third person information which has been entrusted to them in confidence (other than to their employer or the instructing solicitor in the employ of their employer);
  - (d) must not use such information to their own or another client's advantage.
- 24. CILEx Advocates must not offer their personal views or opinions to or in any news or current affairs media on the facts or issues arising in any current client matter.
- 25. CILEx Advocates must not, when interviewing a witness out of court:
  - (a) place such a witness under any pressure to provide anything other than a truthful account of his or her evidence; or
  - (b) rehearse, practise or coach that witness in relation to their evidence or the way in which he or she should give it.
- 26. CILEx Advocates must not devise facts which will assist in advancing the client's case, and must not draft any originating process, pleading, affidavit, witness statement or notice of appeal containing:
  - (a) any statement of fact or contention (as the case may be) which is not supported by the client or by their instructions;
  - (b) any contention which they do not consider to be properly arguable;
  - (c) any allegation of fraud, unless they have clear instructions to make such allegation and have before them reasonably credible material which, as it stands, establishes a prima facie case of fraud; or

- (d) any statement of fact other than the evidence which, according to their instructions, the advocate reasonably believes the witness would in substance give if the evidence contained in any affidavit or witness statement was being given *viva voce*;

provided that nothing in this rule shall prevent an CILEx Advocate drafting a pleading, affidavit or witness statement which contains specific facts, matters or contentions subject to the confirmation of their accuracy by the client.

27. When exercising rights of audience, CILEx Advocates:

- (a) are personally responsible for the conduct and presentation of the case, and must exercise personal judgement on the substance and purpose of statements made and questions asked;
- (b) must not assert a personal opinion on the facts or the law unless invited to do so by the court or when appearing before a tribunal where it is their duty to do so;
- (c) must –
  - (i) ensure that the court is informed of all relevant decisions and legislative provisions of which they are aware, whether the effect is favourable or unfavourable towards the contention for which they argue; and
  - (ii) bring any procedural irregularity to the court's attention during the hearing, and not reserve it to be raised on appeal;
- (d) must not adduce evidence obtained otherwise than from or through the client, or devise facts which will assist in advancing the client's case;
- (e) must not make statements or ask questions which are merely scandalous or are intended or calculated only to vilify, insult or annoy either a witness or some other person;
- (f) must, if possible, avoid naming in open court third parties whose character would thereby be impugned;
- (g) must not, by assertion in a speech, impugn a witness whom they have had an opportunity to cross-examine, unless in cross-

examination they have given the witness an opportunity to answer the allegation; and

- (h) must not -
  - (i) suggest that a witness or other person is guilty of crime, fraud or misconduct; or
  - (ii) attribute to another person the crime or conduct of which the client is accused;

unless such allegations go to a matter in issue (including the credibility of a witness) which are material to the client's case, and which appear to them to be supported by reasonable grounds.