

ETHICS IN LITIGATION: ISSUES RAISED BY THE LEGAL PROFESSION (PROFESSIONAL CONDUCT) RULES, 1998

This article addresses the impact of the Legal Profession (Professional Conduct) Rules, 1998 in the context of ethics in litigation. The approach is to consider the scheme and application of these Rules,¹ to examine the ethical norms applicable to the general conduct of proceedings in court,² and, more specifically and substantially, to analyse the extent to which the Rules affect the process of cross-examination.³

1. SCHEME AND APPLICATION OF THE LEGAL PROFESSION (PROFESSIONAL CONDUCT) RULES, 1998

THE Legal Profession (Professional Conduct) Rules (the LP (PC) Rules) came into operation on 1st June 1998.⁴ They apply 'to every advocate and solicitor who has in force a practising certificate'.⁵ These Rules consist of six parts concerning, respectively, 'Preliminary', 'Practice', 'Relationship and Dealings with Clients', 'Conduct of Proceedings', 'Defending Accused Persons', and 'Conduct of Criminal Prosecutions by Practising Solicitor'. This article focuses on 'Part IV: Conduct of Proceedings' and certain other rules in the LP (PC) Rules to the extent that they are linked to this topic. The LP (PC) Rules apply to interlocutory processes as well as the trial or hearing unless by reason of their specific nature only a particular process is addressed.⁶ The rules are facets of the duties which an advocate and solicitor owes to the court, his client, the opposing solicitor, other persons involved in the court process and the public.

Prior to the advent of the LP (PC) Rules, the Practice Directions and Rulings, 1989 (PDR) (including guidelines issued by the Law Society) governed ethical practice in general.⁷ It is provided in the LP (PC) Rules that they prevail over the PDR 'to the extent of any inconsistency'.⁸ Apart from the PDR, the advocate and solicitor has always been required to act within the ethical parameters mandated by his position as an 'officer of the court'.⁹ The ramifications of the terminology 'officer of the court'

1. See below, "I. SCHEME AND APPLICATION OF THE LEGAL PROFESSION (PROFESSIONAL CONDUCT) RULES, 1998".

2. See below, "II. GENERAL CONDUCT OF PROCEEDINGS IN COURT".

3. See below, "III. CROSS-EXAMINATION".

4. LP (PC) Rules, GN S 156/98, r 1.

5. *Ibid.*, r 2.

6. See, for example, r 70 of the LP (PC) Rules, which concerns the requirement of notice before a judgment in default is entered.

7. The scope of the PDR is briefly considered below.

8. *Ibid.*, r 2(3). For example, compare r 70 of the LP (PC) Rules with Para 33(a) and (b) of the PDR. The notice period for the entry of a judgment in default is now 48 hours rather than 24 hours (the former position under the PDR).

9. See s 82(1) of the Legal Profession Act (Cap 161, 1997 Rev ed).

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