

# **THE LAW SOCIETY OF SCOTLAND**

## **SOLICITORS (SCOTLAND) ORDER OF PRECEDENCE, INSTRUCTIONS AND REPRESENTATION RULES 1992**

**RULES MADE BY THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND  
AND APPROVED BY THE LORD PRESIDENT OF THE COURT OF  
SESSION PURSUANT TO SECTION 25A OF THE SOLICITORS  
(SCOTLAND) ACT 1980**

## **Title and Commencement**

- 1 These Rules may be cited as the Solicitors (Scotland) Order of Precedence, Instructions and Representation Rules 1992 and shall come into force on 31st October, 1992.

## **Interpretation**

- 2(1) In these Rules, unless the context otherwise requires:—

“the Society” means the Law Society of Scotland;

“the Council” means the Council of the Society;

“the Secretary” means the Secretary of the Society and includes any person authorised by the Council to act on behalf of the Secretary for the purposes of these Rules;

“Courts” means the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary and the expression “Court” shall be construed accordingly;

“extended rights” means a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council or, as the case may be, the High Court of Justiciary;

“instructions” means for the purpose of Rule 5—

(a) where a solicitor has on behalf of his firm arranged with another firm for the representation of his client before a Court by a solicitor-advocate, the agreement for representation between the two firms; and

(b) where a client has arranged on his own behalf with a firm of solicitors his representation before a Court by a solicitor-advocate, the agreement for representation between him and the firm.

“a solicitor-advocate” means a solicitor who has been granted extended rights;

- (2) Any reference in these Rules to a firm of solicitors shall be deemed to include a solicitor practising solely on his own account.

- (3) The provisions of the Interpretation Act 1978 shall apply to these Regulations as they apply to an Act of Parliament.

## **Order of Precedence of Court**

- 3 Where a solicitor-advocate accepts instructions to appear in a Court, those instructions shall:—

- (1) take precedence before any other professional obligation;

- (2) themselves be in the following order of precedence—

(a) where the solicitor-advocate has extended rights in the civil courts only—

House of Lords

Inner House of the Court of Session

Outer House of the Court of Session

(b) where the solicitor-advocate has extended rights in the High Court of Justiciary only—

High Court of Justiciary exercising its appellate jurisdiction

High Court of Justiciary

(c) where the solicitor-advocate has extended rights in all Courts—

House of Lords

High Court of Justiciary exercising its appellate jurisdiction

High Court of Justiciary

Inner House of the Court of Session

Outer House of the Court of Session

Subject to the above order of precedence instructions shall take priority according to the date, or, if on the same date, the time when they are delivered, or, if orally transmitted, when they have been accepted by the solicitor-advocate.

## **Priority of Instructions**

- 4 Notwithstanding the general rule stated in Rule 3 the solicitor-advocate shall have regard to the following considerations in determining which instructions are to be accepted:—

(a) The seriousness, importance or value of the case;

(b) In the case of an appeal, that the solicitor-advocate has appeared for the client in the lower court;

- (c) in the case of an adjourned diet or continued hearing, that the solicitor-advocate appeared at the previous diet or hearing;
  - (d) in the case of a debate on the pleadings, that the solicitor-advocate was responsible for drafting or revising the pleadings, particularly where a difficult or delicate point of law is involved to which the solicitor-advocate has already devoted a substantial amount of time and research;
  - (e) in the case of a proof or trial, that the solicitor-advocate was involved to a substantial extent in drafting the pleadings, debating the pleadings, consulting with the client or advising on the pre-trial or pre-proof preparations;
  - (f) that the client has, for the purposes of the case, come to rely on the advice and guidance of the solicitor-advocate to an unusual extent;
  - (g) that because of the nature or circumstances of the case, or because of the limited time available, it would be unusually difficult for either counsel or another solicitor-advocate adequately to prepare for appearance;
  - (h) that a suitable fee has been tendered with instructions or conversely that the instructions were given on the basis of an agreement with the client that no fee or only a modified fee will be paid.
- If in doubt as to what his decision should be, the solicitor-advocate should consult the Secretary.

### Cancellation of Instructions

- 5(1) Acceptance of instructions involves a professional commitment on which the client and the court are entitled to rely. A solicitor-advocate is not entitled without good cause to cancel instructions once accepted so as to relieve himself of that professional commitment.
- (2) In considering whether, and if so when, to cancel instructions after having accepted them, a solicitor-advocate should have in mind the following considerations:—
  - (a) so long as instructions to do so have been accepted and not cancelled a solicitor-advocate owes a duty to the client and the court to attend in court when the case is called;
  - (b) a solicitor-advocate owes a duty to the client and the court to ensure, as far as he can, that the case is properly prepared and properly presented;
  - (c) a solicitor-advocate owes a duty to the client and the court to remain in attendance until the trial or hearing has been completed;
  - (d) a solicitor-advocate owes a duty to his fellow solicitor-advocates to avoid placing them unnecessarily in a position where they have to take over his cases at short notice and face the client and the court without adequate time for preparation.

It may also be appropriate to take into account the considerations mentioned in Rule 4 above.

- (3) Where a solicitor-advocate has been instructed by a solicitor and has:—
  - (a) an actual clash of commitments he shall, subject to rule 6(1), without delay intimate the cancellation of the instructions with which he cannot comply and return the relevant papers; or
  - (b) a foreseeable clash of commitments he shall, subject to rule 6(1), immediately inform the instructing solicitor of the situation and comply with any subsequent instructions as to alternative arrangements in the event of his being unable to appear.
- (4) Where a solicitor-advocate has been instructed directly by a client and has:—
  - (a) an actual clash of commitments; or
  - (b) a foreseeable clash of commitments;
 he shall, subject to rule 6(1) immediately inform the client of the situation, and comply with any subsequent instructions as to alternative arrangements in the event of his being unable to appear.
- (5) In the case of proceedings before the High Court of Justiciary on appeal, there is a particular obligation on the solicitor-advocate who represented the appellant at the trial and has recommended an appeal to present that appeal.

### Securing Representation

- 6(1) Where, a solicitor or a solicitor-advocate is unable, in a difficult or urgent situation, to secure representation for a person wishing to be represented by a solicitor-advocate before any court he shall inform the Secretary of the situation.

(2) Where the Secretary is informed under paragraph (1) he shall:—

- (a) nominate and appoint an appropriate solicitor-advocate to represent the client; or if this is not reasonably practicable,
- (b) consult the Dean of the Faculty of Advocates.

7 These rules do not apply to an employed solicitor-advocate whose contract of employment prevents him from acting for persons other than his employer.

# FORM OF UNDERTAKING

*Rule*

1. Name and address of instructed firm:.....  
.....
  
2. Name and address of instructing party (if solicitor, insert firm name and reference)  
.....  
.....
  
3. Case name and number: .....
  
4. Name of solicitor-advocate:.....
  
5. I/We\* the instructing party have arranged my/our client's\* representation in the above case with the instructed firm by the above solicitor-advocate. It has been explained that the above solicitor-advocate may cancel the arrangement to appear if he receives other instructions which have priority. If he receives such instructions in a difficult or urgent situation, he may not be able to consult me/us\* as to an alternative representative.
  
6. I/We\*, the instructing party, authorize the instructed firm, in the above situation, to contact the Law Society of Scotland in order that they may on my/our\* behalf make alternative arrangements for representation by any other solicitor-advocate or if there is no such person who can appear, by counsel; and I/We\* undertake to pay the charges due for such representation.

.....(Signature of instructing party)

.....(Date)

..... (Signature of witness) ..... (Signature of witness)

.....(Occupation) .....(Occupation)

..... (Address) ..... (Address)

.....

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\*delete as appropriate