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Multidisciplinary Practicers

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Joint Response to the Questionnaire from the
Commission on Multi-Disciplinary Partnership of the
Federation of European Bars - February 1996

The responses given below to the Questionnaire relate to the codes of practice regulating the profession of a Solicitor of the Supreme Court of the Judicature of England and Wales. The rules relating to other branches of the legal profession will be different.

1. Name of a Practice:

It is possible in certain circumstances to keep in the name of a solicitor's practice the name of a former retired or deceased partner. The rules are discussed below.

(1) **General**

The rule is set out in the Solicitors' Practice Rules 1990, Rule 11 (1).

"The name of a firm of solicitors shall consist only of the name or names of one or more solicitors, being present or former principals together with, if desired, other conventional references to the firm and to such persons; or a firm name in use on 28 February 1967; or one approved in writing by the Council of the Law Society".

"Conventional References" would mean terms such as "& Co." or "& Partners". It would not be proper for a sole practitioner to use terms indicating "& Partners" unless the practice did formerly have more than one principal. The rule will apply to the practice name used by a sole practitioner.

(2) **Practice Overseas**

Similar rules apply to the name of a practice operated by English Solicitors outside England and Wales.

Equally, a similar standard is applied to any other legal practice outside this jurisdiction in which English Solicitors form a majority of the partners or own a controlling majority of the shares. In the latter case, the name of an owner of shares or a director shall be treated as the name of a principal (Solicitors' Overseas Practice Rules 1990, Rule 10).

(3) **Incorporated Practice**

The rules governing the name of an incorporated practice are set out in the Solicitors' Incorporated Practice Rules 1988, Rule 22. (See also 2 below.) Such a practice must be recognised by the Law Society within the terms of the rules and the practice name may consist of

- (a) the name or names of one or more solicitors, registered foreign lawyers or recognised bodies who are members or former members of the practice;
- (b) the name or part of the name of any predecessor firm or recognised body in practice at the time of the formation of the incorporated practice;
- (c) other conventional references to any such person, firm or body.

(4) **Headed Stationery**

The names of partners must be shown on the headed stationery of a solicitor where the number of partners is under 20. Where it is over 20, it is optional but, if not included on the stationery, the address of the principal place of business together with a statement that a list of the partners may be inspected at that address must be included. (Business Names Act 1985).

Insofar as the names of non-partners are shown on the headed stationery, their precise status must be clearly stated. (Solicitors' Publicity Code 1990, Rule 7). It is not usual practice to show the names of anyone other than partners in the firm although the recent practice of having non-solicitor directors of finance or practice managers has meant that such persons have been included on headed stationery with a designation of their status.

2. **Incorporated Practice:**

It is now possible for a solicitor's practice to be incorporated. The relevant rules are contained in the Solicitors' Incorporated Practice Rules 1988.

Any incorporated body that wishes to carry on the practice of solicitors must be recognised by the Council of the Law Society and is known as a "recognised body".

A recognised body must at all times be managed and controlled by solicitors or other recognised bodies or by

such persons together with one or more registered foreign lawyers (see 5 below). Equally, a recognised body can only have as a director a person who is a solicitor or a registered foreign lawyer and at least one of the directors must be a solicitor.

The shares may not be held by any person who is not a solicitor, a registered foreign lawyer or a recognised body.

It follows from the above that there is no requirement that a solicitor or registered foreign lawyer shall practice as such within the incorporated practice but one would not expect it to be otherwise. It is not possible for any non-solicitor to be a shareholder and it is specifically provided in the rules that on the death of a shareholder, those shares must be transferred to another solicitor within a period of 12 months.

3. **Premises:**

There are no particular rules relating to premises as such. However, Rule 1 of the Solicitors' Practice Rules 1990 prohibits a solicitor from doing anything which inter alia compromises or impairs the solicitor's independence or integrity. Equally, the requirement that client matters be kept confidential and the rules relating to the supervision and management of a solicitor's office have as their indirect effect the requirement that a solicitor may not practice in any way, including the arrangement of premises, which will compromise these obligations.

It is foreseen in the rules that individual solicitors may share office services but even in this case there is a requirement that such arrangements should not compromise the general obligations for the keeping of client confidentiality.

4. See 3 above.

5. **Multi-Disciplinary Practice:**

A solicitor may practice as a solicitor only in partnership with other solicitors or registered foreign lawyers (see below). He is not entitled to share any fees with a person other than a solicitor or registered foreign lawyer. This prohibition will extend to members of the other branches of the legal profession, particularly barristers. As a matter of practice, most Notaries Public will also be solicitors and such dual qualification would overcome the prohibition.

As stated above, solicitors are entitled to practice with registered foreign lawyers under the terms of the Multi-National Legal Practice Rules 1991. Registered foreign lawyers are foreign lawyers registered by the Law Society under Section 89 of Schedule 14 (2), The Courts and Legal

Services Act 1990. A "foreign lawyer" is a person who is not an English solicitor or barrister but who is a member and entitled to practice as such, of a legal professional regulated within a jurisdiction outside England and Wales. A public register is maintained of registered foreign lawyers. The status of registered foreign lawyer does not confer any rights of audience or right to conduct litigation in the Courts of England and Wales or any right to undertake activities reserved to solicitors by the Solicitors Act 1974.

6. See 5 above.

7. **Legal Privilege, Conflict of Interest and Independence:**

The professional rules relating to legal privilege, conflict of interest and the independence of the lawyer are contained within the various codes of practice which are regulated by the Law Society under the terms of the Solicitors Act 1974. Some of these codes are referred to above but there are additional codes as well. In principle, any solicitor in practice, whether in private practice or as an employed solicitor, is bound by the General Codes of Conduct and breaches may result in disciplinary action being taken against the individual solicitor by the Law Society, Solicitors Complaints Bureau, or by the Solicitors' Disciplinary Tribunal. There is power to exact a number of penalties against solicitors found to be in breach of the rules ranging from reprimand to suspensions or removal of a practising certificate.

Legal privilege derives from statute. It is to be noted that professional privilege in this jurisdiction attaches to the affairs of the client and a solicitor must observe the general rules as to confidentiality of a client's affairs unless ordered to disclose them by a Court or the communications between client and solicitor fall into one of the few areas not protected by legal privilege.

8. **Employed Solicitors:**

It is possible for a solicitor to practice whilst in the employment of another solicitor or of a non-solicitor. A solicitor employed within a solicitor's practice will be subject to the same rules of conduct as would a partner in that firm but the responsibility for his work would usually be taken by the firm and it would be unusual for any claims in negligence to be made against the individual rather than the firm. Having said that, there have been a few cases where firms have brought claims against an employed solicitor when a claim in negligence has been brought against the firm.

A solicitor employed other than in a solicitor's practice or multi-national practice will be subject to the same

rules of practice as would any other solicitor and, in addition, by the Employed Solicitors Code 1990 under which he must consider carefully whether he will be able to maintain the general requirements of the codes of practice should he be asked to advise any third party who might be a client of his employer. In particular, he must consider whether his employer can indemnify the third party in respect of claims for which the employer may be vicariously liable and whether he can maintain his obligations of confidentiality. There are particular rules for employees of insurers, associations, local and central government, charities and other bodies. Insofar as a solicitor has limited rights of audience in the Courts, a solicitor employed other than in a solicitor's practice or multi-national practice will not be entitled to exercise any such limited rights of audience.

9. It is implicit in the answer to 8 that an individual solicitor is subject to all the same rules of professional conduct as would any other solicitor who practices on his own account or in a firm as a partner. The disciplinary rules will equally apply.

10. **Control of the Profession:**

The profession of a Solicitor of the Supreme Court of the Judicature of England and Wales is regulated by the Law Society within the terms of the Solicitors Act 1974. Disciplinary matters are controlled by the Law Society, the Solicitors' Complaints Bureau and the Solicitors' Disciplinary Tribunal.

The Solicitors Complaints Bureau is an independent body established by the Law Society to handle complaints and its powers are derived from the Law Society's Charter and from the Solicitors Act 1974 as amended. The Solicitors Complaints Bureau cannot give legal advice nor can it make a finding of negligence but it will investigate other allegations of poor service.

The Solicitors Disciplinary Tribunal is wholly independent of the Law Society and is established under the Solicitors Act 1974. Its members are appointed by the head of the Court of Appeal, Civil Division, the Master of the Rolls, and is made up of solicitors and lay persons who are neither solicitors nor barristers.

The General Rules of Practice have been extended to cover registered foreign lawyers and multi-national practices and registered foreign lawyers are also subject to the jurisdiction of the Solicitors Disciplinary Tribunal.

There are no particular practice rules to deal with any conflict that may arise between the disciplinary aspects of solicitors' practice rules as extended to registered foreign lawyers and those rules to which the latter may be

subject imposed by their own professional body outside the jurisdiction.