

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 6.1.1

[Formerly GN 2013, para 1; Council's Guidance Note 1 of 2001]

ETHICS AND INFORMATION TECHNOLOGY

1. This Guidance Note aims to provide members with both ethical and practical guidance on the use of information technology ('IT') in their practice.

A. Introduction

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

3. The Law Society's Ethics Committee ('EC') in 2001, with the assistance of representatives of the Information Technology Committee, has reviewed the practice guidelines on ethics and IT issued by jurisdictions such as the United States, Canada and England.

4. 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.

5. This Guidance Note covers the following topics:

- (a) e-mail;
- (b) practising law on the Internet;
- (c) publicity; and
- (d) online referral and introduction schemes.

B. General

6. Members are reminded that when considering these guidelines, they must have reference to the current editions of the Legal Profession Act (Cap 161, 2009 Rev Ed), the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) and the Practice Directions of the Council.

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

8. All references to a law firm include a legal practitioner and a law practice.

C. E-mail

(i) Adoption of an e-mail policy for the law practice

9. Electronic mail ('e-mail') is a communications medium. It is particularly suitable for short communications and for the sending of documents that can be printed by the recipient.

10. 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 practice will not include in its correspondence. E-mails should identify the sender and his/her designation in the law practice.

11. The Council will also advise law practices to draft their own office e-mail policy having regard to the PCR 2015 and this Guidance Note. Under rule 32 of the PCR 2015, a legal practitioner must “exercise proper supervision over the staff working under the legal practitioner in the law practice”. The adopted e-mail policy by a law practice should ensure the proper supervision of all staff over the use of e-mail in their practice.

12. It is recommended that law practices ensure that if e-mail is used as a communication medium 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 legal practitioner or a member of staff of management level or equivalent seniority is away from the office for a day or more.

13. 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 legal practitioner, important or urgent messages, notices or documents are not sent by e-mail without prior notification of their dispatch.

14. The law practice should consider implementing 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.

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

(ii) Client confidentiality and e-mail

16. Under rule 6(2) of the PCR 2015, a legal practitioner must not knowingly disclose any information which is confidential to his/her client and is acquired by the legal practitioner (whether from the client or from any other person) in the course of the legal practitioner’s engagement. Therefore, care must be taken to ensure e-mail containing confidential information is protected.

17. A law practice 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.

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

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

20. Confidential warnings should be added to all e-mails sent by the law practice 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 e-mails sent so that the law firm would not have the burden of considering whether to include the warning in each email sent.

21. A suggested example of an automated confidential warning modified from the Law Society of England’s Guidance Note on e-mail 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.

(iii) Giving professional undertakings via e-mail

22. When a law practice 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.

23. A law practice 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.

D. Practising Law on the Internet

(i) Virtual law firm

24. The current Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA') and the rules made thereunder do not prohibit a lawyer practising law via the Internet through the law practice's own website.

25. Section 25(1)(a) of the LPA, however, requires every practising solicitor (as defined by the Act) to declare the "principal address, and every other address in Singapore, of each Singapore law practice, Joint Law Venture and foreign law practice in which [he/she] will be practising". This information is recorded under section 27(1) of the LPA in the annual register of practitioners maintained by the Registrar of the Supreme Court and the Council of the Law Society.

26. Given the terms of section 25(1)(a)(iv) of the LPA, law practices must have a place of business at which clients may meet their solicitor and where mail and telephone calls are received. Therefore, a 'virtual office' where the business of a law practice is conducted entirely online is not allowed.

(ii) Client identification on the Internet

27. The PCR 2015 do not require you to meet your clients 'face to face'. However, if a law practice wishes to give online advice, there is a possibility that the law practice may not meet its client. It is advisable and, at times, may be essential that a law practice takes necessary steps to verify their client's identity and their legal capacity.

28. In the case of taking instructions from a person purportedly acting on behalf of his/her client, there is an obligation under rule 5(5) of the PCR 2015 for the legal practitioner to ensure that the person has the authority to give instructions on behalf of the client. In the absence of any evidence, the rule requires the legal practitioner must "obtain the client's confirmation of those instructions within a reasonable time after receiving those instructions".

(iii) Client care

29. The requirements of the PCR 2015 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 fees and costs and the progress of the client's matter. E-mails must, with reasonable dispatch, be responded to and proposals of settlement and positions taken by other parties explained in a clear manner.

E. Publicity and Section 33 of the Legal Profession Act

30. Publicity conducted through the Internet is subject to Part 5 of the PCR 2015 that governs publicity in or outside Singapore.

31. A law practice'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 practice. If legal advice is given, a law practice must realise that it could give rise to attendant obligations and risks in law. A law practice may wish to, therefore, consider appropriate disclaimers.

32. If legal advice is given or a document is prepared and dispatched through a third party, the law practice must be aware of the terms of section 33 of the LPA. An unauthorised person, as defined under section 32(2) of the LPA, may be in breach of section 33 of the LPA if he/she acts as an advocate or solicitor or provides legal services; eg, 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.

F. Online Referral and Introduction Schemes

33. Under sections 83(2)(d) and 83(2)(e) of the LPA, it is an offence if a solicitor (as defined by the Act) 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, of any other advocate and solicitor" or "directly or indirectly, procured or attempted to procure the employment of himself, of any advocate and solicitor ... to whom any remuneration for obtaining such employment had been given by him or agreed or promised to be so given".

34. Members are reminded that, under rule 39(2) of the PCR 2015, the legal practitioner must not, *inter alia*, reward a referrer by the payment of any commission or other form of consideration.

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

36. 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 practice would be improper given the terms of section 83(2)(b) and/or section 83(2)(h) of the LPA.

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

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THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE