

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 2.1.3

[Formerly PDR 2013, para 62]

ENQUIRIES TO RELEVANT COMMITTEE

A. Enquiries to the Law Society or Relevant Committee

[Formerly PDR 1989, chap 7, para 36]

It has come to the attention of the Council that members have sought guidance from the Law Society or its Committees without disclosing that there are other relevant parties concerned with the question thereby obtaining an answer which did not take into account the opposing views on the question.

The Council would like to remind members who wish to enquire or require guidance from the Law Society or its Committees to extend a copy of the letter to any other party who may be involved in the issue or problem raised to enable the Law Society to consider any opposing views on the matter.

B. Hypothetical Reference

[Formerly PDR 1989, chap 7, para 35]

Enquirers should be informed that the Council will not entertain any reference or request for a ruling in hypothetical cases or where the identities of the parties involved are not revealed.

An enquirer may, if there is a need to do so, request Council not to disclose the identities of the parties to the Professional Conduct Council Advisory Committee ('Advisory Committee'). In such an event, the Council reserves the right to disclose such names as it deems necessary to enable the Committee to properly determine the reference.

C. Guidelines for Enquiries to Advisory Committee

[Supersedes Council's Practice Direction 2 of 2009]

Part C of this Practice Direction supersedes Council's Practice Direction 2 of 2009.

Part of the Advisory Committee's function is to provide guidance to both Singapore-qualified lawyers and foreign-qualified lawyers on ethical issues.

Requests for advice or guidance from the Advisory Committee should comply with the following guidelines. The Advisory Committee reserves the right not to consider or to give any guidance on requests which do not follow the guidelines set out below:

- (a) The request for guidance should be submitted in writing to the Law Society as the Secretariat to the Advisory Committee. Requests should not be submitted to the chairperson of the Advisory Committee or to members of the Committee individually.
- (b) Enquirers should seek guidance only in respect of ethical matters which are not clearly dealt with by legislation (including subsidiary legislation), practice directions in force, common law or ethical matters in respect of which there is some genuine ambiguity or no other available guidance.

- (c) The request for guidance should not be hypothetical – it must deal with a real ethical issue which has arisen or which it is reasonably expected to arise in the enquirer's own professional practice.
- (d) The request for guidance cannot be made anonymously, and the enquirer must identify all parties involved (including the enquirer).
- (e) The request for guidance should be a genuine enquiry and not a disguised complaint against another legal practitioner. In particular, requests for guidance should not be used to malign, harass or pressurise opposing parties or counsel or to gain tactical advantage.
- (f) Requests for guidance should not be made in respect of matters which should properly be dealt with either by the court or between the parties.
- (g) The request for guidance should set out for the Advisory Committee's consideration:
 - (i) the identities of all parties involved and the nature of each party's involvement in the matter (including the enquirer);
 - (ii) a full and accurate account of all material facts, bearing in mind the need to observe any obligation of confidentiality which may be owed to the client(s) concerned;
 - (iii) a summary of the ethical issues involved;
 - (iv) all relevant authority bearing on the point such as legislation (including subsidiary legislation), practice directions, text books, articles and cases, whether from Singapore or elsewhere; and
 - (v) the specific question(s) upon which the enquirer is asking the Committee to express its views.
- (h) If the matter touches upon the conduct of another legal practitioner or if the guidance sought has the potential to affect another legal practitioner, the enquirer should inform the other legal practitioner of the intention to seek guidance from the Advisory Committee and the letter to the Law Society seeking guidance should be copied to the other legal practitioner.

If the subject matter of the enquiry has been the subject of correspondence between the enquirer and the other legal practitioner, the enquirer should also provide the same to the Law Society.

- (i) The Committee reserves the right to seek further information or clarification from the enquirer before issuing any guidance. Further, to the extent that third parties (including other legal practitioners) may be involved in the subject matter of the request for guidance, the Committee reserves the right with the enquirer's consent to seek clarification or information from those third parties. If any additional information or clarification is not forthcoming or if the enquirer does not consent to the Committee seeking the further information or clarification from relevant third parties, the Advisory Committee reserves the right not to provide guidance on the enquiry.
- (i) Any guidance given is confidential and is intended only for the benefit of the enquirer. The Advisory Committee may publish anonymised versions of the enquiry and the guidance where the subject matter of the request is one of general application or interest.

- (j) The Advisory Committee provides guidance, not rulings. Neither the enquirer nor any third party who may be affected by the subject matter of the enquiry is bound by the guidance given by the Advisory Committee. Only the courts can provide rulings on the scope and extent of legal practitioners' professional obligations and bind legal practitioners or third parties with those rulings. Having said that, the courts do give some weight to Advisory Committee's guidance representing, as it does, the professional body's view. The weight which will be given will depend to a large extent on the completeness and accuracy with which all relevant material has been placed before the Committee together with the request for guidance.
- (k) While the Law Society and the Advisory Committee's starting point is that all enquiries are confidential, if the enquiry is in respect of completed conduct (as opposed to future conduct) and discloses potential professional misconduct or criminal wrongdoing, the Advisory Committee may be under a duty to report that misconduct through the relevant channels.

The Advisory Committee's advice or guidance is well-researched and generally entails substantial consideration and discussion by Committee members. The Committee aims to respond with a formal advice or guidance within three to six weeks from the date that the Committee accepts a request for guidance. Where an expedited response is necessary, the enquirer should make that clear in the enquiry the reasons for the urgency. The Committee will then endeavour to furnish its ultimate advice or guidance as a matter of urgency and follow up with its reasons in a formal advice or guidance thereafter.

The Advisory Committee also welcomes input from legal practitioners about practical issues or suggestions for reform of the rules of ethics.

D. Requests to the Conveyancing Practice Committee for Guidance, Direction or Ruling *[Formerly PD/3/2013]*

1. Functions of the Committee

Amongst other functions, the Conveyancing Practice Committee has been tasked with assisting members in settling disputes in respect of conveyancing transactions so that they need not be settled in court. In addition where customary conveyancing practice is unclear, the Committee may be asked to provide guidance. However where issues are clearly legal disputes of a magnitude that ought to be brought to the court for a determination, the Committee will not interfere. Further elaboration of the Committee's tasks and assistance are given below.

2. Requesting guidance

Members must first make a distinction between seeking guidance from seeking a ruling or direction. Seeking guidance by a member may be made unilaterally. No 'other party' to the transaction should be named. Guidance given by the Committee is informative in nature and is not binding on any member. Guidance may not be used to indicate to 'another party' how 'that party' should act or conduct itself. The Committee discourages members from seeking guidance on practices that are well-established or ought to be known or practised in the ordinary course of a normal conveyancing transaction.

3. Requesting direction(s) or ruling(s)

Direction(s) and ruling(s) are given when two or more members agree to place before the Committee the identified area of dispute in the relevant conveyancing transaction and for the

Committee to either provide a direction or give a ruling. Requests by members should comply with the following protocols, otherwise the Committee may not consider the request:

- (a) the facts of case must be agreed upon by all requesting members; the issues must be identified and clearly presented. Both members must state their respective positions;
- (b) the presented issues should only be in respect of conveyancing practice matters that do not require interpretation of any relevant legislation (including subsidiary legislation). Where aspects of common law are referred to, that common law must hinge on well-known decided principles that are already enunciated by the court. If the principle of law is being questioned or queried, the Committee may decline the request and recommend the members to settle their dispute in court;
- (c) the facts of the case must not be hypothetical – as stated in (a) above, these facts must relate to the actual circumstances that have taken place and from which the issues arose;
- (d) to summarise, requests by members for a direction or ruling should set out for the Committee's consideration:
 - (i) a full and accurate account of all material facts, bearing in mind the need to observe any obligation of confidentiality;
 - (ii) a summary of the conveyancing issues involved and the submission of the respective members;
 - (iii) all relevant case authorities or referred to legislation bearing on the presented issues should accompany the respective member's submission; and
- (e) the requesting members must also adopt the following terms in the protocol:
 - (i) all submissions and copies of documents, case authorities, legislation, *etc*, must be copied to the other member;
 - (ii) requesting members must agree to abide and be bound by the direction or ruling of the Committee without qualification; and
 - (iii) when asked to provide further documents by the Committee or to answer questions raised, the members should respond within five business days.

4. Effect of a decision by the Committee

Although the Committee does not monitor the actions or conduct of members after the direction or ruling is given, the Committee expects that members take the necessary action(s) to abide by and comply with the direction or ruling given.

Any guidance, direction or ruling given is confidential and is intended only for the benefit of or to bind (as the case may be) the requesting members. The Committee may publish anonymised versions of the case referred to by members and the decision of the Committee where the subject matter of the request is one of general application or interest to members who practise conveyancing.

Whilst the Law Society and the Committee recognise that the recitation of facts and circumstances by requesting members are confidential, the Committee may be under a duty to report any professional misconduct or criminal wrongdoings which constitutes a breach of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) or the Criminal Procedure Code (Cap 68, 2012 Rev Ed) respectively.

5. Timelines and conclusion

The Committee generally will provide its decision to any request within three to six weeks from date of the request. This is after all the necessary documents are received by the Committee. Members should not expect instantaneous responses as the Committee members are also working lawyers. No query will be entertained over the telephone. Members must not expect the staff of the Law Society or the Director-in-charge of the particular portfolio to answer such queries. Expedited response will only be given as an exceptional case where the matter at hand is of utmost urgency.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE