

Appendix 1

Code of Conduct for PDS Lawyers and Other PDS Employees

Purpose of the PDS

1. The purpose of the PDS is to provide quality, timely and independent advice and representation to persons subject to criminal proceedings and who are eligible for a grant of Legal Aid pursuant to the provisions of the Legal Services Act 2000.

Duties to the Client

2. A PDS lawyer owes the following duties to each client:
 - (a) to do his or her utmost, consistent with the lawyer's duty to the Court; and to promote and work for the best interests of the client and to ensure that the client receives a fair hearing;
 - (b) to provide the client with fearless, vigorous and effective defence and to use all proper and lawful means to secure the best outcome for the client;
 - (c) to act with all reasonable diligence and promptness in handling the affairs of the client which shall include duties of disclosure of all relevant information in the case to the client and of keeping the client informed of the progress of the case.

Duty to Act with Integrity and Independence

3. All employees of the PDS shall act with honesty and integrity in carrying out his or her duties. He or she must never knowingly or recklessly give false or misleading information.
4. A PDS lawyer has a duty to maintain his or her professional independence and not to allow this to be compromised by prosecuting authorities, the Courts, the Agency, the Ministry of Justice, clients or any other person or body.

Duty to Act Impartially, Avoid Discrimination and to Acknowledge Cultural Differences

5. All employees shall treat all clients fairly, reasonably and without discrimination. An employee must not therefore discriminate directly or indirectly against any person on grounds of race, colour, ethnic or national origin, sex, marital status, sexual orientation, disability, age, political persuasion or religion consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. All employees must ensure that the culture of clients and their families/whanau is acknowledged and respected.
6. A PDS lawyer must accept an assignment to act for any eligible client provided that:

- (a) he or she can competently act;
 - (b) no significant risk of conflict of interest arises;
 - (c) there is no substantial reason why the best interests of the client would not be served;
 - (d) no right of withdrawal would immediately arise under paragraphs 23 or 24 below.
7. A PDS lawyer shall provide advice, assistance or representation to a client only where he or she is competent to do so. Competence requires such legal knowledge, skill, experience and preparation as is reasonably necessary to properly represent the interests of the client.
8. A PDS lawyer shall not refuse to advise, assist or represent a client because of the nature of the allegation or the client or because of the lawyer's personal views.

Duty of Confidentiality

9. All employees shall keep all information about a client confidential unless the client specifically waives his or her right of confidentiality in this regard (subject however to any internal audit obligations).
10. A PDS lawyer is bound by the rules of legal professional privilege and any applicable Rules of Professional Conduct.

Duty to the Court

11. A PDS lawyer must never deceive, or recklessly or knowingly, mislead the Court.
12. As an officer of the Court, a PDS lawyer should support the authority and dignity of the Court by strict adherence to codes of professional behaviour and by manifesting a professional attitude towards the judge, prosecutor, witnesses and others in the courtroom and consistent with the proper and efficient administration of justice.

Relationship with other Professional Codes of Conduct

13. PDS lawyers shall comply with the New Zealand Law Society Rules of Conduct and Client Care and any amendments thereof and shall have regard to any guidance issued by that body; and the said Rules are hereby expressly incorporated as a term of this Code of Conduct.
14. The Public Defender (except as may be delegated by him or her) shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.
15. This Code applies in addition to any professional or staff code that binds any employee of the PDS. Where any serious doubt arises as to the interpretation of this Code, the issues will be referred to the Public Defender who will provide

advice and guidance on the matter, consulting wherever appropriate with those responsible for other professional codes. So far as it is possible to do so, this Code must be interpreted in a way which is compatible with other professional codes.

Duty to Avoid Conflicts of Interest

16. A PDS lawyer shall not act for two or more clients where there is a conflict of interest, or a significant risk of conflict of interest, between the clients, or for any client where there is a conflict between the interest of the client and that of the PDS lawyer or the PDS.
17. Without prejudice to the preceding paragraph, a conflict of interest arises where the interests of a client require the PDS lawyer to act in a way which is contrary to the interests of another client, for example where the duty of confidentiality owed to a client comes into conflict with the duty to disclose all relevant information to another client.
18. Where a PDS lawyer provides advice, assistance or representation to a client and a conflict or a significant risk of conflict arises between the interest of two or more clients, or the PDS lawyer and a client, then he or she must cease to act.

Duty not to Offer or Accept Payments

19. An employee shall not pay any fee, commission, inducement, gratuity, gift, benefit or other form of compensation to a client or to a witness save for payments made from PDS funds in respect of proper witness expenses, fees of expert witness, or similar costs.
20. Save for the receipt of professional salary, an employee shall not accept any fee, commission, inducement, gratuity, gift (except where a refusal to accept is likely to cause offence), benefit or other form of compensation relating to his or her representation of a client of the PDS. Where a gift is substantial, it is to be reported to the Service Development Manager or to the Manager Service Contracts, who will determine the appropriate response. An employee who accepts a gift should declare the gift to the Service Development Manager or to the Manager Service Contracts for a decision on final disposal.

Relationship with the Legal Profession and Others

21. A PDS lawyer shall not practice law other than in the performance of his or her duties as an employee of the PDS, or engage in any other occupation, without express written permission from the Service Development Manager. A PDS lawyer is not able to provide legal aid services in their private capacity.
22. All employees shall endeavour to maintain relationships with the wider legal profession and other agencies in the criminal justice system based on courtesy, mutual respect and professionalism.

Withdrawal of Legal Representative

23. A PDS lawyer shall cease to act for a client where:

- (a) a conflict or a significant risk of conflict of interest or breach of confidentiality arises;
 - (b) a conflict or a significant risk of conflict arises between the client's interests and the lawyer's duty to the Court;
 - (c) the client withdraws instructions.
24. A PDS lawyer may cease to act for a client where:
- (a) the client's behaviour towards the PDS lawyer or any other employee is violent, threatening or abusive;
 - (b) there is some other substantial reason for withdrawal, approved by the Public Defender.
25. If a PDS lawyer ceases to act, then he or she shall give reasons to the client for so doing, except in the case of paragraph 23(c) above, and shall take steps to inform the client of this fact without delay.

Public Interest Disclosure

26. If an employee believes that he or she is being required to act in a way which:
- (a) is illegal, improper or unethical;
 - (b) is in breach of professional rules;
 - (c) may involve maladministration, fraud or misuse of public funds;
 - (d) is otherwise inconsistent with this Code or the New Zealand Law Society Rules of Conduct and Client Care

he or she must report the matter to the Public Defender or, where that may be inappropriate (for example where the Public Defender is the cause of the concern), to the Chief Executive of the Legal Services Agency subject however to the provisions of the Protected Disclosures Act 2000.

Standards of Conduct

27. An employee shall not do anything to bring the PDS into disrepute or to diminish public confidence in the criminal justice system in the course of his or her employment or otherwise.
28. An employee who is a member of a professional body shall comply with the rules of conduct and any guidance issued by that body.
29. All employees must apply any professional rules or guidance, approved by the New Zealand Law Society relating to the treatment of victims and witnesses.

30. An employee shall not misuse his or her position or information acquired in the course of his or her duties to further his or her own private interests or those of others.
31. The terms, conditions, policies and procedures contained in the PDS office manual shall apply to all employees except where varied or overridden by an express provision of this Code.

Complaints

32. A complaint against an employee shall be dealt with under the procedures laid down by the PDS manual and the terms of the employee's contract of service.
33. A professional complaint against a PDS lawyer may be dealt with under the procedure laid down by the Lawyers and Conveyancers Act 2006, and if relevant under paragraph 32 above as well.