THE BAR PRACTICE REGULATIONS

S.I. 36/1973

(SECTION 40)

[Commencement 1st June, 1973]

Citation.

1. These Regulations may be cited as the Bar Practice Regulations.

Existing arrangements for practice and accounts of the Bar to remain in force.

2. Until other provision is made by law, the practice followed immediately before the commencement of these Regulations governing the matters for which regulations may be made under paragraphs (a) and (b) of section 40 of the Bahamas Bar Act, shall continue in full force and effect.

THE BAHAMAS BAR (CODE OF PROFESSIONAL CONDUCT) REGULATIONS

S.I. 22/1981

(SECTION 40)

[Commencement 8th April, 1981]

Citation.

1. These Regulations may be cited as the Bahamas Bar (Code of Professional Conduct) Regulations.

Interpretation.

2. In these Regulations —

(a) a reference to an attorney is a reference to a counsel and attorney as defined in the Act;

(b) the notes appended as a Commentary to each Rule set out in the Schedule are only intended as general guidelines as to the meaning, scope, requirements and purpose of the respective Rule and do not form part of the Rule.

Code of conduct.

3. Every attorney shall in the pursuit of the practice of his profession comply with, and be subject to, the Rules of Professional Conduct set out in the Schedule.

SCHEDULE

THE BAHAMAS BAR ASSOCIATION

CODE OF PROFESSIONAL CONDUCT

RULE I
INTEGRITY

The attorney must discharge his duties to the Court, his client, members of the public and his fellow members of the profession with integrity.

Commentary

1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt as to his attorney's trustworthiness the essential element in the true lawyer-client relationship will be missing. If the attorney is lacking in personal integrity his usefulness to his client and his reputation within the profession will be destroyed, regardless of how competent an attorney may be.

2. Dishonourable or questionable conduct on the part of the attorney in either his private life or his professional activities will reflect adversely to a greater or lesser degree upon the integrity of the profession and the administration of law and justice as a whole. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair a client's trust in the attorney as a professional consultant, disciplinary action may be justified.

3. Generally speaking, however, the Bar Council will not be concerned with the purely private or extra-professional activities of an attorney which do not bring his professional integrity or competence into question.

RULE II
COMPETENCE

The attorney must perform all the work and services which he undertakes on behalf of his client in a competent manner, providing a quality of service at least equal to that which attorneys generally would expect of a competent attorney in a like situation.

Commentary

1. Competence in the context of the first branch of this Rule goes beyond formal qualification of the attorney to practise law. It has to do with the sufficiency of the attorney's qualification to deal with the matter in question and includes knowledge and skill and the ability to use them effectively in the interests of the client.

2 As a member of the legal profession, the attorney holds himself out as knowledgeable, skilled and capable in the practice of law. Accordingly his client is entitled to assume that he has the ability and capacity to deal adequately with the legal matters which he undertakes on the client's behalf.

3. It follows that the attorney should not undertake a matter unless he honestly believes that he is competent to handle it or that he can become competent without undue delay, risk or expense to his client. If the attorney proceeds on any other basis he is not being honest with his client. This is an ethical consideration and is to be distinguished from the standard of care which a court would invoke for purposes of determining negligence.

4. Competence in a particular matter involves more than an understanding of the relevant legal principles: it involves an adequate knowledge of the practices and procedures by which such principles can be effectively applied.

5. The attorney must be alert to recognize his lack of competence for a particular task and the disservice he would do his client if he undertook that task. If he is consulted in such circumstances he should either decline to act or obtain his client's instructions to retain, consult or collaborate with an attorney who is competent in that field. The attorney should also recognize that competence for a particular task may require that he seek advice from or collaborate with experts in scientific, accounting or other non-legal fields, and he should not hesitate to seek his client's instructions to consult experts in such a situation.

6. Numerous examples could be given of conduct which does not meet the quality of service required by the second branch of the Rule. The list which follows is illustrative but not by any means exhaustive —

(a) failure to keep the client reasonably informed;
(b) failure to answer reasonable requests from the client for information;
(c) unexplained failure to respond to the client's telephone calls;
(d) failure to keep appointments with clients without explanation or apology;
(e) informing the client that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;
(f) failure to answer within a reasonable time a communication that requires a reply;
(g) doing the work in hand but doing it so belatedly that its value to the client is diminished or lost;
(h) slipshod work, such as mistakes or omissions in statements or documents prepared on behalf of the client;

(i) failure to inform the client or to explain properly proposals of settlement;

(j) withholding information from the client or misleading the client as to the position of the matter to cover up the fact of neglect or mistakes;

(k) self-induced disability, for example, from intoxicants or drugs, which interferes with or prejudices the attorney's services to the client.

7. It will be noted that the Rule does not provide a standard of perfection. A mistake even though it might be actionable for damages in negligence would not necessarily constitute a failure to maintain the standard set by the Rule, but evidence of gross neglect in a particular matter or a pattern of neglect or mistake in different matters may be evidence of such a failure regardless of tortious liability. In the result, where both negligence and incompetence are established damages may be awarded for the former and the latter can give rise to the additional sanction of disciplinary action.

8. The attorney who is incompetent does his client a disservice, brings discredit on his profession and may bring the administration of justice into disrepute. In addition, he damages his own reputation and practice and may injure those who are associated with or dependent upon him.

RULE III
ADVISING CLIENTS

The Attorney must be both candid and honest when advising his client, acting in the discharge of his responsibilities with the utmost good faith.

Commentary

1. The attorney's duty to the client who seeks legal advice from him is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the attorney's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the attorney honestly thinks as to the merits and probable results.

2. Whenever it becomes apparent that the client has misunderstood or misconceived his position or what is really involved, the attorney should explain as well as advise, so that the client is apprised of his true position and fairly advised with respect to the real issues or questions involved.

3. The attorney should clearly indicate upon what facts, circumstances and assumptions his opinion or advice is based, e.g. in cases where the circumstances do not justify an exhaustive investigation with the consequent expense to the client. However,

unless the client instructs him otherwise, the attorney should investigate the matter in sufficient detail to enable him to express an opinion rather than mere comments with many qualifications.

4. The attorney should be wary of bold and confident assurances to his client, especially when his employment may depend upon his advising in a particular way.

5. The attorney should advise and encourage his client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and he should discourage his client from commencing useless legal proceedings.

6. When advising his client the attorney must never knowingly assist or encourage any dishonesty, fraud, crime or illegal conduct or instruct his client as to how to violate the law and avoid punishment. He should be on his guard against becoming the tool or dupe of an unscrupulous client or those who are associated with that client.

7. A *bona fide* test case is not necessarily precluded by the preceding paragraph and so long as no injury to the person or violence is involved it is not improper for the attorney to advise and represent a client who in good faith and on reasonable grounds desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

8. Apart altogether from the substantive law on the subject, it is improper for the attorney to advise, threaten or bring a criminal or quasi-criminal prosecution in order to secure some civil advantage for his client or to advise, seek or procure the withdrawal of a prosecution in consideration of the payment of money or transfer of property to or for the benefit of his client.

9. In addition to his opinion as to the legal questions, the attorney may be asked for or may be expected to give his views as to non-legal matters such as the business, policy or social implications involved in the question or as to the course the client should choose. In many instances the attorney's experience will be such that his views on non-legal matters will be of real benefit to his client. If the attorney does express views on such matters, he should, where and to the extent necessary, point out that he lacks experience or other qualification in the particular field and he should clearly distinguish his legal advice from such other advice.

10. The duty to give honest and candid advice requires the attorney to inform the client promptly when the attorney discovers that a mistake, which is or may be damaging to the client and which cannot readily be rectified, has been made in connection with a matter for which he is responsible. The attorney should expeditiously deal with any claim which may be made against him and he must not, under any circumstances, take any unfair advantage that

would defeat or impair his client's claim. At the same time the attorney should advise his client that the client may obtain legal advice elsewhere as to any rights he may have arising from such mistakes.

RULE IV
CONFIDENTIALITY

The attorney has a duty to hold in strict confidence all information received in the course of the professional relationship from or concerning his client or his client's affairs which information should not be divulged by the attorney unless he is expressly or impliedly authorized by his client or required by the laws of the Commonwealth of The Bahamas so to do.

Commentary

1. The attorney cannot render effective professional service unless there is full and unreserved communication between him and his client. At the same time the client must feel completely secure and he is entitled to proceed on the basis that without any express request or stipulation on his part matters disclosed to or discussed with his attorney will be held secret and confidential.

2. This ethical rule must be distinguished from the evidentiary rule of lawyer and client privilege with respect to oral or documentary communications passing between the client and his attorney. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

3. As a general rule the attorney should not disclose that a particular person has consulted or retained him, unless the nature of the matter requires it.

4. The attorney owes the duty of secrecy to every client without exception, regardless of whether he is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the attorney has ceased to act for the client whether or not differences may have arisen between them.

5. The fiduciary relationship between the attorney and his client forbids that the attorney use any confidential information covered by the ethical rule for the benefit of himself or a third person or to the disadvantage of his client. Should the attorney engage in literary works such as his autobiography, memoirs and the like he should avoid disclosure of confidential information.

6. The attorney should take care to avoid disclosure to one client of confidential information concerning or received from another and he should decline employment which might require him to do so.

7. The attorney should avoid indiscreet conversations, even with his spouse or family, about a client or his affairs and he should shun any gossip about such things even though the client is not named or otherwise identified. Likewise the attorney should not repeat any gossip or information about his client's business or affairs that he overhears or that is recounted to him. Apart altogether from ethical considerations or questions of good taste indiscreet shop-talk between attorneys, if overheard by third parties able to identify matter being discussed, can result in prejudice to the client. Moreover the respect of the listener for the attorneys and the legal professional will probably be lessened.

8. The rule may not apply to facts which are public knowledge but nevertheless the attorney should guard against participating in or commenting upon speculation concerning his client's affairs or business.

9. Confidential information may be divulged with the express authority of the client or clients concerned, and, in some situations, the authority of the client to divulge may be implied. For example, some disclosure may be necessary in a pleading or other document delivered in litigation being conducted for the client. Again the attorney may disclose the client's affairs to partners or associates in his firm and, to the extent necessary, to this non-legal staff such as secretaries and filing clerks. But this implied authority to disclose places the attorney under a duty to impress upon his employees, students and associates the importance of non-disclosure (both during their employment and thereafter) and requires him to take reasonable care to prevent their disclosing or using any information which he himself is bound to keep in confidence.

10. Disclosure by the attorney may also be justified in order to establish or collect his fee, or to defend himself or his associates or employees against an allegation of malpractice or misconduct, but only to the extent necessary for such purpose.

11. Disclosure of information necessary to prevent a crime will be justified if the attorney has reasonable grounds for believing that a crime is likely to be committed.

12. When disclosure is required by law or by order of a court of competent jurisdiction, the attorney should always be careful not to divulge more information than is required of him.

RULE V
IMPARTIALITY AND CONFLICT OF INTEREST

While it is not desirable that an attorney represent more than one interest in any matter, the Bar recognizes that the choice should be that of the parties after due disclosure by the attorney to the client. Therefore, save after adequate disclosure in writing to and with the consent of the client or prospective client concerned, the

attorney must not advise or represent more than one interest in a matter nor shall he act or continue to act in a matter when there is or is likely to be a conflicting interest. A conflicting interest is one which would be likely to affect adversely the judgment of the attorney on behalf of or his loyalty to a client or prospective client or which the attorney might be prompted to prefer to the interest of a client or prospective client.

Commentary

1. The reason for the Rule is self evident; the client or his affairs may be seriously prejudiced unless the attorney's judgment and freedom of action on his client's behalf are as free as possible from compromising influences.

2. Conflicting interests include but are not limited to the financial interest of the attorney or an associate of the attorney and the duties and loyalties of the attorney to any other client, including the obligation to communicate information.

3. Associates of the attorney within the meaning of the Rule include his spouse, son or daughter, any relative of the attorney (or of his spouse) who lives under the same roof, any partner or associate of the attorney in the practice of law, a trust or estate in which the attorney has a substantial beneficial interest or for which he acts as a trustee or in a similar capacity, and a corporation of which the attorney is a director or in which he or an associate of his owns or controls, directly or indirectly, a significant number of shares.

4. The Rule requires adequate disclosure to the client so that he may make an informed decision as to whether he wishes the attorney to act for him despite the presence or possibility of the conflicting interest. As important as it is to the client that his attorney's judgment and freedom of action on his behalf should not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead it may be only one of several factors which the client will weigh when deciding whether or not he will give the consent referred to in the Rule. Other factors might include, for example, the availability of another attorney of comparable expertise and experience, the extra cost, delay and inconvenience involved in engaging another attorney and the latter's unfamiliarity with the client and his affairs. In the result, in the judgment of the client his interests may sometimes be better served by not engaging another attorney. An example of this sort of situation is when the client and the other party to a commercial transaction are continuing clients of the same law firm but are regularly represented by different attorneys in that firm.

5. Before the attorney accepts employment for more than one client in a matter or transaction the attorney must advise the clients concerned that he has been asked to act for both or all of them, that no information received in connection with the matter from one can

be treated as confidential so far as any of the others are concerned, and that if a conflict develops which cannot be resolved, he cannot continue to act for both or all of them and may have to withdraw completely. If one of such clients is a person with whom the attorney has a continuing relationship and for whom he acts regularly, this fact should be revealed to the other or others with a recommendation that they obtain independent representation. If, following such disclosure, all parties are content that the attorney act, he should obtain their written consent, or record their consent in a separate letter to each. He should, however, guard against acting for both sides where, despite the fact that all parties concerned consent, it is reasonably obvious that an issue contentious between them may arise or their interests, rights or obligations will diverge as the matter progresses.

6. If, after the clients involved have consented an issue contentious between them or some of them arises, the attorney although not necessarily precluded from advising them on other non-contentious matters, would be in breach of the rule if he attempted to advise them on the contentious issue. In such circumstances he should ordinarily refer the clients to other lawyers. However, if the issue is one which involves little or no legal advice, for example, a business rather than a legal question in a proposed business transaction, and the clients are sophisticated, he may let them settle it by direct negotiation in which he does not participate. Alternatively, he may refer one client to another attorney and continue to advise the other if it was agreed at the outset that this course would be followed in the event of a conflict arising.

7. The same basic considerations apply, where the conflicting interest arises not by reason of the attorney's duties or obligations to another client but by reason of his own financial or other interest or that of an associate. For example, the attorney or one of his family or his partners might have a personal financial interest in the client or in the matter in which the attorney is requested to act for the client, such as a partnership interest in some joint business venture with the client. Another example is when a debtor-creditor relationship exists between the attorney or his firm and the client. This however is a relationship which should be avoided and save in exceptional circumstances, the attorney should not borrow money from a client who is not in the business of lending money and it is undesirable that he lend money to his client except by way of advancing necessary expenses in a legal matter which he is handling for that client.

8. In such a case, when the attorney is asked to act, he must, before accepting the employment, disclose and explain the nature of his conflicting interest to the client, or in the case of a potential conflict, how and why it might develop later. If the attorney does not choose to make such disclosure or cannot do so without

breaching a confidence he must decline the employment. If, following such disclosure, the client requests him to act, he should obtain the client's written consent or record such consent in a letter to the client. However, the client's decision that he wants the attorney to act in such circumstances should not be accepted uncritically by the attorney. He should bear in mind that, if he accepts the employment, his first duty will be to his client, and if he has any misgivings about this ability to place his client's interests first, he should decline the employment.

9. The Rule will not prevent an attorney from arbitrating or settling, or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are *sui juris* and who wish to submit the dispute to him.

10. The Rule does not purport to apply to situations in which the attorney is holding funds or property of his client in trust. In all such cases the attorney should abide by the applicable rules of the law and of the Bar Council. For example, if funds of the client entrusted to the attorney for investment are to be invested in a security in which the attorney or his associate has an interest the attorney should insist that the client be represented by an independent attorney. In such circumstances disclosure to and the consent of the client will not normally suffice.

11. An attorney who has acted for a client in a matter should not thereafter act against him (or against persons who were involved in or associated with him in that matter) in the same or any related matter, or place himself in a position where he might be tempted or appear to be tempted to breach the Rule relating to Confidential Information. It is not, however, improper for the attorney to act against a former client in a fresh and independent matter wholly unrelated to any work he has previously done for that person.

12. For the sake of clarity the foregoing paragraphs are expressed in terms of the individual attorney and his client. However it will be appreciated that the term "client" includes a client of the law firm of which the attorney is a partner or associate whether or not he handles the client's work.

13. Generally speaking in disciplinary proceedings under this Rule the burden of showing good faith and that adequate disclosure was made in the matter and the client's consent obtained, will rest upon the attorney.

RULE VI
OUTSIDE INTERESTS AND THE PRACTICE OF LAW

The attorney who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interests to jeopardise his professional integrity, independence or competence.

Commentary

1. The term "outside interest" covers the widest possible range and includes activities which may overlap or be connected with the practice of law, such as engaging in the mortgage business, acting as a director for a client corporation, writing on legal subjects, etc., as well as activities not so connected, such as careers in business, politics, broadcasting, the performing arts, etc.

2. The attorney must not allow his involvement in an outside interest to impair the exercise of his independent professional judgment on behalf of his clients. Whenever an overriding social, political, economic or other consideration arising from the outside interest might influence the attorney's judgment he should be governed by the considerations declared in the Rule relating to Impartiality and Conflict of Interest and in particular, paragraph 8 thereof.

3. Where the attorney's outside interest is in no way related to the legal services that he performs for clients, ethical considerations will usually not arise unless his conduct brings him or the profession into disrepute, or his activities impair his competence as, for example, where the outside interest so occupies his time that his clients suffer from inattention or unpreparedness.

4. The attorney must make it clear whether he is acting in his professional capacity as a lawyer or otherwise.

RULE VII
PRESERVATION OF CLIENT'S PROPERTY

The attorney owes a duty to his client to observe all laws and rules regarding the preservation and safekeeping of the property of the client entrusted to him and in the absence of any such laws and rules or where the attorney is in doubt he should take the same care of such property as a careful and prudent man would take of his own similar property.

Commentary

1. "Property" apart from clients' moneys, includes securities such as mortgages, negotiable instruments, stocks, bonds, etc., original documents such as wills, title deeds, minute books, licences, certificates, etc., other papers such as a client's correspondence files, reports, invoices, etc., and chattels such as jewellery, silver, etc.

2. The attorney should promptly notify his client of the receipt of any property of or relating to the client unless he is satisfied that the client is aware that it has come into his custody.

3. The attorney should clearly label and identify his client's property and place it in safekeeping separate and apart from his own property.

4. The attorney should maintain adequate records of client's property in his custody so that he may promptly account for or deliver it to or to the order of the client upon request. He should ensure that it is delivered to the right person, and in case of dispute as to the person entitled he may have recourse to the courts.

5. The duties here expressed are closely related to those regarding confidential information. The attorney should keep his client's papers and other property out of sight as well as out of reach of those not entitled to see them and should, subject to any rights of lien, promptly return them to the client upon request or on the conclusion of his mandate.

6. The attorney should be alert to claim on behalf of his clients any privilege in respect of their property seized or attempted to be seized by an external authority.

RULE VIII
THE ATTORNEY AS ADVOCATE

When acting as an advocate the attorney must, while treating the tribunal with courtesy and respect, represent his client resolutely, honourably and within the limits of the law.

Commentary

1. The advocate's duty to his client "fearlessly to raise every issue, advance every argument and ask every question, however distasteful, which he thinks will help his client's case" and to endeavour to obtain for his client the benefit of any and every remedy and defence which is authorized by law must always be discharged by fair and honourable means, without illegality and in a manner consistent with the attorney's duty to treat the court with candour, fairness, courtesy and respect. (Note: The words in quotation marks come from the speech of Lord Reid in *Rondel v. Worsley* (1969) 1 A.C. (H.L.) 191 at 227).

The attorney must not, for example —

(a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of his client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit his client to do anything which the attorney considers to be dishonest or dishonourable;

(c) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter, whether by bribery, personal approach or any means other than open persuasion as an advocate;

(d) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, mis-state facts or law,

presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or assisting in any fraud, crime or illegal conduct;

(e) knowingly mis-state the contents of a document the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(f) knowingly assert that for which there is no reasonable basis in evidence or the admissibility of which must first be established;

(g) deliberately refrain from informing the tribunal of any law or jurisprudence which he considers to be directly in point and binding on the tribunal and which has not been mentioned by his opponent;

(h) dissuade a material witness from giving evidence or advise such a witness to absent himself;

(i) knowingly assist a witness to misrepresent himself or impersonate another;

(j) needlessly abuse, intimidate, or harass a witness;

(k) needlessly inconvenience a witness.

2. (a) Where the attorney discovers that he has unknowingly done or failed to do something which, if done or omitted knowingly, would have been in breach of this Rule, his duty to the court requires him, subject to the Rule on Confidential Information, to disclose the error or omission and do what he reasonable can in the circumstances to rectify it.

(b) If the client desires that a course be taken which would involve a breach of this Rule, the attorney must refuse and do everything reasonably possible to prevent it. If he cannot do so he should, subject to the Rule on Withdrawal, withdraw or seek leave to withdraw.

3. The attorney should not express his personal opinions or beliefs, or assert as fact anything that is properly subject to legal proof, cross-examination or challenge. He must not make himself in effect an unsworn witness or put his own credibility in issue. If the attorney is a necessary witness he should testify and the conduct of the case should be entrusted to another attorney. The attorney who was a witness in the proceedings should not appear as advocate in any appeal from the decision in those proceedings. There are no restrictions upon the advocate's right to cross-examine a fellow attorney and the attorney who does appear as a witness should not expect to receive special treatment by reason of his professional status.

4. The attorney may properly seek information from any potential witness (whether under subpoena or not) but he should disclose his interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way. An opposite party who is professionally represented should not be approached or dealt with save through or with the consent of his attorney.

5. The attorney should never waive or abandon his client's legal rights (for example an available defence under a statute of limitations) without his client's informed consent, but in civil matters it is desirable that the attorney should avoid and discourage his client from resorting to frivolous or vexatious objections or attempts to gain advantage from slips or oversights not going to the real merits, or tactics which will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

6. Whenever the client's case can be fairly settled the attorney should advise and encourage his client to do so rather than commence or continue legal proceedings.

7. When engaged as a prosecutor the attorney's prime duty is not to seek to convict, but to see that justice is done through a fair trial upon the merits. The prosecutor exercises a public function involving much discretion and power, and must act fairly and dispassionately. He should not do anything which might prevent the accused from being represented by counsel or communicating with counsel and to the extent required by law and accepted practice, he should make timely disclosure to the accused or his counsel (or to the court if the accused is not represented) of all relevant facts and witnesses known to him, whether tending towards guilt or innocence.

8. When defending an accused person the attorney's duty is to protect his client as far as possible from being convicted except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which he is charged. Accordingly, and notwithstanding the attorney's private opinions as to credibility or merits, the attorney may properly rely upon any evidence or defences including "technicalities" not known to be false or fraudulent.

9. Admissions made by the accused to his attorney may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to his attorney the factual and mental elements necessary to constitute the offence, the attorney, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, or to the form of the indictment, or to the admissibility or sufficiency of the evidence, but he must not suggest that some other person committed the offence or call any evidence which, by reason of the admissions, he believes to be false. Nor may he set up an affirmative case inconsistent with such admissions, e.g. by calling evidence in support of an alibi intended to show that the accused could not have done, or in fact had not done, the act. Such admissions will also impose a limit upon the extent to which the attorney may attack the evidence for the prosecution. He is entitled

to test the evidence given by each individual witness for the prosecution and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but he should go no further than that.

10. Where, following investigation —

(a) a defence attorney *bona fide* concludes and advises his accused client that an acquittal of the offence charged is uncertain or unlikely;

(b) the client is prepared to admit the necessary factual and mental elements;

(c) the attorney fully advises the client of the implications and possible consequences, and particularly of the detachment of the court; and

(d) the client so instructs him,

it is proper for the attorney to discuss with the prosecutor and for them tentatively to agree on the entry of a plea of "guilty" to the offence charged or to a lesser or included offence appropriate to the admissions, and also on a disposition or sentence to be proposed to the court. The public interest must not be or appear to be sacrificed in the pursuit of an apparently expedient means of disposing of doubtful cases, and all pertinent circumstances surrounding any tentative agreements, if proceeded with, must be fully and fairly disclosed to the court. The judge must not be involved, in any such discussions or tentative agreements, save to be informed thereof.

11. An undertaking given by the attorney to the court or to another attorney in the course of litigation must be strictly and scrupulously carried out. Unless clearly qualified, the attorney's undertaking is his personal promise and responsibility.

12. At all times the attorney should be courteous and civil to the court and to those engaged on the other side. Legal contempt of court and the professional obligation are not identical, and a consistent pattern of rude, provocative or disruptive conduct by the attorney, even though unpunished as contempt, might well merit discipline.

13. In adversary proceedings the attorney's function as advocate is openly and necessarily partisan. Accordingly, he is not obliged (save as required by law or under paragraph 1 (h) above) to assist his adversary or advance matters derogatory to his own client's case. When opposing interests are not represented, for example, in *ex parte* or uncontested matters, or in other situations where the full proof and argument inherent in the adversary system cannot obtain, the attorney must take particular care to be accurate, candid and comprehensive in presenting his client's case so as to ensure that the court is not misled.

14. The principles of the present Rule apply generally to the attorney in his capacity as advocate and therefore extend not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals and other bodies, regardless of their function or the informality of their procedures.

RULE IX
THE ATTORNEY IN PUBLIC OFFICE

The attorney should bring to the discharge of his duties in any public office which he holds the same high standards of conduct which he is required to observe as a practising attorney.

Commentary

1. The Rule applies to an attorney who is elected or appointed to a legislative or administrative office at any level of government regardless of whether or not he attained such office because of his professional qualifications. He must bear in mind that he is in the public eye and therefore the legal profession can more readily be brought into disrepute by failure on his part to observe its ethical standards of conduct.

2. The attorney who holds public office must not allow his personal or other interests to conflict with the proper discharge of his official duties. If he holds a part-time public office he must not accept any private legal business in which his duty to his client will or may conflict with his official duties, and if some unforeseen conflict arises he should terminate the professional relationship, explaining to his client that his official duties must prevail. The attorney who holds a full-time public office will not be faced with this sort of conflict, but he must nevertheless guard against allowing his independent judgment in the discharge of his official duties to be influenced by his own interest, that of some person closely related to or associated with him, that of his former or prospective partners or associates.

3. In the context of the foregoing paragraph, persons closely related to or associated with the attorney include his spouse, son or daughter, any relative of the attorney (or of his spouse) who lives under the same roof, a trust or estate in which the attorney has a subtantial beneficial interest or for which he acts as a trustee or in a similar capacity, and a corporation of which the attorney is a director or in which he or some person closely related to or associated with him holds or controls, directly or indirectly, a significant number of shares.

4. Subject to any special rules applicable to the particular public office, the attorney holding such office should, when he sees that there is a possibility of a conflict of interest, disqualify himself by declaring his interest at the earliest opportunity, and he should not take part in any consideration or discussion of or vote with respect to the matter in question.

5. When the attorney or any of his partners or associates is a member of an official body he should not appear professionally before that body. However subject to the rules of the official body it would not be improper for him to appear professionally before a committee of such body if such partner or associate is not a member of that committee.

6. The attorney should not represent in the same or any related matter any persons or interests with whom he has been concerned in an official capacity. Likewise, he should avoid advising upon a ruling of an official body of which he is a member or of which he was a member at the time the ruling was made.

7. By way of corollary to the Rule, relating to Confidential Information, confidential information acquired by the attorney by virtue of his holding public office should be kept confidential and should not be divulged or used by him merely because he has ceased to hold such office.

8. Generally speaking, the Bar Council will not be concerned with the execution of the official responsibilities of a lawyer holding public office, but if his conduct in office reflects adversely upon his integrity or his professional competence, he may be subject to disciplinary action.

RULE X
FEES

The attorney should not —

(a) stipulate for, charge or accept any fee which is not fully disclosed, fair and reasonable;
(b) appropriate any funds of his client held in trust or otherwise under his control for or on account of his fees without the express authority of his client, except in accordance with the custom or accepted practice of the profession;
(c) enter into any agreement or stipulate payment only in the event of success in any suit, action or other contentious proceedings for which he is retained or employed to prosecute.

Commentary

1. A fair and reasonable fee will depend upon and reflect such factors as —

(a) the time and effort required and spent;
(b) the difficulty and importance of the matter;
(c) whether special skill or service has been required and provided;
(d) the customary charges of other attorneys of equal standing in like matters and circumstances;
(e) the amount involved or the value of the subject matter;
(f) the results obtained;

(g) scales advised by the Bar Association;
(h) such special circumstances as loss of other employment, uncertainty of reward, and urgency.

A fee will not be fair and reasonable if it is one which cannot be justified in the light of all pertinent circumstances, including the factors mentioned, or is so disproportionate to the services rendered as to introduce an element of fraud or dishonesty.

2. It is in keeping with the best traditions of the legal profession to reduce or waive a fee in a situation where there is hardship or poverty, or the client or prospective client would otherwise effectively be deprived of legal advice or representation.

3. Breach of this Rule and misunderstandings respecting fees and financial matters bring the legal profession into disrepute and reflect adversely upon the general administration of justice. The attorney should try to avoid controversy with his client with respect to fees, and he should be ready to explain the basis for his charges (especially if the client is unsophisticated or uninformed as to the proper basis and measurements for fees). He should give the client a fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make informed decisions. When something unusual or unforeseen occurs which may substantially affect the amount of the fee, the attorney should forestall misunderstandings or disputes by explanations to his client.

Whilst there may be special circumstances in particular cases which justify the quotation or acceptance of a fee less than the minimum scale as advised from time to time by the Bahamas Bar Association it is generally considered improper deliberately to undercut fees by quoting or accepting a reduced fee from any prospective new client and especially if it is known or there are reasonable grounds to believe that such person is or has been represented by another attorney in The Bahamas.

4. The attorney should not charge his client interest on an overdue account unless permitted by law, and then only after adequate notice to the client.

5. In matters where the attorney is acting for two or more clients on the same side it is his duty to divide his fees and disbursements equitably between them in the absence of agreement otherwise.

6. A fee will not be a fair one within the meaning of the Rule if it is divided with another attorney who is not a partner or associate unless (a) the client consents, either expressly or impliedly to the employment of the other attorney; and (b) the fees are divided in proportion to the work done and responsibilities assumed.

7. The fiduciary relationship between the attorney and his client requires full disclosure in all financial matters between them and

prohibits the acceptance by the attorney of any hidden fees. No fee, reward, costs, commission, interests, rebate, agency or forwarding allowance or other compensation whatsoever related to professional employment may be taken by the attorney from anyone other than the client without full disclosure to and the consent of the client or, where the attorney's fees are being paid by someone other than the client such as a borrower, or a personal representative, the consent of such other. So far as disbursements are concerned, only *bona fide* and specified payments to others may be included, and if the attorney is financially interested in the person to whom the disbursements are made, such as an investigating, brokerage or copying agency, he must expressly disclose this fact to his client.

8. It is the generally accepted practice in real estate transactions and collection matters for the attorney to deduct his fees and disbursements from moneys paid to him on behalf of his client.

RULE XI
WITHDRAWAL

The attorney owes a duty to his client not to withdraw his services except for good cause and upon notice appropriate in the circumstances.

Commentary

1. Although the client has the right to terminate the lawyer-client relationship at will, the attorney has no such freedom of action. Having accepted professional employment he should complete the task to the best of his ability unless there is justifiable cause for his terminating the relationship.

2. In all situations where the attorney withdraws from employment he should act so as to minimize expense and avoid prejudice to his client, and do all that he reasonably can to facilitate the orderly transfer of the matter to the attorney who succeeds him.

3. Where withdrawal by the attorney is required or permitted by this Rule he must comply with all applicable rules of the court, and, where required by rules or practice, obtain the court's permission to withdraw.

4. In some circumstances the attorney will be under a positive duty to withdraw. The obvious case is where he is discharged by the client. Other examples are (a) if he is instructed by his client to do something inconsistent with his duty to the court and if, following explanation, the client persists in his instructions; (b) if the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another; (c) if it becomes clear that the attorney's continued employment will involve him in a breach of this Code, such as for example a breach

of the Rule relating to Impartiality and Conflict of Interest; or (d) if the attorney discovers that he is not competent to handle the matter. In these situations it will be the attorney's duty to inform his client that he must withdraw.

5. Situations where an attorney would be entitled to withdraw, although not under a positive duty to do so, will usually only arise where there has been a serious loss of confidence between the attorney and the client. Such a loss of confidence goes to the very basis of the relationship. Thus, if the attorney is deceived by his client he will have justifiable cause for withdrawal. Again, the refusal of the client to accept and act upon the attorney's advice on a significant point might indicate such a loss of confidence. However, the attorney should not use the threat of withdrawal as a device to force a hasty decision by his client on a difficult question.

6. Failure on the part of the client after reasonable notice to provide funds on account of disbursements or fees would also justify withdrawal by the attorney, if no serious prejudice to the client would result.

7. No hard and fast rules can be laid down as to what will constitute reasonable notice prior to withdrawal. Where the point is covered by statutory provisions or rules of court, these will govern. In other situations the attorney must be governed by the basic principle that he should protect his client's interests to the best of his ability and that he should not desert his client at a critical stage of a matter or at a time when his withdrawal would put the client in a position of disadvantage or peril.

8. Upon his discharge or withdrawal the attorney should —

(a) deliver to or to the order of the client all papers and property to which the client is entitled;

(b) give the client all information he may require in connection with the case or matter;

(c) account for all funds of the client then held or previously dealt with, including the refunding of any renumeration not earned during his employment;

(d) promptly render his account for outstanding fees and disbursements;

(e) co-operate with the attorney who succeeds him for the purposes outlined in paragraph 2.

The obligation in clause (a) to deliver papers and property is subject to the lawyer's right of lien referred to in paragraph 10. In the event of conflicting claims to such papers or property the attorney should use his best efforts to have the claimants settle the dispute.

9. Co-operation with the successor attorney will normally include providing him with memoranda of facts and law which have been prepared by the attorney in connection with the matter, but confidential information which is not clearly related to the matter should not be divulged without the express consent of the client.

10. Where upon the discharge or withdrawal of the attorney the question of his right of lien for unpaid fees and disbursements arises, he should have due regard to the effect of its enforcement upon the client's position. Generally speaking the attorney should not enforce his lien if the result would be to materially prejudice the client's position in any uncompleted matter.

11. Before accepting employment, the successor attorney should be satisfied that the other approves or has withdrawn or has been discharged by the client. It is quite proper for the successor attorney to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the other attorney, especially if the latter withdrew for good cause or was capriciously discharged. But if a trial or hearing is in progress or imminent, or if the client would otherwise be prejudiced, the successor attorney should not allow any outstanding account to interfere with his acting for the client.

12. Where an attorney acting for several clients in a case or matter ceases to act for one or more of them, he should co-operate with his successor attorney or attorneys to the extent permitted by this Code, and seek to avoid any unseemly rivalry or appearance of it.

13. When a law firm is dissolved it will usually result in the termination of the lawyer-client relationship as between a particular client and one or more of the attorneys involved. In such cases most clients will prefer to retain the services of the attorney whom they regarded as being in charge of their business prior to the dissolution. However, the final decision rests with the client, and the attorneys who are no longer retained by that client should act in accordance with the principles here set out, and in particular paragraph 2.

RULE XII
THE ATTORNEY AND THE ADMINISTRATION OF JUSTICE

The attorney should encourage public respect for and strive to improve the administration of justice.

Commentary

1. The admission to and continuance in the practice of law implies on the part of the attorney a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public and,

because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby maintain public respect for it.

2. The attorney's training, opportunities and experience enable him to observe the workings and to discover the strengths and weaknesses of laws, legal institutions and authorities. He should therefore lead in seeking improvements in the legal system, but his criticisms and proposals should be *bona fide* and reasoned.

3. The obligation outlined in the Rule is not restricted to the attorney's professional activities but is a broad general responsibility resulting from his position in the community. His responsibilities are greater than those of a private citizen. He must not subvert the law by counselling or assisting in activities which are in defiance of it, and he must do nothing to lessen the respect and confidence of the public in the legal system of which he is a part. He should take care not to weaken or destroy public confidence in legal institutions or authorities by broad irresponsible allegations of corruption or partiality. The attorney in public life must be particularly careful in this regard because the mere fact that he is an attorney will lend weight and credibility to his statements. But for the same reason he should not hesitate to speak out where he sees an injustice.

4. Although proceedings and decisions of tribunals are properly subject to scrutiny and criticism by all members of the public, including attorneys, members of tribunals are often prohibited by custom or by law from defending themselves. Their inability to do so imposes special responsibilities upon attorneys. First, the attorney should avoid criticism which is petty, intemperate or unsupported by his *bona fide* belief in its real merit, bearing in mind that in the eyes of the public his professional knowledge lends weight to his judgments or criticisms. Secondly, if he himself has been involved in the proceedings, there is the risk that his criticism may be, or may appear to be, partisan rather than objective. Thirdly, where the tribunal is the target of unjust criticism, the attorney, as a participant in the administration of justice, is uniquely able to and should support the tribunal, both because its members cannot defend themselves and because the attorney is thereby contributing to greater public understanding of and thus respect for the legal system.

5. Whenever the attorney seeks legislative or administrative changes, he should disclose whether he is pursuing his own interest, or that of a client or whether he is acting in the public interest. The attorney may advocate such changes on behalf of a client even though he does not agree with them, but when he purports to act in the public interest, he should espouse only those changes which he conscientiously believes to be in the public interest.

RULE XIII
AVAILABILITY OF LEGAL SERVICES

Whereas limited publication of an attorney's name or firm name for information purposes is a useful adjunct to the overall availability of legal services to the public, unregulated competitive advertising is incompatible with the integrity of the profession and may be detrimental to the public interest. The following categories of limited advertising are considered acceptable, subject, in any particular case, to disallowance by the Bar Council:

(a) Listings in professional legal directories, telephone directories, professional journals or other similar publications.

(b) Publication of names on legal aid panels and referral services sponsored or approved by the Bar Council, including those of foreign diplomatic missions, professional and community oriented bodies.

(c) The use of name plates on law offices and the publication of professional cards and announcements.

(d) Any other category or mode of limited advertising which the Bar Council in its discretion may from time to time allow.

Commentary

1. It is essential that a person requiring legal services be able to find, with a minimum of difficulty or delay, an attorney who is qualified to provide such services. In a relatively small community, where attorneys are well known, the person will usually be able to make an informed choice and select a qualified lawyer in whom he has confidence. However in larger centres these conditions may not obtain and as the practice of law becomes increasingly complex and the practice of the individual attorney tends to become restricted to particular fields of law, the reputations of attorneys and their competence or qualification in particular fields may not be sufficiently well known to enable a person to make an informed choice. Thus one who has had little or no contact with attorneys or who is a stranger in the community may have difficulty in finding an attorney who has the special skill required for the particular task. Telephone directories, legal directories and referral services will help him find a lawyer, but not necessarily the right one for the work involved.

2. The individual attorney when consulted by a prospective client in such circumstances should be ready to assist in finding the right attorney for the problem to be dealt with. If, for some reason, he cannot agree to act (e.g. he may not consider himself well qualified in the particular field), he should assist in finding an attorney who is qualified and able to act. Such assistance should be willingly given and, except in very special circumstances, should be given without charge.

3. The individual attorney may also assist in making legal services available by participating in legal aid plans and referral services, by engaging in programmes of public information, education or advice concerning legal matters, and by being considerate of those who seek his advice but who are inexperienced in legal matters or cannot readily explain their problems.

4. The means by which it is sought to make legal services more readily available to the public must be consistent with the public interest and must not be such as would primarily advance the economic interests of any individual attorney or law firm, or detract from the integrity, independence or effectiveness of the legal profession. Unregulated advertising is not in the interest of the public or the profession. Such advertising has for good reason been prohibited by professional bodies. It would be apt to encourage self aggrandizement at the expense of truth and could mislead the uninformed and arouse unattainable hopes and expectations resulting in the distrust of legal institutions and attorneys. Moreover, there are sound economic reasons for not allowing unregulated advertising, quite apart from the traditional reasons for which the professions have rejected it. There is the risk that such advertising would tend to increase the cost of legal services and in the course of time would tend to bring about a concentration of legal services in large firms that could afford to advertise freely to the detriment of the medium size and small firm, thereby unduly limiting the choice of persons seeking independent legal representation.

5. Limited advertising (as opposed to unregulated advertising) can be of much assistance to persons seeking legal services for example (a) advertising on behalf of the profession by the Bar Council and by the groups authorized by them; (b) publication of names on legal aid panels and referral services sponsored or approved by the Bar Council; (c) the use of name plates on law offices and the publication of professional cards and announcements, including, where permissible, a reference to the fact that an attorney is an accredited specialist or that his practice is restricted to a particular field. The overriding considerations are that the content of such advertising should be true and should not be capable of misleading those to whom it is addressed.

6. When considering whether or not limited advertising in a particular area meets the public need, consideration must be given to the clientele to be served. Thus the Bar Council must have freedom of action in determining the nature and content of the limited advertising that will best meet the community need.

7. The attorney must not directly or indirectly apply for or seek instructions for professional business or do or permit in the carrying on of his practice any act or thing which may be regarded as touting, or engage in competitive advertising calculated to attract business unfairly. It is competitive and unfair advertising for the

attorney to use an ostentatious name plate or display a name plate elsewhere than at his place of business; to put the names of clients on his own letterhead; to allow his name to be put on the note paper of clients or third persons; to circularise former clients on any resumption of practice; or, generally, to circularise non-clients, or to allow his name or description to appear on client's circulars.

The attorney must not, directly or indirectly, do or permit any act or thing to be done which can reasonably be regarded as professional touting or as designed primarily to attract legal business. The attorney should not offer generally to provide legal services at reduced rates for the sole purpose of attracting clients. However, he may properly assist in making legal services available by charging a reduced fee or no fee at all to a person who would have difficulty in paying the fee usually charged for such service or by accepting a salary, flat fee or retainer from or under a scheme established by Government or the Bar Council or a community service group in order to provide legal services to a defined or identifiable section of the public. For this purpose a community service group means a group established for purposes which are charitable or educational or which involve self improvement of its members through mutual aid and assistance and includes a group formed for the express purpose of providing legal services to persons who cannot afford normal or fixed or any fees.

8. The attorney should not solicit appearances on radio, television or any other public forum in his professional capacity as an attorney or attempt to use any such appearance as a means of professional advertisement. Nor should he engage in his capacity as an attorney in any public appearance that might discredit the legal profession. It is quite proper for the attorney to appear in his private or personal capacity as a speaker, actor or otherwise on a non-legal programme where his professional activity as an attorney is not the reason for his appearance and in such cases he may be described as an attorney. If his professional capacity is the reason for his appearance, any introduction or description of him should be limited to his name, professional designation and a reasonable amount of biographical detail.

9. The attorney has a general right to decline particular employment (except when he has been assigned as counsel by a court), but it is a right he should be slow to exercise if the probable result would be to make it very difficult for a person to obtain legal advice or representation. Generally speaking he should not exercise the right merely because a person seeking his services, or that person's cause, is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of his private opinion as to the guilt of the accused. As stated in paragraph 2, the attorney declining employment should assist in obtaining the services of another attorney competent in the particular field and able to act.

10. The attorney should adhere to rules made by the Bar Council with respect to making legal services available and with respect to advertising, but rigid adherence to restrictive rules should be enforced with discretion where an attorney, who may have infringed such rules, acted in good faith in making legal services available more efficiently, economically, and conveniently than they would otherwise have been and where he was not primarily advancing his own economic interests.

RULE XIV
RESPONSIBILITY TO THE PROFESSION

As a member of an honourable profession the attorney should assist in maintaining the integrity of the profession and should participate in its activities.

Commentary

1. Unless an attorney who tends to depart from proper professional conduct is checked at an early stage, loss or damage to his clients or others may ensue. Evidence of minor breaches may on investigation disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is therefore proper (unless it is privileged or otherwise unlawful) for an attorney to report to the Bar Council any instance involving or appearing to involve breach of this Code. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where a shortage of trust funds is involved, the attorney has an obligation to the profession to report the matter unless it is privileged or otherwise unlawful for him to do so. In all cases the report must be made *bona fide* without malice or ulterior motive.

2. An attorney should not refuse without good and sufficient reason a retainer against another attorney who is alleged to have wronged his client.

3. The attorney has a duty to reply promptly to any communication from the Bar Council.

4. The attorney should not write, in the course of his practice, letters, whether to his client, another attorney or any other person, which are abusive, offensive or otherwise totally inconsistent with the proper tone of a professional communication from an attorney.

5. There should be no discrimination by the attorney on the grounds of race, creed, colour, national origin or sex in the employment of other attorneys or articled students or in other relations between him or her and other members of the profession.

6. In order to enable the profession to discharge its public responsibility to provide independent and competent legal services, the individual attorney should do his part in assisting the profession

to function properly and effectively. In this regard, participation in such activities, as law reform, continuing legal education, tutorials, legal aid programmes, community legal service, professional conduct and discipline, liaison with other professions, and other activities of the Bahamas Bar Association, although often time-consuming and without tangible reward, are essential to the maintenance of a strong, independent and useful profession.

RULE XV
PRACTICE BY UNAUTHORIZED PERSONS

The attorney should assist in preventing the unauthorized practice of law.

Commentary

1. Statutory prohibitions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal abilities, but they are immune from control, regulation and, in the case of misconduct, from discipline, and their competence and integrity have not been vouched for by an independent body representative of the legal profession. Moreover, the client of an attorney who is authorized to practise has the protection and benefit of the lawyer-client privilege, the attorney's duty of secrecy, the professional standards of care which the law requires of attorneys, the authority which the courts exercise over them, and of other safeguards such as professional liability insurance, rights with respect to the taxation of bills and rules respecting trust money.

2. The attorney should not employ in any capacity having to do with the practice of law (a) an attorney who is under suspension as a result of disciplinary proceedings; or (b) a person who has been disbarred as an attorney or has been permitted to resign while facing disciplinary proceedings and who has not been reinstated.

3. The attorney must assume complete professional responsibility for all business entrusted to him. He must maintain direct supervision over his staff and over assistants such as students and clerks to whom he delegates particular tasks and functions. For example, if he practises alone or operates a branch or part-time office, he should ensure that all matters requiring an attorney's professional skill and judgment are dealt with by an attorney qualified to do the work, and that legal advice is not given by unauthorized persons, whether in his name or otherwise. Furthermore, the amount of any fee to be charged to a client should be approved by the attorney.

4. Sections 19 to 23 of the Bahamas Bar Act specifically preclude unqualified persons from (i) acting as counsel and attorney in any case civil or criminal to be heard or determined in any court (ii) using any name, title, addition or description implying that he is

qualified or recognised by law as qualified to act as counsel and attorney and (iii) in expectation of any fee, gain or reward, directly or indirectly drawing or preparing any memorandum or articles of association of a company or any instrument relating to real or personal property or to any legal proceedings. Contravention of these sections is a criminal offence punishable by fine and, in some instances, also by imprisonment.

Where these practices occur and are condoned or acquiesced in by Bahamian attorneys, they should be regarded as examples of improper conduct by the Bahamian attorneys so concerned in addition to being breaches of the law by the outside attorney and they should be reported to the Bar Council for appropriate action.

For the avoidance of doubt, it is declared that there is nothing improper in a Bahamian attorney consulting with or instructing outside attorneys to draw pleadings or other documents whenever the Bahamian attorney is so instructed by his client and provided that the control of the conduct of the matter rests in the Bahamian attorney.

RULE XVI
RESPONSIBILITY TO LAWYERS INDIVIDUALLY

The attorney's conduct towards other attorneys should be characterised by courtesy and good faith.

Commentary

1. Public interest demands that matters entrusted to an attorney be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each attorney engaged in a matter will contribute materially to this end. The attorney who conducts himself otherwise does a disservice to his client and neglect of the Rule will impair the ability of attorneys to perform their function properly.

2. Any ill feeling which may exist or be engendered between clients, particularly during litigation, should never be allowed to influence attorneys in their conduct and demeanour toward each other or the parties. The presence of personal animosity between attorneys involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or references between them should be avoided, and haranguing or offensive tactics interfere with the orderly administration of justice and have no place in our legal system.

3. The attorney should accede to reasonable requests concerning trial dates, adjournments, waiver or procedural formalities and similar matters which do not prejudice the rights of his client. Where the attorney knows that another attorney has been consulted in a matter he should not proceed by default in such matter without enquiry and warning.

4. The attorney should avoid sharp practice. He should not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other attorneys not going to the merits or involving the sacrifice of the client's rights.

5. The attorney should answer with reasonable promptness all professional letters and communications from other attorneys which require an answer and he should be punctual in fulfilling all commitments.

6. The attorney should give no undertaking he cannot fulfil and he should fulfil every undertaking he gives. Undertakings should be written or confirmed in writing and they should be absolutely unambiguous in their terms. If the lawyer giving an undertaking does not intend to accept personal responsibility, he should state this quite clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the attorney giving it will honour it personally.

7. The attorney should not communicate upon or attempt to negotiate or compromise a matter directly with any party who is represented by an attorney except through or with the consent of that attorney.

8. The attorney should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other attorneys but he should be prepared, when requested, to advise and represent a client in a complaint involving another attorney.

9. The same courtesy and good faith should characterise the attorney's conduct toward lay persons lawfully representing others or themselves.

RULE XVII
OBSERVANCE OF CODE

1. The foregoing Rules should not be construed as a denial of the existence of other duties and rules of professional conduct which are in keeping with the traditions of the Legal Profession, though not specifically mentioned therein.

2. Where in any particular matter explicit ethical guidance does not exist, an attorney should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

Commentary

1. Public confidence in the administration of justice and in the legal profession may be eroded by irresponsible conduct on the part of the individual attorney and he should strive to avoid even the appearance of impropriety.

2. Our system of administering justice provides procedures whereby issues can be tried in an impartial manner to the end that such issues may be decided upon the merits. Statements or suggestions by the attorney that he could or would attempt to circumvent those procedures should therefore be avoided because they would tend to bring both him and the legal profession into disrepute.

3. Without express instructions from the client, it is improper for the attorney to insert in the client's will a clause directing the executor to retain the services of the attorney in the administration of the estate.

4. The attorney has a professional duty, quite apart from any legal liability, to meet financial obligations incurred in his practice such as agency accounts, obligations to members of the profession and fees or charges of witnesses, special examiners, registrars, reporters and public officials. Where the attorney incurs an obligation on behalf of a client which the attorney is not prepared to pay personally, he should make his position clear in writing at the time the obligation is incurred.

5. The attorney should not undertake to advise an unrepresented person but should urge him to obtain independent legal advice and if the unrepresented person does not do so, the attorney must take care to see that such person is not proceeding under the impression that his interests will be protected by the attorney. If the unrepresented person requests the attorney to advise or act for him in the matter, the attorney should be governed by the considerations outlined in the Rule relating to Impartiality and Conflict of Interest.

6. The attorney should endeavour to conduct himself at all times so as to reflect credit on the legal profession and to inspire the confidence, respect and trust of his clients and the community.

RULE XVIII
RELATIONSHIP WITH COUNCIL

1. An attorney shall as far as possible respond to a request from the Council or a committee thereof for comments or information on any aspect of a complaint being considered by the Council or the committee.

2. An attorney shall ensure his attendance at disciplinary committee proceedings where so requested by or on behalf of the Council or committee.