



Singapore
Institute of Legal Education

Private Client Practice Criminal Litigation Practice

Taking Instructions and
Preliminary Advice

A client will come to see you in 2 situations:

- (i) Before he is charged, i.e. while Police investigations are on-going; or
- (ii) After he is charged

Before Client is Charged

Taking Client's instructions in relation to the allegation(s) or complaint(s)

- Thorough understanding of the allegation(s) or complaint(s)
- Identify the facts in issue as Client unfolds the story
- Details of Client's denial or explanation on the events leading to the allegation(s) or complaint(s)
- Details as to any connections Client has had with the complainant, witnesses for the Prosecution, and the co-accused persons
- Particular attention ought to be paid to the defence of alibi, if available – sufficient notice is required to be given to the Prosecution

s 278 of the Criminal Procedure Code 2010

(while police investigations are on-going)

Principle in Browne v. Dunn

- The significant aspect of instructions is that it will form the basis on which you will put forward your client's case in relation to the Prosecution's case.

House of Lords, ***Browne v. Dunn*** [1893] 6 R 67

Before Client is Charged

Advising Client

- Advise him on importance of the Statement(s) recorded, s 23 CPC 2010 and Defence of alibi, if applicable
- Do not advise Client to collude or destroy evidence
- Do not advise him to conceal evidence or do anything to conceal information or screen him or any person from legal punishment
- A legal practitioner must not “concoct any evidence or contrive any fact, whether or not that evidence or fact will assist in advancing the client’s case”

Rule 9(2)(g)-(h), Legal Profession (Professional Conduct) Rules 2015
s 200, 201, 204A & 213 Penal Code

(while police investigations are on-going)

Before Client is Charged

Advising Client

- If Client will be charged in Court in the coming days, advise him to arrange for a bailor. If on Agency bail, bailor is to be present in Court at Mention of case
- Sufficient security to be able to post Client's bail
- Bailor must bring Passport to Court, if not surrendered to the Investigation Agency earlier
- Bailor must be:
 - a) Singapore citizen or PR
 - b) Above 21 years old
 - c) Not a bankrupt
 - d) Not involved in the case

(while police investigations are on-going)

After Client is Charged

- Examine the charges and advise Client
- Take further and detailed instructions on the charge(s)
- Decide whether to make representations to the AGC on the charge(s)
- Client to decide whether to plead guilty or claim trial to the charge(s)
- Seek clarification with Client on any areas of doubt on Client's involvement in the charge(s) before trial and before making any representations to AGC
- Explain to your Client 2 types of Statements that investigating agencies (Police, CPIB, CNB, Customs, etc) would have recorded:
 - (i) 'cautioned statement' s 23 CPC 2010
 - (ii) 'long statement' s 22 CPC 2010

(when Client is out on Police/Court Bail)

- Written representations to AGC to review the charge(s):
 - (i) reduce charge(s)
 - (ii) proceed with lesser number of charge
 - (iii) withdrawal of charge(s)
- To take instructions and advise Client on merits of Prosecution's case
- To plead guilty to charge(s) or claim trial
- If plead guilty, to receive instructions and obtain details and background of Client
- Always obtain documentary evidence in support
- Obtain Client's approval of the draft representations before submitting to AGC
- False representations may render Client liable to prosecution for an offence under Section 182 Penal Code

Client's Background

family background

marital status

academic records

employment history

awards or testimonials

medical history

criminal antecedents

Sample Schedule of Legal Costs

1. Retainer/Deposit (if not refundable, to state)
2. Disbursements
 - a) Payment for Police Reports, Medical Reports, etc
 - b) Transport costs
 - c) Stationery, postage, etc
3. Attendance in court
 - a) For Mention including bail application, if any
 - b) PTC, CCMS, CCDC
 - c) Hearing (for trial or to plead guilty)

Sample Schedule of Legal Costs

4. Preparation Fee for Hearing/Trial (bill by hour or agreed sum?)
- 5 . Refresher Fee (in the event case is part-heard)
- 6 . GST
- 7 . Additional cost(s) not anticipated at time of brief, in the event case proceeds further and new matters/issues surfaced

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(3)(b) – Defending accused regardless of personal opinion

A legal practitioner who represents an accused person must not express the legal practitioner's personal opinion as to whether the accused person is guilty, or allow the legal practitioner's personal opinion as to whether the accused person is guilty to affect the legal practitioner's professional assessment of the facts or the law, the legal practitioner's conduct of the criminal proceedings, or the legal practitioner's duty to the accused person or the court

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(4) – Confession by client

Where a legal practitioner represents an accused person, and the accused person confesses to any offence to the legal practitioner, the legal practitioner —

- (a) may continue to represent the accused person; but
- (b) must not adduce any evidence or make any submission which is inconsistent with the confession by the accused person.

Whereas *rule 15(4)*:- **A legal practitioner who represents the prosecution must**, within a reasonable time after the conviction but before the sentencing of an accused person, inform the court of –

- (a) any previous conviction or antecedent of the accused person that the prosecution knows of;
- (b) any relevant factors, and any known precedents, relating to the sentence; and
- (c) if the accused person is unrepresented, any known mitigating circumstances

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(5)(a)(i) – Advising client to plead

A legal practitioner must advise an accused person he or she represents on whether to plead guilty, or to claim trial, to a charge

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(3)(c)-(d) – Absence from criminal trial

A legal practitioner who represents an accused person must not be absent from a trial or hearing without reasonable grounds; if absent from a trial or hearing, must:

- (i) communicate the grounds for the legal practitioner's absence to the accused person before the trial or hearing; and
- (ii) make reasonable efforts to arrange for another legal practitioner to take over the conduct of the trial or hearing

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(6) – Continuing to act if accused absconds

If an accused person absconds, the legal practitioner representing the accused person may –

- (a) apply to be discharged from acting in the matter; or
- (b) conduct the defence on the basis of instructions received as if the accused person was present but elected to remain silent

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(8) – Disclosure of previous convictions

If an accused person has any previous conviction or antecedent, the legal practitioner representing the accused person is not required to disclose such antecedent, but must not adduce any evidence or make any submission which is inconsistent with the previous conviction or antecedent of the accused person

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(5)(a)(ii) – Evidence from accused

A legal practitioner must advise an accused person he or she represents on whether to give evidence or to remain silent in the accused person's defence

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(7) – Mitigation plea

If an accused person has pleaded guilty or has been convicted after trial, the legal practitioner representing the accused person, when presenting a plea in mitigation, must not make any allegation which is scandalous or is intended or calculated to vilify, insult or annoy any person

Rule 14

Legal Profession (Professional Conduct) Rules 2015

Rule 14(3)(e) – After conviction and sentence

A legal practitioner who represents an accused person must continue to reasonably assist the accused person after the accused person is convicted and sentenced

Rule 14(3)(a) – Bail

A legal practitioner who represents an accused person must not provide any surety or bail for the accused person

Making Representations

- ***Knight Glenn Jeyasingam v PP*** [1999] 1 SLR(R) 1165
- ***Ng Chye Huay and anor v PP*** [2006] 1 SLR(R) 157

To Note

- Keep attendance notes of your interview(s) with clients
- Do not concoct or adduce evidence for clients
- Do not make representations or give advice to clients on matters you know not to be true
- Do not make promises or give assurances which you know you cannot keep

Always Remember

- When taking instructions always pay close attention to possible Defence(s) available to Client based on facts or instructions received
 - E.g. Alibi Defence or General Exceptions to Penal Code
 - See s 278 CPC 2012, s 107 & 108 Evidence Act
 - Remember s 182 Penal Code

- Counsel must have competent understanding of procedural aspects of trial, evidence law, legal ingredients of offence(s)
- 3 broad areas to obtain client's instructions
 - Client's background
 - Instructions in relation to the charge(s)
 - Statement(s) given to investigation agencies
- If case is under the CCDC regime, must advise Client that his Defence must not be inconsistent with information he gave the Investigation Officer and recorded in Statement(s)
- If interviewing witnesses for Defence, Client should not be present

- Clients come to see you for a service – will seize upon any assurances they receive from you
- There must always be communication with the Client
 - Communications should be documented
- It is preferred to take instructions in person. Do not take instructions or receive information from third persons on behalf of Client. If received information from third party, to inform Client in writing and confirm the contents
- Number of interview is not conclusive – instead counsel must spend quality time with Client

Pleading Guilty

- Counsel should advise client generally about his plea
 - If necessary, express advice in strong terms, if evidence is overwhelming
 - But must make it clear to Client that they have complete freedom of choice and responsibility for the plea
 - Plea of guilty comes from lips of the Accused but his mind must be in agreement with his plea
 - If plea is extracted by pressure – it may be found to be a nullity

To sum up

- Listen to your client first, then ask questions
- Identify clearly your objectives in relation to the work to be done
- Explain the issues involved and options available to the client
- Keep the client informed of the progress of the case
- Personal Conduct – Conduct Beyond Reproach
 - When taking instructions from your client, conduct yourself with honour, integrity and dignity at all times

Summary

Taking Instructions

Take instructions from Client in person

Do not give advice or receive instructions over the phone; or via fax or email unless of course, these are the mode of communication with the Client, and if need be should always be a follow-up from previous meetings

The Interview

- Appearance/Presentation
- 1st Interview. Overview of the case and the fees
- 2nd Interview and more, if necessary

You should have details of the following:

1. Personal particulars
2. Academic Background
3. Employment Background
4. Family Background
5. Previous Antecedents, if any
6. Medical background, including Medical Reports
7. The Charge(s)
8. Statement(s) to Police
9. Alibi Notice, if any
10. Instructions whether to PG, CT or write to AGC to review case or charge(s)
11. Exhibits for Defence
12. Instructions to call for expert evidence for the Defence, if necessary

Make a checklist of information needed

- Information on the case you need
- Details of witnesses, if any
- Documents to be produced
- Medical Reports

Bailable and non-bailable offences

Bailable offences

- Offences specified as such in the 5th column of the First Schedule
- Bail must be offered as of right; *generally*, no discretion to refuse bail (“*must be released*” in s 92(1) CPC)
- For offences punishable with imprisonment, Court can order non-release on police bail, or refuse to grant court bail, if it believes on prescribed grounds that the person will not attend (s 92(3) CPC)
 - See r 5 of the CPR for the prescribed grounds of belief, which are really a mix of *facts* (e.g. the accused is not a citizen or permanent resident, is not domiciled in Singapore) and *factors* (e.g. the nature and seriousness of the offence, the likely sentence on conviction)

Non-bailable offences

- Generally discretionary as to whether bail is offered (“*may be released*” in s 93(1) CPC)
- Various factors taken into account, e.g. nature of the offence; penalty provided; likelihood of absconding; possibility of evidence being tampered with
- Must release if there are “no reasonable grounds for believing the accused has committed a non-bailable offence” (subject to exceptions to bail in s 95 CPC), or if there are grounds for further investigating whether some other bailable offence has been committed (s 93(2), (3A) CPC), but court can order no release on police bail or refuse to grant court bail if the bailable offence is punishable with imprisonment and it believes on prescribed grounds that the person will not attend (s 93(3B) CPC, r 5 CPR 2018)

Non-bailable offences

- Onus on person seeking bail to persuade the court to exercise discretion favourably (see *Selvamsylvester*)
- Read *Yang Yin* for an appreciation of how the court exercises discretion
- Despite bail being granted for non-bailable offences, court can cause released person to be arrested (s 93(5) CPC)

Exceptions to bail

Exceptions to bail

- Notwithstanding discretion to grant bail for non-bailable offences, bail shall not be granted in certain specific situations prescribed under s 95(1) CPC including:
 - Accused is charged for an offence punishable with death or life imprisonment (s 95(1)(a) CPC)
 - Court believes, on prescribed grounds, that accused will not attend (s 95(1)(b) CPC, r 5 CPR 2018)
- There are, in turn, certain carve outs from the above rule (found in s 95(2) CPC) that allow the court to still release a person on bail (e.g. accused is a juvenile or a sick or infirm person).

Conditions and quantum of Bail

Conditions

- Specified statutory conditions for release on bail/personal bond (s 94(1), 99(2), (4) CPC)
 - E.g. attendance as required, surrender of travel documents, attendance for investigations or in court, non-commission of offence; non-interference with witnesses, No leaving Singapore without permission of police/court
- Power to impose other necessary conditions, including electronic tagging (s 94(2), (3) CPC)

Breach of conditions

- Accused person is liable to be arrested without warrant in certain scenarios (s 103(1), (3) CPC):
 - E.g. actual or likely non-attendance, actual or likely breach of bail/personal bond conditions
- Following arrest, court can decide to remand or grant bail again subject to conditions.
- Offence to abscond while on bail / personal bond (s 103(5) CPC)

Quantum of bail

- A number of factors determine the quantum of bail – fundamentally, it's the bailor's money at stake if an accused absconds.
- The quantum of bail is not meant to deter an accused person from flight. Primarily has to be sufficient to ensure the bailor does not shirk from his or her duties (*Ewe Pang Kooi*; s 96 CPC)

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Part B Candidates should refer to the Code of Conduct for more information, particularly, the sections on conduct and behaviour, and the use of SILE resources.