



ATTORNEY GENERAL'S CHAMBERS
BRUNEI DARUSSALAM



The Law Society of Brunei Darussalam

**THE CODE OF PRACTICE
FOR THE CONDUCT OF CRIMINAL
PROCEEDINGS BY THE
PROSECUTION AND THE DEFENCE**

THE CODE OF PRACTICE FOR THE CONDUCT OF CRIMINAL PROCEEDINGS BY THE PROSECUTION AND THE DEFENCE

A. INTRODUCTION

1. This document lays down the Code of Practice (“Code”) for the conduct of criminal proceedings by the Prosecution and the Defence. The Code sets out best practices guidelines in the conduct of criminal proceedings and is jointly issued by the Attorney-General’s Chambers and the Law Society of Brunei Darussalam.
2. The Code does not lay down any rule of law and is not issued pursuant to any statutory duty or power. The Code does not supplant the rules of professional conduct that may be applicable to Prosecutors or Defence Counsel respectively, and does not create any right, entitlement, legitimate expectation, or provide for any disciplinary action or any other action or consequence based on any alleged non-compliance.
3. The guidelines in the Code aim to encourage best practices in the conduct of criminal proceedings, which are characterised by:
 - a) good faith efforts in making representations to the Public Prosecutor and in conducting plea bargaining;
 - b) considering in good faith any representations made to the Public Prosecutor by or on behalf of the accused person;
 - c) narrowing the issues in dispute and the effective and timely resolution of disputes;
 - d) maintaining the rule of law and assisting in the administration of criminal justice; and
 - e) assisting the court in ensuring a speedy and efficient trial process and in arriving at a just decision.
4. Unless otherwise stated, all references in the Code to:
 - a) “Prosecutors” refer to the Public Prosecutor, the Deputy Public Prosecutors, the Prosecuting Officers and all persons who are duly authorised to act for the Public Prosecutor in the conduct of criminal proceedings; and
 - b) “Defence Counsel” refer to advocates and solicitors who act on behalf of their clients accused of having committed criminal offences.
5. The primary duty that Defence Counsel owes to the administration of criminal justice is his duty as an officer of the court, which includes a duty to serve as the accused person’s advocate.

B. GENERAL DUTIES OF THE PROSECUTION AND THE DEFENCE

6. Prosecutors and Defence Counsel should at all times:

- a) respect the honour and dignity of their professions and maintain the highest professional and ethical standards;
- b) conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- c) exercise the highest standards of integrity and care and ensure that their conduct is above reproach;
- d) respect the fundamental rights of suspects and the right of the accused person to a fair trial;
- e) respect the rights, interests and privacy of victims and witnesses;
- f) recognise each other as professional colleagues and act fairly, honestly and courteously towards each other;
- g) co-operate with one another as reasonably as possible to assist the court in achieving a fair, just and expeditious disposal of each case;
- h) be, and appear to be, independent, and avoid all conflicts of interest that might undermine their independence;
- i) carry out their functions free of extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter and for any reason;
- j) avoid impropriety and the appearance of impropriety;
- k) be competent and act with reasonable diligence and promptness;
- l) take reasonable steps to maintain and enhance their knowledge, and skills necessary for the proper performance of their duties; and
- m) ensure that they are able to discharge or carry out their work diligently and expeditiously, having regard to their other work and professional commitments.

C. BEST PRACTICES IN PRE-TRIAL PROCEEDINGS

Section 1 – Disclosure

- 7. Prosecutors and Defence Counsel should comply with the disclosure requirements imposed by law, and make reasonable efforts to promote a co-operative and honourable pre-trial atmosphere on all matters concerning disclosure, including nature of defence.
- 8. Prosecutors and Defence Counsel should disclose to each other their respective draft Statement of Facts and Mitigation Plea, and they should inform the other party of any objection they may have to the matters stated therein, prior to the proceedings.

Section 2 – Plea bargaining

9. Prosecutors and Defence Counsel, where possible, should enter into Criminal Case Negotiations (CCN) to narrow issues at trial or to avoid unnecessary litigation altogether.

Section 3 – Confidentiality and privilege

10. Prosecutors and Defence Counsel should:

- a) preserve the confidentiality of documents served by the other party;
- b) respect the rules of evidence and disclosure with regard to privileged information; and
- c) refrain from disclosing any correspondence between the parties made on a without prejudice basis.

Section 4 – Service of documents and inspection of exhibits

11. Prosecutors and Defence Counsel should:

- a) ensure that any relevant documents are served on the other party and the court at the same time, for example, any submissions filed in court should also be served on the other party on the same day;
- b) seek to agree on a future deadline for the exchange, if directed to exchange by the court but either party is not ready at the appointed time;
- c) ensure the timely service of such documents as ordered by the Court; and
- d) decide what exhibits, if any, they wish to inspect and ensure that the appropriate arrangements are made to inspect them as promptly as possible so that there is no undue delay in the trial.

12. Prosecutors and Defence Counsel should give each other reasonable notice prior to inspection of the other party's exhibits.

13. Prosecutors and Defence Counsel should file and serve their respective cases as soon as they are ready, even if earlier than statutorily required where practicable.

Section 5 – Interview of witnesses

14. Prosecutors and Defence Counsel may properly interview any witness or prospective witness for the opposing side without the consent of, but subject to first giving notice to, the opposing counsel or party.
15. The attendance of a witness at a pre-trial interview is voluntary and cannot be compelled. If a witness declines to attend a pre-trial interview, this fact should normally be disclosed by one party to the other.

16. Prosecutors and Defence Counsel should explain in advance to the witness in clear terms the purpose of the pre-trial interview and deal with any questions that the witness may have in relation to the process.
17. Extra care and sensitivity should be taken where the witnesses are young, and/or have been adversely affected or traumatized by the relevant offence(s).
18. Prosecutors and Defence Counsel should always remind their witnesses (including expert witnesses) that they have an overriding duty to be truthful and to assist the court, and not the Prosecution or the Defence.

Section 6 – Evidence

19. Prosecutors and Defence Counsel should at all times use their best endeavours to maintain the integrity of evidence, whether in written, oral or any other form, which may be submitted to the court.

Section 7 – Communications with accused persons

21. Prosecutors should not communicate with an accused person who is known to be represented by a Defence Counsel except through or with the permission of the Defence Counsel.
22. Prosecutors and Defence Counsel should, insofar as they are aware, inform the opposing party promptly of an unscheduled mention upon their application.

Section 8 – Service of subpoenas on advocates and solicitors

23. Prosecutors and Defence Counsel should ensure that if an advocate and solicitor is required to attend court as a witness in criminal proceedings, the advocate and solicitor should be informed of such criminal proceedings in a timely manner.

Section 9 – Multiple clients

24. Defence Counsel should not represent two or more clients in the same or related cases where conflict of interest may arise
25. Defence Counsel should not seek concessions favourable to one client by any agreement which is detrimental to the interests of another client. Defence Counsel representing two or more clients in the same or related cases should not participate in making an aggregated agreement as to guilty pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the pleas involved.

D. BEST PRACTICES IN COURT PROCEEDINGS

Section 1 – Duty to the court

26. Prosecutors should present to the court or tribunal, fairly and impartially, the whole of the facts which comprise the case for the Prosecution or the case that the Defence has to meet, and not strive for a conviction at all costs. Defence Counsel should endeavour to protect the accused person from being convicted except by a court and upon evidence

sufficient to support a conviction for the offence with which the accused person is charged.

27. Prosecutors and Defence Counsel should comply with the intent of the procedural rules and not intentionally manipulate procedural rules to delay court proceedings.
28. Prosecutors and Defence Counsel should not deliberately make applications and arguments that, to their knowledge, are clearly baseless and without merit.
29. In cases involving vulnerable victims and especially where the court has ordered *in camera* hearings, the Prosecutor and Defence Counsel shall at all times ensure that the confidentiality of documents and information adduced at the hearing, as well as the privacy of any victim or vulnerable witnesses, are protected. Defence Counsel shall advise their client to comply with such orders.
30. Prosecutors and Defence Counsel should not intentionally misrepresent matters of fact or law to the court, or intentionally misstate the evidence or mislead the court as to the inferences it may draw from the evidence. Where a Prosecutor or Defence Counsel has inadvertently misled the court, all necessary steps should be taken to correct the court's impression after the error has been discovered.
31. Prosecutors and Defence Counsel should avoid communicating with a Judge about the facts, issues or any other matter in a case that they know is pending or likely to be pending before the court unless they have first informed the other party of the nature of the matters they wish to communicate with the court and have given them an opportunity to be present or to reply.

32. Prosecutors and Defence Counsel should at all times:

- a) act with due courtesy to the court before which they are appearing;
- b) use their best endeavours to avoid unnecessary adjournments, expense and waste of the court's and the other party's time; and
- c) assist the court in ensuring a speedy and efficient trial and in arriving at a just decision.

Section 2 – Punctuality and timelines

33. Prosecutors and Defence Counsel should endeavour to be punctual when they are appearing before the court.
34. Prosecutors and Defence Counsel should always respect all the rules of the court, including any timelines stipulated by the court for any matter.

Section 3 – Cross-examination of witnesses

35. Prosecutors and Defence Counsel should in all cases:
 - a) not make statements or ask questions which are scandalous or intended to insult or calculated only to vilify, insult or annoy either the witness or any other person;

- b) conduct the examination of all witnesses fairly, objectively, and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness;
- c) only put material to a witness that is considered on reasonable grounds to be accurate and its use justified in the circumstances of the trial;
- d) not put questions that affect the credibility of a witness by attacking his character but that are otherwise not relevant to the actual inquiry, unless there are reasonable grounds to support the imputation conveyed by the questions;
- e) not interview or discuss with a witness, whom the Prosecutor or the Defence Counsel has called, his evidence or the evidence of the other witnesses while such witness is under cross-examination, save that communications with the witness for any purpose necessary for the making of administrative or logistical arrangements in the matter are permitted; and
- f) not by assertion in submissions make any allegation against a witness whom they had an opportunity to cross-examine unless in cross-examination they have given the witness an opportunity to answer the allegation.

Section 4 – Offering of witnesses

36. Prosecutors should, as soon as possible and before the trial if reasonably practicable but no later than the close of the Prosecution’s case, inform the Defence of the identity and location (if known) of any person whom they know may be able to give evidence relevant to a case but who is not proposed to be called by the Prosecution. Any statement made by such a person or the witness should also be furnished to the Defence Counsel if such a disclosure is required by law.
37. Where a witness called by the Prosecution gives evidence on a material issue in substantial conflict with a prior statement made by the witness to justify impeachment proceedings under the Evidence Act, the Prosecution should disclose the prior statement to the Defence Counsel.

Section 5 – Arguments and submissions made to the court

38. Prosecutors and Defence Counsel should inform the court of all relevant decisions and legislative provisions of which they are aware, whether the effect is favourable or unfavourable towards the contention for which they argue.
39. Prosecutors and Defence Counsel should assist the court at all times before the conclusion of the trial by drawing attention to any apparent errors or omissions of fact or law or procedural irregularities, which, in their opinion, ought to be corrected.
40. Prosecutors and Defence Counsel should not advance submissions, opinions or propositions that to their knowledge are contrary to the law.

Section 6 – Publicity and the media

41. Prosecutors and Defence Counsel should not give any statement to the press or media that may amount to contempt of court or that is calculated to interfere with the fair trial of a case that has not been concluded.

Section 7 – Appeals

42. Prosecutors and Defence Counsel should be accurate in referring to the record of appeal and the authorities upon which they rely in their written and oral arguments to the court.
43. Prosecutors and Defence Counsel should give reasonable notice to opposing counsel before the hearing of any new facts and explain why an application to admit new evidence could not be filed before the hearing. Where appropriate, parties should make the appropriate application for the admission of further evidence.
44. Prosecutors and Defence Counsel should not intentionally omit authorities that are adverse to their respective cases. All relevant authorities should be brought to the attention of the court.