

GUERNSEY BAR EXAMINATION

9.30 AM, 24 MAY 2019

COMPULSORY PAPER TWO

ETHICS AND PROFESSIONAL CONDUCT

ONE HOUR

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. NOT ALL QUESTIONS CARRY EQUAL MARKS.

- Question 1 – 15 MARKS
- Question 2 – 10 MARKS
- Question 3 – 10 MARKS
- Question 4 – 15 MARKS

PLEASE WRITE LEGIBLY AND ENSURE THAT YOU ANSWER EACH QUESTION ON A SEPARATE SHEET OF PAPER. PLEASE WRITE ON ONE SIDE OF THE PAPER ONLY AND LABEL EACH SHEET CLEARLY WITH:

- NAME OF PAPER
- CANDIDATE LETTER
- QUESTION NUMBER
- PART NUMBER OF QUESTION (if applicable)

MATERIAL PROVIDED:

1. Oath, Articles and Rules of Professional Conduct of the Guernsey Advocate

QUESTION 1 (total 15 marks)

- 1.1 (a) Identify one of the Articles from the Oath and Articles of the Guernsey Advocate that you think is most in need of repeal or amendment. Explain why you think the change is needed.
- (b) Suggest a new Article to add to the current list. Explain why you think this would be an appropriate addition.

(5 marks)

- 1.2 Jon is a Guernsey Advocate and runs his own Guernsey law firm, employing three other people. Until recently, Jon's brother, Roger, was a 5 year PQE solicitor practising at a large firm in London. However, due to a misunderstanding with a package of cocaine, and following disciplinary proceedings against him, Roger has been struck off the Roll of the Law Society of England and Wales. Roger has now moved to Guernsey and he asks Jon if he can work as a paralegal employee in Jon's firm. Are there any issues with granting this request?

(5 marks)

- 1.3 Jon decides to employ Roger, mainly to help liaise with witnesses and handle correspondence under Jon's supervision. One of the matters that Jon is working on is a litigation file for a medical negligence plaintiff, Mrs P. Part of the evidence for the plaintiff will be from an expert. Jon asks Roger to find an expert witness. Roger contacts Doctor Jones, who is suitably qualified but has never previously been instructed as an expert witness. Sometime later, Jon looks over the correspondence file and sees that Roger has been trying to persuade Doctor Jones to do the work on a 'no win, no fee' basis. Roger has explained this in an email to the Doctor as fulfilling the firm's duty to keep Mrs P's costs down as much as possible. Should Jon be concerned about Roger's actions?

(5 marks)

QUESTION 2 (total 10 marks)

Jon takes Mrs P's file away from Roger and decides to handle everything himself. He instructs a different expert, Professor Wood. Subsequently, in April 2017 Jon emails Professor Wood with the dates for the trial window. The trial is estimated for 7 days in January 2018 and they agree that he will be available for all 7 days although probably only needed for 3 days. Jon agrees to the Professor's cancellation fees, in particular if given less than 2 weeks' notice then full daily rate of £1,500 per day.

In August 2017, the case settles. Jon tells Roger to inform Professor Wood that they are cancelling his services for the trial. Roger fails to inform Professor Wood of the settlement and that he is no longer required to attend the trial until January 2018 when the Professor contacts the firm. That is within 2 weeks of the proposed trial date. Professor Wood then sends the firm an invoice for £10,500. The firm does not pay and, following an unsuccessful letter before action, Professor Wood issues proceedings against the firm.

Jon defends the action, asserting that Mrs P is the correct defendant as she was the plaintiff in the underlying action '*and as such is the only person capable of being liable for disbursements under the indemnity principle.*' Jon does not inform Mrs P about this or about Professor Wood's action at all, even though the firm are still instructed by her to deal with the costs of her medical claim. Judgment is entered against Jon's firm and the firm sends a payment to Professor Wood, drawn on its office account, in full settlement of the matter.

Eventually, Mrs P finds out about Professor Wood's action. She contacts you, seeking your advice on whether she can complain to the Guernsey Bar about Jon.

- 2.1 Identify any provisions from the Rules of Professional Conduct that you consider may be relevant and explain whether or not you think that Jon is likely to be found to have breached any of them. **(10 marks)**

QUESTION 3 (total 10 marks)

3.1 Phillip contacts you and asks if you will act for him in a negligence claim. In the course of the conversation, you discover that Jenny, an advocate in another firm has been acting for Phillip, but Phillip explains that he is not happy with her advice so he has 'sacked' her. What actions should you take before you agree to act for Phillip in order to comply with the Rules of Professional Conduct?

(3 marks)

3.2 Explain the differences between standard CDD, enhanced CDD, and reduced or simplified CDD. What steps would you need to take if you were unable to meet the appropriate CDD requirements in relation to a particular client or prospective client?

(7 marks)

QUESTION 4 (total 15 marks)

- 4.1 What are the three internationally recognised stages to money laundering?
(3 marks)
- 4.2 The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations 2008 apply to prescribed businesses that carry out specified types of work. Which types of legal services are covered by these Regulations?
(5 marks)
- 4.3 You are concerned about a proposed transaction - the purchase of a hotel in St Peter Port - which one of your clients, Baptiste, intends to make. The purchase price is considerably more than any of his past transactions as far as you are aware. The more you tried to discuss the source of his financing, the less he said and eventually he left suddenly, saying that *'you want to know too much'* and *'maybe I will use someone else for this one'*. What matters should you consider in making a decision on whether or not to report this conversation to the Financial Intelligence Service? Should you be worried about breaching client confidentiality if you make the disclosure? If you tell a more experienced colleague about your conversation with Baptiste and seek her views on reporting the matter, does that raise any issues for you?
(7 marks)

END OF PAPER