

CODE OF CONDUCT

IN FORCE AS AT 11 NOVEMBER 2006

**THE SOUTH AFRICAN INSTITUTE OF
INTELLECTUAL PROPERTY LAW**

**DIE SUID-AFRIKAANSE INSTITUUT VAN
INTELLEKTUELE GOEDEREREG**

CODE OF CONDUCT

TABLE OF CONTENTS

1	PRELIMINARY	28
2	DEFINITIONS	28
3	GENERAL GUIDE LINES	29
4	ADVERTISING	30
5	CONDUCT TOWARDS COLLEAGUES, THE INSTITUTE, THE PROFESSION AND CLIENTS	31
6	CONDUCT TOWARDS OFFICIALS AND PATENT OFFICE	33
7	CONFLICT OF CLIENTS' INTERESTS	34
8	CONFLICTS WITH OWN INTERESTS	35
9	COMPLAINTS AND GUIDANCE	35
10	INFORMATION FOR AUDIT PURPOSES – CONTINGENT LIABILITIES	36

CODE OF CONDUCT

1 PRELIMINARY

- 1.1 This Code sets out the rules of professional conduct applicable to members in the profession and that members in the profession are obliged to observe in the conduct of their practices. Accordingly all references in this Code to members shall mean members in the profession. All other terms defined in the Constitution of the Institute shall have the same meaning in this Code. Insofar as any earlier ruling is incompatible with this Code, this Code prevails.
- 1.2 All members shall comply with Rules and Regulations, as may be applicable to a member, of the Law Societies, Societies of Advocates, Bar Associations and similar professional bodies to which they belong. The Council of the Institute may, in its discretion, deal with a breach of any such Rules and Regulations as a breach of this Code or may refer the breach to the relevant body for attention.
- 1.3 In the case of a non-resident member, if there is any conflict between the standards of conduct set forth in this Code and the standard of professional conduct obtaining among reputable patent and trade mark attorneys/agents in his or her own country, compliance by the member with the standards obtaining in the member's own country but not with the standards prescribed herein shall not be deemed to be unprofessional conduct unless, after due investigation, Council, by a majority vote, finds that the conduct of the member reflects discredit on the Institute or its members.

2 DEFINITIONS

Words used in this Code shall have the meanings defined in the Constitution.

3 GENERAL GUIDE LINES

- 3.1 The Council has issued this Code for the guidance of members in their professional conduct, and it is emphasised that members are expected to act within the spirit as well as the letter of the Code.
- 3.2 Members in private practice must be independent and must be seen to exercise professional independence without being influenced by any other interests.
- 3.3 It is the duty of members to maintain high ethical standards in professional practice, to promote the interests of their clients and of the profession and to render a service to the public. Members should refrain from doing or sanctioning any act that is undignified or that is likely to bring discredit upon the Institute, upon the profession or upon any of its members.
- 3.4 Members shall not improperly use or disclose information obtained from or on behalf of any client or prospective client.
- 3.5 Members must give priority in their conduct to acting -
 - 3.5.1 within the law,
 - 3.5.2 in their clients' best interests, and
 - 3.5.3 in the interests of the profession, in that order.
- 3.6 Members shall be accountable to the Council for the defaults of any of their partners, fellow directors and staff who are not members of the Institute so far as such acts and defaults relate to intellectual property.
- 3.7 Members of the Institute shall maintain the highest standards of professional conduct in:
 - 3.7.1 Advertising; (See 4 below)
 - 3.7.2 Conduct towards colleagues, the Institute, the profession, and clients; (See 5 below)

- 3.7.3 Conduct towards Officials; (See 6 below)
- 3.7.4 Conflict between clients' interests; (See 7 below)
- 3.7.5 Conflict with own interests. (See 8 below)

4 ADVERTISING

- 4.1 Members shall conform fully with the Rules of Law Societies and other regulatory bodies to which they belong in advertising and other activities calculated to attract business.
- 4.2 The letterheads and other documents used in the conduct of members' practices may reflect the names of partners and consultants (being previous partners of a member's practice) but shall not contain the name of any other person unless that person is in the full time employ of the practice and the function and position of that person in the practice is clearly and unambiguously stated in a manner that is in no way misleading.
- 4.3 Members shall not allow their names to be used, either directly or through a nominal partnership, by another practice that does not have a Patent Agent or Patent Attorney as a partner or in its employ and in such a way as to mislead others into thinking that the practice has a Patent Agent or Patent Attorney as a full time partner or in its employ.
- 4.4 Members shall not refer to or make use of any office held in the Institute in their letterheads or in any way in connection with their practices.
- 4.5 Student or Ordinary membership of the Institute shall not be reflected in a member's letterhead or in connection with a member's practice. Where a person is entitled to practise as a patent agent, trade mark agent, or attorney, the fact that the person is a student member shall not preclude that person's name from appearing on that person's firm's letterhead.
- 4.6 Members shall not directly or indirectly advertise, announce or publish offers to sell or to license or to negotiate the sale or licence of intellectual

property, whether as an agent or otherwise, except upon the *bona fide* instructions of a client.

- 4.7 Members shall not directly or indirectly solicit invitations to give addresses or write articles on behalf of the Institute without the Council's prior approval. The Council reserves the right to take such steps as it may deem necessary against members to prevent any abuse of this privilege.
- 4.8 Members giving or writing addresses and articles on behalf of the Institute, including radio and television broadcasts, may be identified only by name and office or status in the Institute.
- 4.9 Members shall not, with a view to attracting or inviting instructions use their status in or association with the Institute to enter into correspondence with listeners, viewers or readers of broadcasts or publications given or written by the member or other members.

5 CONDUCT TOWARDS COLLEAGUES, THE INSTITUTE, THE PROFESSION AND CLIENTS

- 5.1 Members shall extend courtesy to the public and to fellow practitioners and shall at all times refrain from doing or saying anything that is intended to undermine or that is to the detriment of other members.
- 5.2 Members shall practise on a strictly professional basis and shall refrain in correspondence or otherwise, from using abusive or derogatory language.
- 5.3 A member shall be entitled to accept an unsolicited mandate from a client even though he is aware that such client had previously been the client of another member but a member shall not knowingly take over a mandate from a client of another member without advising the other member.
- 5.4 When one member (the latter member) notifies another member (the former member) that a former client of the former member has instructed

the latter member that the client wishes to terminate the client's mandate to the former member and wishes the latter member to assume the mandate, the former member should accept the correctness of and act upon advice given by the latter member. If the former member has or justifiably feels that there are reasonable grounds on which to doubt the correctness of the information given by the latter member regarding the change in mandate, the former member may write to the client, informing the client of the advice received from the latter member and seeking confirmation and shall send to the latter member a copy of the letter to the client.

- 5.5 If a client changes a mandate from one member to another, the former member has a right to retain documents belonging to the client, over which the former member has a lien, until his or her fees and disbursements have been paid. In general, it is not desirable for the latter member to proceed with the mandate until the reasonable costs of the former member have been paid unless urgent matters require that the mandate should proceed without delay. In such cases, the latter member should obtain a sufficient deposit and give the former member an undertaking that the former member's fees and disbursements will be paid, if necessary, when their reasonableness has been established and should undertake to hold available for inspection by the former member and to return to the former member at a convenient time for the purposes of taxation or preparation of an account those documents that are required for such purposes. Having obtained such undertaking(s), the former member should hand over the client's documents to the latter member to enable the latter member to proceed with the mandate.
- 5.6 A member representing a party in any matter in regard to which another member has received instructions from another party (whether to institute, threaten, or defend proceedings, or otherwise) shall not deal with such other party knowing him or her to be a client of the other member except with the consent of the other member.

- 5.7 A member shall not knowingly make a material misrepresentation of facts to another member or to a client in any matter.
- 5.8 A member's conduct towards any recognised practitioner in Intellectual Property matters should be the same as that towards his or her fellow members.
- 5.9 Unprofessional or dishonourable or unworthy conduct on the part of a member shall include *inter alia* failure –
- (a) to answer or appropriately to deal with, within a reasonable time, any correspondence or other communication which reasonably requires a reply or other response; and
 - (b) to comply with a ruling or decision of the Council.
- 5.10 **Branch Offices**
- No member shall have or retain any branch office purporting to provide the services of the profession unless the practice conducted there, when open, is at all times under the effective supervision of a person who, if he is not the member himself or a partner of that member, is an Attorney, Patent Attorney or Patent Agent employed by a fellow, provided that if Council is reasonably of the view that a branch office is not at any time under such effective supervision, Council may direct the first-mentioned member immediately to rectify the situation.

6 CONDUCT TOWARDS OFFICIALS AND PATENT OFFICE

- 6.1 A member shall at all times maintain high professional standards when dealing with Government Officials (e.g. with officials at the High Court, and the Patent and trade marks Offices, and other Government Departments).
- 6.2 A member shall not do anything which could place other members at any disadvantage through the first-mentioned member's personal relationship with any official.

- 6.3 A member shall not make improper use of or disclose information obtained from any official on behalf of a client or prospective client.

7 CONFLICT OF CLIENTS' INTERESTS

- 7.1 A member shall endeavour to avoid situations in which his or her duty to one client is in conflict with that to another client and, whenever any such conflict becomes apparent, the member shall take steps calculated to resolve it and to avoid prejudice to either client.
- 7.2 Once a member has acted for a client in any matter, the member should never act for an adversary in the same matter nor lend such adversary any aid, counsel, or assistance in that or any other matter (even if the member's relationship with his or her former client has terminated), if the member's former client could be prejudiced by the use of confidential or other information obtained from the former client. In this regard, the same matter shall mean the matter in which the particular dispute addressed or to be addressed is the same.
- 7.3 A member may represent both parties as a mediator in the initial stages of a possible dispute (whether in connection with an opposition, revocation, infringement proceedings or otherwise, including obtaining necessary extensions of time) provided that in so doing the member makes it clear to both parties that the member is representing them both and they consent thereto.
- 7.4 A member may grant or agree to the grant of initial extensions of time (whether the member is representing both parties or not) without the prior approval or express consent of the client in respect of whom the extension of time is requested.
- 7.5 A member may and should accept the instructions of a client to file an application which may lead to conflicting rights, under circumstances where the member considers that failure to do so may result in prejudice to such client.

8 CONFLICTS WITH OWN INTERESTS

- 8.1 A member shall not acquire or be associated with the acquisition of any intellectual property right, or substantial interest therein, in such circumstances as would be likely to give rise to a conflict between professional duty and self-interest.
- 8.2 A member shall not undertake work relating to an intellectual property right for a client if the member is the owner of an intellectual property right or of a substantial interest therein and if the circumstances are such as might give rise to a conflict between professional duty and self-interest, unless the member before undertaking the work fully discloses to the client his or her ownership or interest and obtains written consent.

9 COMPLAINTS AND GUIDANCE

- 9.1 A complaint regarding the conduct of a member shall be submitted to Council through the Administrative Officer in writing setting out full particulars of the complaint. Council will then decide whether or not to refer the matter to the disciplinary committee of the Institute.
- 9.2 Any member may ask Council for a ruling as to whether or not;
 - 9.2.1 any conduct in which the member or the member's firm engages or proposes to engage, or
 - 9.2.2 any publication which the member or the member's firm uses, publishes or proposes to use or publish complies with this Code and Council may rule thereon.

10 INFORMATION FOR AUDIT PURPOSES – CONTINGENT LIABILITIES

- 10.1 A member who receives a request to supply information for audit purposes regarding contingent liabilities (e.g. matters which may affect the financial position of a company, or matters which may relate to pending or threatened claims to litigation) shall not comply with such request unless the matter in respect of which the information is required is clearly and unequivocally identified.
- 10.2 When such request is made by an auditor on behalf of a client, and provided a contingent liability has been adequately identified in terms of sub-paragraph 1 above, the member may comply with such request but only if he is asked to confirm, as reasonable in his or her opinion, an amount which the client has suggested be provided in respect of such adequately identified contingent liability.
- 10.3 When supplying such information, the member shall qualify his or her report by stating that although care has been taken in preparing or checking the information, no guarantee can be given that the information is correct in all aspects.
- 10.4 The member shall add any further qualification which he or she considers appropriate (e.g. disclaimer of detailed knowledge).

[End of Document]