



Tel : 04-2615669
Fax/Tel : 04-2628664
E-mail : secretariat@penangbar.org
Website : www.penangbar.org

No. 4. Green Hall,
1st Floor,
10200 Penang,
Malaysia.

JAWATANKUASA PEGUAM PULAU PINANG PENANG BAR COMMITTEE

Criminal Law 6/20

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To Members of the Penang Bar,

Professional Practice and Etiquette among Criminal Practitioners

The Penang Bar Committee has received information lately that there have been instances of blatant disregard of rules of professional practice and etiquette among some practitioners of the Criminal Bar. This relates namely to taking over conduct of a criminal matter to represent a client who is already represented by counsel.

Irrespective of area of practice, an advocate and solicitor has an important duty to ensure that they do not act for a client who is already represented by another advocate and solicitor and, even if so, the advocate and solicitor must strictly comply with **Rule 54 of the Legal Profession (Practice and Etiquette) Rules 1978** which provides as follows:

54. Advocate and solicitor not to appear for a party represented by another advocate and solicitor.

Where in any matter or proceeding, the name of any advocate and solicitor or the name of his firm appears on the records for any party, or an advocate and solicitor is known to be acting for a party in a matter whether in a Court or not, no other advocate and solicitor shall knowingly agree to appear or to act or continue to appear or to act for such party in such matter or proceeding unless -

- (a) he obtains the consent of the first-named advocate and solicitor; or*
- (b) he is satisfied that the proper professional remuneration of the first-named advocate and solicitor has been paid or he undertakes that the same will be paid; or*
- (c) he has, in ignorance that such name so appears on the record or that such advocate and solicitor has been so acting, already agreed to appear or to act for such party and is unable by reason of circumstances or urgency or the like to refuse to appear or to act further for such party, without exposing himself to a charge of breach of professional duty; or*
- (d) the first-named advocate and solicitor is unwilling or has refused to act further for such party, in which event he shall, if so required, protect any lien which the first-named advocate and solicitor may have for costs.*

Mandatory adherence to this Rule is significant in criminal practice as there are no procedural provisions in the Criminal Procedure Code equivalent to Order 64 of the Rules of Court 2012 for civil litigation i.e. while an advocate and solicitor cannot represent a client in a civil case unless they abide by the stringent measures stipulated in the Rules of Court 2012, there are no similar requirements for defence counsel representing an accused person in a criminal matter. Instead, in order to place themselves on record in criminal cases, defence counsel are merely required to appear before the Court and announce that they are acting for the accused.

Hence, criminal practitioners must take reasonable effort to ensure that the accused person whom they are instructed to act for is not already represented by inquiring from the client or, if the case had been called up earlier in Court, by going through the records of proceedings.

If there is already a counsel on record, and if another counsel wishes to take over conduct of the matter, the latter must ensure that they comply with the requirements of **Rule 54** of the **Legal Profession (Practice and Etiquette) Rules 1978**.

Members are reminded that any failure to comply with the **Legal Profession (Practice and Etiquette) Rules 1978** may result in disciplinary action under the **Legal Profession Act 1976**.

Members are therefore advised to take note of the above and to be guided accordingly.

V Parthipan
Chairman
Criminal Law Subcommittee