

## **PUPILLAGE GUIDELINES**

**Reminder:** A barrister may only act as a pupilmaster following 5 years' admission to the Bermuda Bar.

### **Policy Statement on Pupilmaster's Obligations**

The decision to hire a pupil creates professional responsibilities that extend beyond the simple legal relationship existing between the pupilmaster and the pupil who will be joining the pupilmaster's firm or practice. The pupilmaster should be cognizant of assuming a professional obligation toward an individual who will soon become a professional colleague. That obligation is to provide the pupil with an agreed upon opportunity to work under the pupilmaster's supervision. If the pupilmaster's firm or practice should dissolve or other events should occur that prevent the pupilmaster from carrying out the obligation, all reasonable steps should be taken to ensure that an alternative pupillage position is found for the pupil.

### **Policy Statement on Pupil's Obligations**

Pupils are advised that acceptance of a pupillage position involves the assumption of professional obligations to one's pupilmaster over and above the normal contractual duties of an employee. The corresponding pupilmaster's obligations are set out above. Termination of a pupillage relationship by a pupil should be undertaken only in the event of dissatisfaction with the quality of experience and instruction being provided by the pupilmaster and where possible, upon such notice as will provide the pupilmaster with a reasonable opportunity to make alternative means of dealing with the matters and duties assigned to the pupil.

### **Conduct of Pupillage**

The general obligations and functions of a pupilmaster are as follows:

The pupilmaster should ensure that the pupil is well grounded in the Barristers Code of Professional Conduct 1981, as amended from time to time.

The pupilmaster should ensure that the pupil is provided with an appropriate form of education plan (referred to below) detailing the anticipated work experience of the pupil and that the pupil completes it conscientiously and accurately.

The pupilmaster should ensure that the pupil has opportunity to read files and other documents such as will provide the pupil with the opportunity to do all such work and gain all such

experience as is appropriate for a person commencing practice in the type of work done by the pupilmaster.

The pupilmaster should take a direct interest in and monitor the work the pupil does and should give all reasonable assistance and the opportunity for discussion.

The pupilmaster should encourage a relationship with the pupil whereby the pupil is encouraged to discuss problems and receive information on matters relating to practice and etiquette. In appropriate circumstances, arrangements should be made for the pupil to spend time with and see the work of other members of the pupilmaster's firm or practice.

The pupilmaster must, if it is proper to do so, provide for the pupil the appropriate certificate required by the pupil pursuant to the provisions of the Supreme Court Act 1905 at the end of the period of pupillage or take the necessary steps to ensure that some other person entitled by the Supreme Court Act 1905 to sign such a certificate does so, and certify that pupillage has been completed in accordance with these guidelines.

### **Practice Areas**

Throughout the term of pupillage the pupil should be assigned work by the pupilmaster in such practice areas as are appropriate to the pupilmaster's experience and the needs of the pupil. It is recognized that the pupil's exposure to any given area of practice may be greater or lesser, depending upon whether opportunities with strong educational potential exist or arise in that area.

### **Guidance and Advice**

The pupil should be encouraged to approach the pupilmaster to discuss in confidence any problems or areas of concern relating to the pupil's pupillage.

### **Routine Tasks**

It is recognized that the pupil may be required to assist from time to time with the filing of documents at court and government or administrative offices, make deliveries and assist with other clerical matters.

### **Professional Responsibility**

The pupil should be given explanations of the professional responsibilities of a barrister and attorney relating to confidentiality of those requesting advice, avoidance of conflicts of interest and other ethical issues.

### **Interviewing**

The pupil should be given the opportunity to participate in interviews with those persons who are requesting advice and should be given the opportunity to interview other persons to obtain factual information relevant to the matter being considered.

### **Legal Research**

The pupil should be given the opportunity to research and report to the pupilmaster both verbally and in written form. If the pupil does not possess legal research skills developed to a level where the pupil could provide advice to those requesting the advice, the pupilmaster should assist the pupil in developing those skills by:

- (a) personally reviewing research undertaken by the pupil;
- (b) arranging for other barristers (where appropriate) to review legal research skills with the pupil; and
- (c) provide the pupil with suitable legal research assistance .

### **Problem Analysis and Fact Investigation**

Other than through interviewing, throughout the pupillage term, the pupilmaster should develop the pupil's skills in problem solving and gathering facts by providing the pupil the opportunity to:

- (a) discuss and analyze problems of those requesting the advice of the pupilmaster. Those discussions should attempt to teach the pupil how to identify the various options available for assisting the client and how to identify the strategic implications of each option;
- (b) observe an experienced barrister's initial consultation with those requesting the advice, then analyze the problem with the barrister after the consultation;
- (c) eventually take on responsibility for problem analysis and then discuss that analysis with the pupilmaster;
- (d) review company minute books and other documents relevant to a "due diligence" review;
- (e) assist in carrying out and review real estate title searches, various company and Supreme Court Cause Book searches;
- (f) review trial, examination for discovery and other transcripts.

### **Planning and Conduct of a Matter**

The pupil should be given instruction on the importance of devising a plan for the conduct of a matter that is consistent with the needs and expectations of those requesting the advice and the importance of achieving the desired result in a reasonable time and at a reasonable cost. It should be impressed upon the pupil that those requesting the advice must be kept advised of the progress of the matter and be consulted for instructions when important decisions must be made. Effective communications with both those requesting the advice and the pupil should be stressed by the pupilmaster.

### **File and Practice Management**

The pupil should be taught a suitable tickler system for both follow ups and limitation dates; the policies and procedures for docketing time; note-taking and record-keeping procedures and

techniques for the organization of individual files. The pupil should be made familiar with the pupilmaster's firm or practice files and records management system, including the procedures for opening and closing files.

### **Office Systems**

The pupil should be given instruction on various office systems and procedures including procedures for tracking photocopying, telephone, facsimile and other electronic communications and other expenses, procedures for obtaining reimbursement for disbursements on behalf of those requesting the advice; the organization of the firm's or practice's internal precedent systems, the capabilities and limitations of the word processor and office computer systems and any database systems relevant to tasks the pupil will work on.

### **Drafting**

The pupil should be given the opportunity to draft various legal documents such as contracts, affidavits, notices, agreements, pleadings, resolutions, information circulars, prospectuses and bye-laws. The pupilmaster should review and amend such draft documents. The pupil should be given the opportunity to draft letters to and on behalf of those requesting the advice including, for example, demand letters, reporting letters and opinion letters.

### **Writing**

To the extent the opportunity may exist or arise throughout the pupillage term, the pupil should be given the chance to assist in the writing of legal research memoranda, correspondence, briefs, reports, speeches, presentations or articles.

### **Negotiation**

To the extent the opportunity may exist or arise throughout the pupillage term, the pupil should be given the chance to observe and in some cases participate in negotiations conducted by the pupilmaster or other barristers in the firm or practice of the pupilmaster.

### **Advocacy**

The pupil should be given the opportunity to accompany the pupilmaster or one or more other barristers in the firm or practice of the pupilmaster to observe the conduct of any or all of the following: examinations for discovery, cross-examination on an affidavit, contested motions, applications in court, trials and appearances before administrative tribunals.

### **Draft Education Plan**

The following draft plan is one example of what an education plan might look like. It is drafted with a law firm setting in mind as the environment in which the pupil will serve. Pupilmasters may develop their own education plan which may borrow from what follows to whatever degree is appropriate. However, the plan should reflect the pupilmaster's educational program for the pupil and the pupilmaster is expected to fulfill whatever is set out in that plan. **Accordingly, it is**

**not expected that this sample plan will be copied and used exactly as set out below. The particular educational plan adopted should detail work and skills which the pupil could expect to encounter in the particular legal practice areas he or she will encounter.**

As a suggestion, each skills area has been divided into basic and optional groupings. The basic groupings represent the minimum objective of the pupillage experience (i.e. all pupils will receive this experience). The optional grouping represents experience that the pupil may or may not receive, depending upon factors such as the pupil's ability, availability of appropriate work and time. **It should not be assumed that the basic groupings listed below represent the Bar Council's view on the minimum standards for pupillage.** Pupilmasters who decide to produce a plan in this format may have basic groupings that are either more or less extensive, depending on the practice of that pupilmaster. A pupilmaster may decide not to set out basic and optional groupings, but the plan should **not** be a list of things that the pupil may or not do during pupillage. It should fairly represent the experience that the pupil can expect to receive.

## **Professional Responsibility**

### *Basic*

- The basic duties and responsibilities of a barrister taught through dialogue with the pupil and/or firm seminars.
- Routine discussion with other barristers in the firm on particular files.
- Discussion with the pupil regarding client confidentiality.
- Explanation and demonstration of procedures used to avoid conflicts of interest.
- Explanation and demonstration of procedures used for tickler systems.
- Explanation of how fees are tracked and billed and how this is explained to clients
- Use of general and trust accounts
- Discussion of appropriate response when asked by a client to do something which would involve a breach of the law or the Barristers' Code of Professional Conduct.

### *Optional*

- Discussion of courses of action that could potentially lead to a breach of professional conduct rules and identifying appropriate means of avoiding such a breach.
- Discussion of the proper approach to permitted levels of advertising and business development.
- Observation of the appropriate delegation of work to non-barristers.

## **2. Interviewing**

### *Basic*

- Discussion of proper interviewing techniques.
- Attendance with the pupilmaster on initial interviews with new client.
- Observation of interviews with witnesses
- Preparation of witness statements or affidavits for signature based on interview.

### *Optional*

- Interview of clients or witnesses.
- Interview of consultants, experts and others.
- Preparation of clients or witnesses for trial or examination.

## **3. Advising**

### *Basic*

- Discussion of proper legal counseling techniques.
- Preparation of memoranda for the pupilmaster providing the basis for advising the client.
- Discussion of options and remedies available to client.
- Attendance with pupilmaster or other barrister(s) in the firm at meetings with client in which the client is advised.
- Preparation of memoranda to file or other records of advice given to client.

### *Optional*

- Advice to client under supervision of pupilmaster.

## **4. Fact Investigation**

### *Basic*

- Review of documentary evidence (e.g. client's personal or firm files, company minute books, files maintained by government or administrative bodies).
- Conduct of searches under various public records systems.
- Observation of examinations for discovery or in aid of execution or cross-examination.
- Assistance in interviewing clients or witnesses.
- Preparation of summary of transcripts / meetings / interviews.

### *Optional*

- Arrangement for, preparation and conduct of interviews with client.

## **5. Legal Research**

### *Basic*

- Familiarity with research materials and facilities available (e.g. firm library, Supreme Court library, inter-firm lending arrangements, computer search databases).
- Research of points of law and verbal reporting of same to pupilmaster.
- Prepare memorandum of law.

### *Optional*

- Preparation of or response to legal memoranda, pleadings etc.

## **6. Analysis of Problems**

### *Basic*

- Discussion of client request for advice; generation of options and strategy.
- Preparation of written report of options and strategy based on pupil's research and investigation.

## **7. Planning and Conduct of a Matter**

### *Basic*

- Formulation of a plan with the pupilmaster for conduct of various matters.
- Discussion of effective communication with the client and with other barristers.
- Discussion of various cost and time saving techniques.

### *Optional*

- Assessment of various options in light of client's needs and financial resources.
- Preparation of draft reporting letters to client.

## **8. File and Practice Management**

### *Basic*

- Learning of basic file and record keeping practices.
- Learning of procedures for opening and closing of files.
- Preparation of a plan or checklist for a new file
- Learning of how to document a file (records of telephone calls, etc.).
- Proper organization of a file.
- Proper use of time docketing systems
- Keeping client informed of progress of matter.
- Familiarity with billing practices and procedures.
- Familiarity with tickler systems (follow-ups and limitation dates).

## **9. Office Systems**

### *Basic*

- Familiarity with general and trust account procedures.
- Processes used for recording expenses and disbursements.
- Familiarity and use of precedent files.

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## **10. Drafting**

### *Basic*

- Proper usage of precedents.
- Engagement and retainer letters.
- Correspondence.
- Documents, agreements.

## **11. Writing**

### *Basic*

- Discussion of methods for improving accuracy and clarity of expression in the legal context; memoranda, reports, letters.

### *Optional*

- Speeches, articles, opinion letters.

## **12. Negotiation**

### *Basic*

- Discussion of negotiation techniques and strategy.
- Observation of negotiations.
- Review and discussion of outcome of negotiations with pupilmaster.

### *Optional*

- Conduct of negotiation of minor disputes (under guidance of the pupilmaster).

## **13. Advocacy**

### *Basic*

- Discussion of advocacy techniques.
- Observation of advocacy by the pupilmaster or other barristers in the firm.
- Attendance at court, administrative hearings as observer.

### *Optional*

- Attendance at contested motions, summary conviction matters.