



New South Wales

Legal Profession Uniform Conduct (Barristers) Amendment (Refusal of Briefs) Rule 2018

under the

Legal Profession Uniform Law

The Legal Services Council has made the following rule under the *Legal Profession Uniform Law*.

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Chief Executive Officer, Legal Services Council

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1 Citation

This Rule may be cited as the *Legal Profession Uniform Conduct (Barristers) Amendment (Refusal of Briefs) Rule 2018*.

2 Commencement

This Rule commences on the day on which it is published on the NSW legislation website.

3 Authorising provision

This Rule is made by the Legal Services Council under Part 9.2 of the *Legal Profession Uniform Law*.

Schedule 1 Amendment of Legal Profession Uniform Conduct (Barristers) Rules 2015

[1] **Rule 101 Briefs which must be refused or must be returned**

Insert “or” at the end of rule 101 (l).

[2] **Rule 101 (m)**

Omit “arises, or”. Insert instead “arises.”.

[3] **Rule 101 (n)**

Omit the paragraph.

[4] **Rule 101A**

Insert after rule 101:

101A Refusal of briefs by barristers who are current and former judges or tribunal members

(1) In this rule:

court does not include tribunal.

former rules means the rule or rules of conduct (however described) in force immediately before 1 July 2015 governing the right of a barrister to appear before a court of which the barrister was a judge, justice, magistrate, coroner, master, prothonotary, registrar or other judicial officer, or a person acting in any of those offices, including rule 95 (n) of the *New South Wales Barristers’ Rules* and rule 92A of the *Victorian Bar Practice Rules 2009*.

judge includes a judge, justice, magistrate, coroner, master, prothonotary, registrar or other judicial officer, or a person acting in any of those offices, but does not include a person appointed as a judge before 1 July 2015.

tribunal means a tribunal constituted by or under an Act or a disciplinary tribunal.

(2) A barrister must refuse to accept or retain a brief or instructions to appear before a court if:

(a) the brief is to appear before a court:

(i) of which the barrister is or was formerly a judge, or

(ii) from which appeals lie to a court of which the barrister is or was formerly a judge, and

(b) the appearance would occur less than 5 years after the barrister ceased to be a judge of the court.

(3) A barrister must refuse to accept or retain a brief or instructions to appear before a tribunal that does not sit in divisions or lists of matters to which its members are assigned if:

(a) the barrister is a full time, part time or sessional member of the tribunal, or

(b) the appearance would occur less than 2 years after the barrister ceased to be a member of the tribunal.

(4) A barrister must refuse to accept or retain a brief or instructions to appear before a tribunal that sits in divisions or lists of matters to which its members are assigned if:

- (a) the brief is to appear in a proceeding in a division or list to which the barrister is assigned as a member of the tribunal, or
 - (b) the brief is to appear in a proceeding in a division or list to which the barrister was assigned and the appearance would occur less than 2 years after the barrister ceased to be assigned to the division or list.
- (5) The former rules continue to apply to a barrister who was, before 1 July 2015, appointed as a judge, justice, magistrate, coroner, master, prothonotary, registrar or other judicial officer, or a person acting in any of those offices.
- (6) For the purposes of subrule (2) (a) (ii):
 - (a) an appeal is not to be considered to lie to the Federal Court of Australia from the Supreme Court of a State or Territory, and
 - (b) the Supreme Court of Victoria (in the exercise of any of its jurisdiction) is taken to be a court to which an appeal from the County Court of Victoria lies, and
 - (c) the Supreme Court of New South Wales (in the exercise of any of its jurisdiction) is taken to be a court to which an appeal from the District Court of New South Wales lies.
- (7) This rule does not apply in respect of a tribunal if a provision of an Act or a statutory instrument made under an Act prohibits a member or former member of the tribunal from representing a party before the tribunal or prohibits any such representation within a certain period after ceasing to be a member or in certain circumstances.