



## **Provision of documents to journalists, law reporters and other non-parties**

<b>Purpose:</b>	To assist barristers in deciding how to respond to requests for case documents from third parties
<b>Scope of application:</b>	All practising barristers
<b>Issued by:</b>	The Ethics Committee
<b>Originally issued:</b>	June 2015
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<b>Status and effect:</b>	<b>Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.</b>

1. You may be asked to provide copies of documentation to those attending court. It may even be suggested that you are obliged to provide such documentation. The person making such a request may be a journalist or a law reporter, or may be (or be representing) a non-party with a direct or indirect interest in the proceedings, or may be someone who is merely curious about the case.

2. You have no duty to provide documentation to someone who is not a party to the proceedings. Your primary duty is to your client, to preserve your client’s confidentiality and maintain legal professional privilege. In family cases there are also various statutory provisions that prohibit the publication of confidential information relating to the proceedings and the child that require careful scrutiny, irrespective of your instructions.

3. The position is governed by CD6 of the Core Duties of the Bar Standards Board Handbook as follows:

*You must keep the affairs of each client confidential [CD6].*

The rule in the Handbook which covers confidentiality is rC15.5:

*rC15 Your duty to act in the best interests of each client (CD2), to provide a competent standard of work and service to each client (CD7) and to keep the affairs of each client confidential (CD6) includes the following obligations:*

...

*.5 you must protect the confidentiality of each client's affairs, except for such disclosures as are required or permitted by law or to which your client gives informed consent.*

4. Requests by non-parties for copies of skeleton arguments are particularly frequent. In an ordinary case, complying with such a request in relation to a skeleton argument which has been used at a current or past hearing is likely to present no problem. However, before doing so you must be satisfied that disclosure:

- (a) will not breach confidentiality or privilege;
- (b) will not breach (or facilitate breach of) any general rule of law or practice in the particular court or tribunal (e.g. under the Sexual Offences (Amendment) Act 1976 s.4, or the embargo on judgments before delivery, or under the Children Act 1989 s.97 and the Administration of Justice Act 1960 s.12); and
- (c) will not breach (or facilitate breach of) orders made in the particular proceedings (e.g. under the Children and Young Persons Act 1933 s.39 or the Contempt of Court Act 1981 s.4, or a Reporting Restriction Order made in the family court).

Even where none of these specific reasons to decline the request applies, you should still consider whether the contents of the skeleton argument or the circumstances of the case as a whole are such that your client's express permission to disclose should be sought.

5. Should a non-party ask you for sight of (or for copies of) case documents (including skeleton arguments) which contain confidential material, then you must refuse that request unless you have your client's consent and/or the court's permission (where this is required). You should tell your client that the request has been made, and you should advise your client of the right to refuse to consent. You should also consider and, as necessary, advise on the matters referred to in paragraph 4 above, which are expanded upon in paragraph 7 below in relation to family cases. If your client consents, and you are satisfied on those other matters, then you may comply with the request.

6. Your client should also be advised where relevant that, irrespective of refusal of consent, the non-party may be entitled to inspect and/or obtain copies of certain documentation under rules of court, that the court may order this, and that the interests of open justice will be given considerable weight when deciding whether to do so. Where the document has been placed before a judge and referred to in the course of ordinary (non-family) proceedings, the court's usual position will be to direct that access be permitted to the document and, where access is sought for a proper

journalistic purpose, the case for allowing access to it will be strong. The court will carry out a proportionality exercise which will be fact-specific. It will have regard to the purpose of the open justice principle, the potential value of the material in advancing that purpose and, conversely, any risk of harm which access to the documents may cause to the legitimate interests of others (*The Queen on the Application of Guardian News and Media Ltd v City of Westminster Magistrate's Court* [2012] EWCA Civ 420, Toulson LJ at [69]-[91]). See also *Cape Intermediate Holdings Ltd v. Dring* [2018] EWCA Civ 1795 for further analysis of the categories of documentation available to a non-party.

7. Particular caution is required in family cases, whether private or public law:

(a) First instance hearings are conducted in private, members of the public being excluded, but accredited journalists may attend. Committal hearings at first instance and hearings in the Court of Appeal are not conducted in private. You are very unlikely to be asked by a non-party, non-journalist for documentation. More likely is a request from a journalist for a skeleton argument or case summary.

(b) In such a situation, you should consider the Administration of Justice Act 1960 s.12, which makes it a contempt of court to publish information relating to proceedings conducted in private. You should also consider the Children Act 1989 s.97, which prohibits publication (during the proceedings) of any material intended or likely to identify any child as being involved in the proceedings or their address or school. Information of this sort is likely to be contained in the documents sought by the requesting journalist.

(c) You should also refer to the President's Guidance "Transparency in the Family Courts", dated 16 January 2014, for further assistance in relation to the publication of confidential information. Similar Guidance was issued at the same time for the Court of Protection.

(d) Thus whilst first instance hearings conducted in private may be attended by accredited journalists, those journalists will not usually be entitled to see or receive any documents filed with the court (including skeleton arguments and case summaries) without the court's permission.

(e) As regards appellate hearings conducted in public, there is likely to be a Reporting Restriction Order which prohibits anyone from identifying the child concerned or publishing information that might lead to the identification of the child (such as the parents' names, the child's address or the child's school). See however CPR PD52C para. 33 ("Documents to be provided to court reporters at the hearing of an appeal"), whereby advocates of a legally represented party must bring two copies of the appeal skeleton to court for provision to accredited journalists. Under para. 33(5) this may be subject to variation on the oral

application of any party. Importantly under para 33(2), *“In appeals in family proceedings involving a child, the copies of the skeleton argument must be in anonymised form and must omit any detail that might, if reported, lead to the identification of the child”*. See however *Cape Intermediate Holdings Ltd v. Dring* [2018] EWCA Civ 1795 above.

(f) For all of those reasons, save as set out at (e) above, it would not usually be appropriate to give a journalist or law reporter a document filed with the court without the court’s permission.

8. Anyone dissatisfied with your (or your client’s) refusal to provide documentation has the opportunity to apply to the relevant court or tribunal in accordance with its rules and may be left to do so. In particular, for civil cases to which the Civil Procedure Rules 1998 apply, CPR 5.4C(1) provides that, in some circumstances, a non-party may obtain from court records a copy of a statement of case and any judgment or order given or made in public. CPR 5.4C(2) permits a non-party (if the court gives permission) to obtain a copy of any other document filed by a party. Family practitioners should have regard to FPR 2010 PD12G which prescribes what information may be given to whom, and to parts 12.73, 14.14 and 14.24. In criminal cases, the Criminal Procedure Rules 2012 provide (rule 5.8) a corresponding framework under which non-parties can apply to the court for disclosure of information about a case.

### **Important Notice**

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