

CORE PRINCIPLES OF THE LEGAL PROFESSION

Preamble

The lawyer's role is to counsel, conciliate and represent.

In a society founded on respect for the law and for justice, the lawyer advises the client on legal matters, examines the possibility and the appropriateness of finding amicable solutions or of choosing an alternative dispute resolution method, assists the client and represents the client in legal proceedings.

The lawyer fulfils the lawyer's engagement in the interest of the client while respecting the rights of the parties and the rules of the profession, and within the boundaries of the law.

Over the years, each bar association has adopted its own rules of conduct, which take into account national or local traditions, procedures and laws. The lawyer should respect these rules, which, notwithstanding their details, are based on the same basic values set forth below.

1 - Independence of the lawyer and of the Bar

In order to fulfil fully the lawyer's role as the counsel and representative of the client, the lawyer must be independent and preserve his lawyer's professional and intellectual independence with regard to the courts, public authorities, economic powers, professional colleagues and the client, as well as regarding the lawyer's own interests.

The lawyer's independence is guaranteed by both the courts and the Bar, according to the country.

Except where provided by law to ensure the defence of persons of limited means or to ensure due process, the client is free to choose the client's lawyer, and the lawyer is free to choose whether to accept a case.

2 – Legal professional privilege and confidentiality

Legal professional privilege is traditionally understood to be the lawyer's duty not to disclose confidential information that is learned in the practice of the profession. This obligation has a moral and contractual foundation (not betraying the trust owed to a person who has confided in a lawyer, and the lawyer's commitment, even if tacit, to the client), an ethical foundation (it flows from the nature of the legal profession and is the profession's very essence) and a varying basis in law. In some countries, the protection of legal professional privilege is a constitutional norm. In other countries, which make it a principle of public policy, breaching legal professional privilege carries criminal penalties. In yet other countries, it is merely an essential ethical obligation for lawyers.

Depending on the country, clients may or may not waive legal professional privilege.

Even in countries that make legal professional privilege a fundamental matter of public interest, there are exceptions, which, depending on the case, obligate or authorise the lawyer to disclose information that is protected by legal professional privilege, in particular in the event of an imminent threat of death or serious injury to a person or a group of persons. In any event, a lawyer who is in this situation is urged, if possible, to consult the relevant regulatory authority (chair of the bar council, union, senior member or chair of his or her bar association, or ethics committee).

3 - Prohibition of conflicts of interest

In order to uphold legal professional privilege and the principles of independence and loyalty, the lawyer must avoid conflicts of interest. He or she therefore cannot represent two or more clients in the same case if there is a conflict or risk of a conflict between them. Likewise, the lawyer must avoid acting for a client if that client has confidential information obtained from another former or current client of the lawyer. Similarly, the lawyer may not use information in one case that was obtained confidentially in another case.

In any event, the lawyer cannot represent a client whose interests may be in conflict or intermingled with the lawyer's own interests.

If a conflict of interest arises during an engagement, the lawyer must stop all work on the case.

The existence of a conflict of interest is determined with regard to the lawyer, and also all the lawyers with whom the lawyer works as part of an association, grouping or network.

The conditions under which this general principle applies are detailed in the national or local laws or regulations that govern the profession. In the event of a discrepancy between them concerning a cross-border dispute or case, the more restrictive law or regulation governs.

4 - Competence

The lawyer can only practise his or her profession properly with appropriate professional training, which the lawyer must obtain, maintain and pursue throughout his or her career.

The lawyer may agree to provide services only in fields with which the lawyer is familiar, or in any other legal or other fields with the assistance of professional colleagues or experts, after so informing the client.

5 - Dignity, probity, loyalty and diligence

The lawyer must prove worthy of the trust placed in him or her by upholding these principles. The lawyer must not do anything that damages the lawyer's reputation, or that of the profession as a whole or the public's trust in the profession.

The lawyer must not under any circumstances facilitate the commission by a client or a third party of an illegal act punishable as a criminal offence, or an act that constitutes tax fraud.

6 - Respect towards professional colleagues

In the interest of the proper administration of justice, the lawyer must comply with the rules of the profession by maintaining a spirit of trust, fairness and cooperation with the lawyer's professional colleagues, bearing in mind that the lawyer must always defend the interests of the client to the best of the lawyer's ability.

Depending on the jurisdiction, correspondence between lawyers is official, with some exceptions, or confidential, with some exceptions. The lawyer must adhere to the rules applicable in the lawyer's jurisdiction. When the lawyer corresponds with lawyer in another jurisdiction, the correspondence is presumptively official. If the lawyer wishes that the correspondence remain confidential, the lawyer must first ensure that the other lawyer is permitted to maintain this confidentiality and must obtain the other lawyer's express agreement to that effect.

7 - Contribution to the proper administration of justice and respect for the rule of law

While acting respectfully and in good faith towards the courts, the lawyer must defend his or her client with complete freedom in compliance with applicable procedural rules and customary practices before the relevant court.

The lawyer must never knowingly give the courts – or anyone – false or misleading information.

8 - Right to fair remuneration

The lawyer is entitled to legal fees and to the reimbursement of the expenses incurred in providing the exercise of the profession. These fees and expenses are determined by agreement with the client, in accordance with the law and the ethical rules by which the lawyer is bound.

At the outset of the representation, the lawyer should inform the client if the client is eligible for legal aid.

In general, the lawyer should counsel the client on how to manage the case in light of the cost of the matter, and in particular by attempting to reach a possible amicable resolution or by suggesting that recourse to a method of alternate dispute resolution.

EXPLANATORY MEMORANDUM

This memorandum is the work of the sub-committee tasked with drafting the core principles of the legal profession in order to explain and illustrate these principles, which have been drafted succinctly, and to help lawyers and Bars apply them, without being binding in any way.

Preamble

These core principles have not been designed as a code of ethics. They are not intended to constitute binding rules. They are merely the expression of an ideal foundation common to all Bars, which constitutes both a summary of the principal national and international rules that govern the legal profession, and a goal to be achieved in an ideal state that respects the rule of law.

The lawyer assists and represents the client.

Before accepting an engagement, it is the lawyer's responsibility to identify the client, being particularly careful when the contact has not been made directly by that client, as when assisting legal entities or groupings whose legal representatives and in certain cases whose beneficial owners the lawyer must identify.

The lawyer then must obtain all information necessary to ensure that the lawyer is able to provide the client with all legal assistance that the client requests, in compliance with the law.

Conciliation should be sought as part of defending the client's interests. Conciliation attempts sometimes required the lawyer to seek - even unilaterally - interim or preservative measures, or that proceedings be initiated immediately. Even in these cases and at all times over the course of proceedings, the lawyer must consider whether an amicable solution can achieve a result that is in the interest of the client.

Clients are represented in judicial proceedings, but also in all alternative dispute resolution methods, such as mediation or arbitration for example.

1 - Independence of the lawyer and of the Bar

The situation varies considerably around the world. Some countries prohibit lawyers from being employees of law firms, while others authorise this. Many make no distinction between the practice of law as an independent professional and as an employee. In some countries, in-house counsel are members of the Bar, while in others they are excluded from bar admission. Some countries allow third parties to invest in law firms, others prohibit this. In all cases, the intellectual independence of the lawyer is a key aspect of the practice of the profession.

This independence is guaranteed in two ways: either by the courts, in countries where professional conduct disputes fall under the jurisdiction of independent judges, or by the regulatory authorities, i.e., the Bars, which have specific jurisdiction over matters of conduct and discipline. These two systems are incidentally not mutually exclusive.

The principle of the free choice of lawyer is closely linked with the principle of independence, since although the client is free in theory to choose his or her lawyer, the lawyer normally is never obliged to accept a case. There are two types of exceptions to this principle: the various legal aid systems may assign a lawyer to a client who cannot afford one, and most legal systems provide for lawyers to be assigned by the courts or the Bar authorities. In these cases, unless the lawyer invokes a conscience clause, he or she must take the case but is free to structure the client's defence as the lawyer sees fit.

2. Legal professional privilege and confidentiality

Legal professional privilege is a crucial and delicate topic. Already, at the national level, the abundance of legal scholarship and case law are a testament to the difficulty of analysing a principle that all agree to be fundamental. This difficulty only increases when borders are crossed and reaches its peak when the "continental" (Romano-German) traditions are confronted with those of the common law. The words themselves are problematic and deceptive cognates infect translations.

The UIA respects all existing legal systems. Its role is not to standardise them; neither does it have the power to do so. Its members nevertheless share the conviction that over and above differences – whether apparent or real – in concepts and terminologies, there is a common base that is summarised in the second principle above.

Going forward, the desire is to create a permanent unit that would take responsibility for compiling a database of regularly-updated information containing the principal statutes, case law and legal scholarship on international conventions and courts.

3. Prohibition of conflicts of interest

The lawyer should prevent and resolve all conflicts of interest, and in general all situations that could affect the lawyer's professional judgment, independence or loyalty because of interests that diverge from those of the client.

The lawyer cannot represent a client if, due to the lawyer's relationship with a current or former client:

- legal professional privilege would be violated or would be at serious risk of violation;
- the lawyer would have to use information that belongs to that current or former client, unless that information is in the public domain;
- the lawyer reasonably believes that the existence of this relationship affects his or her independence of judgment or loyalty to any of the clients concerned;
- the law or the rules of the profession prohibit this.

The lawyer should have internal procedures adapted to the size of the lawyer's firm, designed to identify, when starting a relationship with a new client, the potential existence of a conflict of interest with a current or former client. The lawyer should assess the risk of conflict of interest at all times.

The lawyer cannot advise several clients if there is a conflict among the interests of these clients or a serious risk of such a conflict. Therefore, when drafting a contract, the lawyer must clearly state who the client is, especially when the other parties are not represented by counsel. If all the parties ask the lawyer to draft the contract, he or she may do so in the absence of a foreseeable conflict of interest; in such a case, the lawyer must remain neutral and provide the clients with objective, comprehensive observations on the scope of what the lawyer is drafting for them.

The lawyer must stop handling the cases of clients when a conflict of interest arises between them.

Lawyers who practise together or whose public communications show that they practise together are bound by the same conflict of interest and ineligibility rules as lawyers who practise individually.

4 - Competence

The lawyer's role can only be fulfilled effectively if the lawyer has received suitable professional training. The academic degree required to practise the profession a minimum legal requirement in this regard.

The increasing complexity of the law, the ever-increasing proliferation of rules of all kinds and the increase in the frequency of changes in the law require continuing legal education. This constitutes a professional obligation for lawyers, which is often provided by the regulatory authorities but for which lawyers are ultimately responsible.

In any event, it is no longer possible for a lawyer to be proficient in all fields of law. The lawyer therefore may not accept a case without the competence to handle it or, after informing the client, without obtaining the assistance of other lawyers or experts.

5 - Dignity, probity, loyalty and diligence

Each of these principles constitutes a rule of good conduct.

Lawyers must be trustworthy, and must not do anything that could harm the lawyer's reputation, or that of the profession as a whole, such as the public's trust in the profession.

Inappropriate conduct may lead to sanctions, including, in the most serious cases, disbarment.

6 - Respect of professional colleagues

Respect of professional colleagues goes beyond the requisite courtesy that is essential to maintain, especially in hard-fought litigation between clients. Mutual respect between professional colleagues ultimately serves the interests of the clients, in that it facilitates the proper administration of justice and can help to resolve disputes.

Relations between lawyers must not interfere with the disputes between their clients.

A number of jurisdictions have made discussions and correspondence between lawyers confidential as a matter of principle, in order to promote the handling or settlement of disputes. Elsewhere, all correspondence between lawyers is presumptively official. Lawyers should comply with the principle that is applicable in their jurisdiction. They must be particularly attentive to this in their cross-border relations. According to the Council of Bars and Law Societies of Europe (CCBE), Article 5.3 of the Code of Conduct for European Lawyers should apply: correspondence is official as a rule, unless there is an agreement for confidentiality. For non-CCBE members, there are no normative rules. The UIA suggests applying the conflict of laws rule adopted by the CCBE.

7 - Contribution to the proper administration of justice and respect for the rule of law

The stated principle is clear: the lawyer must never knowingly provide the court – or anyone else – with false or misleading information.

Above and beyond this principle, the lawyer's obligations to the courts vary according to the nature of the proceeding – adversarial or inquisitorial – that is applicable in the jurisdiction. In some countries, the lawyer must inform the courts of all precedents that are favourable or unfavourable to the client; in other countries, there is no such requirement.

In all these proceedings, divergences between the interests of the client and those of justice can raise delicate issues for the lawyer, which the lawyer must resolve, bearing in mind that a lawyer can only represent a client successfully if the lawyer can be trusted to act to promote the proper administration of justice.

8 – Right to fair remuneration

Fees should be set according to three basic principles:

- the lawyer must inform the client of the manner in which the proposed fees will be calculated, so that the client can give informed consent,
- the amount of the fees must be equitable and well-supported,
- the fees must be set in compliance with the law and the rules of ethics.

In some jurisdictions, this third rule bans agreements for contingent or any form of success fees, and sometimes allows the courts or the regulatory authority to reduce the agreed fees. Otherwise, the parties are bound by the agreement reached freely between them.

The local rule should be applied, while keeping in mind these three principles which constitute rules of good conduct.