

# CODE OF CONDUCT OF THE ESTONIAN BAR ASSOCIATION

Adopted on 8 April 1999 by the General Meeting of the Estonian Bar Association

## Chapter I General Provisions

### Article 1. Field of Application

This Code of Conduct shall comprise advocate's rules of professional conduct and good morals. (05.05.2005)

### Article 2. Respect for the Rules of Professional Conduct

- (1) The legal profession binds advocates to respect the rules of professional conduct.
- (2) Respect for the rules is ensured by the awareness of each and every advocate of the obligations inherent to the profession as well as by public opinion prevalent at the Bar.
- (3) If the advocate hesitates over a choice of mode of conduct, he shall seek advice from a senior colleague in order to prevent a breach of the rules of professional conduct.
- (4) Breach of any of the rules of professional conduct specified in this Code of Conduct may result in the institution of proceedings in the Court of Honour and in a disciplinary sanction being taken against the advocate.

### Article 3. Interpretation of the Rules of Professional Conduct

- (1) The interpretation of the rules of professional conduct shall be subject to the law, resolutions of the general assembly of the Bar Association and the Board of Directors of the Bar, decisions of the Court of Honour, recommendations of the Committee of Ethics and Methodology, established practice and experience of the Bar Association, as well as the opinion of senior advocate and conscience of the advocate. (05.05.2005)
- (2) (Repealed 05.05.2005)

## Chapter II General Principles

### Article 4. Independence

- (1) When rendering legal services, the advocate shall observe law, legal acts and decisions of the Bar authorities, rules of professional conduct, as well as good practice and his conscience.
- (2) When rendering legal services, an advocate may not submit to the pressure of public opinion, public or local authorities or public office or officers, nor to any other direct or indirect influence, which may affect the advocate's independence in his professional activity.
- (3) The advocate may be a member of political parties or non-profit organisations and directing bodies thereof, provided that legal assistance rendered by him does not represent his political views, religious beliefs, world outlook or other opinions or beliefs and party politics. (05.05.2005)

(4) An advocate may not be engaged in a sphere which contravenes the rules of professional conduct of advocates or the principles of independence or which is inappropriate to the legal profession in any other manner.

(5) The advocate shall choose, within the power and authority given by the client, the best lawful measures and means to protect the interests of the client.

(6) The advocate may not be identified with the client or the client's case as a result of performing the client's assignments.

#### Article 5. Confidentiality

(1) The relationship between the advocate and his client is founded upon trust. Therefore, all information given or received by him in the course of rendering legal services, is confidential.

(2) The advocate shall respect the confidentiality of all information in connection with the provision of legal services as well as the source of such information, except in the case where disclosure of such information is required by law or where the authorisation and instructions given by the client indicate client's consent to disclose such information. (05.05.2005)

(3) The confidentiality requirement shall also extend to include the fact of seeking legal assistance from the advocate, as well as to the content of such legal assistance and to the fees. Disclosure of the amount of a fee charged by the advocate to court for judging the payment of legal fees shall not be deemed a violation of the confidentiality obligation.

(4) The advocate shall ensure that no third person had access to his client's documents, correspondence or other information, or to any documents drafted by the advocate in the course of rendering legal services to the client, which are in his possession in connection with handling the client's matter.

(5) The advocate may not give an account of or testify as a witness about the facts which have become known to him in the course of rendering services to his client.

(6) The advocate may not make the documents or other information related to his professional activity available to any third party, or administrative agencies to which the said documents or information are not addressed, except in the case where disclosure of such information is explicitly required by law or where the authorisation and instructions given by the client indicate client's consent to disclose the said information. Presentation and disclosure of the said documents and information to the Board of Directors of the Bar in the exercise of supervision over the activities of an advocate or to the Court of Honour in the hearing of a matter concerning a disciplinary offence shall not be deemed to be a violation of the confidentiality obligation. (05.05.2005)

(7) The obligation of confidentiality shall have an unspecified term. The advocate shall comply with the confidentiality obligation also after the termination of his professional activities. Violation of the confidentiality obligation cannot be justified by public interest or the fact that this would allow better protection of the interests of the client. (05.05.2005)

(8) Only the client or his legal successor may by his written consent, exempt an advocate from the confidentiality obligation. (05.05.2005)

#### Article 6. Personal Publicity

(1) Law office may provide publicly available information concerning its activities, including information about the business name, areas of activity, location and office hours of the law office, as well as the names, previous professional activities, areas of activities and academic degrees of attorneys operating in the law office, and the price list of the legal services. (13.03.2007)

(2) Commercial notification of the activities of an attorney and a law office shall take place in compliance with the rules of professional conduct, including the independence of the attorney, obligation of confidentiality, and principles of dignity and collegiality.(05.05.2005)

#### Article 7. Unfair Competition

(1) The advocate may not prospect for clients in an unfair way by inducing a client of another advocate to change his advocate, or for the same purpose disparage his colleagues or other law offices or the legal services rendered by them.

(2) The advocate may take over a client in the case which has been earlier handled by another advocate only after he has notified the other advocate of such take over. The advocate will be released from the obligation of notifying the other advocate of a client take-over if such notification may harm the interests of the client.

(3) If the advocate undertakes to represent or protect a person to whom he knows that another advocate has been assigned by a competent body to provide legal aid, the advocate accepting such assignment by agreement shall forthwith inform the other advocate assigned by a competent body thereof.

(4) When communicating with a client or a person seeking legal assistance, the advocate may not make disparaging evaluations or comparisons of other law offices and advocates.

(5) The advocate may not make any assertions which disparage his colleagues or which question their expertise.

(6) (Repealed - 13.03.2007)

#### Article 8. The Client's Interests

(1) The advocate must always act in the best interest of his clients and must put those interests before his own interests or those of third parties, including the interests of fellow members of the legal profession. Subject to due observance of all rules of law and professional conduct, the advocate shall use all means and methods for the benefit of his client such that the personal honour, honesty and integrity of the advocate are beyond doubt.

(2) In carrying out the instructions of his client, the advocate shall use only those means and methods consistent with law which enable him to better protect his client's interests and act pursuant to the provision of law, his expertise and experience as well as his conscience. Unless it is contrary to law, the rules of professional conduct or to the interests of his client, the advocate shall take into consideration the wishes of his client when choosing the means

and methods of representation or protection. If in the contract for legal assistance the client has limited the advocate's right to use certain means or methods of protection or representation, such limitation shall be binding upon the advocate. (05.05.2005)

(3) The advocate may carry out only such instructions of the client which do not contravene the law or harm the advocate's personal honour, honesty and dignity. If a client's wishes are contrary to the actual interests of the client, law or to the personal honesty, honour or integrity of the advocate, the advocate shall explain to the client his position and all possible consequences of the client's demands which are unreasonable or inconsistent with law. If the client refuses to desist from making demands, the advocate shall have the right to terminate the contract for legal assistance with the client.

#### Article 9. Personal Honour, Honesty and Dignity of Advocate

(1) The advocate shall communicate with his clients, court, colleagues and the public honestly and conscientiously in a way consistent with good professional practice and the rules of professional conduct. The advocate must avoid behaviour which may compromise or damage the reputation of legal profession or the Bar.

(2) The provisions of paragraph 1 shall apply also to the conduct of the advocate beyond his professional activities.

### Chapter III

#### Relations in Law Office

#### Article 10. Supervision Over the Observance of the Rules of Professional Conduct.

(1) Supervision over the observance of the rules of professional conduct the in law office shall be exercised by the management of the law office. (05.05.2005)

(2) A patron advocate shall observe that the advocates under his patronage observe the rules of professional conduct.

#### Article 11. Confidentiality in the Law Office

(1) The observance of the obligation of confidentiality in the law office shall be ensured by the management of the law office. (05.05.2005)

(2) The management of the law office shall organise maintenance of all the confidential documentation and other media related to the professional activities of advocates in such a manner that third parties have no access thereto. The media obtained in the course of rendering legal services may not be made available or disclosed to third parties. (05.05.2005)

(3) The management of the law office shall ensure that the official letterheads or other blank document forms indicating the name of advocate or law office, or other printed matter and the insignia of the law office are not used by third parties. (05.05.2005)

### Chapter IV

#### Relations With Clients

#### Article 12. Acceptance of Instructions

(1) The advocate shall have the right to decide on the acceptance of the instructions from a person seeking legal assistance.

(2) (Repealed 05.05.2005)

(3) The advocate shall not accept instructions if it is apparent that legal advice is sought for the protection of interests which are contrary to law or if the client's claim is not based on law or if there is no procedural way to protect the interests of the client.

(4) The advocate shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work, nor handle a matter which he knows he is not competent to handle in the best interests of the client.

(5) If so requested by a person seeking legal advice, the advocate shall inform the person of the grounds for his refusal to accept instructions.

(6) An advocate shall be deemed to have accepted instructions if a relevant contract of legal assistance has been effected in compliance with law.

#### Article 13. Conflict of Interest

(1) An attorney may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict between the interests of those clients. An attorney shall not provide legal services to a client if there exist circumstances that affect or may affect the attorney's ability to observe the requirements set out in Article 8 (1) of this Code and act only in the interests of the client (conflict of interest), unless the attorney has notified his client of such circumstances and the client does not desist from demanding provision of legal services by the attorney (05.05.2005).

(2) An attorney shall not accept an assignment from a person seeking legal advice if a conflict of interest arises. An attorney shall terminate the contract if the circumstances arise that would have excluded the acceptance of assignment on the basis described in the paragraph above (05.05.2005).

(3) An attorney may render legal services to several persons in the same matter, provided that there is no conflict of interest. Among other things there is no conflict of interest when all clients agree and require that the attorney shall render legal services to other clients in the same matter. Should there arise any dispute in that matter later on, the attorney shall not render legal services to any of the aforesaid clients (05.05.2005).

#### Article 14. Rendering Legal Services

(1) When accepting or refusing instructions, or discharging or refusing to discharge instructions, the advocate shall treat fairly and equally all persons regardless of their citizenship, nationality, race, skin colour, sex, language, origin, religion, political or other convictions, as well as of their financial or social status or other similar factors.

(2) Legal services rendered by the advocate must be professional and based on the investigation of underlying circumstances, evidence, legal acts and court practice. The premise of professional advice is constant advancement by an advocate of his professional knowledge and skills. The advocate may not employ any means or measures which are inconsistent with law to protect the interests of his clients.

(2<sup>1</sup>) An attorney shall explain to the client the opportunities and prerequisites for reaching the solution expected by the client. The client will decide on the commencement of proceedings. (05.05.2005)

(3) The advocate shall discharge the instructions of his client within a reasonable time period or by the deadline designated in the contract of legal assistance, and shall save the client from any groundless costs and expenses.

(4) The advocate shall keep his client informed as to the progress of the matter entrusted to him and respond to the inquiries of the client when due and as appropriate and, if possible, in

the language of inquiry.

(5) The advocate has no obligation to check the truth and correctness of the information entrusted to him by the client. The advocate is not responsible for the authenticity of the data supplied to him by his client.

(6) The manager of the law office shall ensure that the money, securities and other assets trusted to the attorney or received on behalf of the client in performance of the assignment, shall be kept separately from the assets of the law office or attorneys and it shall be subject to separate accounting. (05.05.2005)

#### Article 15. Contract of Legal Assistance

The advocate shall discharge the instructions given by the client with due care and accuracy according to the contract of legal assistance made with the client. The instructions which have not been covered by the contract of legal assistance and have been given by the client to the advocate or which are necessary to protect the interests of the client, may be discharged by the advocate by the agreement with the client or the advocate may refuse to discharge any such instructions.

#### Article 16. Documents Relative to Matter

(1) The materials supplied by the client shall include documents furnished by the client to the attorney in the course of handling the matter, correspondence and legal documents drafted by the attorney on the instruction of the client. An attorney shall keep separate records of his clients' materials and ensure their preservation and confidentiality. (05.05.2005)

(2) The information recorded by the attorney for his personal purposes shall not be deemed to be a part of the matter, to which, however, the obligation of confidentiality shall apply.

(3) The original copies of the documents supplied to the advocate shall be returned to the client on the request of the latter following the discharge of the instructions as well as following the termination of the contract of legal assistance or refusal to discharge the instructions provided that such documents are not kept on a court file.

(4) An attorney is entitled to withhold the documents supplied by the client or drafted by the attorney on the instruction of the client, if the client has failed to pay for legal services rendered to him. (05.05.2005)

#### Article 17. Retaining Fees

(1) The amount and form of fee charged by the advocate (retaining fee) shall be determined by the agreement with the client and shall be specified in the contract of legal assistance.

(2) If the client fails to pay the retaining fee on the terms and conditions agreed upon, the advocate shall be entitled to refuse to render legal services to that client and terminate the contract of legal assistance.

(3) The advocate may render pro bono legal services.

(4) The attorney shall inform his client of the availability of legal aid where applicable. (05.05.2005)

(5) Where the state has paid for the legal assistance, the advocate shall not be justified in charging any retaining or other fees as compensation for any of his costs or expenses from the client.

#### Article 18. Termination of Legal Services

(1) The advocate shall cease to discharge the instructions specified in a contract for legal

assistance and terminate the contract if the client:

1. submits falsified evidence and the advocate is aware of such falsification;
2. notwithstanding the advocate's explanations, the client demands that the advocate use means or methods which are inconsistent with law to protect the interests of the client;
3. demands that the advocate act in a manner which is inconsistent with the honour and dignity of the advocate or with the rules of professional conduct.

(2) The advocate may cease to discharge the instructions under the contract for legal assistance or terminate the contract on his own initiative, if:

1. a conflict of interest specified in Article 13 above arises;
2. the client fails to discharge or is in material breach of any provision of the contract for legal assistance;
3. the client acts contrary to the advocate's instruction or expresses his loss of confidence in the advocate in any other explicit manner;
4. the client gives the advocate instructions which harm the interests of the client or are clearly useless for the discharge of the instruction and, despite the advocate's explanations, the client does not desist from demanding the discharge of such instructions.

(3) (Repealed 21.02.2008)

(4) Termination of legal assistance shall not deprive the advocate of the right to charge a fee for legal assistance rendered.

#### Article 19. Relations with Clients in Criminal Proceedings

(1) The advocate may not withdraw from any agreed or court-assigned obligation to protect the suspect or the accused.

(2) The obligation described in paragraph 1 above shall apply within the limits of proceedings which obligation has been negotiated under a contract for legal assistance or has been assigned to the advocate by the court. The instruction to represent a client in the court of first or second instance shall also extend to include the obligation of the advocate to contest a judgement or decision if the client so requires and the legal grounds exist.

(3) If the client denies the accusations made against him the position of the client shall be binding upon the advocate. The advocate shall not be bound by the position of his client when rendering a legal opinion on the accusations made against his client, however, he shall inform the client about the defence position.

(4) When protecting a client whose interests contravene the interests of any other party in the same criminal proceedings the advocate shall avoid making unfounded accusations against such party without prejudice to the interests of his client.

#### Chapter V

#### Relations With the Courts

#### Article 20. Communication With the Courts

(1) The advocate shall show due respect and courtesy towards the court both in his speech, writing and demeanour. The advocate shall avoid inappropriate criticism of the courts' activities or decisions. The advocate shall not criticise the activities of the courts or effective judgements in the media or in public. The expression of an opinion on the theoretical position and reasoning contained in a judgement shall not be deemed criticism.

(2) The advocate shall notify the court when due of an out-of-court settlement, as well as of the circumstances which may bring about the postponement of legal proceedings.

(3) The advocate shall not influence the judge in any extrajudicial manner.

#### Article 21. Protection of the Client's Interests in Legal Proceedings

(1) The advocate shall not provide evidence or make assertions which harm the interests of

his client.

(2) The advocate shall never knowingly give false or misleading information to the court, or impede in any other wilful manner due and speedy review of a case.

(3) The advocate shall not make assertions which refer to any racial, religious, nationalistic or sexual bias.

#### Article 22. Communication With the Parties and Witnesses

(1) The advocate shall show due respect and courtesy towards the opposing party and other parties to the proceeding both in his speech, writing and demeanour. The advocate shall not disparage the parties to the legal proceedings.

(2) The advocate shall never knowingly give false or misleading information to the parties to the legal proceedings.

(3) The advocate shall not in any extrajudicial manner influence the witnesses or exert pressure on other parties to the legal proceedings, nor wilfully mislead them or take unfair advantage of his rights of procedure.

#### Article 23. Extension to Arbitrators Etc.

The rules governing the advocate's relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

#### Chapter VI

##### Relations Between Advocates

#### Article 24. Relations Between Colleagues

(1) The relations between an attorney and his colleagues are based on mutual respect and trust. An attorney shall treat his colleagues in benevolent, fair, courteous and correct manner and shall be prepared to provide assistance and cooperate with them. Observance of these requirements may not affect the interests of client. (05.05.2005)

(2) Any personal dispute of a professional nature between advocates should, if possible, be settled by way of negotiation. Failing agreement, the advocate may refer the dispute for settlement to the Board of Directors of the Bar or to the Court of Honour.

(3) An attorney shall use legal remedies against his professional colleagues only in the cases where all other ways to settle the dispute have been exhausted.

(4) An attorney shall not settle the disputes between advocates in the media or in public.

(5) When rendering legal assistance in a matter, where the opposing party is also advised by an attorney, the attorney shall in general communicate with the opposing party by mediation of or under informed consent of the attorney of the opposing party. If, in execution of the matter of the client, the attorney addresses directly to the opposing party, he will immediately inform the attorney of the opposing party thereof. (05.05.2005)

#### Chapter VII

##### Relations With the Public

#### Article 25. Relations With the Public And Media

(1) In his relations with the public the advocate shall be guided by the rules of professional conduct. (05.05.2005)

(2) The advocate may act in public or in the media only on his own behalf, except in the cases where he is justified or authorised to act on behalf of the Bar.

#### Chapter VIII



**Implementation of Code**

**Article 26. Effective Date of the Code**

The Code of Conduct of the Estonian Bar Association shall take effect as from 1st of June 1999.