

# Code of Conduct for the Danish Bar and Law Society

(Rules and policy adopted by the General Council of the Danish Bar and Law Society)

## 1. Introduction

### *1.1. The lawyer's position in society*

In a community founded on the rule of law, the lawyer occupies a special position.

A lawyer's professional remit is to promote justice and counter injustice.

A lawyer shall – within the law and the frameworks of this Code of Conduct – assert and defend his clients' rights and freedoms and act as their counsel.

In his counsel, a lawyer shall not solely be mindful of the letter of the law, but also its true interpretation. In acting for and counselling clients, a lawyer should according to the given circumstances take account of the public interest as a special factor.

A lawyer has legal and moral obligations towards:

- clients
- the courts and other authorities and bodies before which he acts on behalf of his clients
- the legal profession and individual colleagues
- the general public for which the existence of an impartial and independent legal profession, whose integrity is also founded on respect for codes of conduct prescribed by the profession, is a key prerequisite in defence of human rights vis-à-vis the State.

### *1.2. Administration of Justice Act's rules regarding Code of Conduct for lawyers*

1.2.1. Pursuant to Section 126 (1) of the Administration of Justice Act, a lawyer shall conduct himself in a manner consistent with the code of conduct. This shall include performing his duties thoroughly, conscientiously and consistently with what is indicated by justified regard for the client's interests. Cases shall be proceeded with the promptness necessary.

Pursuant to Section 126 (4) of the Administration of Justice Act a lawyer shall likewise, outside of his professional legal undertakings, in matters of business or financial in nature, not display conduct unworthy of a lawyer.

#### 1.2.2.

The General Council of the Danish Bar and Law Society supervises fulfilment of these obligations.

The Disciplinary Board, which hears complaints concerning lawyers, determines the particulars of the contents of the Administration of Justice Act's standard of best practice for lawyers and imposes disciplinary sanctions pursuant to Chapter 15b of the Administration of Justice Act.

### *1.3. Status and purpose of the Code of Conduct*

#### 1.3.1. Status of the Code of Conduct

Pursuant to Article 18 (4), in the Statutes of the Danish Bar and Law Society, the General Council of the Danish Bar and Law Society has drawn up this Code of Conduct, which shall be applicable to all lawyers, irrespective of whether they practise in a law firm or are employed by companies or organisations not authorised to practise law, cf. Section 124 of the Administration of Justice Act.

The Code of Conduct expresses the Danish legal profession's understanding of the requirements for the professional standards and ethics to be observed by lawyers in practising law.

This understanding of the fundamental ethical principles for practising law is essentially universal for the legal profession in all EU Member States – and in all democratic states governed by law. The Code of Conduct is therefore extensively based on the Code adopted by the CCBE (Council of Bars and Law Societies of Europe) governing cross-border legal services within the EU.

#### 1.3.2. Purpose of the Code

This Code of Conduct shall serve as a guide for lawyers, their clients and the general public with regard to the duties of a professional ethical nature that are incumbent on lawyers in practising law.

The purpose of the Code of Conduct is further to contribute to the Disciplinary Board's prescriptions for the Administration of Justice Act's standard of Code of Conduct.

#### *1.4. Applicability of the Code of Conduct*

##### 1.4.1.

The following rules are applicable to lawyers practising in Denmark and Danish lawyers practising abroad.

##### 1.4.2.

The Code of Conduct for Lawyers in the European Union adopted by the CCBE, and ratified by the General Council of the Danish Bar and Law Society shall likewise apply to the cross-border activities of lawyers within the EU.

## **2. General principles**

#### 2.1.1. Independence

In practising law, a lawyer shall at all times preserve his absolute independence. A lawyer must thus not allow himself to be influenced by either his own or third parties' ulterior interests.

A lawyer must not compromise his professional standards in order to please his client, the court or third parties.

#### 2.1.2.

Rescinded.

#### *2.2. Trust and personal integrity*

A lawyer shall by maintaining his personal honour and integrity at all times strive to preserve his clients' trust.

#### *2.3. Confidentiality*

##### 2.3.1.

Trust and confidentiality between the lawyer and his client is a necessary precondition for the lawyer's function.

Discretion is therefore essentially a legal and ethical duty and right for lawyers and shall be respected in the interests not only of the individual but also society at large.

2.3.2.

A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3.

The obligation of confidentiality is not limited in time.

2.3.4.

Rescinded.

2.3.5.

The lawyer's associates, staff and other persons employed in the law firm shall fulfil the same obligation of confidentiality.

2.3.6.

If several lawyers or law firms conduct business in joint offices, 2.3.5 shall likewise apply to such joint offices.

*2.4. Collaboration and relations with other professions*

2.4.1.

A lawyer may not practise his profession in a partnership or similar form of financial joint venture with individuals or companies who are not authorised to practise law, cf. Section 124 of the Administration of Justice Act.

*2.5. Publicity etc.*

2.5.1. Advertising

Advertising must not contain inaccurate, misleading or unreasonably deficient statements.

2.5.2. Company name

2.5.2.1.

The company name of a law firm must be suitable for unique and specific identification of that firm.

2.5.2.2.

The company name and extensions to it shall indicate that the enterprise is a law firm. Limited liability law firms shall moreover observe Section 124 (1) of the Administration of Justice Act.

2.5.2.3.

The company name and other business trademarks, including logos, of a law firm must not be designed to give the impression that the firm is operated by parties other than lawyers, cf. Section 124 of the Administration of Justice Act.

*2.6. Legal stationery*

2.6.1.

Stationery used by lawyers must conform to the rules set out in 2.5.

#### 2.6.2.

If stationery bears the names of persons other than the lawyers engaged in the law firm, this must be in such a manner as to indicate –e.g. by separation or other clear indication

– that such persons are not responsible participants in the firm, cf. Section 124 of the Administration of Justice Act.

#### 2.6.3

If authorization for the Danish courts are indicated, this shall be by means of the officially designated title or commonly used abbreviation and cited immediately after the Bar member's name.

### **3. Relations with clients**

#### *3.1. Acceptance and handling of, and withdrawal from, cases*

##### 3.1.1. Acceptance of cases

###### 3.1.1.1.

A lawyer may solely accept a case for a client on the direct instructions of that client, from another lawyer on behalf of that client or on the instructions of a public authority or from an otherwise competent body.

###### 3.1.1.2.

If the specific circumstances indicate that the identity, competence and authority of the client are uncertain, the lawyer should make reasonable efforts to obtain information as to these matters.

###### 3.1.1.3.

A lawyer must not receive money from, perform or assist in performing monetary transactions for any party except as part of his performance of an assignment for a client whose identity is known to him.

###### 3.1.1.4.

If a lawyer in connection with a client's request for counsel has grounds to suspect that the client's purpose is to misuse the lawyer's counsel for the purposes of punishable acts or omissions, including money-laundering, the lawyer must not accept the assignment. The same applies if handling the case would entail breach of code of conduct, c.f. Section 126 of the Administration of Justice Act.

###### 3.1.1.5.

In accepting any new case, the lawyer shall make every effort to guard himself against any doubts as to his observance of the provisions in 3.2 concerning conflict of interests.

##### 3.1.2. Handling of cases

###### 3.1.2.1.

A lawyer shall serve the client's interests diligently, conscientiously and promptly. He shall to a reasonable extent keep his client informed as to the progress of the matter entrusted to him.

#### 3.1.2.2.

A lawyer must not accept an assignment which he is not competent to handle, unless, by agreement with the client, he can arrange to cooperate with a suitably qualified colleague. A lawyer should not accept an assignment unless he can perform that assignment promptly having regard to the pressure of other work.

#### 3.1.3. Withdrawal from cases

##### 3.1.3.1.

A lawyer must not decline to pursue a case in such a way or in such circumstances that the client is prevented from obtaining other legal assistance in time and without prejudice to his case.

##### 3.1.3.2.

If a lawyer during the handling of a case for a client has grounds to suspect matters of a nature as described in 3.1.1.4, it is incumbent on that lawyer to decline to proceed further with the case.

### **3.2 Conflict of interests**

#### 3.2.1.

A lawyer may not assist a client in situations in which a conflict of interest has arisen or where there is an obvious risk of such a conflict arising.

Such situations always exist when:

1. a lawyer assists clients in the same case if the clients have conflicting interests. However, a lawyer may appear for several parties during a preliminary hearing if no disputes are dealt with during the hearing and if none of the parties is opposed,
2. a lawyer assists a party after previously having assisted the opposing party in the case,
3. a lawyer assists in several cases with connections to each other, if there is a risk that confidential information the lawyer has received in one of the cases can be used in another of the cases. This applies even if the lawyer does not assist the clients at the same time,
4. the lawyer has close family ties to someone who has conflicting interests with the client in the case,
5. the lawyer has a not inconsiderable direct or indirect financial or business connection to a party who has conflicting interests with client in the case,
6. the lawyer has other close connections to a party who has conflicting interests with the client in the case,
7. the lawyer has such business or other connections with the client that there is a risk the lawyer cannot advise the client independent of irrelevant interests,
8. a lawyer agrees with the client or others that he or she is to be paid in the form of shares or other shares of ownership in a company where the result of the case will influence the value of such shares or other shares of ownership. This also applies in other cases where agreement is made on such payment if the arrangement will influence the impartiality and personal integrity of the lawyer in the discharge of his or her duty.

Such situations may also exist when:

9. a lawyer assists a client in a case if he or she has a regular client relationship with the opposing party although not assisting such party in the specific case,
10. a lawyer assists competing companies,
11. a lawyer participates on behalf of several parties in creating or concluding a legal matter about which there is agreement among the parties. A lawyer who on behalf of the parties has participated in creating or concluding a legal matter may not subsequently assist one or the parties on an issue involving the legal matter if it has or might have a bearing for the other party/parties.

#### 3.2.2.

A lawyer may not serve as an arbitrator, conciliator or mediator for several parties, if he or she previously assisted any one of the parties singly in circumstances connected to the conflict. After serving as an arbitrator, conciliator or mediator, a lawyer may not assist any one of the parties singly in circumstances connected to the conflict.

#### 3.2.3.

When lawyers practice law as members of a joint practice, in corporate form, see section 124 of the Danish Administration of Justice Act, or as members of an office-sharing practice, the rules of paragraph 3.2.1 and paragraph 3.2.2 shall apply to the joint practice, corporation and office-sharing practice as well as to the mutual relationship between its participants, including lawyers engaged as employees.

(2) The rules of paragraph 3.2.1 and paragraph 3.2.2 shall apply correspondingly to other types of cooperation, collaborations and joint practices between lawyers or law firms if in relation to a third party they appear as a joint practice or a law firm.

#### 3.2.4.

The consent of the involved parties to the lawyer's assistance in the cases mentioned in paragraphs 3.2.1, 1)-8), 3.2.2 and 3.2.3 shall not have any bearing on the evaluation of whether a conflict of interest exists. In the cases mentioned in paragraph 3.2.1, 9)-11), the significance of such consent is subject to a specific evaluation.

#### 3.2.5.

When a conflict of interest or obvious risk of same exists in accordance with paragraph 3.2.1, the lawyer must cease to act with respect to all of the clients involved. If the lawyer in the cases mentioned in 1), 2), 3), 9) and 10) has only received significant information from some of the clients, the lawyer's withdrawal can be limited to the other clients.

(2) The lawyer's withdrawal must be immediate, cf., however, paragraph 3.1.3.1.

#### 3.2.6.

If the lawyer's withdrawal from the case in accordance with paragraph 3.2.5 is due to a conflict of interest that has arisen exclusively or primarily due to his or her circumstances, the lawyer may not charge a fee for the work on the case that must also be carried out by the lawyer who takes over the case. The lawyer must repay the client for any payment of fee received for such work.

#### 3.2.7.

Law firms comprised by paragraph 3.2.3 must draw up written guidelines for dealing with conflict of interests. The guidelines must be geared to avoiding conflict of interests and to detecting and identifying conflicts that arise at the earliest possible time, and must contain a description of the procedure to be followed when a conflict is identified.

(2) The guidelines must be sent to the General Council of the Danish Bar and Law Society on request.

### *3.3. Legal Fee Agreements*

#### 3.3.1.

A lawyer shall not make legal fee agreements, that is, agree to receive a share of the result achieved by the client upon conclusion of the case (*pactum de quota litis*).

#### 3.3.2.

Rescinded.

### *3.4. Regulation of fees*

#### 3.4.1.

A fee charged by a lawyer for his work shall not be higher than what may be regarded as fair and reasonable, cf. Section 126 (2) of the Administration of Justice Act.

#### 3.4.2.

In conjunction with agreement being made on legal services, the lawyer must if requested provide the client with information about the most important elements of the calculated assistance and the size of the fee the lawyer plans to charge. Where it is not possible to give a fixed fee, the lawyer must either state the way in which the fee will be calculated or provide and explain an estimate. The lawyer must also inform the client about the anticipated expenses, including any taxes to be paid to public authorities.

(2) If the lawyer has provided an estimate, the client must be informed as soon as possible if the total fee is expected to exceed the amount given in the estimate.

(3) If an agreement is made for additional services in the case, paragraphs (1) and (2) above shall apply correspondingly to such an agreement.

(4) If the lawyer's fee is to be paid provisionally or finally by the public or an insurance company, the lawyer, when he or she accepts the case, must inform the client about the principles for setting the fee and the possible consequences for the client.

(5) If the client is a consumer, the lawyer must on his own initiative give the client the information provided in (1)-(4) above in writing.

#### 3.4.3.

Covert fees are inadmissible.

#### 3.4.4.

Invoices shall be issued for fees without undue delay and should, as dictated by the particular circumstances, itemise the services rendered for which payment is demanded.

#### 3.4.5.

Any commission, discounts and the like received from a third party shall unconditionally be credited to the client.

### *3.5. Payment on account. Deposits.*

#### 3.5.1.

A payment on account of the lawyer's fee should not exceed what may be regarded as a reasonable fee, with regard for the services rendered by the lawyer and their value to the client.

The rule in 3.4.3 shall apply in the event of payment on account.

### 3.5.2.

If a lawyer requires the payment of a deposit prior to commencement of an assignment, this shall not exceed what by a cautious estimate would be assumed a reasonable fee for the assignment in question. The rules regarding return on trust property shall apply to deposits.

### *3.6. Fee sharing with non-lawyers*

A lawyer may not share his fees with a person who is not a lawyer.

### *3.7. Cost effective resolution and advise of availability of legal aid*

#### 3.7.1.

The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client, when appropriate, as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

#### 3.7.2.

A lawyer shall inform his client of the availability of public legal aid or legal aid under an insurance policy.

### *3.8. Client funds*

Any client funds that come into the possession of a lawyer shall be treated in compliance with the rules in "Statute concerning the obligations of lawyers in respect of trust property".

### *3.9. Professional indemnity insurance*

Lawyers have a duty to take out and maintain a professional indemnity insurance in compliance with Article 44 of the Statutes of the Danish Bar and Law Society.

## **4. The conduct of lawyers in court, etc.**

### *4.1. Relations with the client*

A lawyer who undertakes to bring a client's case before an ordinary court or court of arbitration or tribunal shall loyally and conscientiously within the boundaries of the Law defend and further his client's interests.

### *4.2. Relations with the courts*

A lawyer shall practise his profession with due respect for the court or tribunal. He may not unduly hinder the court or tribunal in its impartial hearing and trying of the case. Thus, a lawyer must not mislead the court or tribunal or knowingly give false information.

### *4.3. Relations with the opposing party*

#### 4.3.1.

A lawyer shall respect the contradictory nature of judicial proceedings. He must therefore not prevent the opposing party from speaking and must not make contact with the judge or members of the tribunal concerning the case without first informing the opposing party, or submit exhibits, notes or documents to the judge or members of the tribunal without advising the opposing party of these with a copy of the materials submitted.

#### 4.3.2.

If a party prior to or during an ongoing court case has proposed a settlement, the lawyer acting on behalf of the opposing party must not without consent submit or divulge to the court that proposed settlement whereas his own proposals for settlement may be readily submitted.

#### 4.4. *Special rule concerning arbitration proceedings*

In arbitration proceedings, article 4.3 shall apply unconditionally with respect to the third arbitrator. Where the parties have explicitly made an agreement to that effect in arbitration proceedings, it is permissible for a lawyer to make contact with the arbitrator appointed by his client.

### **5. Relations between lawyers**

#### 5.1. *Collegial conduct*

##### 5.1.1.

A lawyer shall demonstrate fittingly collegial behaviour towards other lawyers.

A lawyer must not unduly criticise a colleague, his work or fees.

##### 5.1.2.

If a lawyer finds that a colleague has acted in breach of code of conduct, he shall draw that colleague's attention to the matter.

In the event of a collegial dispute between lawyers, they shall first make every effort to attempt to resolve this amicably.

##### 5.1.3.

A lawyer who wishes to make a complaint concerning a colleague's conduct should, prior to proceeding with a formal complaint, contact the chairman of the local district constituency to which his colleague belongs, with a request to convene a collegial conference.

A colleague accused of disloyal conduct may contact the chairman of the local district constituency with a request to convene a collegial conference.

#### 5.2. *Cooperation with lawyers from abroad*

##### 5.2.1.

A lawyer who is approached by a colleague from another country concerning a matter which he is not competent to undertake should assist his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the requested service.

##### 5.2.2.

Concerning cooperation with lawyers from EU Member States who have adopted CCBE's Code of Conduct, lawyers are referred to that code.

#### 5.3. *Referral fees*

5.3.1.

A lawyer may not demand or accept from any colleague a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.3.2.

A lawyer may not pay anyone a fee, commission or any other compensation for referring a client to himself.

*5.4. Communication with opposing parties and their counsel*

5.4.1.

A lawyer must not obstruct the summoning of another lawyer or displace a colleague from a case and should, on the contrary, as dictated by circumstances, urge the opposing party to seek his own counsel.

5.4.2.

A lawyer must not communicate about a particular case directly with anyone who is represented by a colleague without the consent of that colleague unless this is justified by the regard for defending a client's or his own interests, and if the colleague in question fails, in spite of reminders, to fulfil his duty according to code of conduct.

The lawyer shall in any event inform the other lawyer of any such communication.

5.4.3.

In pursuing a case, a lawyer may not go beyond what is dictated by justified regard for defending the client's interests, and in particular it is inadmissible to effect unnecessary legal measures or attempt to advance the client's interests in an improper manner.

5.4.4.

A lawyer must not record or be instrumental in the recording of telephone calls or other communications on audio tape or the like without the other party or the other participants having given their prior consent to such recording.

5.4.5.

*Employed lawyers and training of assistant attorneys*

It is incumbent upon lawyers who employ chartered assistant attorneys to ensure that they receive the proper practical training to enable them to qualify as "advokat" (attorney), including insight into and appreciation of the significance of the Code of Conduct for the Danish Bar and Law Society. The employer is responsible for ensuring that chartered assistant attorneys act in accordance with the Code. The employer must therefore not instruct his trainees – or others – to conduct themselves in a manner which if displayed by the lawyer himself would be in breach of the Code.

As amended at the General Council meeting April 24th 2008.