

## **PROCLAMATION**

of the Executive Committee of the Polish Bar Council of 14 December 2011 on promulgation of the consolidated text of the Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates)

The consolidated text of the Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates) adopted by the Polish Bar Council on 10 October 1998 (Resolution No. 2/XVIII/98), as amended by Resolution No. 32/2005 of the Polish Bar Council of 19 November 2005 and resolutions of the Polish Bar Council nos. 33/2011 – 54/2011 of 19 November 2011, is promulgated pursuant to Resolution No. 52/2011 of the Polish Bar Council of 19 November 2011.

### **Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates)**

*With respect for its long tradition, in particular the experience of practice of a free, independent and autonomous profession acquired over the 80 years since the reestablishment of the Polish bar, relying on the model of the first set of Rules of Ethics for Advocates and the Dignity of the Profession adopted by the Polish Bar Council on 6 and 7 May 1961, and discerning the need to improve the rules of professional practice and corporate existence and adapt them to a changing reality, the Polish Bar Council resolved on 10 October 1998 to adopt the Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates) (Resolution No. 2/XVIII/98).*

## **CHAPTER I**

### **General Provisions**

#### **§ 1**

1. The principles of ethics for advocates are derived from ethical standards as applied to the profession of advocate.
2. Conduct by an advocate which could debase him or her in public opinion or undermine trust in the profession shall also constitute a violation of the dignity of the profession of advocate.
3. An advocate has a duty to comply with ethical standards and to safeguard the dignity of the profession of advocate.
4. An advocate practising the profession abroad has a duty to comply with the standards set forth in this Code as well as standards of ethics for advocates in force in the host country.

## **§ 2**

In cases not covered by this Code, an advocate shall be guided by the principles established in resolutions by the authorities of the bar and in disciplinary decisions, as well as customary norms accepted by the community of advocates.

## **§ 3**

This Code shall apply to advocate trainees as relevant.

## **§ 4**

An advocate shall be subject to discipline for violation of the ethics of advocates or violation of the dignity of the profession in professional practice and public activities, as well as in private life.

## **§ 5**

Every advocate is required to contribute to compliance by members of the bar with the principles of ethics for advocates and safeguarding of the dignity of the profession. An advocate is entitled to point out a violation of the rules to a colleague.

## **§ 6**

The purpose of the professional duties undertaken by advocates is protection of the interests of the client.

## **§ 7**

When performing professional duties, an advocate shall exercise complete freedom and independence. The advocate bears a particular responsibility not to exceed the bounds of proper representation of the interests of the client.

## **§ 8**

An advocate shall perform professional duties in accordance with the best intention and expertise, with all due integrity, conscientiousness and zeal. An advocate has a duty to continually improve his or her professional qualifications and to strive to maintain a high level of professional competence.

## **§ 9**

1. The profession of advocate may not be combined with occupations which would
  - a) offend the dignity of the profession,
  - b) limit the advocate's independence, or
  - c) undermine public trust in the bar.
2. More specifically, the following shall be regarded as conflicting with the practice of the profession of advocate:
  - a) holding the position of a manager in the enterprise of another or serving as a member of the management board or commercial proxy in a commercial company or as a member of the supervisory board delegated to the management board of a commercial company, except for service on an interim basis in order to carry out an assignment for a client that is specific and limited in time;

- b) intermediation on a professional basis in commercial transactions, except for advice in conclusion of agreements and for conducting commercial and financial transactions as part of the business of a law office unrelated to the practice of the profession of advocate;
  - c) operating a law office in the same premises as a person operating a different business, when such situation would be inconsistent with the principles of ethics for advocates or could threaten the reputation of the bar.
3. When an advocate enters into a trust agreement, the advocate shall exercise the greatest care to assure that the agreement does not violate the principles of ethics for advocates or the dignity of the profession.
  4. Service by an advocate as a bankruptcy trustee or undertaking the duties of a judicial supervisor, liquidator or administrator acting pursuant to the Bankruptcy and Rehabilitation Law, serving as a trustee in the authorities of a foundation, on supervisory boards, or on management boards of residential or other cooperatives, as well as serving as an acting member of the management board or commercial proxy of a commercial company, shall be regarded as consistent with professional ethics, subject to the foregoing provisions as well as the rules concerning protection of the professional secrecy of advocates. When serving in such capacity, the advocate shall be required to comply with the provisions of this Code.

## **CHAPTER II**

### **Professional Practice**

#### **§ 10**

An advocate may not justify violation of the principles of ethics or the dignity of the profession by reliance on suggestions made by the client.

#### **§ 11**

An advocate shall not consciously provide false information to the court.

#### **§ 12**

An advocate shall not provide legal assistance which would facilitate the commission of a crime or indicate the ability to avoid criminal responsibility for an act to be committed in the future.

#### **§ 13**

An advocate shall perform professional duties in compliance with the principles of objectivity.

#### **§ 14**

An advocate shall be responsible for the form and content of pleadings written by the advocate, even if they are not signed by the advocate.

### **§ 15**

An advocate shall not be responsible for the truth of facts provided to the advocate by the client, but shall exercise moderation in alleging extreme or improbable circumstances.

### **§ 16**

If it is necessary to refer to extreme circumstances or expressions, the advocate shall make his or her presentation in a form that does not offend the dignity of the court, the authorities, or the profession of advocate. Proper forms shall be used in professional correspondence. It is prohibited to use offensive terms or expressions or to threaten criminal or disciplinary charges.

### **§ 17**

While an advocate is guaranteed freedom of speech in performance of his or her professional duties, the advocate shall exercise moderation, proportion, and circumspection in his or statements, whether to the court or state authorities, or to journalists and representatives of the media, in order to avoid violating the principle of the dignity of the profession.

### **§ 18**

1. An advocate shall avoid public demonstration of his or her personal attitude towards the client, persons close to the client, and other persons participating in the proceedings.
2. It is impermissible for an advocate to display familiarity with persons employed at courts, governmental institutions or law enforcement authorities.
3. In contacts with the media, an advocate shall avoid assuming the role of the client's spokesperson, but should be guided by the substantial need to respond to allegations against the client published in the media which in the advocate's assessment present the matter in a one-sided, selective or biased manner.

### **§ 19**

1. An advocate is required to maintain in secrecy and to secure against disclosure or unauthorized use anything which the advocate learns of in connection with performance of his or her professional duties.
2. Materials in an advocate's files are subject to professional secrecy.
3. Professional secrecy also extends to any reports, notes or documents concerning a matter, wherever located, obtained from the client or other persons.
4. An advocate shall require his or her colleagues and staff as well as any other persons employed by the advocate during performance of his or her professional duties to comply with the duty to maintain professional secrecy.
5. An advocate using a computer or other means of electronic data recording in his or her work is required to use programming and other means of securing data against unauthorized disclosure.
6. Transmission of information subject to professional secrecy via electronic or similar means of communication shall require particular care and cautioning the client of the risk to maintaining secrecy when using such means.
7. The duty to maintain professional secrecy is unlimited in time.

8. An advocate shall not proffer evidence in the form of testimony of a witness who is an advocate or legal adviser in order to obtain disclosure by such witness of information obtained in connection with practice of the profession.

### **§ 20**

In the event of a search conducted in premises in which an advocate practises the profession, or in the advocate's private dwelling, the advocate is required to demand the presence during such action of a representative of the bar.

### **§ 21**

An advocate may not take a case whose outcome may affect the person or property of the advocate, unless the claim pertains to a family member or is common to the advocate and the party.

### **§ 22**

An advocate may not take a case or provide legal assistance if

- a) the advocate previously provided legal assistance to the opposing party in the same or a related case;
- b) the advocate participated in the matter while performing a public function;
- c) a person against whom the advocate is to conduct the matter is a client of the advocate's, even in a different matter; or
- d) a professional attorney who is a person close to the advocate is conducting the matter for, or has already provided legal assistance to, the opposing party, in the same or a related case.

### **§ 23**

An advocate is prohibited from using advertising and from seeking clients in a manner inconsistent with the dignity of the profession, or in cooperation with entities seeking clients in violation of law or principles of social coexistence.

### **§ 23a**

1. An advocate is authorized to provide information about his or her professional activity under the condition that such information and the form thereof are
  - a) consistent with the rules of this Code;
  - b) consistent with applicable law, specifically concerning consumer protection and combating unfair competition;
  - c) clear and not misleading;
  - d) provided in compliance with professional secrecy; and
  - e) not aimed at assignment of a specific matter to the advocate, subject to par. 2(b) of this section.
2. An advocate may provide information about legal services performed, in a manner consistent with the rules of this Code, through
  - a) inclusion of information in firm documents;
  - b) an offer in a proceeding in the nature of a tender or competition, or an offer submitted at the express request of a potential client; in such offers it is permissible to provide

- information about the advocate's professional activity that may be relevant in assessing the offer;
- c) placement of press information directly connected with legal services, in compliance with the rules developed by the Polish Bar Council and containing the information listed in par. 3(a)–(i) of this section;
  - d) placement of entries in address and telephone directories;
  - e) transmission of information via electronic means of communication at the express request of a potential client;
  - f) placement of information on websites or placement of information about the website in catalogues or search engines;
  - g) appropriate designation of the premises of the law office; or
  - h) publication of brochures or handbooks.
3. The information may contain
- a) the trademark or logo of the law office or partnership;
  - b) the name and address of the law office as well as the name of the advocate, telecommunications numbers, e-mail address, and website name;
  - c) a list of the partners of the partnership of which the advocate is a member, with an indication of which of the partners is an advocate, and if managerial personnel are appointed within the partnership, their names together with the office they hold;
  - d) a list of persons regularly cooperating with the law office or partnership;
  - e) the advocate's academic title or degree;
  - f) particulars concerning the type and range of legal services provided by the advocate, with an indication of preferred fields of law or cooperation with foreign law firms;
  - g) particulars concerning the ability to provide legal services in foreign languages;
  - h) a statement of the year in which the law office or partnership was established and the date it began operations;
  - i) membership in a specific bar chamber;
  - j) a list of publications by the advocate;
  - k) placement of information about non-legal qualifications of the advocate;
  - l) a picture of the advocate;
  - m) only at the request of a client or in an offer directed to a potential client, a statement on fees and how they are calculated; and
  - n) only at the request of a client or in an offer directed to a potential client, the amount of insurance against civil liability.
4. Any information concerning fees or how they are calculated must be stated unambiguously. It should be clearly defined whether the fee includes costs incurred as well as taxes and other fees.
5. An advocate may state the amount of an insurance policy against civil liability.

### **§ 23b**

1. An advocate is not permitted to propose services to potential clients in the form of an offer directed to persons who did not previously make such express request.
2. Information shall not, more specifically,

- a) create a likelihood of generating unjustified expectations with respect to the results of the advocate's work;
  - b) refer to personal familiarity with judges, prosecutors or public officials;
  - c) contain direct comparisons concerning quality with other identifiable advocates or members of other legal professions, or criticism thereof;
  - d) employ an inappropriate or aggressive form; or
  - e) contain any elements of evaluation.
3. Paid initiation of press articles or programs under the pretext of objective information but designed to promote the advocate or his or her law practice or partnership is impermissible.
  4. It is impermissible to contact potential clients in order to provide them information about the advocate's services, including during uninvited visits, telephone calls or correspondence to persons who have not sought legal assistance from the advocate.
  5. It is impermissible to hire third parties to disseminate information about an advocate.
  6. An advocate shall not pay any fee for publishing information apart from the reasonable costs of publication.

### § 23c

1. Letters and pleadings of the advocate in connection with legal assistance provided shall contain
  - a) the name and address of the advocate, if he or she provides legal assistance through an individual law office;
  - b) the name and address of the partnership through which the advocate provides legal assistance, if he or she provides such assistance through a civil law partnership, registered partnership, professional partnership or limited partnership;
  - c) the address of an office or branch of the law office or partnership, if established, together with the registered address of the law office or partnership.
2. If the activities are conducted in the form of civil law partnership, registered partnership, professional partnership or limited partnership in which the advocate is a partner, then, when appropriate under the circumstances, a full list of the partners of the partnership (or in the case of a limited partnership, the general partners) shall be stated, with an indication of which of the partners is an advocate, and if managerial personnel are appointed within the partnership, their names together with the office they hold. This shall not apply to the situation where the name of the partnership leaves no doubt as to the partners who are advocates.
3. If the activity is conducted in the form of civil law partnership, registered partnership, professional partnership or limited partnership in which a partner is a foreign lawyer within the meaning of the Act on Performance of Legal Services in the Republic of Poland by Foreign Lawyers dated 5 July 2002, entered in the roll of foreign lawyers maintained by the regional bar council, the following information shall be stated:
  - a) the professional title, in the official language of the home country;
  - b) an indication of the professional organization in the home country to which the lawyer belongs, or the court before which the lawyer is entitled to appear under the law of such country; and

- c) information that the foreign lawyer conducts a permanent practice within a scope equivalent to the profession of advocate.

**§ 23d**

An advocate is not permitted to accept a benefit from another advocate or a third party as a fee for referring a client to another advocate, or to provide any benefit as a fee for referring a client to the advocate. Assignment of a portion of a fee or amounts defined in some other form to the heirs of a deceased advocate or to a retired advocate for acquiring his or her practice shall not be a violation of this prohibition.

**§ 24**

Advocates should provide advice and assistance to one another in their professional work, when it does not conflict with the interests of the client.

**§ 25**

An advocate entrusted with the duties of a patron shall make his or her best efforts to prepare the trainee properly to practise the profession of advocate, in terms of professional skills and compliance with the principles of ethics for advocates.

**§ 26**

An advocate is required to maintain insurance against civil liability arising out of practice of the profession, in accordance with the rules and in the manner determined by the Polish Bar Council.

**CHAPTER III**

**Relations with the Court and Other Authorities Before Which the Advocate Appears**

**§ 27**

1. An advocate shall act with restraint and tact towards the court and offices and institutions before which the advocate appears.
2. Even if persons participating in a judicial proceeding behave improperly, the advocate shall display self-control and tact.

**§ 28**

An advocate shall take care to assure that his or her addresses, statements and questions do not offend the dignity of persons participating in the case.

**§ 29**

When visiting incarcerated persons, an advocate shall take care to maintain the solemnity and dignity of the profession.

**§ 30**

1. An advocate shall notify the court or other authority before which he or she is appearing when unable to participate in given procedures.
2. An advocate is required to justify his or her failure to appear.

3. If his or her power of attorney terminates, the advocate shall promptly notify the court or other authority before which he or she has appeared of such fact.

## **CHAPTER IV**

### **Relations with Colleagues**

#### **§ 31**

1. In relations with colleagues, an advocate shall observe the principles of courtesy, loyalty and collegiality.
2. An advocate is required to display the utmost loyalty towards colleagues working with him or her within a law office or partnership, and shall refrain from any actions violating such loyalty also after the end of their cooperation.
3. If an advocate assigns the handling of a matter to an advocate practising in another country or seeks advice from such an advocate, the advocate is personally liable to pay the fee and cover the costs, even if the client is insolvent. The advocate may limit his or her liability to the portion of the amount due that arose before the foreign advocate was notified of the advocate's withdrawal from liability for future obligations. The advocates may establish different terms with respect to the liability to the foreign advocate.

#### **§ 32**

It is impermissible for an advocate to consult with the opposing party in circumvention of the party's defence counsel or attorney.

#### **§ 33**

Any out-of-court settlement negotiations involving advocates or legal advisers shall not be subject to disclosure.

#### **§ 34**

Before providing legal assistance, an advocate shall determine whether the client is already using the legal services of another advocate in the matter, and if so, he or she shall not, without the knowledge and consent of the other advocate, provide legal assistance or take part in the matter jointly with the other advocate. The advocate who has been conducting the matter may refuse to provide consent only for significant reasons.

If the delay required for the advocates to reach agreement could materially harm the interests of the client, the advocate joining the matter should provide the necessary legal assistance to the client and promptly notify the existing advocate thereof, and then, if there are any obstacles, shall withdraw from providing further assistance.

#### **§ 35**

An advocate taking over a case voluntarily shall notify the relevant procedural authority, and if defence counsel or an attorney has previously been appointed the advocate shall promptly notify the defence counsel or attorney that he or she is taking over the case.

### **§ 36**

Any disagreements between advocates shall be resolved in the first resort by the relevant authorities of the bar, and then by the permanent arbitration court at the Polish Bar Council or other arbitration court with exclusive participation of advocates. Partnership agreements to which advocates are parties shall contain an appropriate arbitration clause.

### **§ 37**

An advocate may agree to represent the parties in a case against another advocate pertaining to the other advocate's professional actions only after first notifying his or her own regional bar council.

### **§ 38**

An advocate shall strive to resolve a case against another advocate amicably if the merits of the case so allow.

### **§ 39**

1. In the event of a dispute between advocates, the opportunities for amicable resolution of the dispute should first be exhausted, or resort should be had to the intermediation of the relevant authorities of the bar.
2. If there is a conflict between the principles of collegiality and the justified interests of the client, the interests of the client shall take priority.
3. In the event of a dispute with a foreign advocate concerning professional matters, the advocate shall seek solutions that would eliminate the dispute. An advocate may not commence a proceeding arising out of such a dispute before informing the professional organizations to which the advocates who are parties to the dispute belong, in order to enable the organizations to provide assistance in reaching an agreement.

### **§ 40**

Principles of collegiality require an advocate who

- a) is unable to appear in court at the designated time, to notify in advance the advocates acting in the case and if possible agree with them on the time when the advocate will appear;
- b) wishes to obtain the consent of the court to consider out of turn a case in which the advocate is involved, to ascertain first that the advocates acting in earlier cases consent thereto;
- c) intends to submit pleadings at a hearing in a case the advocate is conducting, to do so if possible at the beginning of the hearing and serve copies thereof on his or her adversary as soon as possible;
- d) submits an appendix to the record, to submit it with a copy for the opposing party.

### **§ 41**

When issuing a substitution to a colleague, an advocate shall do so within a time enabling the substitute to prepare properly for the hearing, and shall provide the substitute any necessary

documents and notes. An advocate shall exercise particular care when issuing a substitution to an advocate trainee.

**§ 42**

An advocate accepting a substitution from an advocate from a different locality shall confirm acceptance of the substitution.

**CHAPTER V**

**Relations with Clients**

**§ 43**

An advocate is required to defend the interests of his or her client courageously and honourably, while maintaining the respect and courtesy owed to the court and other authorities, without heed for personal gain or the consequences of such attitude for the advocate or others.

**§ 44**

An advocate has a duty to seek a resolution enabling the client to save costs and to recommend an amicable conclusion of the matter if it is in the interest of the client.

**§ 45**

An advocate shall not agree to conduct a case when requested to do so by an unauthorized person.

**§ 46**

An advocate may not represent clients whose interests are conflicting, even if the clients consent.

If a conflict arises during the course of a proceeding, the advocate is required to terminate the power of attorney of the clients whose interests are conflicting.

**§ 47**

An advocate may not agree to conduct a matter against a person close to the advocate.

**§ 48**

An advocate shall not agree to conduct a matter against a person with whom the advocate has a serious personal dispute.

**§ 49**

The advocate shall monitor the course of a matter and inform the client of the progress and outcome of the matter.

**§ 50**

1. An advocate shall be particularly scrupulous in financial dealings with a client.

2. An advocate is required to inform the client of the amount of the fee or the manner in which it is calculated (e.g. on the basis of time worked).
3. It is impermissible for an advocate to enter into an agreement with a client that provides for an obligation to pay the fee for conducting the matter conditioned solely on the final outcome in the matter. An advocate may provide in an agreement with a client for an additional fee for a positive outcome in the matter.

#### **§ 51**

The client's relationship to the advocate is based on trust. An advocate is required to terminate the power of attorney when it appears from the circumstances that the client has lost confidence in the advocate. An advocate shall not abuse this rule in order to be released from conducting an appointed case.

#### **§ 52**

An advocate must not allow a situation to arise in which the advocate is dependent on the client, and in particular an advocate may not take out loans from a client whose matter the advocate is conducting.

#### **§ 53**

An advocate is required to release to the client promptly, upon the client's request, any and all documents received from the client, as well as documents which the advocate received from the court of other authorities before which the advocate has appeared as attorney in a matter conducted by the advocate.

#### **§ 54**

An advocate may not condition release of documents referred to in §53 on the client's prior payment of costs and expenses payable to the advocate.

#### **§ 55**

1. An advocate may not abandon actions in a case conducted by the advocate because the client has failed to pay the agreed fee, and in particular may not for such reason refuse to appear at a hearing. However, the client's failure to pay the agreed fee may constitute grounds for terminating the power of attorney in the manner and time provided by law.
2. An advocate is not required to bear expenses in a matter conducted by the advocate, such as court fees or costs of travel to another locality, if the client upon due request fails to pay the required amount on time.

#### **§ 56**

An advocate is required to obtain the consent of the client, in writing if possible, to waive the filing of an appellate instrument. The advocate shall promptly document in the case file the lack of such consent, the inability to obtain it, or the client's refusal to provide it.

#### **§ 57**

If an advocate concludes that filing of an appellate instrument in a case conducted by the advocate voluntarily or by appointment is legally or factually unjustified, and the client does

not agree with such position, the advocate shall promptly terminate the power of attorney. This applies also to a cassation, a cassation appeal, a constitutional petition, and other procedural measures for amending or setting aside legally final rulings.

#### **§ 58**

An advocate may not take part in execution proceedings unless otherwise provided by a specific regulation. This prohibition does not apply to judicial actions or actions related to execution against real estate.

### **CHAPTER VI**

#### **Service to the Bar. Relations with Authorities of the Bar.**

#### **§ 59**

Holding office in the authorities of the bar is a corporate right and obligation of every advocate.

#### **§ 60**

An advocate elected to the authorities of the bar is required to perform his or her office and to cooperate in realization of the fundamental tasks of the bar with the utmost diligence.

#### **§ 61**

An advocate is required to display respect for the authorities of the bar.

#### **§ 62**

If a member of the authorities of the bar is temporarily suspended from practice, he or she shall cease to hold office in such authorities.

#### **§ 63**

An advocate is required to comply with applicable resolutions and other decisions of the authorities of the bar.

#### **§ 64**

An advocate is required to appear at any summons by the authorities of the bar, and shall promptly justify any failure to appear. An advocate is required to provide the authorities of the bar with any requested clarifications within the specified time.

#### **§ 65**

The culpable failure to pay bar dues shall constitute a serious violation of the principles of professional ethics.

#### **§ 66**

An advocate is required to cooperate with the authorities of the bar in all matters concerning the profession of advocate.

**§ 67**

For purposes of this Code, the authorities of the bar shall include authorities of the bar as well as the authorities of the bar chambers, the dean, and the disciplinary attorney.

**CHAPTER VII**

**Final Provisions**

**§ 68**

These Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates), adopted by the Polish Bar Council on 10 October 1998, shall come into force upon publication in the monthly journal *Palestra*, that is, on 1 December 1998. The Rules of Ethics for Advocates and the Dignity of the Profession adopted by the Polish Bar Council on 26 September 1993 shall cease to be in force at that time.

**§ 69**

Resolution No. 32/2005 of the Polish Bar Council of 19 November 2005 shall come into force upon publication of the consolidated text of the Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates) in the monthly journal *Palestra*, that is, on 31 December 2005.

**§ 70**

The amendments to the Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates) enacted by the resolutions of the Polish Bar Council of 19 November 2011 shall come into force on 1 January 2012.