



Model Code of Conduct for European Lawyers 2021



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Preamble

As adopted on 08/10/2021

Lawyers have a central position in the administration of justice. They defend citizens' rights by assisting and representing them, and liaise between citizens and the courts. In this capacity, they hold a key position in ensuring the trust of the public in actions of the courts – the mission of which is fundamental in a democratic system governed by the rule of law.

Essential principles guide lawyers' behaviour in all circumstances, including independence, observance of legal professional secrecy and confidentiality, refusal to counsel, assist or defend a client if the lawyer is having a conflict of interest.

The lawyer shall be competent, devoted, diligent and cautious with their clients.

When carrying out their duties, lawyers shall respect principles of dignity, conscience, integrity and loyalty.

One of the main objects of the Council of Bars and Law Societies of Europe (CCBE) is to represent its member bars on all matters of mutual interest relating to the exercise of the profession of the lawyer, the development of the law and practice pertaining to the rule of law and the administration of justice.

The Model Code of Deontology is the third part of a set of documents which the CCBE has adopted to achieve these objectives as concerns deontology:

The **Charter of the Core Principles of the European Legal Profession** contains a list of ten core principles that express the common ground which underlies all the national and international rules which govern the conduct of European lawyers.

The **Code of Conduct for European Lawyers** states common rules which apply to all lawyers from the European Union, the European Economic Area, the Swiss Confederation and the United Kingdom, as well as associated and observer countries, whatever Bar or Law Society they belong to in relation to their cross-border practice. In particular, it aims at defining the applicable rules when the deontological rules of more than one member country are applicable in accordance with their terms.

With the **Model Code of Conduct for European Lawyers**, the CCBE presents to its members a coherent set of deontological rules.

The Articles of the Model Code of Conduct are inspired by the Charter of Core Principles. They do not aim at providing a comprehensive set of regulations of the legal profession though. For example, the Model Code of Conduct does not deal with lawyers' relationship with disciplinary organs.

The Articles of the Model Code are accompanied by comments, aimed at clarifying their meaning in order to facilitate their application in concrete cases.

The CCBE does not propose that the Model Code of Conduct, unlike the Code of Conduct of European lawyers, should constitute a uniform code to be adopted as enforceable rules in all the Bars it represents.

The drafting of rules which would have this aim would indeed lead to a code reflecting, as it were, the lowest common denominator of the deontological rules in force in all the Bars, resulting in the

formulation of sometimes the most restrictive standard, sometimes the least restrictive, which would be of little use.

The CCBE has therefore chosen to propose rules which are best suited to current conceptions of the purpose of lawyers' deontological rules, dictated by the interests of the client, and which comply with European law.

The CCBE therefore believes that, recognising the merit of these rules, its member Bars will voluntarily adopt the provisions of the Model Code of Conduct or, where this is not possible, will be largely inspired by them.



Model Article on Independence

As adopted on 19/05/2017

1. An independent legal profession is a prerequisite for the rule of law

1. Key role of independence provision

The Charter of Core Principles of the European Legal Profession of 25 November 2006 provides as principle a) the independence of the lawyer, and the freedom of the lawyer to pursue the client's case¹: "A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed without this independence from the client there can be no guarantee of the quality of the lawyer's work. The lawyer's membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers' independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients' cases, and may suffer imprisonment or death for attempting to do so."

It follows from those principles that society needs a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, of any kind or for any reason.

Independence is necessary:

- ▷ to enable lawyers properly to defend clients against the State and
- ▷ to protect lawyers from being identified with clients,
- ▷ to build trust between lawyers and their clients,
- ▷ to preserve the rule of law.

When representing clients, lawyers contribute to the observance of the rule of law by the public authorities.

¹ [CCBE Charter of Core Principles of the European Legal Profession](#) of 25 November 2016.

2. These principles are recognized by leading international authorities:

- a. art. 16 of the Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)².
- b. Principle One of Council of Europe Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer³, and
- c. Recital D and point 4 of European Parliament's Resolution on the legal profession and the general interest in the functioning of legal systems, dated 23 March 2006⁴.

2. In the exercise of his or her profession, the lawyer shall be independent, free from influence, including influence which may arise from his or her personal interests or as a result of external pressure. A lawyer must therefore avoid any impairment of his or her independence and should not compromise his or her professional standards in his or her dealings with the client, the court, third parties and public authorities. Otherwise, he or she shall not accept a mandate or, if already instructed, shall terminate his or her existing mandate.

What does it mean to be independent?


Independence means that lawyers

- a. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and
- b. are able to travel and to consult with their clients freely both within their own country and abroad; and
- c. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics; and
- d. shall be free from external pressure; and
- e. shall resist any influence stemming from his/her own personal interests; and
- f. shall not compromise their professional standards to please the client, the court, third parties or public authorities.

² [United Nations Basic Principles on the Role of Lawyers](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³ [Council of Europe Recommendation Rec\(2000\)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer](#), adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies.

⁴ [European Parliament resolution on the legal professions and the general interest in the functioning of legal systems](#), 23 March 2006.



Model Article on Conflict of Interests

As adopted on 02/12/2016

1. Except as otherwise provided in paragraph 4, a lawyer may not assist or act on behalf of two or more clients if there is a conflict between the interests of those clients. A lawyer may not assist or act on behalf of a client if there is a conflict between the interests of his or her client and his or her own interests or if the lawyer had handled the matter as a public servant, or as a judge, an arbitrator or mediator, or in the capacity of resolving disputes in any other form of alternative dispute resolution, or in any other comparable capacity. This obligation also applies whenever there is a significant risk of a conflict of interests.

General remark: A lawyer devoted only to act in the best interest of his/her client, free of any conflicting interests, is indispensable for the trust of the client in his/her lawyer; also in the public perception, a lawyer is expected to avoid even the slightest appearance of representing conflicting interests. Therefore, it is a widely accepted key principle of the lawyer's profession that a lawyer has to avoid representing conflicting interests of his/her clients. Only a lawyer free of conflicting interests is able "to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs" (cp. ECJ, C-550/07 (Akzo Nobel), Note 42). The Conflict of Interest-issue is closely linked to other central key principles of the legal profession, such as confidentiality and independence.

Para 1 describes the general principle: a lawyer is not only excluded to assist a client if there actually is an existing conflict of interests but also if there is a significant risk that a conflict of interest may arise in the future. "Significant" risk means that a (future) conflict of interests is likely. For that reason, according to paragraph 3, the lawyer has the duty to assess a conflict of interest at all time.

It is of no relevance, if the conflict arises between the interests of the clients or between the interests of the client and those of the lawyer.

However, one should bear in mind that under this clause not all and any (potential) conflicting interest exclude a lawyer from representing one or more clients: for example, in a client-lawyer relationship there are inherent conflicting interests, f.e. with respect to the fees, the content of the engagement contract, the response time, etc. Thus follows that with respect to a conflict with personal interests of a lawyer, a lawyer is not allowed to assist a client if the personal interests of the lawyer are or might be affected by those interests of the client which ought to be represented/defended by the lawyer by performing his/her duties under the mandate with the client. Such a conflict may arise for example, if the lawyer shall assist the client in a dispute with a company in which the lawyer holds a significant share or if the lawyer shall represent a client to obtain a building permission on a property which is adjacent to a property belonging to the client's wife who raises objections against the building project

The same is true with respect to conflicting clients' interests: if f.e. a law firm represents two clients which are competitors, there can be a wide variety of conflicting clients' interests which do not per se exclude the law firm to continue represent these two competitors. With respect to conflicting interests

between two or more clients, a lawyer is precluded from assisting two or more clients only if the conflict arises in connection with those interests which ought to be represented by the lawyer. Thus follows that a lawyer cannot represent the plaintiff and the defendant in the same court case. Moreover, a lawyer who assisted client A in contract negotiations with client B cannot represent client B against the former client A in a dispute which arises out of this contract, even if this dispute arises only several years later. On the other hand, a lawyer can represent two competitors in non-related matters against third parties, f.e., a lawyer is allowed to represent two competitors in a case challenging the validity of a national statute which is of relevance for both competitors or to collect money for both competitors from third parties. A lawyer can be allowed to represent client B against client A in a matter which is not related with another matter in which the lawyer is or was representing client A, however, subject to the lawyer complying with all his/her other duties, esp. the confidentiality obligation.

By using the broad terms “assist or act” it is made clear that any kind of representation by a client is covered, be it litigation/arbitration or out-of-court representation.

The second sentence of para 1 contains a non-exhaustive list of examples of conflicts of interests: in all these cases the lawyer is not allowed to assist a client.

Apart from para 4, lit. (b), this clause does not provide for an exemption if the clients waive a conflict by giving their “informed consent”.

2. A lawyer may not assist or act on behalf of a client if this conflicts with a duty which he or she owes to a former client.

Para 2 underlines the close relationship of the conflict-of-interest issue with the other duties of a lawyer, esp. the confidentiality and the independence, be it a deontological obligation or a contractual obligation. To be free from a conflict of interests is a necessary but not the only condition for a lawyer to act or to assist a client. Cp also Article [•] on Confidentiality which contains a corresponding provision.

3. The lawyer has the duty to assess the risk of a conflict of interests at any time.

Bearing in mind the importance of the principle that a lawyer has to act free of any conflicts of interest as defined under para 1, **para 3** obliges a lawyer to continuously monitor if a conflict arises. Generally spoken, the lawyer is more qualified than a client to assess the risk of conflicts-of-interests and to recognize any such conflict. Consequently, the lawyer has the duty to assess the (risk of) conflicting interests not only once, before accepting a mandate, but also during the mandate.

There can be various reasons that a conflict arises only later on, whereby it is irrelevant, if the reason derives from the sphere of the client, from the sphere of the lawyer or from new developments in the matter: f.e., a change of the majority shareholder in a client may cause a conflict with another client of the lawyer; or a lawyer, representing client A in court proceedings against B, joins another law firm which represents B in these court proceedings; or, a law firm represents client A in criminal proceedings, during these proceedings it evolves that an employee of the law firm is involved in this criminal act.

4. A lawyer may assist or act on behalf of two or more clients in situations of conflict of interests or potential conflict of interests only if:
 - a. the different clients have a common interest in relation to that matter; and
 - b. the clients have given their informed consent; and
 - c. the duty of confidentiality is not put at risk; and
 - d. the lawyer considers that the conflict of interests or potential conflict of interests does not prevent him or her from acting in the best interests of all such clients.

A conflict of interest is much broader than a conflict. Having a common interest in a certain matter does not mean that the individual interests of a person involved cannot conflict with the individual interest of another person involved.

This f.e. is almost always the case when two or more persons want to make a contract. The contract is meant to regulate the conflicting interests of the parties involved. The parties that make a contract certainly also have a common interest, but this does not exclude that they also have in that same matter personal interests that might be conflicting with the personal interests of the other. In general one can say that the individual rights of a contracting party are better served by being defended by a lawyer that has only to care for the individual rights of his or her client. But sometimes the involved parties only seek a balance between their individual rights and they trust that a common lawyer will seek this balance and the common interests of both clients.

Parties with conflicting interests in litigation do not have this common interest. A lawyer can never defend parties with opposing interests in litigation. Parties in a conflict might have a common interest to resolve the conflict in an ADR. A lawyer acting as a dispute resolver is however not acting as a lawyer.

The 4 conditions have to be realized before a lawyer can act for persons with conflicting interests:

- a. There has to be a common interest.
- b. There has to be an informed consent.
- c. Even when a. and b. are realized the lawyer cannot act when this would mean that he has to disclose confidential information, or when the knowledge of confidential information that he or she cannot disclose prevents him or her from acting in the best interest of all the parties involved.
- d. A lawyer that acts for more than one party must defend equally the rights and interests of all the parties involved. If the conflict between these interests prevents him or her from doing so, he or she cannot accept the case or has to cease acting.

All of this section of the Model Code of Conduct has regard to the basic principles set out in Paragraph 1. In most ordinary circumstances it will not be possible for the same lawyer or law firm to advise two or more clients in relation to the same matter. It will never be possible for a lawyer or law firm to act for any client where the own interests of the instructed lawyer or law firm conflict with those of the client.

The rule is designed to avoid conflicts of interest, to ensure that those entitled to truly independent advice understand this and are empowered to receive it. Furthermore, the rule seeks to avoid circumstances which might prejudice professional secrecy and / or place legally privileged or simply confidential information at risk.

Para 4 sets out to deal with those rare circumstances when it may be possible for a single lawyer or law firm to act for more than one party in the same matter.

It must be stressed that the ordinary and simple position is that it would not be right to do so (and indeed some member bars and law societies have regulatory rules prohibiting such actions – NB nothing

in this Para obviates the needs for member bars and law societies to comply with regulations or statutes applicable in their own jurisdictions).

Para 4 can take effect only in situations where the best interests of two or more clients with their informed mutual understanding and continuing consent outweigh the risks arising from a conflict of interest.

Para 4 creates an obligation to monitor the balance between the best interests of the clients and the risks or implicit risks in continuing to act where there may be a conflict or where professional secrecy, legally privileged communications or simply confidential information may be placed at risk. It is imperative that lawyers who seek to act in such circumstances review the best interests of the clients on a continuing basis and cease to act pursuant to Para 4 as soon as that monitoring shows the mutual benefit of the clients is no longer outweighed.

5. If a conflict of interests arises in the course of the conduct of matters for two or more clients or the conditions of paragraph 4 are no longer met, a lawyer must cease to act for all these clients in those matters.

Para 5 is the necessary consequence of para 3 and makes clear that a lawyer must be free of any conflict of interests from the beginning until the very end of the mandate.

Whenever later on such conflict of interests arises the lawyer must cease to act for all clients in all matters which give rise to the conflict of interest: thus follows that the lawyer is not allowed to cease to act only for one of the affected clients and to continue to assist the other client.

6. Lawyers practising in the same firm or lawyers and other professionals practising in the same firm are considered as one single entity for the purpose of complying with their duty not to act when there is a conflict of interests.

Para 6 applies the foregoing provisions in para 1 – para 5 to lawyers practicing in associations. Thus follows for example that a law firm shall cease to act when there is such a conflict of interest between two clients of the law firm, even if different lawyers in the law firm are handling the cases for each of the client.

This principle also applies to multidisciplinary partnerships (MDP); the lawyers in such MDP's, therefore, are responsible to safeguard that all members of the partnership, also those of the other profession, observe this rule.



Model Article on Confidentiality⁵

As adopted on 02/12/2016

1. Confidentiality serves the rule of law. It forms the basis of the relationship of trust between a lawyer and his or her client.

Confidentiality is a fundamental principle of justice. In EU law, the protection of confidentiality has the status of a general legal principle in the nature of a fundamental right. Confidentiality is currently recognised in all Member States of the European Union. The protection of confidentiality also derives from Article 8(1) of the European Convention on Human Rights (ECHR) (protection of correspondence) in conjunction with Article 6(1) and (3)(c) of the ECHR (right to a fair trial) as well as from Article 7 of the Charter of Fundamental Rights of the European Union (respect for communications) in conjunction with Article 47(1), the second sentence of Article 47(2) and Article 48(2) of that Charter (right to be advised, defended and represented, respect for rights of defence) (cp. CJEU, C-155/79 (AM&S); Opinion of the Advocate General Kokott, C-550/07 (Akzo Nobel)).

If a client cannot be certain that the facts and thoughts he or she entrusts to a lawyer will be kept strictly confidential, trust between the client and his or her lawyer will be compromised.

Without such trust lawyers cannot properly discharge their duty to provide legal assistance which is essential for the safeguard of the rule of law.

Both aspects are underlined in paragraph 1.

In some countries, the concept of confidentiality is also considered to serve the proper administration of justice. However, since this view is not shared by all Member Countries, paragraph 1 refers to the “rule of law”: and the term “rule of law” is intended to cover where appropriate the proper administration of justice as well as the client’s interest, his/her right to legal assistance and his or her right to a fair trial.

2. The lawyer is bound by confidentiality. It is a duty of the lawyer, and may also be a right of the lawyer.

Legal professional privilege/Confidentiality serves to protect communications between a client and a lawyer. On the one hand, it is the indispensable precondition for the client’s right to legal assistance and, on the other hand, it is based on the specific role of the lawyer as being required to provide, in full independence, and in the overriding interests of justice, such legal assistance as the client needs (cp. CJEU, C-155/79 (AM&S); Opinion of the Advocate General Kokott, C-550/07 (Akzo Nobel)).

⁵ The Article is not intended to govern disciplinary proceedings where different rules may apply.

Given/considering that different terms - Confidentiality/Professional Secrecy/Legal Privilege - are used in different jurisdictions to express a similar concept, the CCBE Code of Conduct uses the more general term confidentiality without defining it; its content can be derived/deduced from the various sections of this article.

Not to disclose confidential information is a duty of the lawyer.

It may also be a right of the lawyer in the sense that no one can force a lawyer to disclose confidential information.

Such duty and any such right shall be respected by the legislator and public authorities.

3. Confidentiality is unlimited in time; it survives the termination of the retainer with the client.

4. Confidentiality applies to any and all information about a client or a client matter which is given to the lawyer by his or her client or which is received by the lawyer in the course of the lawyer's exercise of his or her profession, irrespective of the source of such information.

Primarily, duties of confidentiality cover all information relating to the client and the client's matter that are entrusted to the lawyer. It is irrelevant from what source a lawyer obtains that information. It is not only the information given to the lawyer directly by the client that is protected but also any and all information which the lawyer obtains from other sources in dealing with that client, be it relatives, business partners or third parties unrelated to the client and/or the client's matter.

Bearing in mind the broad scope of the concept of confidentiality, it follows that any and all information, relating to the client and the client's matter entrusted to the lawyer, will be confidential irrespective of the means of transmission of that information to the lawyer and will, without limitation, encompass verbal, digital and written information.

5. Confidentiality also applies to any and all documents prepared by the lawyer, to all those delivered by the lawyer to his or her client and to all communications between them.

As follows from paragraph 4, all communications between a lawyer and his or her client are confidential in both directions. Not only the information received by the lawyer, but also any document or communication from the lawyer addressed to the client in the exercise of his or her profession.

6. Confidentiality as defined in paragraphs 4 and 5 applies both in litigation or advice.

7. Paragraphs 4 and 5 above do not prevent a lawyer from disclosing confidential information to third parties and in particular to public authorities and courts, provided the lawyer has ascertained that:
 - a. such disclosure is in the best interests of the client; and
 - b. the client agrees with such disclosure; and
 - c. no applicable provisions forbid such disclosure.

Paragraph 4 gives a broad definition of the scope of confidentiality. However, in the exercise of his or her profession, lawyers need to be able to disclose information. Without such disclosure he or she would not be able to act as a lawyer. It is the lawyer (under the supervision of his or her professional authorities) who has to judge what information he or she will disclose in what circumstances. As a general rule, the lawyer can never disclose information without the permission of the client (b). Even with the agreement of the client, it is the lawyer's duty to consider whether or not a disclosure is in the best interest of his or her client (a). If not, he or she cannot disclose.

As a result of different concepts of Confidentiality/Professional Secrecy/Legal Privilege, there are various approaches as to the circumstances in which a lawyer is entitled or even obliged to disclose information. In some Member States, the lawyer may be obliged to disclose information if the client agrees to the disclosure or instructs the lawyer to do so. In other Member States, the client's consent is a necessary condition for the lawyer to disclose confidential information, but the lawyer is still entitled not to disclose if he or she considers that disclosure would not be in the best interest of the client. Subject to those differences, the lawyer should always act in the best interest of the client.

All conditions mentioned under this paragraph must be met in order to entitle the lawyer to disclose confidential information. It thus follows that the consent of the client is a necessary but not sufficient condition to allow the lawyer to disclose confidential information.

Point c) refers to applicable national rules since in some Member States the disclosure can be forbidden even if conditions in points a) and b) are met. The term "provisions" includes general statutory provisions as well as deontological rules irrespective of their nature, including case law, because the nature of deontological rules differs from Member State to Member State.

8. The lawyer is entitled to disclose confidential information in proceedings between the lawyer and his or her client or in proceedings against the lawyer provided such disclosure is necessary for such proceedings and there is a direct relation between such proceedings and the lawyer's mandate from this client. Proceedings include court, administrative, professional and alternative dispute resolution proceedings.

Under certain circumstances a lawyer may be entitled to disclose confidential information when involved in proceedings as a party. This is not a general rule and is subject to certain restrictions.

A lawyer may be entitled to use confidential information:

1. In proceedings between the lawyer and a client and
2. In proceedings against the lawyer for the purpose of his or her defence.

In all such proceedings the lawyer is entitled to disclose confidential information only to the extent that it is necessary to secure his or her interests in such proceedings as long as there is a direct relation between such proceedings and the lawyer's mandate from this client.

9. The lawyer shall ensure that his or her employees and any other person with whom he or she collaborates in the course of the exercise of his or her profession, comply with confidentiality as set out in this Article.

This provision stipulates that the lawyer may collaborate with non-lawyers provided he or she takes all reasonable measures to safeguard that these persons comply with the confidentiality obligations of the lawyer.



Model Article on Relations with Clients

As adopted on 27/11/2020

1. Requirement to act in the best interests of the client

A lawyer must always act in the best interests of the client.

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before any other interests, including the lawyer's own interests.

In considering what is in the best interests of a client, a lawyer should give due regard to the expectations and wishes of the client.

2. Requirement for competence and skill

1. General provision

A lawyer should not accept instructions in a matter which the lawyer knows or ought to know he or she will not be able to handle competently.

A lawyer may, however, provide the required legal knowledge, skills, and resources by acting together with other lawyers.

Competence requires a lawyer to provide the legal knowledge, skills, and resources reasonably necessary to carry out the instructions of his or her client, as they may evolve over time.

Lawyers may not always have all the legal knowledge, skills, and resources necessary to carry out the instructions of their clients. In such circumstances, the lawyer would be in compliance with this paragraph by acting together with one or more lawyers who have the requisite knowledge, skills and resources.

2. Obligation of continuing training / life-long learning

Lawyers shall maintain their professional skills through continuing education in legal and other practice-related subject matters.

Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Lawyers are only able to provide such competent representation by keeping pace with the continuous rapid change of the law and technological environment in which they operate.

Therefore, life-long learning and continuous training is necessary, in all matters relevant to the services offered by the lawyer.

3. Requirement of diligence (responsiveness) (availability)

Lawyers must be diligent in relation to their clients. They should be reasonably available and responsive to their clients. They should take all actions required to comply with their mandate in a timely manner.

Lawyers should ensure the service they provide to their clients takes account of the clients' needs and circumstances.

Lawyers must seek to obtain from their clients in due time all instructions needed to be able to act in their best interests, including those needed to be able to diligently manage proceedings and monitor deadlines.

4. Requirement to abide by a client's decisions concerning the objectives of legal representation and handling of the matter

A lawyer shall give due regard to a client's decisions concerning the objectives of legal representation and shall consult with the client as to the means by which those objectives are to be pursued as may be appropriate. For this reason, the lawyer should provide the client with all relevant and appropriate information to enable the client to make informed decisions on the options available, and on the way the matter is to be handled.

This paragraph amplifies and builds upon the duty in Paragraph 1 to act in clients' best interests. Whilst lawyers must seek to achieve the best legal outcome for their clients, the decision as to what that best outcome should be and the strategies and arguments by which it should be achieved, is one in which the client must be involved.

It is, however, for the lawyer to decide when consultation with the client is necessary. If such consultation is not possible (for example, when a client does not have capacity, cannot be contacted or an important time-limit would otherwise be missed), lawyers shall act in accordance with their best judgement of what is in their clients' best interests, in accordance with their mandate.

5. Prohibition of assistance in unlawful conduct

Lawyers shall not support or assist clients in committing or attempting to commit conduct, which is illegal, criminal, or fraudulent. Lawyers' duty is to advise clients on the extent and applicability of the law.

Lawyers shall not assist their clients in committing illegal, criminal, or fraudulent actions. If, during the performance of their mandate, lawyers discover that the transaction for which their advice is sought is likely to be of such a nature, they must inform their client of the consequences resulting therefrom. If the client persists, the lawyers must withdraw from the matter.

6. Freedom to accept instructions

Subject to any limitations of law or rules of professional conduct, a lawyer shall be free to accept or decline any assignment. When declining an assignment, lawyers do not need to justify their decision, but must promptly inform the prospective client thereof.

In order to preserve lawyers' independence and the relation of trust that should exist between lawyers and their clients, lawyers must be free to decline instructions.

Since the reasons why lawyers decide to decline a mandate may be covered by professional secrecy, notably in case of conflicts of interest, lawyers should not be forced to justify their decision to decline a mandate.

There may, however, be legal or regulatory justifications for limiting that freedom. For instance, rules on legal aid could restrict the right of a lawyer to decline a matter received under a legal aid program.

7. Communication with clients

Lawyers must communicate with their clients on a regular basis and in a manner, which is clear, understandable, and appropriate to their clients' needs.

Such communication shall include all information reasonably necessary for the client to appreciate the nature and scope of the services that the lawyer renders or intends to render, as well as providing for periodic reporting on the progress in rendering such services.

Clear and straightforward communication between a lawyer and a client, given as regularly as the circumstances may require, is important to foster their relationship and mutual trust.

8. Safeguarding clients' funds and property

A lawyer shall hold funds and other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own funds and property.

Funds shall be kept in one or more separate accounts clearly segregated from all other accounts of the lawyer and, to the maximum extent permitted by law, exclusively dedicated to the safeguarding of third-party funds.

Other property shall be identified as such and appropriately safeguarded.

Complete records of such funds and other property shall be kept by the lawyer at least for as long as required by applicable limitation periods.

Upon receiving funds or other property in which a client or third party has an interest, a lawyer shall promptly inform such client or third party thereof. The lawyer shall promptly deliver to such client or third party any funds or other property that such person is entitled to receive, to the extent permitted by law, pursuant to the agreement with such client or third party and, shall promptly render to that person a full accounting of such funds or property, as well as of any financial benefits earned thereon.

The duty of loyalty and the duty to act in the client's best interest entails the obligation to carefully hold the assets of clients or third parties which a lawyer receives in the course of executing a mandate, separated from the lawyer's own assets. This obligation should not only ensure a correct settlement of costs and proceeds of the custody, in particular of accrued interest, but also that the assets are as far as possible protected against claims from the lawyer's creditors. In this respect, the lawyer is obliged to keep the assets in the manner which, under applicable law, offers the greatest protection against claims from the lawyer's own creditors. Accordingly, it is prohibited for a lawyer to commingle the assets held in custody with his own assets or to use them – even temporarily – for the lawyer's own interests or the interests of other persons who have no interest in the assets held in custody by the lawyer.

This provision does not only apply to funds but also to all other assets which the lawyer keeps in custody on behalf of clients or third parties: such property shall be appropriately safeguarded and clearly identified as clients or third-party property.

It is for the lawyer, subject to complying with any applicable legal or regulatory requirements, to decide whether to hold funds held on behalf of different clients in separate accounts or in a collective account.

The last paragraph of the rule imposes obligations on a lawyer who receives funds (or other property), to those, clients or third parties, who have an interest in them but did not provide such funds (or other property) themselves.

That will be the case, for instance, when the lawyer receives funds from another lawyer or third party for the account of the lawyer's client, in satisfaction of a judgement in favour of such client. Another example is when a lawyer has agreed with a client and a third party that the client will remit to the lawyer amounts claimed by the third party from such client, to be held in escrow by the lawyer until a final decision has been rendered on the merit of the third-party's claim, upon which the lawyer must release the funds held in escrow in accordance with the terms of the decision. In that case indeed, the third party has an interest in knowing that the client has made the required payment under the escrow agreement.

In such a case, the lawyer needs to inform the client (as in the first example) or the third party (as in the second example) of the receipt of the funds (or other property), since they have an interest therein and are not necessarily aware that such payment has been made. The information needs to be given as promptly as practical after receipt of the funds (or other property).

In addition, the lawyer is required to deliver them to such client or third party promptly when they are entitled to them. However, the lawyer is not required to do so when the law would prohibit it (for instance, because the funds have been attached), or when the person entitled to them has explicitly agreed otherwise (for instance, that the funds should remain in escrow until certain events have occurred). The lawyer should in that case obtain and keep satisfactory evidence of such agreement.

Finally, the lawyer has a duty to promptly render a full accounting of such funds (or other property) to the party having an interest in them, including any financial benefits relating thereto, such as investment income earned on such funds (or other property).

9. Communication with opposing parties

A lawyer shall refrain from communicating about a particular case or matter with any person who the lawyer knows to be represented or advised in the case or matter by another lawyer, without the prior consent of that other lawyer and shall keep the other lawyer informed of any such communications.

This provision reflects a principle accepted in many jurisdictions which is designed to avoid a lawyer taking undue advantage of the client of another lawyer.

10. Termination of representation

As a rule, a lawyer and a client may terminate their relationship at any time.

However, if the lawyer terminates the relationship, he or she shall give such notice thereof to the client as may be necessary to safeguard the client's interests.

When the relation of trust inherent to the client-lawyer relationship is broken, each party must have the right to terminate it, without having to justify the reasons thereof.

This principle, however, is subject to the following observations and qualifications:

First, rules and regulations may provide for certain exceptions, for instance when a lawyer has been designated pursuant to rules and regulations organising legal aid.

Second, the rule is without prejudice to the lawyer's right to be paid for services already provided and costs incurred (excluding, however, any compensation for loss of future profits).

Third, if the lawyer terminates the relationship, sufficient advance notice thereof must be given to the client in order to safeguard the client's interests. Factors that need to be taken into account in determining the appropriate length of such notice include the time needed for the client to find alternative counsel and for such counsel to be ready to take over the matter and the time needed for the lawyer to complete assignments that cannot be interrupted without harming the client's interests, such as urgent or imminent courts proceedings.

A similar notice requirement is not necessary to safeguard the lawyer's interests in the case of termination by the client, as those interests can be met through monetary compensation, as described above. In accordance with the lawyer's overriding duty always to act in the best interest of the client, the lawyer must, however, inform the client of the risks he or she would be taking by not allowing the lawyer to complete assignments that cannot be interrupted without harming the client's interests.

11. Delivery of documents upon termination of the mandate

Upon termination of representation, the lawyer shall, at the client's request, hand over the complete file, in originals when available and permissible, except for any of the lawyer's internal documents which were not communicated to the client or third parties and documents which are considered as confidential or privileged under applicable rules.

If the client requests the lawyer to transmit the file to another lawyer, such file shall include documents which are considered as confidential or privileged under applicable rules.

The lawyer shall always be entitled to keep a copy of any such documents for his or her own files.

This rule does not address and is without prejudice to any applicable rules regarding liens or retention rights which the lawyer might invoke in respect of the client's documents.

12. Duty to inform about the availability of legal aid

Lawyers have the duty to inform their clients about the availability of legal aid and the conditions thereof.

Before accepting representation, lawyers have a duty to inform their clients of the availability of legal aid and the conditions for obtaining it. Lawyers do not have, however, an affirmative duty to determine whether their client is eligible for legal aid under the client's specific circumstances.

In addition, lawyers do not have such duty if it is clear that their client is not eligible for legal aid.

If, in the course of advising the client, the lawyer discovers that the client may be entitled to legal aid, the lawyer shall inform the client accordingly: this follows from the lawyer's duty to act in the best interest of the client.



Model Article on Fees

As adopted on 08/10/2021

1. Freedom to negotiate fees with client

Unless otherwise provided by applicable standards or regulations, a lawyer and his or her client may freely agree upon the lawyer's fees, expenses and other compensation in accordance with the principles set forth in paragraph 4 below.

This sets out the fundamental principle that a lawyer and their client are free to agree a fee, subject to the principles set forth in paragraph 4.

2. Requirement to determine fees or at least factors to be used in the calculation of the fees before start of rendering legal services

Upon accepting instructions, the lawyer should provide information to the client on the scope of the services to be provided, the amount of his or her fees and any other compensation for providing such services, or at least the factors that will be taken into account to determine such amount. It is recommended that such information should be given in writing or some other recordable form and should be updated if necessary. When applicable, the lawyer shall inform his or her client of the availability of legal aid or insurance coverage of the fees.

This rule confirms that there is a duty to act with transparency so that the client is informed of the factors which will be taken into account to determine the amount of the lawyer's fees and adequate steps are taken to ensure that the client is aware of available legal aid or insurance coverage.

3. Requirement that the lawyer's fee has to be reasonable

A lawyer should only enter into fee agreements with a client that are lawful, and which the lawyer considers to be suitable for the client's needs and take account of the client's best interests.

The client's needs and resources are a factor to be taken into account for the lawyer which may be adapted or modified according to the client's best interests.

It is for the lawyer, acting responsibly, to determine what is in a client's best interests in close cooperation with the client. The test of a client's best interests is a subjective one. This paragraph is not restrictive as, for example, the best interests of a client seeking to defend their reputation or to assert a point of principle may mean that payment of significant fees on a matter compared to the amount at stake. The subjective test may take into account the urgency with which the work is required, the importance or public profile of the person or company for which it is undertaken and the degree of seniority or expertise of the lawyer.

4. Factors which may be taken into consideration in fixing fees

Unless an agreement has been reached with the client on the amount of the fee or the method to calculate it, fees charged by a lawyer shall take into account such factors as the difficulty of the matter, the amount of work required of the lawyer, the expertise and seniority of the lawyer, the importance of the matter to the client, the urgency and nature of the services provided, the value of the matter and such other factors as may be pertinent to establish a fee that is reasonable under the circumstances.

The first part of the provision deals with agreements that provide for a fixed or determinable fee.

This paragraph reflects the scope for a lawyer's fees, charges and compensation to vary dependent upon a range of factors which include those set out in the paragraph but also without limitation: the special requirements and nature of the client; the unusual character of the matter; the risks and obligations assumed; whether the legal services are to be rendered in a single matter or on a regular basis.

5. Court fees and expenses should be borne by the client

A lawyer may pay court fees and expenses on behalf of a client. If they do so, they are entitled to recover those court fees and expenses as they would unpaid fees for legal services.

Lawyers may, but are not obliged to, pay court fees or expenses on behalf of a client. In every case such fees and expenses are recoverable by the lawyer and non-payment or non-refunding of those fees and expenses will give the same rights to the lawyer as he or she would have in the event of non-payment of their legal fees and expenses.

6. Lack of payment as grounds to terminate a mandate

Where a lawyer decides to terminate the relationship with a client for non-payment of fees or expenses, he or she should give notice to the client to enable the client to safeguard his or her interests affected by the termination.


This provision is intended to prevent the client's interests to be prejudiced by the timing of a lawyer's decision to terminate their instructions for non-payment of fees. However, this provision does not prevent the lawyer from terminating their instructions without notice if required or permitted by any other applicable provision.

7. Prohibition of fee-sharing with non-lawyers

A lawyer may not share his or her fees with a person who is not a lawyer except where an association between a lawyer and the other person is permitted by applicable provisions.

This rule specifies that lawyers may not share their fees with non-lawyers, except when the parties sharing those fees would be permitted to be associated together under applicable rules and regulations, whether in a partnership or another format. This requirement would be met if, under applicable rules and regulations, they are allowed to be associated in a multi-disciplinary practice (MDP), an alternative business structure (ABS) or a similar type of association. It is therefore for the national regulators or legislators to determine whether and to what extent the participation of a lawyer in an MDP, an ABS or a similar type of association should be possible.

The rule does not require that the fee sharing parties actually be part of such an association, as long as such an association would be permitted under applicable local rules and regulations.



Model Article on Relations between Lawyers

As adopted on 21/05/2021

1. Lawyers must behave in such a manner that other lawyers, in particular their opponents, and their bar authorities, can trust them at all times. They must act respectfully towards each other.

A properly functioning legal system requires that lawyers can trust each other at all times. Such a relationship of trust ensures that lawyers do not need to protect themselves and their clients against another lawyer's possible disloyal behaviour.

By acting accordingly, lawyers make the conduct of litigation and negotiations more efficient, facilitate settlement negotiations on behalf of their clients and reduce the costs of their services, thereby acting in the best interest of their clients.

Similarly, a properly functioning self-regulated profession such as the legal profession requires that bar authorities can trust their members without the need to seek outside assistance, from courts or other authorities, to obtain the truth.

2. A lawyer who instructs a colleague to act on behalf of a client in a particular matter has no ethical obligation for the payment of such colleague's fees beyond what the law may require.

When a lawyer **has instructed another lawyer on behalf of** a client who fails to pay the instructed lawyer's fees, a controversy can arise on whether the instructing lawyer has any liability towards the instructed lawyer for such payment. This article states the rule that a lawyer who instructs a colleague to act on behalf of a client in a particular matter is liable for the payment of such colleague's fees to the extent the law so requires but has no ethical obligation beyond that.