

COMMISSION CONSULTATIVE DES BARREAUX DE LA COMMUNAUTE EUROPEENNE

CONSULTATIVE COMMITTEE OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN COMMUNITY

THE **DECLARATION OF PERUGIA** ON THE PRINCIPLES OF PROFESSIONAL CONDUCT OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN COMMUNITY. (16. IX. 1977)

I The Nature of Rules of Professional Conduct:

Rules of professional conduct are not designed simply to define obligations, a breach of which may involve a disciplinary sanction. A disciplinary sanction is imposed only as a remedy of last resort. It can indeed be regarded as an indication that the self-discipline of the members of the profession has been unsuccessful.

Rules of professional conduct are designed, through their willing acceptance by the lawyers concerned, to ensure the proper performance by lawyers of a function which is recognised as essential in all civilised societies.

The particular rules of each Bar or Law Society are linked to its own traditions and are adapted to the organisation and sphere of activity of the profession in the country concerned, to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

In seeking a common basis for a code of professional conduct for the Community one must start from the common principles which are the source of specific rules in each member country.

II The Function of the Lawyer in Society:

A lawyer's function in society does not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as of those who seek it and it is his duty, not only to plead his client's cause, but to be his adviser. A lawyer's function therefore lays on him a variety of duties and obligations (sometimes appearing to be in conflict with each other) towards:-

the client;

the client's family and other people towards whom the client is under a legal or moral obligation;

the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;

the legal profession in general and each fellow member of it in particular; and

the public, for whom the existence of a free-and independent but regulated profession is an essential guarantee that the rights of man will be respected.

Where there are so many duties to be reconciled, the proper performance of the lawyer's function cannot be achieved without the complete trust of everyone concerned. All professional rules are based from the outset upon the need to be worthy of that trust.

III Personal Integrity:

Relationships of trust cannot exist if a lawyer's personal honour, honesty and integrity are open to doubt. For the lawyer these traditional virtues are professional obligations.

IV Confidentiality:

1. It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. The obligation of confidentiality is therefore recognised as the primary and fundamental right and duty of the profession.
2. While there can be no doubt as to the essential principle of the duty of confidentiality, the Consultative Committee has found that there are significant differences between the member countries as to the precise extent of the lawyer's rights and duties. These differences which are sometimes very subtle in character especially concern the rights and duties of a lawyer vis-a-vis his client, the courts in criminal cases and administrative authorities in fiscal cases.
3. Where there is any doubt the Consultative Committee is of opinion that the strictest rule should be observed-that is, the rule which offers the best protection against breach of confidence.
4. The Consultative Committee most strongly urges the Bars and Law Societies of the Community to give their help and assistance to members of the profession from other countries in guaranteeing protection of professional confidentiality.

V. Independence:

1. The multiplicity of duties to which a lawyer is subject requires his absolute independence, free from all other influence, especially such as may arise from his personal interests. The disinterestedness of the lawyer is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore show himself to be as independent of his client as of the court and be careful not to curry favour with the one or the other.
2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no real value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.
3. The rule against representation of conflicting interests, and the rules which prohibit a lawyer carrying on certain other forms of activity are designed to guarantee the lawyer's independence in accordance with the traditions and customs of each country.

VI. The Corporate Spirit of the Profession:

1. The corporate spirit of the profession ensures a relationship of trust between lawyers for the benefit of their clients and in order to avoid litigation. It can never justify setting the interests of the profession against those of justice or of those who seek it.
2. In some Community countries, all communications between lawyers (written or by word of mouth) are regarded as being confidential. This principle is recognised in Belgium, France, Italy, Luxembourg and the Netherlands. The law of the other countries does not accept this as a general principle: even the express statement that a letter is confidential (or "without prejudice") is not always sufficient to make it so. In order to avoid any possibility of misunderstanding which might arise from the disclosure of something said in confidence, the Consultative Committee considers it prudent that a lawyer who wishes to communicate something in confidence to a colleague the rules of whose country are different from his own, should ask beforehand whether and to what extent his colleague is able to treat it as such.
3. A lawyer who seeks the assistance of a colleague in another country must be sure that he is properly qualified to deal with the problem. Nothing is more damaging to trust between colleagues than a casual undertaking to do something which the person giving it cannot do because he is not competent to do it. It is therefore the duty of a lawyer who is approached by a colleague from another country not to accept instructions in a matter which he is not competent to undertake. He should give his colleague all the information necessary to enable him to instruct a lawyer who is truly capable of providing the service asked for.
4. As regards the financial obligations of a lawyer who instructs a lawyer of another country, the Council for Advice and Arbitration of the Consultative Committee issued the following opinion on 29 January 1977:

In professional relations between members of Bars of different countries, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

VII. Professional Publicity:

1. In all member countries of the Community lawyers are forbidden to seek personal publicity for themselves or to tout for business. This prohibition is designed for the protection of the public and of the high standing of the profession. The extent of the prohibition is not the same in every country. In some countries, it is laid down in national legislation which provides for a criminal penalty in case of breach. It is therefore possible that a lawyer from another country who engages in a prohibited form of publicity may mislead the public and run the risk of criminal proceedings. In general, there is nothing to prevent a lawyer using cards and writing paper in the form authorised by his own professional body. Beyond that, he would be wise to ask the professional organisation of the host country for guidance in advance.
2. In some countries, publicity which is designed to provide information for the public or for lawyers in other countries is permitted if it is approved by or under the auspices of the professional organisations. Lawyers from other countries may use such means of publicity insofar as the rules of their own Bar or Law Society permit them to do so.

VIII Respect for the Rules of other Bars and Law Societies:

The Directive of 22 March 1977 specifies the circumstances in which a lawyer from another Community country is bound to comply with the rules of the Bar or Law Society of the host country. Lawyers have a duty to inform themselves as to the rules which will affect them in the 'performance of any particular activity. The Bar or Law Society of the host country has a duty to reply to their questions as to the content and effect of its own rules, always having regard to their purpose which is to protect those who require the professional services of a lawyer. Lawyers should always have in mind that the manner in which they behave will reflect on the professional organisation to which they belong, on their colleagues and on all their clients.

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