

THE CODE OF ETHICS FOR ADVOCATES OF THE BAR OF THE REPUBLIC OF MOLDOVA

Passed at the Congress of Advocates of 20 December, 2002, Chisinau

In the Republic of Moldova advocate plays an eminent role in protecting fundamental human rights and liberties.

The goal of exercising the profession of advocate is to provide qualified legal assistance for natural persons and legal entities in protecting their rights, liberties and lawful interests.

While exercising his/her profession, advocate shall be obliged to take action in order to ensure the free access to justice and the right to a fair trial, to take action by all legal means to protect profession, dignity and honor of advocates.

The liberty and independence of the profession of advocate shall be exclusive attributions of the person who exercise the profession based on the law and this Code.

The norms of professional ethics of this Code shall be aimed at guaranteeing the proper fulfillment of his/her mission by advocate to ensure the adequate operation of the justice and protection of the rights of the parties to trial.

The advocate's oath shall constitute the legal and moral essence for exercising the profession. Failure to respect the oath and norms of this Code shall serve as a base for instituting disciplinary liability proceedings against advocate.

While exercising his/her right to assist and represent the client before all the courts, authorities and institutions, advocate shall be entitled to apply any means of exercising the right to defense provided for by the law.

1. Independence

- (1) While exercising the profession, advocate shall be obliged to take adequate measures to ensure the independence and liberty of exercising the profession. The multitude of the advocate's duties imposes absolute independence, free of any influence, even the influence derived from his/her own interests or of influences coming from third parties, on the part of advocate.
- (2) Thus, advocate shall have to avoid any hampering of his/her independence and to make sure he/she does not neglect his professional ethics.

2. Confidence and Moral Integrity

- (1) The relations between advocate and client shall be based on honesty, integrity, equity, correctness, sincerity and confidentiality.
- (2) Advocate shall be held liable for his/her behavior both while exercising the profession and while not exercising it.

3. Confidentiality

The nature of the advocate's mission is conceived to be the repository of his/her clients' secrets and confidential communications. This is the advocate's fundamental right and duty.

The obligation to keep the professional secret shall be absolute and unlimited in time. Object of the professional secret shall be the issues in connection with which a person asked for legal assistance, essence of the consultations provided by advocate, strategic and tactic procedures for defense and representation, data on the person who asked for legal assistance and other circumstances resulting from the advocate's professional activity.

Object of the confidentiality shall expand to all the advocate's and bar associations' activities. No pressure exercised by a public authority or of another nature may oblige advocate to disclose the professional secret, except for the cases provided for by the law or to take an action aimed at ensuring the defense within a litigation between advocate and client.

4. Incompatibilities

The profession of advocate in the Republic of Moldova shall be incompatible with the following:

- a) Any other paid position, except for the positions related to scientific and didactic activities, and arbiter of an arbitrage court;
- b) Entrepreneurial activity;
- c) Notary's activity.

5. Personal Advertising

- (1) Advocate shall be prohibited from, directly or indirectly, advertising his/her professional activity.
- (2) The specified interdiction shall not be applied when there is data on advocate in informational publications, business cards and on the Internet.
- (3) The advocate's office may not be located within buildings hosting investigation bodies, prosecution, courts of law, as well as his dwellings.

6. Client's Interest

Under the law and ethical norms advocate shall be obliged to protect the client's interests, even in relation to his/her own interests, or those of another advocate or the interests of the state.

7. The Relations with Clients

- (1) Advocate shall take action only when he/she was empowered by his/her client to do so or under the contract with the client, or upon being appointed by the court at the request of the criminal investigation body or a court of law, or in case of pro bono work upon request.
- (2) Advocate shall correctly and diligently provide consultations to his/her client, inform the client about the developments related to the case assigned to him/her.
- (3) Advocate shall not be allowed to accept a case when he/she is surely aware of his/her lack of competence necessary to handle this case, except for the cases when he/she cooperates with another advocate who has the necessary competence.
- (4) Advocate may not accept a case when due to other obligations it is impossible for him/her to promptly handle this case and correctly provide consultations.
- (5) In case it is impossible for advocate to fulfill his/her duties he/she has to make sure that the respective client find in a timely manner another advocate who would provide him/her with legal assistance in order to avoid any hampering to the client's interests.
- (6) The relations between advocate and client should be formal and based on mutual respect.
- (7) Advocate shall not be entitled to accepting a fraudulent proposal and shall be obliged to take action under the law.

8. Conflict of Interests

- (1) Advocate shall not be entitled to providing consultations, representing or defending more than one client in the same case when the clients' interests are in conflict, or there is a real risk that such a conflict would come up.
- (2) Advocate should refrain from handling the cases of all clients involved when there is a conflict of interests between them, when there is a risk that the professional secret may be violated, or when the independence risks being doubted.
- (3) The lawyer does not have the right to accept the case of a new client if the secret of a prior client may be violated or when the lawyer's knowledge about the circumstances entrusted by a previous client provides unfair advantage to the new client representation."

9. Establishing Fees

- (1) Advocate should inform client about the fees, and the total value of the fees should be fair and justified.

- (2) When advocate asks for a transfer of a part payment on account to cover the expenses and/or the fees, the respective amount should not exceed a reasonable estimation of the fees and respective possible expenses. In patrimonial cases the fees may not exceed 30% of the stocks.
- (3) If the part payment was not paid, advocate shall be entitled to giving up the case or may withdraw, respecting provisions of points 7 and 6 of this Code.

10. Sharing the Fees with a Person who is not Advocate

- (1) Advocate shall be prohibited from sharing the fees with a person who is not advocate.
- (2) The above mentioned provision shall not be applicable to the amounts of money or compensations transferred by advocate to the heirs of a demised advocate or to an advocate who resigned in order to be the successor of his/her clients.

11. The Relations between Advocates and Criminal Investigation Bodies, Courts of Law and Public Authorities

- (1) In keeping the relations with the criminal investigation bodies, courts of law and public authorities, advocate should have a respectful and loyal behavior. Advocate shall: respect the solemn and adversarial character of the hearings; correctly defend and represent the client, irrelevant of his/her own interests or those of a third party, or of other circumstances that may influence him/her.
- (2) Advocate shall not be entitled to provide, purposefully, the judge with false information or of other nature aimed at misleading the judge.
- (3) Norms applicable to the relations between advocate and judge shall be equally applied to the relations between advocate and representatives of the criminal investigation bodies or those of the public authorities.

12. The Relations between Advocates

1. Good Fellowship

- (a) Good fellowship implies that the relations between advocates be bases on trust, in the client's interest, in order to avoid useless trials or any behavior that might affect the reputation of the profession. Good fellowship may not be in contradiction with the advocates' interests and those of the clients.
- (b) Advocate shall be obliged to have a friendly and loyal behavior toward any fellow advocate.
- (c) Addressing a fellow advocate or speaking about him/herm advocate shall be obliged, before pronouncing his/her name and surname, to use the words "Mr. Advocate", "Mrs. Advocate", and when addressing members of the Bar Council, members of the commission for licensing the profession of advocate, members of the Commission for ethics and discipline, and the chief off the bar association, he/she shall use the word "Master".

2. *Cooperation between advocates from different states*

- a) Each advocate shall have the duty to refrain, at the request of an advocate of a different state, from accepting a cause he/she does not have the necessary competence to handle; in such situation, advocate should help the fellow advocate get in touch with another advocate who would be able to provide him with the requested service.
- b) When advocates from two different states work together, both of them should take into account the differences that may exist between their legal systems, bars, their professional competencies and obligations.

3. *The Correspondence mailed between Advocates*

- (a) Advocate who mails a “confidential” communication to another advocate should specify this upon the moment of mailing the respective communication.
- (b) When addressee of the communication is not able to ensure the “confidential” character of the communication, he/she shall send it back to sender without taking knowledge of its contents.

4. *Fees for Referral*

- (a) Advocate may not claim or accept a fee, a commission or another compensation, from another advocate or a third party, for referring a client to an advocate or vice versa.
- (b) Advocate may not transfer a fee, a commission or another compensation to anyone for referring a client to him/her.

5. *Communication with the other Party*

Advocate may not get directly in touch with a person, in connection with certain case, when he/she is aware that this person is being represented or assisted by another advocate, except for the cases when his/her fellow agreed on this and pledge to keep him/her up-to-date.

6. *Changing the Advocate*

- a) An advocate may not succeed another advocate in defending the interests of a client, in a certain case, unless he/she beforehand announced his/her colleagues about that and took all the necessary measures to pay off the expenses and fees his predecessor was supposed to pay off. Altogether, this duty shall not make advocate personally liable for paying expenses and fees his/her predecessor was supposed to pay off.
- b) If, in the client’s interest, it is necessary to take urgent action before he/she could have meet the conditions

provided for in the previous paragraph, advocate may take these measures only under the condition that he immediately informed his predecessor about that.

7. Preparing Young Advocates

In order to increase the confidence and cooperation between advocates in the interests of the clients, it is necessary to encourage gaining a better knowledge of the laws and applicable procedural norms. Therefore, advocates shall be obliged to be very diligent in preparing young advocates on high level. The supervisor of an intern may be an advocate recommended by the Bar Council who has high moral and professional qualities, exercises the profession for no less than 5 years and has sufficient conditions (table, stool, literature, etc.) in order to ensure the internship.

8. Litigation between advocates

- (a) When an advocate thinks that a fellow advocate infringed an ethical norm, he/she should bring this to the knowledge of the respective fellow.
- (b) When a personal conflict of professional nature appears between two advocates, they should first try to solve it in an amiable manner.
- (c) Before instituting proceedings against a colleague, in connection with a conflict of interests, an advocate should inform the Bar to get its permission and assistance in view of solving the conflict in an amiable manner.