

English version of the Code of Conduct of the Netherlands Bar Association

The Rules of Conduct of Advocates 1992

1. Introduction

1.1. Nature of the code of conduct

This code of conduct expresses the standards generally accepted among advocates which they ought to observe in the exercise of their profession. They are not rules on disciplinary proceedings applicable to advocates. The content of disciplinary proceedings is determined by the Disciplinary Court on the basis of the advocate's oath, by-laws and the three rules cited in article 46 of the Act on Advocates, which may be summarized as follows:

- looking after the interests of the clients;
- complying with the by-laws of the Netherlands Bar Association;
- acting in a manner befitting a decent advocate.

This code of conduct may be regarded as the further details of first, and more importantly the third rule (open to broad interpretation) referred to in that article. They shall not be binding in the sense in which the rules laid down in the by-laws of the Netherlands Bar Association are binding. They are meant as guidelines to advocates in exercise of their profession. While they may also serve as guidelines to the Disciplinary Courts, they shall not be binding upon them, as the Disciplinary Appeals Tribunal has often ruled.

1.2. Task and function of advocates

The main task of advocates is to consult with and assist individual clients or groups of clients whose interests converge. In doing so, advocates shall represent the points of view of their clients. The advocates' partiality on principle is irreconcilable with looking after interests which conflict with their client's interests. Accordingly, advocates shall refrain from representing conflicting interests. In their handling of a case, advocates can only serve their clients' interests well when they are guided by those interests at the exclusion of any self-interest. Nor should advocates be hampered by or act in accordance with other interests in fulfilling this main task. They should perform this task completely independently. This would be incompatible, for example with granting commission to intermediaries or other third parties for the purpose of securing engagements, or with making arrangements with persons other than their own clients on the manner in which matters will be handled.

Advocates are first and foremost their clients' counsel. Advocates can only perform their task properly if the client gives them all the information that is relevant to the evaluation and handling of the case. This may only be demanded of clients if they can do so without being exposed to any risk. As a consequence, advocates must exercise the greatest possible care in observing secrecy and in making use of their advocate-client privilege. The primary duty of advocates is to handle cases in a sound and careful manner. This duty includes the duty to gain and keep up the necessary know-how and, when they are faced with a case for which they lack the required knowledge and/or skills to secure the necessary assistance or refer the client to a colleague who does meet the requirements.

Aside from the monopoly of advocates in lawsuits, their role in the administration of justice, too, is seen by society as an essential one. In this connection, they have been assigned a certain position and certain privileges. They should use this position in such a way that it furthers the proper administration of justice. Not only the interests of clients, but the public interest, too, are served by a proper administration of justice. Good professional practice is in the interest of the public. This was expressly confirmed in the preparation of the amendments to the Act on Advocates in 1984.

It therefore follows that advocates should make proper use of the position and privileges conferred upon them, not only - and not even primarily - because this position and these privileges can be put in jeopardy if used improperly, but because they represent a commitment to society.

Elements of the position referred to are that advocates have more and freer access to individuals and information than the average citizen, that they have the right to speak in situations in which others may be denied this right, and that they enjoy considerable freedom in the presentation of their arguments. Considering the public interest in properly exercising the profession, advocates therefore have the duty not to express themselves, either orally or in writing, in unnecessarily offensive terms, and must take into account the justified interests of the other party and any third party.

In this connection, advocates should realise that the manner in which they behave, helps determine the way they (and their professional performance) are judged. They shall refrain from acts which harm the trust placed in them as advocates. The aim for individual advocates and thus advocates in general,

should be to be regarded as true professionals whose opinions are authoritative. They should not, for example, resort to improper means, such as announcing or taking steps that are not in keeping with the goal they have in mind.

Experience has shown that sound relationships among advocates are generally conducive to the interests they represent. Without losing sight of the interests entrusted to them and the public interest, advocates should foster an attitude of courtesy and trust among themselves; in line therewith, they should not speak of one another in disrespectful or offending terms. Poaching clients from a colleague is likewise incompatible with this obligation.

1.3. Conflicting obligations

In compliance with the above, advocates could be faced with conflicting obligations. They must resolve such quandaries with care, bearing in mind, however, that looking after the interests of their clients is their primary task. They must carry out this task in accordance with the interest which the public at large has in sound professional practice, and in isolated cases this will even have to take precedence over the interests of the client. For help, in the form of advice, to solve such conflict, advocates may turn to the dean. In cases in which a conflict might easily arise, the code of conduct accordingly stipulates that the dean's advice should be sought. While advocates are free to solicit such advice, it goes without saying that they stand to gain from it, especially in cases involving a moral dilemma. For this advice, they shall turn to the dean under whom they fall, even if the case concerned is played out in another district.

1.4. Specific rules of conduct

The rules of conduct set out below may be seen as further details of the standards identified above. Whenever a situation gives rise to uncertainty on the manner in which the rules should be applied, they should be tested against these standards. Some changes in emphasis have been made relative to the 1980 code of conduct, which in turn was based on the 1968 code of honour. The scope of these codes has been maintained. Despite rapid developments in society and in the professional field of legal practitioners, new regulations, etc, there was apparently no justification for a comprehensive review. Extra attention was paid to classify the rules in accordance with the various, and sometimes even conflicting, interests advocates ought to look after, as set out above.

2. General rules

Rule 1 (formerly rule 1)

Advocates shall behave in such a way that confidence in the profession and in their own exercise of the profession is not harmed.

Rule 2(1) (formerly rule 4(1))

1. Advocates shall not allow their freedom and independence in the exercise of the profession to be put in jeopardy.

Rule 2(2) (formerly rule 4(2) and 43(4))

2. Advocates may not grant or receive remuneration or a fee for securing engagements.

Rule 3 (formerly rule 7)

Advocates shall bear in mind that an amicable settlement is often preferable to a lawsuit.

Rule 4 (formerly rule 8)

Advocates must exercise due care in handling the matters entrusted to them.

3. Relationship with the client

Rule 5 (formerly rule 5)

The interest of the client rather than any self-interest of advocates shall determine the manner in which advocates are required to handle cases.

Rule 6 (formerly rules 9 and 10)

1. Advocates must observe secrecy; they shall not divulge the details of cases they are handling, the identity of their clients or the nature and extent of their interests.
2. If an advocate is of the opinion that the proper performance of the task entrusted to him requires his

knowledge to be made public in any way, he shall be free to do so if the client does not object thereto and if it is compatible with sound professional practice.

3. Advocates shall impose the same obligation to observe secrecy upon their staff as that to which they are bound.

4. The obligation to observe secrecy shall continue after the relationship with the client has come to an end.

5. If advocates have undertaken to observe secrecy, or if this secrecy arises from the nature of their relationship with any third party, they shall also observe this secrecy vis-à-vis their clients.

Rule 7(1) (formerly rule 6(1))

Rule 7, Section 1

1. An advocate may not represent the interests of more than one party if such interests are in conflict or if there was a real chance of such conflict.

Commentary on Rule 7, Section 1 (Rule 6, Section 1 1980)

Rule 6 (1980) contained, in addition to the rule repeated here, an absolute prohibition against an advocate acting for both parties in divorce proceedings. There appears to be no longer any good grounds for this exception and it is now easier than in the past to conceive of situations where one advocate can serve the common interests of both spouses in divorce proceedings. A judgment of the Disciplinary Appeal Tribunal (no. 1573 of 2 December 1991) confirms this view. However, since alongside the common interests of both parties there will also by definition be conflicting interests to some degree, then an advocate must here especially act with the greatest of caution. See also the Disciplinary Court of Amsterdam no. 03-122 A of 6 February 2004.

Rule 7, Section 2 (Rule 6, Sections 2 and 3 1980)

2. An advocate who represents the interests of more than one party is generally obliged to withdraw completely from the case as soon as a conflict of interest arises that is incapable of immediate resolution.

Commentary on Rule 7, Section 2 (Rule 6, Sections 2 and 3 1980)

Section 2 deals with the situation where an advocate must withdraw due to a conflict of interest. It was formulated somewhat differently in Rule 7, Section 2 (1980). The obligation to withdraw due to a conflict of interest is no longer dependent on whether 'the proper representation of the interests of one of the parties is jeopardised'.

However, the new wording allows for the continuation of the relationship if a conflict of interest can be immediately resolved.

Furthermore, the rule is given some scope for interpretation by the addition of the words 'in general'. This means that there could be special circumstances that justify the rule not being applied. The Committee focused in particular here on the common situation where an advocate represents the interests of an insured party and the insurer as against a third party. Whilst from the point of view of efficiency, information, costs savings, etc., this is not in general undesirable, nevertheless it is quite conceivable that a conflict could arise between the interests of both clients. Thus, for example, there could be a disagreement even before the start of proceedings as to cover, although it is in the interests of both the insured party and insurer not to openly disclose this until a decision has been reached on the claim. In some circumstances it is also conceivable that an advocate continues to act for a longstanding client (insured party or insurer) as against the other party (insured party or insurer) when problems gradually arise on matters such as insurance cover or a settlement. If an advocate in such circumstances wishes to continue to act for one of the two parties, then it is assumed that from the start neither party is in any doubt as to in whose interests the advocate will continue to act in the event of a conflict of interest. If he has received confidential information from either with regard to the other, he should understand that he may not use this information. If this is nevertheless desirable for the proper conduct of the case, then the advocate must withdraw.

Rule 7, Section 3 (Rule 6, Section 3 1980)

3. An advocate who has represented the interests of more than one party in a particular case and who then withdrew from acting for one or more of those parties shall not act further in such case against the party or parties he withdrew from acting for.

Commentary on Rule 7, Section 3 (Rule 6, Section 3 1980)

Rule 6, Section 3 (1980) includes rules on how to proceed if an advocate is representing the interests of more than one party. This section is sub-divided. Rule 7, Section 2 deals with the situation where an advocate withdraws where there is a conflict of interest. Rule 7, Section 3 also deals with the situation an advocate ceases to act as Counsel for one of a number of parties with similar interests, either on his own initiative or otherwise, for example because 'this person is not comfortable with him'. If an advocate withdraws for a reason other than a conflict of interest, he may continue to represent the other party, but in general he will not be able to act against the party whose interests he no longer represents.

Rule 7 Section 4

4. An advocate may not act against a former or existing client of his own or of a colleague within the same firm except in the circumstances set out in the following sections.

Rule 7 Section 5

5. An advocate may avoid the provisions of Rule 7 Section 4 if:

1. the interests entrusted to the advocate relate to a different issue to that for which the advocate or a colleague within the same firm represents or represented the existing or former client, and the interests entrusted to the advocate are also unconnected with such issue and it is unlikely that such a connection will arise;
2. the advocate or his colleague within the same firm does not possess confidential information of any nature originating from his former or existing client, nor business-related information or other information relating to the person or business of the former or existing client, which could be significant in the case against the former or existing client, and
3. no reasonable objections have been put forward by the former or existing client or the party requesting the advocate to represent his interests.

Rule 7 Section 6

6. If the conditions of Rule 7 Section 5 have not been satisfied, an advocate can still avoid the provisions of Rule 7 Section 4 if the party requesting the advocate to represent his interests and the former or existing client against whom the advocate is to act all give prior consent, on the basis of proper information being supplied to them, to the advocate acting as provided for in Rule 7 Section 4.

Rule 7 Section 7 (rule 7 Section 4 1992)

7. The provisions in the previous sections apply to all advocates who are members of the same (multidisciplinary) partnership.

Commentary

In view of experience gained since the amendment of the Code of Conduct in 1992, and the case law of the disciplinary tribunals, it was decided to bring Rule 7 in to line with these developments.

The wording of sections 5 and 6 is intended to permit an advocate to act against a former or existing client under strict conditions.

The amended Rule of Conduct not only covers the situation where a new client gives instructions, but also the situation where during the conduct of a current case a conflict of interest, or possible conflict of interest, arises.

The terms 'firm' (including (multidisciplinary) partnership), 'colleague within the same firm' and 'client' are defined and explained below.

Section 4 of this Rule did not appear as such in the Code of Conduct.

It includes the generally accepted standard within the profession that an advocate may not, except in exceptional circumstances, act against his own former or existing client or that of a colleague within the firm (whether an advocate or not).

'Act' here includes the giving of advice.

The provision does not apply to an advocate acting against a client to recover payment for his unpaid bill.

An exception to the rule as set out in Section 4 is only possible if all three conditions set out in Section 5 are satisfied, whereby the provisions in Rules of Conduct 1; 2, Section 1; 5 and 6, Sections 1 and 4 should be especially considered by the advocate in reaching any decision to avoid the provisions in Section 4.

The rationale for the provision in Section 5 is that an advocate may not act in a situation where he risks creating a conflict of interest that is unfavourable to his client. Furthermore, a client must have the fullest confidence that information about the case, himself or his business that he provides to the

advocate or a colleague within the firm will not be used against him at any time in the future.

The information must be confidential information, i.e. information which is not of a public nature and therefore not simply accessible from anyone other than the client.

In a borderline case, an advocate should not act. He may wish to seek the advice of the Dean, although this is not binding and the advocate still has a duty to comply with disciplinary measures.

The decision remains principally the responsibility of the advocate himself, rather than depending on the wishes of the client.

In addition, even the mere appearance that an advocate is involved in a conflict of interest which is unfavourable to his client must be avoided at all times.

An advocate must recognise that any conflict of interest could arise in the future with the consequence that either the required assistance cannot be provided by the advocate or the advocate must withdraw from the case.

The very nature of the relationship between an advocate and his client may mean that it is undesirable for the advocate or a colleague within the firm to act against this client, even where the cases concern different issues.

The relationship may be / have been of such a personal nature that there is a very real danger that the advocate who obtains information by virtue of such relationship uses it in a way that is unfavourable to the client.

Section 5 of this Rule of Conduct does not enable the creation within one and the same firm of an artificial administrative separation of representation of interests and the relevant files – known as 'Chinese walls' – as a way of avoiding conflicts of interest.

Sub-section 3 is to be regarded as a safety-net provision. If any objection as described in this provision were raised, it is fair to assume that the party in question will give reasons for such objection, to enable the advocate to assess the extent to which the objections can be deemed sound, which is important for the application of Section 5 and the related decision by the advocate that the provision in Section 4 can be avoided.

The provision in Section 4 can also be avoided if the party requesting the advocate to represent his interests and the former or existing client against whom the advocate is to act all give prior consent for this, on the basis of proper information being supplied to them. 'Existing client' includes a client for whom the firm expects to act in the future. Information can only be supplied, however, insofar as this does not conflict with the advocate's duty of confidentiality, because this concerns information he possesses not only about the substance of the case, but also about the person and the capacity of his client (see Disciplinary Court dated 8 March 2004, Adv.bl. 2005, 7).

If, for example, it is public knowledge that the firm is acting on behalf of this existing client on certain matters or if the new client knows of this through other channels, then the advocate may consider and propose the application of the exception contained in Section 6.

An advocate is also free to supply certain information concerning the involvement of the existing client if an agreement has been reached with the existing client in this regard. An example is an agreement with a client who instructs different law firms for different types of cases and who informs the advocate that he has no objection to him acting against him in certain cases and permits him to notify other existing and potential clients of this.

The client must be provided with all relevant information needed to have been able to reach a properly considered decision.

It is recommended that such consent be recorded in writing. However, such a document does not give an advocate a licence to continue providing legal assistance in the same way if during the provision of this legal assistance there are developments that give the client cause to change his mind. It is important to emphasise here that it must be made clear as to what issue or kinds of issues – which can perhaps be changed in the interim – the consent relates to.

Such consent does not at any time affect the duty of the advocate to comply with the Code of Conduct.

With regard to the question of informed consent, it is advisable to take into account that such an explicit prior consent from the client / parties – given only after proper information has been provided – may be in conflict with professional confidentiality, especially at the stage where the client does not yet wish to publicise a new case.

Definitions

a. Firm

- The organisation within which an advocate – whether or not in collaboration with others as defined by Article 4 of the By-law on (multidisciplinary) partnerships 1993 – carries out his practice, irrespective of whether this organisation publicly advertises itself as an organisational unit;
- A (multidisciplinary) partnership as defined by the By-law on (multidisciplinary) partnerships 1993

(Art. 1 (b)); this includes the so-called looser forms of collaboration listed in the By-law; forms of collaboration involving different firms, providing benefits in the fields of centralised buying, exchange of legal know-how and the referral of clients, may fall outside this definition;

- The organisational entity within which an advocate works, not being employed by another advocate (compare last sentence of point 4 of the Professional Charter for the in-house advocate: *Vademecum Advocatuur 2005*).

In determining the question whether one and the same firm is involved, one looks at how the structure is presented to the outside world. 'Presentation' is not limited to the use of the same firm name (reserved for (multidisciplinary) partnerships) mentioned elsewhere on the headed notepaper. Furthermore, the impression can be created that there is one organisational unit not only from the layout of the headed notepaper (or in advertisements), but also - in combination – from factors relating to the organisation of the firm, such as use of a combined reception, answering of telephones, shared office entrance and accommodation.

It should be clear that the existence of looser forms of collaboration is usually more difficult to monitor. This is also true of international collaborations.

b. Colleague within the same firm

A party with whom an advocate carries out his practice within the same firm, as defined in section a above. In principle, such persons will be trainees, advocate employees, advocate colleagues within the same firm and practitioners of a different profession carrying out their practice, whether employed or self-employed.

From the description in section a, above, it is clear that the term 'firm' is not restricted to a physical entity located at a particular address.

Persons working in one branch office are colleagues within the same firm of advocates working in another.

c. Client

A party on whose behalf an advocate acts pursuant to instructions from that party.

The term 'client' is not restricted to a party for who work is actually being carried out in a particular case, since in far from all cases the advocate / client relationship is ended by the conclusion of a case: the client is therefore the party for whom the advocate acts on a permanent basis.

Such a relationship continues even if at any point in time the advocate is not representing the client in any particular case.

Under certain circumstances the same will be true, at the end of a case, for a client for whom the advocate has only acted once.

d. Issue

The interests entrusted to an advocate or his colleague within the same firm in respect of an individual case.

Rule 8 (formerly rule 11)

Advocates shall be required to brief their clients on important information, facts and agreements. In order to avoid any misunderstanding, uncertainty or dispute, they shall be required to confirm in writing any important information and agreements to their clients, wherever necessary.

Rule 9 (formerly rule 12)

1. Advocates shall assume full responsibility for the handling of a case. Advocates may not evade this responsibility by invoking the instruction received from their client. They shall not, however, perform any acts against the apparent wishes of the client.

2. If a difference of opinion exists between an advocate and his client concerning the way in which the case should be handled, and this dispute cannot be resolved by mutual consultation, the advocate shall withdraw.

3. Whenever an advocate decides to resign from an engagement entrusted to him, he shall do so in a careful manner and see to it that the client experiences as few drawbacks as possible.

Rule 10 (formerly rule 38)

1. An advocate who discloses information to a third party concerning a case he is currently dealing with or has dealt with in the past must have regard not only to the interests of his client, but also to other legitimate interests.

An advocate may not disclose such information without the consent of his client and should avoid any misunderstanding as to the capacity in which he acts.

2. In a criminal case, the advocate may not provide any copies of court documents to the media. The advocate should be very cautious about allowing sight of these documents.

Commentary on Rule 10

Naturally, first and foremost, an advocate must represent the interests of his client. These interests may require the advocate to disclose information to a third party, including the media. However, these interests do not in themselves justify the disclosure of any information. Section 1 provides that the advocate may only disclose any information after weighing up the conflicting interests in the case. The 'other interests' referred to in section 1 must be 'legitimate interests', such as the right of, for example, witnesses, victims, next-of-kin and opposing parties, to a private life, but also the self-evidently legitimate interests of the judicial system and the police. An advocate who as a result of publicity is contacted by the Dean must make full disclosure of the matter, especially with regard to the question as to the extent to which he has been the source of the information. The advocate must likewise be able to justify to the disciplinary tribunal his decision to disclose the information and the way in which he disclosed it.

Section 2 relates specifically to the disclosure of information in criminal cases, where it is important to avoid trial by media. The trial must be conducted within the courtroom. Accordingly, providing copies of the documents from the case file is not permitted, either by criminal law advocates or any other advocates with access to documents in the case file.

If an advocate provides copies to someone other than his client, then he must ensure that this third party gives him a written undertaking not to further distribute these copy documents, either directly or indirectly.

There may be an exception to the prohibition on disclosing copy documents from the criminal file to the media in special cases where there would be serious damage to the interests of the client as a clear result of publicity given to the case by a third party. In such a case, it should be immediately clear to the advocate that the disciplinary tribunal would retrospectively find that in all probability the interests of the client weighed heavier than the other legitimate interests.

Inspection of, or quotes from, the court file may in certain circumstances be useful in the context of providing accurate information. To prevent this kind of disclosure of information resulting in the actual disclosure of case documents, the approach must be very cautious and the greatest care must be taken.

'Case documents' means copies of statements, reports and such like drawn up by police or judicial bodies that are made available to the defence, as well as copies of documents seized by others than the client. However, the term 'case documents' specifically excludes the written pleading of the client's advocate and documents provided by the client himself that are put in the case file.

Rule 11 (new; derived from IBA rule 3.3.6.3)

Advocates who notice that they have failed in their duty of looking after the party's interest shall inform their clients, and if necessary, recommend that they obtain independent advice.

4. Appearing in court

Rule 12 (former rule 21)

1. Letters and other communications from one advocate to another may not be relied upon in court, unless this specifically promotes the interest of the client and this is subject to prior consultation with the advocate of the opposing party.

2. If this consultation does not result in a solution, the recommendations of the dean shall be obtained before relying on the above in court.

Rule 13 (former rule 22)

The content of negotiations conducted between advocates with a view to reaching an amicable settlement may not be divulged to the court or other authority hearing the case, without permission of the opposing party's advocate.

Rule 14 (former rule 23)

1. In timing the submission of documents to the court or other authority hearing the case, advocates shall consider that the opposing party should be allowed adequate time to prepare a response with care.
2. Submission of a written pleading shall only be permitted if it contains no more than the advocate's speech.
3. A copy of the written pleading shall be handed to the advocate of the opposing party immediately after the advocates' oral presentations.

Rule 15 (former rule 24)

1. In a pending lawsuit, advocates may not apply to the court or other authority which hears the case other than together with the advocate of the opposing party, unless it is done in writing and a copy of the communication is forwarded simultaneously to the advocate of the opposing party. Moreover, the timing thereof must be such that the opposing party has sufficient opportunity to respond to it.
2. Once the court has been asked to pass judgment, the advocate may not apply to the court without the permission of the opposing party.

Rule 16 (former rule 25)

1. Persons who have been summoned by the opposing party to appear in court as witnesses, or who will apparently be so summoned, may not be examined by the advocate prior to the hearing.
2. In criminal cases, an advocate shall refrain from examining witnesses whom the Prosecution Service has summoned or served a writ of summons to appear, prior to such appearance.
3. These provisions shall not apply to an advocate's own client or to persons employed by or having a special relationship with that client.

5. Relationships among advocates

Rule 17 (formerly rule 29)

In the interests of those seeking justice and of the profession in general, advocates shall always aim to base their mutual relationships on courtesy and trust.

Rule 18 (formerly rule 32(1))

1. Advocates shall not contact a party on a matter in respect of which they know this party to be receiving the assistance of an advocate, other than by the agency of the advocate in question, unless the latter gives them permission to contact that party directly. The same shall apply when the party referred to contacts them directly.
2. (New)

An advocate serving legal notice may do so to the opposing party directly, provided that a copy is simultaneously forwarded to that party's advocate.

Rule 19 (formerly rule 28)

Before advocates proceed with legal action and in particular with measures for the enforcement of a judgment, they shall inform the opposing party, or if this party is represented by an advocate, this advocate accordingly. In principle, they shall allow sufficient time for consultation. If at all possible, they shall consult with one another on the time the case comes up for consideration.

Rule 20 (formerly rule 27)

Without prior consultation with the dean, advocates may not call up an advocate or former advocate to testify on matters which came to their notice in their legal practice. This rule shall apply accordingly to any staff of such advocate or former advocate.

Rule 21 (formerly rule 30)

1. If an advocate instructs another advocate when handling a case, he must guarantee the allowances and fees due to such other advocate, unless the advocate sets limiting conditions.
2. This shall also apply to cases handled by a court-appointed advocate.

Rule 22 (formerly rule 33)

1. If any person asks an advocate to take over a case which is being handled by another advocate, those advocates shall enter into consultations in order that the advocate taking over the case is properly briefed on the state of affairs.
2. If the first advocate's invoice has not been paid and he wants to exercise his right of retention he shall nevertheless hand over the file to his successor when so requested by the client, subject to conditions to be set by the dean.

6. Financial rules

Rule 23 (formerly rules 15 and 41)

1. Advocates shall be meticulous and careful in financial matters.
2. Advocates shall avoid any unnecessary expenses. This shall equally apply vis-à-vis their clients' opposing parties.

Rule 24 (formerly rules 13 and 14)

1. Unless an advocate has good reason to assume that his client does not qualify for legal aid, the advocate shall, at the start of the case and whenever subsequently justified, discuss with his client whether, in the prevailing circumstances, legal aid should be sought.
2. Court-appointed advocates may not claim or receive a fee in any form for the work done in respect of the case for which they have been appointed, except for the fee payable by the client and disbursements in accordance with the applicable rules.
3. If a client prefers not to make use of legal aid, despite the fact that he qualifies for it, the advocate shall record this in writing.

Rule 25 (formerly rules 16 and 17)

1. In drawing up their invoice, advocates shall charge a reasonable fee, taking into account all circumstances.
2. Advocates may not agree on a 'no win no fee' arrangement or similar arrangements.
3. Advocates may not conclude agreements to the effect that their fee will be proportional to the value of the result obtained through their assistance, except where this is done in accordance with a collection rate which is customary and generally accepted among advocates in professional practice.
4. Advocates shall draw up their invoice in such a way that clients can see how much has been charged in terms of fee, disbursements and VAT. If retaining fees have been received, or payments made or received on behalf of a client in respect of costs incurred or otherwise, the advocate shall specify such amounts separately in the invoice and, where necessary and possible, set them off.

Rule 26 (new, and formerly rule 16(4))

1. Whenever any advocate accepts an engagement, he shall discuss the financial implications thereof with the client and provide details of the manner and frequency of his invoicing.
2. Advocates shall inform their clients as soon as they foresee that the amount of a invoice will be significantly higher than the estimate initially given to the client.

Rule 27 (formerly rule 18)

1. If a client objects to an invoice, the advocate shall draw the client's attention to the relevant applicable rules.
2. If as a result of an invoice being disputed in whole or in part by a client, the client objects to the invoice being set off against sums due to him, those sums, up to the amount being disputed, shall be deposited with the dean.
3. If an invoice which has been set off against any retainer paid by a client is disputed by that client for an amount for which a partial or full refund of the retainer is demanded, the advocate shall submit the invoice, at the client's request, for substantive review to the Netherlands Bar Association and/or the Council of Supervision. Sub-section 2 shall apply accordingly.
4. Advocates shall only use the file-retention option pending the payment of any invoice with appropriate caution. If the invoice is disputed, advocates shall draw their clients' attention to the possibility of depositing the amount of the invoice with the dean until the dispute has been settled.
5. If a client asks an advocate for itemization of an invoice, the advocate shall provide such itemization. This shall not lead to a higher invoice than the original invoice.
6. If this does not result in payment, and the advocate submits the invoice for substantive review to the

Netherlands Bar Association and/or the Council of Supervision in accordance with the statutory rules, the advocate shall inform the client accordingly and forward a copy of the invoice submitted to the Netherlands Bar Association and/or the Council of Supervision for substantive review.

7. Until such time as the dean has been consulted, advocates shall refrain from attaching property before judgment and from applying for bankruptcy in respect of claims they have on a client which so far have not been settled in court.

Rule 28 (formerly rule 19)

1. For the payment of their invoices, advocates may not accept any security other than a cash payment as retainer, except in exceptional cases and then only after consulting with the dean.
2. Advocates may set off their invoice against any retainer and other sums they hold in deposit for the client, but only insofar as these other sums held in deposit can be paid to the client without impediment, with the client's agreement, and without prejudice to the provisions of the By-law on Bookkeeping.
3. Set-off may not be applied against funds which cannot be attached by law.

7. Some practice rules

Rule 29 (new)

In their contacts with third parties, advocates shall avoid any misunderstanding about the capacity in which they act in a given situation.

Rule 30 (former rule 2)

Advocates shall refrain from furnishing factual information which they know or should have known to be incorrect.

Rule 31 (former rule 3)

Advocates shall avoid being needlessly offensive when expressing themselves orally or in writing.

Rule 32 (former rules 26 and 44)

1. If in any case an advocate engages the services of any third party or calls any witness, he shall guarantee the remuneration and fees owing to such third party and/or witness, unless an express reservation is made.
2. The provisions of sub-section 1 shall not apply if an advocate invites someone to act as an arbitrator or a party charged with giving a binding opinion.
3. The provisions of the previous sub-sections shall also apply to cases involving court-appointed advocates.

Rule 33 (former rule 35)

Advocates shall ensure that the organization and structure of their offices conform to the standards of good professional practice.

Rule 34 (former rule 40)

1. Advocates who hold a position in any court charged with the administration of justice or with otherwise settling disputes, shall refrain from any involvement in cases in which they work, worked or will become involved in that position.
2. Advocates who work in a group practice may not be involved in a case reviewed by a court in which an advocate forming part of the same group practice holds a position, if this advocate has been or will be involved in the hearing by this court.

Rule 35 (former rule 43)

1. Advocates may only accept engagements from an intermediary not admitted to the bar if they are convinced that the engagement was extended with the agreement of the client and they have in addition reserved the right to communicate directly at any time with that client.
2. (former sub-section 5)

Engagements which only cover the provision of assistance as a procurator may only be accepted from an advocate.

Rule 36 (former rule 46)

1. If the person with whom they speak has not been informed in advance, advocates may not let others listen in to the conversation or record the content of the conversation on a sound carrier.
2. If a conversation with another advocate has been recorded on a sound carrier with the latter's approval, rule 12 shall apply accordingly.

Rule 37 (former rule 47)

In the event of a disciplinary-law investigation or a request for information from the dean relating to a possible disciplinary-law investigation, or to an audit which the dean has been asked to conduct, the advocate being the subject of the investigation or audit shall furnish all the requested information at once without being able to rely on the obligation to observe secrecy, save special cases. An advocate who considers to rely on the fact that it concerns a special case shall consult with the dean.

Rule 38 (former rule 45)

Advocates may only have cases handled by members of their staff who are not admitted to the bar, when they have satisfied themselves that the staff concerned are able to carry out such operations, have defined the field of such operations, and these shall be supervised by the advocates. They shall continue to be responsible vis-à-vis their clients for those cases and any advice provided.

Rule 39

An advocate has to comply with the CCBE Code of Conduct for European Lawyers in his cross-border activities within the European Union and the European Economic Area.

Explanatory note

On 28 October 1988, the Code of Conduct for European Lawyers (hereafter: the Code) was adopted by the delegations of the European Union and subsequently amended on 28 November 1998, 6 December 2002 and 19 May 2006.

The Code applies to all professional contacts of the advocate with advocates from Member States other than his own and the professional activities of the advocate in a Member State other than his or her own, whether or not the advocate is physically present in that Member State.

In the preamble of the Code the professional organisations of advocates have expressed their wish to have the Code as soon as possible declared applicable under national procedures and/or procedures of the European Economic Area, to all advocates in the European Union and the European Economic Area (hereafter: the EU advocate) and that this Code is taken into account each time the internal rules of professional conduct are amended for the purpose of a gradual harmonisation of the rules of professional conduct in the different Member States, so that every EU advocate is subject to uniform rules of conduct in his cross-border activities, irrespective of the Bar to which he is associated.

Now that rules of professional conduct have been laid down in the Code, it has been decided to express the formal acceptance of the Code in a (Dutch) rule of professional conduct. Incorporation of the Code in Dutch legislation entails that advocates who are members of the Netherlands Bar – including those referred to in Article 16(h) of the Act on Advocates – are in the same position as other EUadvocates.

With rule 39 the Code applies to all cross-border professional activities.

The preamble of the Code also expresses the importance of the particular rules of each Bar or Law Society. It is emphasized that 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 that are inherently incapable.

Against this background it is important to point out that the Code diverges where it concerns correspondence between advocates, conflicting interests, professional liability and result-based remuneration, the latter insofar as it refers to the agreement that a fee will be charged only if a particular result is achieved, whereas rules governing cooperation with other professional fields are lacking.

With regard to the rules laid down in the Code on the last three subjects - professional

liability, result-based remuneration and cooperation- legislation in these areas has been laid down in by-laws. Given the hierarchy between law, by-law and rule of conduct, this means that in these cases the advocate must comply with the by-laws. Accordingly, only where the advocate is practicing cross-border, he must comply with the Code pursuant to the stipulation laid down in this rule of conduct. If the advocate, in compliance with the Code, were to act in violation of any rules given by or under the Act on Advocates, the Dean in question has to decide to what extent he will use his authority to draw up a complaint against that advocate. With reference to Article 1.2.2 of the Code, the (national) disciplinary court will eventually function as a safety net in this matter.

Adopted by the Assembly of Delegates on 3 December 2008. Date of coming into force is 1 January 2009.