



Chapter 12

Rules of conduct for advocates

(latest changes: 08.03.2002)

1 INTRODUCTION

1.1 Purpose of the rules

Rules of conduct for advocates aim at securing that professional activities as an advocate shall be conducted in accordance with the ethical principles which are the basis for the work of the advocate in all civilised jurisdictions. Violation against the rules are a basis for disciplinary consequences for the advocate.

1.2 The advocate's duty

It is the advocate's duty to promote justice and to prevent injustice.

It is the advocate's duty to promote the interests of his clients to the best of his ability within the scope of the law. This shall be done with no consideration of personal advantage or risk, political belief, race, religion or extraneous considerations.

The advocate should not identify himself with the client, and he has the right to expect that he should not be identified with the points of view that he presents on behalf of his client and the interests of the client.

It is the advocate's duty to be both a councillor and spokesman for his client.

The advocate must himself decide whether he will undertake an assignment.

1.3 The advocate's conduct

The advocate must conduct himself professionally and correctly in his practice. The advocate must refrain from any conduct which is capable of harming the image of the bar and the profession.

2 GENERAL PRINCIPLES

2.1 Independence

2.1.1

In order to live up to the obligations assumed by an advocate, he must by necessity be independent so that his advice and his actions are not influenced by extraneous considerations. In particular, it is important that he should not be influenced by personal interests or external pressure. An advocate must avoid any weakening of his independence, and he must not compromise his professional standards in order to indulge his client, the court or a third party.

2.1.2

An advocate must not accept an assignment in which his personal economic interests could be in conflict with the interests of the client, or where they might influence his free and independent position as an advocate.

An advocate must not become economically interested in the outcome of a case through transfer of the client's claim or parts thereof. The advocate must not guarantee any loans to the client. An advocate who represents his own economic interests, partly or fully, is obliged to make contractual or otherwise interested parties aware of this.

2.1.3

An advocate must not organize his business in a manner which could prevent him from freely and independently advising and assisting his clients or in such a way that his independence is reduced in other manner.

2.2 Trust

In his practice, the advocate is dependent on trust which can only be attained when the advocate's honesty and integrity are beyond reproach.

2.3 Duty of confidentiality

2.3.1

When practising as an advocate, it is of fundamental importance that clients and others can entrust the advocate with information that the advocate is obliged not to disclose. The advocate's duty to treat information confidentially is a necessary prerequisite for confidence and is therefore a basic and cardinal right and obligation for the advocate.

The advocate's duty to observe confidentiality with regard to information he receives, serves to promote the administration of justice as well as the interests of the client and is therefore entitled to a high degree of protection by the government.

2.3.2

An attorney shall observe his legal duty of confidentiality. Information received by the advocate in his profession must be treated with discretion, also when the information is not encompassed by his legal duty of confidentiality. There is no time limit for duty of confidentiality.

2.3.3

The advocate shall require that associates, staff or persons engaged by the advocate in connection with his practice shall observe the same duty of confidentiality.

2.4 The advocate's advertising and relations with media

2.4.1

The advertising of an advocate should in form and content be to the point and factually correct and should thus not contain anything which is incorrect, misleading or deceiving.

It is allowed to emphasise one or several branches of the advocate's practice, provided the advocate has special knowledge and experience in the said field.

Advocates must contribute to disseminate objective information about their profession in such a way that it will benefit the body of advocates and the general public which seeks legal assistance.

2.4.2

An advocate is obliged in any discussion of litigation to take due account of the interests of the parties and the dignity of the court, and should in this connection prevent the possibility of influencing judges, jurors and witnesses. The advocate should exercise particular restraint as concerns public discussion of upcoming or ongoing court cases in which he has himself been engaged.

In any case where the advocate makes statements in a case in which he has or has had assignments, this should be expressly mentioned.

3 RELATIONS WITH CLIENTS

3.1 Acceptance and completion of assignments

3.1.1

An advocate must not undertake an assignment other than upon direct request by the client, from another advocate on behalf of a client or from a competent body.

When an advocate undertakes an assignment in connection with a financial transaction, the advocate shall investigate the identity of the client or the intermediary on behalf of whom the advocate is undertaking the assignment.

3.1.2

An advocate shall give advice to the client and take care of his interests expeditiously, conscientiously and carefully. The advocate is personally responsible for accomplishment of the assignments that he has undertaken. He shall keep the client informed about the progress of the case.

3.1.3

An advocate shall try to achieve amicable settlements to the extent that this is compatible with the interests of the client.

3.1.4

An advocate should not undertake an assignment when he knows or should know that he lacks the necessary competence. However, this does not apply if within a reasonable period the

advocate can acquire the knowledge required or obtain the necessary competence to ensure a proper and professional performance of the assignment.

An advocate should not undertake new assignments if his other pressure of work has the effect that the cases will not be dealt with in a reasonably expeditious manner.

3.1.5

If the costs in connection with a case must be assumed to become disproportionately high in relation to the client's financial position or the interests involved in the matter, the advocate should in due time inform the client to this effect. Before the advocate engages another advocate, an expert or others in connection with an assignment, the client's consent should be obtained.

3.1.6

An advocate who has undertaken an assignment is obliged to carry it through in accordance with the wishes of his client, unless it should turn out

that the advocate has received erroneous or incomplete information

that the client does not want to adhere to the advocate's advice in the matter

that the client does not upon request pay an advance or provide security for the fee and the costs

that the client does not upon request pay an invoice for an amount on account for work performed and/or expenses incurred

that the client initiates or contributes to publication in contravention of a request by the advocate to refrain from such publication, or

that such events occur that it cannot reasonably be required that the advocate shall continue the assignment.

Before the advocate resigns from an assignment, he is obliged to take whatever steps are needed and which cannot be postponed without exposing the client to potential losses.

3.1.7

An advocate is entitled to refuse to hand over documents which he has in his possession in connection with an assignment as long as the client has not paid the amounts owing to the advocate for costs and fees from the assignment in question. This does not apply when, and to the extent, that retention will expose the client to a potential loss. If the amount outstanding is disputed, the chairman of the Disciplinary Committee, or someone authorised by him, may determine how much of the amount outstanding shall be covered, and that the balance shall be deposited or secured on conditions stipulated by the person in question.

3.1.8

An advocate shall resign from an assignment if he suspects that the assignment encompasses a transaction involving the laundering of money and the client is not willing to refrain from implementing such transaction.

3.2 Conflicts of interest

3.2.1 (The main rule)

An advocate must refrain from undertaking an assignment if there could be a risk that the assignment could bring about breach of the advocate's duty of loyalty and confidentiality in relation to his clients or breach of the advocate's duty of independence.

3.2.2 (Double representation)

An advocate must not counsel, represent or act on behalf of two or more clients if these clients have conflicting interests in the case or if there is a clear risk of this.

3.2.3 (Collision of client's interests)

An advocate may only accept an assignment on behalf of a client against one of the advocate's other clients if it is obvious that there is no reason for concern due to the different nature of the assignment or the nature of the client. The advocate shall inform both parties of the situation.

3.2.4 (Assignments against former clients)

An advocate must exercise care before accepting assignments against a former client.

The advocate must refrain from undertaking assignments against a former client if the advocate's knowledge of the former client's circumstances could be used in a prejudicial manner to the advantage of the new client or could result in harming the interests of the former client.

3.2.5 (The importance of the client's agreement)

If an advocate is prevented from performing actions or business on behalf of one or more clients pursuant to this section 3.2, this shall only apply to the extent the client or clients have not given their agreement that the actions or business can take place.

Even if the clients give their approval, the advocate will still be prevented from acting if his duty of loyalty or confidentiality in relation to a client or the advocate's duty of independence is thereby breached.

The approval of a client is only valid if it is given on the basis of an application from the advocate that provides the client with complete and correct information on the conflict of interest problem.

An advocate who with the express approval of the clients acts as conciliator or an arbitrator between two or more clients with conflicting interests, shall not be considered to have infringed the rules in this section 3.2. If conciliation does not result in a solution of the dispute, the advocate may not represent any of the parties in the further processing of the dispute.

3.2.6 (Application of the rules to companies, shared facilities, etc.)

When an advocate practices law in a company, in a shared office or similar, the rules in 3.2.1 to 3.2.5 concerning conflicts of interest shall apply to the shared facility and to all its participants.

3.3 Calculation of fees

3.3.1

The client is entitled to be informed about how the advocate has stipulated his fee. The fee shall be reasonably related to the assignment and to the work performed by the advocate.

3.3.2

An advocate must not enter into an agreement with clients or others to the effect that he shall receive a fee on the basis of a percentage or share in relation to the outcome or subject of the case, regardless of whether this involves a sum of money or another form of remuneration.

Exceptions from this rule can only be made in the cases when legislation or public regulations authorise such a possibility.

3.3.3

An advocate must not enter into an agreement with clients or others to the effect that he shall receive his fee in the form of shares or other forms of participation in a company or partnership in which the value of the shares or the participations will be affected by the result of the case. Neither must any such agreement on this form of remuneration be agreed if this could influence the advocate's free and independent position during the performance of the assignment.

3.3.4

If an advocate requires payment of fees and/or disbursements in advance, such payment must not exceed an amount which could reasonably be expected to cover the fee and the disbursements.

3.4 Legal aid

An advocate is obliged to inform his client about existing possibilities of obtaining legal aid from the government or from legal aid insurance.

3.5 Clients' funds

Clients' funds shall be dealt with in accordance with Chapter 3 of these regulations concerning entrusted funds.

An advocate who is requested to administer funds, shall not receive or handle funds that do not have a named source.

3.6 Indemnity insurance

The advocate shall at all times have indemnity insurance covering claims for compensation which may be directed against his professional practice with regard to the nature and scope of his activities.

4 THE ADVOCATE'S RELATIONS WITH COURTS AND PUBLIC AUTHORITIES

4.1 Conduct before the courts

An advocate shall conduct himself correctly in relation to litigation legislation. An advocate shall show respect and act politely before the courts, but shall at the same time defend his client's interests honestly, fearlessly and without regard to own interests or the consequences

for himself or others. The advocate has both a right and an obligation to criticize the court in a proper and decent manner.

4.2 Proper legal process

All cases shall be elucidated by open and professional presentation of evidence and arguments before the full court. The advocate must not in any way try to influence the members of the court informally.

An advocate must not intentionally give incorrect or misleading information to the court.

4.3 Active engagement

An advocate is obliged to familiarise himself thoroughly with the case and conduct the case with the care and promptness required by good professional litigation practice. Requests and recommendations from the court must be answered without undue delay.

4.4 Justifiable volume of assignments

The advocate must ensure that the volume of his assignments does not increase to an extent that could prevent him from satisfying reasonable requirements with regard to the pace of case preparation or from accepting the scheduling of court meetings in current cases.

4.5 Offers of amicable settlement

Without the consent of the adversary, an advocate must not during litigation cite settlement offers made by the adversary or his advocate, or make reference to the fact that they have stated willingness to solve the case by amicable settlement. This is applicable, regardless of whether the adversary or his advocate has stated such a reservation, or not.

An advocate may at any time make reference to settlement offers he has presented himself, unless something else has been agreed. It is assumed that the settlement offers made by him are presented in such a manner that possible settlement offers made by the adversary or his advocate are not disclosed.

4.6 Witnesses and experts, etc.

An advocate is entitled to contact any third party that might be able to give information of relevance to the case, regardless of whether the person concerned has already been named as a witness by the adversary. If it concerns witnesses with a special connection with the adversary, contact should not be made before the adversary's advocate has been notified in advance.

In litigation, contacts with an appointed expert should pass through the court. Direct contact should only take place if this cannot give rise to any concern, and if contact through the court would be complicated. The court and the adversary must in this case be informed as soon as possible about the contact made, and they should also be made aware of the answer.

4.7 Cases in which the advocate may be called as a witness

An advocate must exercise care in accepting an assignment as counsel in a court case, if it must be considered probable in advance that he may be called as a witness in the case.

4.8 Arbitration and other conflict resolution bodies

The rules concerning the advocates' relationship with the courts from 4.1 to 4.6 shall apply

similarly to the extent that they are suitable in respect of an arbitration court and other conflict resolution bodies.

5 RELATIONSHIP BETWEEN ADVOCATES

5.1 Mutual trust between colleagues

Trust and co-operation as colleagues are necessary between advocates, both in the interests of clients and to avoid unnecessary disputes.

An advocate shall always conduct himself with the consideration and openness that can be combined with the interests of the client.

5.2 Referral fee

An advocate must neither from other advocates nor other parties require or receive any form of fee or remuneration for referral or recommendation of a client. Neither must an advocate pay any form of fee or remuneration for having a client referred to him.

5.3 Contact with an adversary

An advocate must not contact an adversary directly when he is represented by an advocate in the question which the contact relates to, unless strong reasons support such a contact, and it has not been possible to contact the advocate, who should be informed about the contact and the reasons for this as soon as possible.

5.4 Disputes between advocates

If an advocate finds that a colleague has acted in contravention of rules of conduct for advocates, he shall inform his colleague accordingly. Criticism of the work of colleagues must be to the point and correct. Efforts should be made to solve disputes between advocates amicably. Court cases on matters mentioned above against a foreign colleague should not be commenced before the respective law organizations have been informed and have had the opportunity to contribute towards a settlement of the dispute.

5.5 Undue influence

An advocate must not raise questions of liability on the part of a colleague with a view to influence his proper maintenance of his client's interests.

5.6 Training

In order to maintain and strengthen the professional and ethical standard of the body of advocates, an advocate is obliged to ensure that his staff receives the necessary training and opportunities for development.

5.7 Associates

Between an advocate and an assistant who does not have his own licence as an advocate, there should be a genuine relationship of employment. The assistant shall work in the offices of the principal. A relationship based on a contract in writing must exist between them, according to which the assistant must among other things be secured a reasonable, fixed salary. The principal must supervise the work of the assistant, and must ensure that he receives sound guidance in his work.

5.8 Replacement of an advocate

An advocate who is engaged to represent a client as a substitute for another advocate in a certain case, must ensure that the client has informed the other advocate accordingly, or the advocate himself should provide such information. Should the client's interest require urgent action, such information must be given as soon as possible after the necessary action has been taken.

5.9 Responsibility for a foreign advocate's fees

Whenever an advocate does not merely recommend, or introduce another advocate to the client, but engages the services of a foreign advocate in respect of a certain case or seeks his advice, he is under personal obligation to pay the foreign advocate's fees and disbursements, even if the client is insolvent. However, at the start-up of such an engagement, advocates may make special agreements. Moreover, the advocate who has engaged another advocate may at any time limit his personal liability to the size of the fee and disbursements that have accrued up to the date he informs the other advocate that he no longer undertakes responsibility.

6. RULES FOR PRACTICING LAW IN OTHER COUNTRIES

6.1 The relationship to CCBE Code of Conduct

A Norwegian advocate practicing law in countries within EEA area is bound by the CCBE Code of Conduct, adopted by CCBE on the 24 November 1998 and accepted by the Norwegian Bar Association on 18 June 1999.