

Code of Professional Conduct for Members of the Swedish Bar Association

*Adopted and issued by the Board of the
Swedish Bar Association on 29 August 2008*

1 The role and primary responsibilities of an Advocate

A free and independent legal profession operating in accordance with sound rules developed by the Advocates themselves is an important part of a society governed by the rule of law and a prerequisite for the protection of individual freedoms and rights. Consequently, an Advocate holds a position of significant responsibility in our society.

The principal responsibility of an Advocate is to show fidelity and loyalty towards the client. As an independent adviser, the Advocate is obliged to represent and act in the client's best interests within the established framework of the law and good professional conduct. The Advocate must not be influenced by possible personal gain or inconvenience or by any other irrelevant circumstances.

An Advocate must practice with integrity and so as to promote a society governed by the rule of law. An Advocate must act impartially and correctly and so as to uphold confidence in the members of the Advocate's profession.

An Advocate must not promote injustice.

2 Professional Duties in General

2.1 The Execution of a Mandate

2.1.1 An Advocate must carry out a mandate with care, accuracy and due timeliness. The Advocate must ensure that the client is not burdened with unnecessary cost.

2.1.2 Legal advice must be based on the necessary examination of the law.

2.2 The Duty of Confidentiality and the Duty of Discretion

2.2.1 An Advocate has a duty of confidentiality in respect of matters disclosed to the Advocate within the framework of the legal practice or which in connection therewith becomes known to the Advocate. Exceptions from the duty of confidentiality apply if the client consents thereto or where a legal obligation to provide the information is at hand. An exception also applies if disclosure is necessary to enable the Advocate to aver complaints by the client or to pursue a justified claim for compensation in respect of the mandate concerned.

2.2.2 An Advocate is obliged to exercise discretion in respect of client matters. An Advocate must not, without cause, enquire about mandates handled by the Advocate's law firm if the Advocate is not personally charged with such work.

2.2.3 An Advocate is obliged to impose upon his staff the same duty of confidentiality and duty of discretion as that which applies to the Advocate himself.

2.3 Information to the client

A client should be kept informed of what transpires in the accomplishment of a mandate. Questions from the client concerning the mandate should be answered without delay.

2.4 Information from the client

An Advocate is not, except for special cause, obliged to verify the accuracy of information provided by the client.

2.5 Professional competence

An Advocate is obliged to maintain and develop his professional competence by monitoring the development of the law in the fields in which the Advocate is active and to submit to the necessary continued training.

2.6 Insurance obligation

An Advocate is obliged to purchase liability insurance cover appropriate to his practice and to maintain such insurance cover by complying with the applicable policy terms and conditions.

2.7 Economic Transactions with the Client

2.7.1 Economic transactions between an Advocate and his clients are prohibited unless resulting from a mandate. However, if a client runs a business, normal transactions within the scope of that business are allowed.

2.7.2 It is not permissible for an Advocate to own a share of or have an interest in a client's enterprise. However, an Advocate may own shares or participations in a client enterprise if the ownership is spread to a wider circle of owners. Such shares or participations may be acquired from the client or someone closely related to the client only if offered to a wider circle and the acquisition takes place on the same terms and conditions as those applicable to others within that circle. An Advocate may also own a share or participation in a business of his own family.

2.7.3 An Advocate's acquisition of, or holding of a share or participation in a client's business must not cause or be expected to cause a conflict of interest.

2.7.4 The abovementioned rule concerning shares and participations also applies to other securities or rights that entitle the holder to a participation in the client's business or where the result is dependent on the business results or another similar circumstance.

2.8 Client Funds and other Property Belonging to the Client

Monetary funds, valuable documents and other property entrusted to an Advocate by a client or by another on behalf of a client must be linked to the mandate. A mandate must not, except for special cause, entail only the management and brokering of funds or safe-keeping of property.

3 Declining to Act and Discontinuing a Mandate

3.1 Offer of a Mandate

An Advocate is not obliged to accept a mandate offered but must immediately give notice of his decision to decline a mandate. An Advocate is not required to state reasons for not accepting a mandate.

3.2 Conflicts of Interest

3.2.1 An Advocate must not accept a mandate if there exists a conflict of interest or a significant risk of a conflict of interest. A conflict of interest exists if:

- 1. the Advocate assists or has previously assisted the opposing party in the same matter,*
- 2. the Advocate is assisting another client in the same matter and the clients have conflicting interests,*
- 3. the Advocate is assisting another client in a closely related matter and the clients have conflicting interests,*
- 4. there is a risk that knowledge covered by the Advocate's duty of confidentiality may be of relevance in the matter,*
- 5. the Advocate or a close relative has an interest related to the matter which is contrary to that of the client, or*
- 6. the existence of any other circumstance which prevents the Advocate from acting in the client's best interests in respect of the mandate.*

3.2.2 A conflict of interest may be at hand if the Advocate is assisting or has previously assisted the opposing party in another matter.

3.2.3 When considering whether there is a conflict of interest in relation to clients or opposing parties which are legal entities then, subject to the specific circumstances, the client or opposing party may be deemed to constitute all or part of the group of companies or interest group of which the legal entity forms a part. The provisions applicable to interest groups may also apply to an individual in his capacity of owner of a legal entity. On the other hand, in such analysis, the client or opposing party may be considered to constitute merely a part of the legal entity, if that legal entity conducts extensive business.

3.3 Duty of Disclosure and Consent

3.3.1 An Advocate who is considering to accepting a mandate is obliged to consider, as soon as possible, whether there is a conflict of interest which precludes the Advocate from accepting the mandate. If the Advocate finds that no obstacle is at hand but that nevertheless a circumstance exists which may lead the client to a different assessment, the Advocate is obligated immediately to notify the client thereof. If such information cannot be provided without breaching the Advocate's duty of confidentiality, the Advocate must decline the mandate.

3.3.2 If express consent can be obtained without setting aside the Advocate's duty of confidentiality, the Advocate may, exceptionally, and after having obtained such consent, accept a mandate even if a conflict of interest under 3.2.1, subsections 3 or 4 or 3.2.2 above is deemed to exist, provided that the circumstances are not such as to give cause to doubt the Advocate ability fully to safeguard the client's interests.

3.4 Duty to Decline a Mandate

3.4.1 An Advocate who after having accepted a mandate identifies the existence of a circumstance such as would have obliged the Advocate to decline the mandate had the Advocate been aware of the circumstance when accepting the mandate must resign from the mandate. The duty of disclosure under 3.3 applies also when a circumstance that gives rise to an issue as to the risk of a conflict of interest arises or is discovered after the mandate has been accepted.

3.4.2 An Advocate is also obliged to resign from a mandate if:

- 1. the Advocate is prevented from carrying out the mandate because of a statutory bar or similar circumstances,*
- 2. the client demands that the Advocate should act criminally or in breach of Good Advocate's Practice and despite having been made aware thereof maintains the demand,*
- 3. the client suppresses or distorts evidence or acts deceitfully and cannot be induced to rectify, or*
- 4. the Advocate, in order to avoid violation of the anti-money laundering legislation, reports a client to the police.*

3.5 Conflicts of Interest of Colleagues

For the purposes of 3.2 and 3.4, a conflict of interest for someone else in the firm or in a shared office where an Advocate practices normally constitutes a conflict of interest also for the Advocate. An exception applies if a conflict of interest occurs due to the entry into the firm of a colleague and the conflict of interest for that colleague arises merely because of a mandate of a former colleague. Another exception arises when the colleague's conflict of interest is of the nature stated in 3.2.1, subsection 5, and circumstances are not such to make subsection 6 applicable.

3.6 Right to Cease Acting when no such Obligation is at Hand

An Advocate may not without consent of the client resign from a mandate unless the Advocate is obliged to do so or if a valid cause may be invoked. A valid cause for resigning from a mandate may be that:

- 1. the client, when retaining the Advocate, intentionally withheld information which would have been essential for the Advocate's decision to accept the mandate,*
- 2. the client unreasonably burdens or troubles the Advocate and cannot be induced to rectification,*
- 3. the client instructs the Advocate to handle the mandate in a manner which is futile or contrary to the best interests of the client, and despite being made aware thereof, maintains the instruction,*
- 4. the client in essential respects acts against the Advocate's advice or otherwise demonstrates a loss of confidence in the Advocate, or despite reminders, fails to effect an advance payment or compensation to which the advocate is entitled on account of the mandate.*

3.7 Stating Reasons for Ceasing to Act.

3.7.1 An Advocate wishing to resign from a mandate must inform the client of the reason therefore and at the client's request, give written notice thereof. Before resigning the Advocate must give the client reasonable time to retain another Advocate. Should an Advocate wish to cease acting as legal counsel in Court, it is the duty of the Advocate in accordance with Chapter 12, Section 18 of the Code of Judicial Procedure, on the basis of the power of attorney to safeguard the client's interests until the client has been able to take measures for legal representation.

3.7.2 The stipulations in 3.7.1 do not apply when, to avoid violation of the Anti-Money Laundering Legislation, the Advocate must report a client to the police.

3.8 Assignment as an Arbitrator or a Judge

The rules on conflicts of interest set out above do not apply when an Advocate is subject to conflict of interest rules of an arbitrator or a judge in a Court of Law.

4 Fee and Statements of Accounts etc.

4.1 Calculation of the Fee and Invoicing

4.1.1 The fee charged by an Advocate must be reasonable.

4.1.2 In determining what constitutes a reasonable fee for a mandate, regard may be had to what has been agreed with the client, the extent of the mandate, its nature, complexity and importance as well as the Advocate's expertise, the result of the work and other such circumstances.

4.1.3 An Advocate may only receive compensation in the form of customary means of payment. The fee charged does not have to be itemised but, on demand, the Advocate is obliged to provide the client with a written account of the work carried out. If the Advocate charges the client for disbursements, the nature thereof such must be clearly specified.

4.1.4 In connection with accepting a mandate, the Advocate should state charging principles and inform the client invoicing routines which the Advocate intends to apply. Fees may be invoiced either by way of a partial invoice, an invoice on-account or by invoicing after completion of the mandate.

Partial invoicing means charging a final fee for part of the Advocate's work attributable to a certain period or for a specific part of the work. On-account invoicing means invoicing part of the final fee without specific attribution to a certain part of the work. Invoicing of on-account work must be accounted for in the final invoice.

4.2 Contingency Fee Agreements

4.2.1 An Advocate may not, except for special cause, enter into a fee agreement with a client which gives right to a quota of the result of the mandate.

4.2.2 An agreement which entails that the Advocate takes a financial risk in the outcome of the mandate must not result in the Advocate's interest in the matter becoming disproportional or otherwise having an adverse effect on the Advocate's carrying out of the mandate.

4.3 Fee for a Legal Procedure

A fee charged on account of a legal procedure may not, unless for special cause, exceed the fee for which the Advocate, on behalf of the client, claims that the opposing party be ordered to pay.

4.4 Financing of the Mandate

4.4.1 An Advocate must inform the client of existing possibilities of having the mandate financed by public means or by insurance and explain the terms and conditions therefore. An Advocate shall assist in safeguarding the rights of the client in this regard.

4.4.2 An Advocate must not for work as a public defender or as a representative under the Legal Aid Act reserve the right to or receive from the client or another part a fee or any other compensation in addition to the compensation determined by the competent authority.

4.4.3 When accepting a mandate covered by legal cost insurance, the Advocate shall inform the client whether he intends to deviate from the standard compensation specified in the terms of the insurance policy.

4.5 Advance payment

An Advocate may ask for advances to cover disbursements on behalf of the client. The Advocate may also, if agreed on acceptance of the mandate or if otherwise reasonable, demand an advance payment on the fee. An advance payment constitutes client funds. When a fee is paid from a client's account, an invoice showing the payment shall simultaneously be sent to the client.

4.6 Final Invoicing and Accounting

4.6.1 When a mandate has been completed or otherwise terminated a final invoice is to be sent to the client, without delay, except where only partial invoicing is applied.

4.6.2 If an Advocate receives funds in the course of the mandate, a final statement of account shall be submitted to the client without delay and any balance in the client's favour shall be paid to the client unless otherwise agreed, or results from the nature of the mandate. An Advocate must not, as a condition for payment, request that the client approves the fee charged or the final statement of account. Nor may an Advocate by agreement or reservation relieve himself of the accounting duty.

4.6.3 An Advocate's statement of account must be clear and unambiguous. The statement of account must specify what the Advocate has received on account of the mandate and the disbursements made by the Advocate as well as the fees invoiced and deducted. Dates of receipt and payment of each partial amount must be specified. The statement of account must be dated.

4.6.4 The duty, in certain cases, annually to account for management of funds and render a statement of income to the authorities is regulated by law and the Accounting Standards of the Bar Association.

5 Relations to the Opposing Party

5.1 Improper Measures

An Advocate must not seek to promote the client's cause by taking improper measure in relation to the opposing party.

Improper measures are, inter alia,

- 1. reporting to an authority about crime or anything else which lacks foundation or relevance to the mandate or threatening to file such report,*
- 2. applying for a summary payment order, filing an application for bankruptcy or payment demand before applying for bankruptcy in circumstances where the Advocate knows that the claim for payment is contested on a basis which is not manifestly unfounded,*
- 3. scandalising the opposing party or threatening to do so , or*
- 4. unwarranted contact with a third party or threatening such conduct.*

5.2 Advance Notice of Legal Action

5.2.1 Legal action must not be taken against an opposing party unless the opposing party is given reasonable time to consider the client's claim and to reach an amicable settlement.

5.2.2 However, legal action may be taken without prior notice if a delay would entail a risk of loss of the legal rights or other damage, or if there are other special reasons for taking such action.

5.3 Disparaging Information

An Advocate may not in the course of a legal proceeding submit evidence of circumstances which are disparaging to the opposing party or make offensive or disparaging statements about the opposing party unless, in the circumstances, this

appears justifiable in order to act in the best interests of the client. Generally, an Advocate should refrain from actions or statements which are liable unnecessarily to offend or insult the opposing party.

5.4 Misleading Information

An Advocate must not mislead the opposing party by making statements about a factual circumstance or the content of legal rule which the Advocate knows are inaccurate.

5.5 If the Opposing Party Lacks Legal Representation or Assistance

5.5.1 At a contact with an opposing party who does not have a legal representative or counsel, the Advocate, where appropriate, should inform the opposing party that it is not part of the Advocate's mandate to safeguard the opposing party's interests and advise him to retain an Advocate.

5.5.2 A draft prenuptial agreement, or an instrument for distribution of marital property, an agreement on sole custody of a child and other similar documents may normally not be issued without prior contact with both parties. However, an Advocate may provide a party with whom the Advocate has had no previous contact with a proposal for such a document if in a covering letter the Advocate gives the information specified in 5.5.1.

5.5.3 Documents containing beneficial deeds may normally only be prepared in consultation with the party intending to perform the deed.

5.6 If the Opposing Party Retains an Advocate

If the opposing party retains an Advocate, all negotiations in the matter concerned shall be carried out with and all communications sent to that Advocate. It is then not permitted for the Advocate to make direct contact with the opposing party except where the action must be brought directly against the opposing party or otherwise, for special reasons, it is necessary. In such a case the Advocate representing the opposing party must be notified.

5.7 Settlement Offers

An Advocate may not, without the consent of the opposing party, disclose an offer of settlement made by the opposing party in legal proceedings.

6 Relations to Courts and Public Authorities

6.1 General

6.1.1 When acting as counsel at court, an Advocate is obliged to observe the requirements of the Code of Judicial Procedure and what any other procedural statutes require. An Advocate must be properly acquainted with the matter and pursue the matter with such care and in such manner as the proper administration of justice requires.

6.1.2 An Advocate promote compliance with court orders and that inquiries from the Court are responded to without delay.

6.1.3 The Court must be promptly informed of any impediment to appearance.

6.1.4 If the Advocate's mandate is terminated the Advocate is obliged to inform the Court thereof without delay.

6.2 Factual Statements and Evidence

6.2.1 An Advocate must not make statements to the Court which the Advocate knows are false nor contest that which the Advocate knows to be true.

6.2.2 An Advocate may not be complicit in the suppression or distortion of evidence. However, an Advocate is not obliged to produce or invoke evidence or adduce facts detrimental to the client unless required to do so at law.

6.3 Demeanour towards Witnesses et al.

6.3.1 An Advocate must not exercise undue influence upon a witness or someone else testifying at Court. However, the Advocate is free to contact such person to obtain information about the testimony of that person even where the person is called to testify by the prosecutor or another opposing party.

6.3.2 An Advocate must not give demeaning information or make offensive or disparaging statements about a witness or another person unless this appears to be justified in the situation at hand in order to safeguard the interests of the client.

6.4 Procedures other than Trial

The provisions set out in 6.1 – 6.3 also apply to proceedings before authorities other than the Courts.

7 The Organisation of a Law Firm, etc.

7.1 Maintaining Independence

An Advocate must operate his legal practice so as not to jeopardise his independence.

7.2 Practise Name

An Advocate should conduct his business under a name which contains the word 'advokat' unless an exception is granted by the Board of the Bar Association. The correct and complete name must clearly appear on all written and electronic communications and any other material whereby the legal services of the firm are being presented.

7.3 Office Organisation

7.3.1 An Advocate is obliged to ensure that the office organisation is in good order and that it has equipment and staffing appropriate for the operation and for satisfactory monitoring of client mandates.

7.3.2 Professional communications addressed to an Advocate should be answered without delay unless it is evident from the circumstances that a response is not needed. If a response cannot be given without delay the receipt of the communication must be confirmed and a response sent as soon as possible.

7.3.3 An Advocate is obliged to ensure that all accounting and management of clients' funds and valuable instruments complies with all legal requirements and the Accounting Standards of the Bar Association.

7.3.4 An Advocate must carefully follow the financial development of the law practise and ensure that all debt arising from the operations of the practise are timely paid.

7.4 Law Practises Incorporated

7.4.1 If an Advocate provides legal services in the form of a company, such company may not engage in activities other than the practice of law. All legal services must be carried out through and be accounted for in that company except in cases where the personal nature of a mandate makes the fee resulting from that mandate attributable to income from services.

7.4.2 An Advocate is permitted to provide legal services through more than one company only if an exception is granted by the Board of the Bar Association. The same applies if legal services are simultaneously offered by a sole proprietorship and by a company.

7.4.3 *Notwithstanding the provisions in 7.4.1, a law firm company may manage its own funds as is customary or, to a limited extent, own property which is not directly associated with the law practice.*

7.5 Organisation of a Law Firm

7.5.1 *Only an Advocate may be appointed to be a member or deputy member of the board or become a shareholder or partner in a law firm company.*

7.5.2 *Subject to dispensation by the Board of the Bar Association, the Managing Director of a law firm organised as a limited liability company does not have to be an Advocate provided that the person in question has undertaken to observe the regulations applicable to the law practice including Good Advocacy Standards. In such case, the Managing Director may also be empowered to sign on behalf of the company jointly with an Advocate. However, no one may be authorised to sign on behalf of the company without the participation of one of its active Advocates except in the circumstances set forth in Chapter 8, section 36 of the Companies Act.*

7.5.3 *Notwithstanding the provisions in 7.5.1 above, a Managing Director who is not an Advocate may, if granted an exemption by the Board of the Bar Association, become a shareholder or partner in a law firm company subject to the following conditions. Such ownership may only cover less than ten percent of the capital and represent less than ten percent of the voting power. In addition, such ownership requires the Managing Director to undertake immediately to transfer his shares or share to the other owners upon termination of the employment.*

7.6 Terms of Employment, etc.

7.6.1 *An Advocate may not be employed by anyone other than an Advocate or a law firm unless dispensation is granted by the Board of the Bar Association. However, an Advocate may, without the approval of the Board, accept employment at a foreign law firm domiciled in the EU, EEA or in Switzerland.*

7.6.2 *An Advocate or partnership of Advocates may employ associates and other staff to assist in the operations of the firm. If more than one Advocate conducts their business in a partnership of Advocates, they shall as between themselves clarify which one of them shall be responsible for the training and supervision of the other staff. The Advocate carrying such responsibility must take all measures reasonable required to ensure that the staff members carry out their duties as required by Good Advocacy Practice. No staff member other than a lawyer may independently render assistance to the public.*

7.6.3 *An Advocate or a partnership of Advocates may not employ associates who are not Advocates if they are employed under conditions where the work of the associate cannot be properly supervised. Associates may not be permitted to offer legal services for their own business. Associates may not be employed on terms which in respect of non-competition or otherwise are unreasonable.*

7.6.4 An Advocate or a partnership of Advocates may not in their practice retain the services of lawyers who are not employed by the law firm. However, such lawyers may be engaged for educational purposes or to perform expert assignments in individual cases.

7.7 Co-operation

7.7.1 An Advocate or a law firm may operate in co-operation with other Advocates or law firms. If such co-operation entails a closer, long-term relationship with respect to mandates or financial connections, the co-operation must be clearly disclosed on the letterhead and any other material of the law firm, for example, through the use of a common firm dominant. If such case, conflicts of interest issues should be determined on the basis of the mandates of all co-operating Advocates and other relevant circumstances. When using a common firm dominant, the insurance obligation set out in 2.6 must be determined having regard to all business performed under such firm dominant.

7.7.2 Close co-operation with foreign lawyers or law firms requires special permission by the Board of the Bar Association.

7.7.3 Other co-operation may not take place under a common firm dominant, or in any other manner which gives the impression that the co-operating parties are part of the same practice.

7.7.4 Co-operation with respect to premises or equipment which entails a risk that the Advocate's duty of confidentiality and duty of discretion be set aside. When Advocates or law firms share a joint office, conflicts of interest issues shall be assessed having regard to the mandates and other circumstances of all Advocates and law firms involved regardless of the financial arrangements. The same applies to all co-operations entailing a risk of the setting aside of the Advocate's duty of confidentiality and duty of discretion.

7.7.5 The sharing of a joint office with others than Advocates is not permitted. However, office premises may be shared with legal specialists who are not Advocates but have a background in the judiciary or who possess other special legal qualifications. If such specialist lawyers practise under their own firm name, the Advocate or law firm has no obligation to monitor such work. However, such specialist lawyers must be reminded of the regulations applying to law firms in particular the duty of confidentiality and the duty of discretion, and shall be obliged to comply therewith.

7.8 Procurement and Marketing

7.8.1 An Advocate may not solicit mandates in a way which entails exploitation of someone else's distress or vulnerable position.

7.8.2 An Advocate may only state a particular area of specialisation if the Advocate has special knowledge and experience in the given practice area.

7.8.3 An Advocate may not contribute to or permit that someone else solicits legal business or conducts marketing on behalf of the Advocate in a manner which is not permitted for the Advocate himself.

7.9 Compensation for Acquisition of Mandates

7.9.1 An Advocate may not surrender part of the fee to someone else or otherwise compensate another person for referring mandates to the Advocate or for undertaking to act for such purpose. Nor may such compensation be accepted.

7.9.2 The rule in 7.9.1 above does not prevent fee sharing between the Advocate and his partner, associate, or such co-operating partner as is specified in 7.7.1.

7.10 Liability for Costs

7.10.1 If an Advocate retains an expert on behalf of a client for the purpose of carrying out an investigation, rendering an opinion or for any other purpose, the Advocate if he does not intend to assume responsibility for the fee or costs of the expert must make this clear before the start of the assignment.

7.10.2 If an Advocate appoints a colleague on behalf of a client, e.g. as a local counsel, the Advocate is liable for the fees and expenses of that colleague unless a different arrangement has been agreed.

7.11 Allowing Trade Marks for Use by Others

An Advocate may not permit the use by others of his letterhead or trade marks in a manner which incorrectly implies that the Advocate or his law firm is the sender or has created the document or is in any other way responsible for its contents.

7.12 Disclosure and Archiving of Documents

7.12.1 Upon the completion or termination of a mandate, the Advocate shall without delay surrender to the client all documents belonging to the client unless the client explicitly requests the Advocate to store the relevant documents and the Advocate agrees to do so. An Advocate may not as a prerequisite for surrendering such documents to the client require that the client approves of the fee charged or a statement of account rendered by the Advocate.

7.12.2 An Advocate is obliged to archive all relevant documents filed in connection with a mandate either in original or as copies. However, this does not apply to duplicates, printed matter or similar material, which without difficulty can be obtained elsewhere. The archival period shall be ten years or more depending on the nature of the mandate.

Documents other than original documents which belong to the client may be archived in either photographic or electronic form.

8 Relations to the Bar Association

An Advocate is obliged, within the prescribed time, to file a submission and a statement of defence if requested by the Board of the Bar Association or by the Disciplinary Committee or the Secretary-General or associates to the Secretary-General. In this respect, the Advocate is not bound by the duty of confidentiality which otherwise applies. All factual information submitted by the Advocate must be truthful.