

Model Article on Relations with Clients

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1. Requirement to act in the best interests of the client

A lawyer must always act in the best interests of the client.

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before any other interests, including the lawyer's own interests.

In considering what is in the best interests of a client, a lawyer should give due regard to the expectations and wishes of the client.

2. Requirement for competence and skill

1) General provision

A lawyer should not accept instructions in a matter which the lawyer knows or ought to know he or she will not be able to handle competently.

A lawyer may, however, provide the required legal knowledge, skills, and resources by acting together with other lawyers.

Competence requires a lawyer to provide the legal knowledge, skills, and resources reasonably necessary to carry out the instructions of his or her client, as they may evolve over time.

Lawyers may not always have all the legal knowledge, skills, and resources necessary to carry out the instructions of their clients. In such circumstances, the lawyer would be in compliance with this paragraph by acting together with one or more lawyers who have the requisite knowledge, skills and resources.

2) Obligation of continuing training / life-long learning

Lawyers shall maintain their professional skills through continuing education in legal and other practice-related subject matters.

Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Lawyers are only able to provide such competent representation by keeping pace with the continuous rapid change of the law and technological environment in which they operate.

Therefore, life-long learning and continuous training is necessary, in all matters relevant to the services offered by the lawyer.

3. Requirement of diligence (responsiveness) (availability)

Lawyers must be diligent in relation to their clients. They should be reasonably available and responsive to their clients. They should take all actions required to comply with their mandate in a timely manner.

Lawyers should ensure the service they provide to their clients takes account of the clients' needs and circumstances.

Lawyers must seek to obtain from their clients in due time all instructions needed to be able to act in their best interests, including those needed to be able to diligently manage proceedings and monitor deadlines.

4. Requirement to abide by a client's decisions concerning the objectives of legal representation and handling of the matter

A lawyer shall give due regard to a client's decisions concerning the objectives of legal representation and shall consult with the client as to the means by which those objectives are to be pursued as may be appropriate. For this reason, the lawyer should provide the client with all relevant and appropriate information to enable the client to make informed decisions on the options available, and on the way the matter is to be handled.

This paragraph amplifies and builds upon the duty in Paragraph 1 to act in clients' best interests. Whilst lawyers must seek to achieve the best legal outcome for their clients, the decision as to what that best outcome should be and the strategies and arguments by which it should be achieved, is one in which the client must be involved.

It is, however, for the lawyer to decide when consultation with the client is necessary. If such consultation is not possible (for example, when a client does not have capacity, cannot be contacted or an important time-limit would otherwise be missed), lawyers shall act in accordance with their best judgement of what is in their clients' best interests, in accordance with their mandate.

5. Prohibition of assistance in unlawful conduct

Lawyers shall not support or assist clients in committing or attempting to commit conduct, which is illegal, criminal, or fraudulent. Lawyers' duty is to advise clients on the extent and applicability of the law.

Lawyers shall not assist their clients in committing illegal, criminal, or fraudulent actions. If, during the performance of their mandate, lawyers discover that the transaction for which their advice is sought is likely to be of such a nature, they must inform their client of the consequences resulting therefrom. If the client persists, the lawyers must withdraw from the matter.

6. Freedom to accept instructions

Subject to any limitations of law or rules of professional conduct, a lawyer shall be free to accept or decline any assignment. When declining an assignment, lawyers do not need to justify their decision, but must promptly inform the prospective client thereof.

In order to preserve lawyers' independence and the relation of trust that should exist between lawyers and their clients, lawyers must be free to decline instructions.

Since the reasons why lawyers decide to decline a mandate may be covered by professional secrecy, notably in case of conflicts of interest, lawyers should not be forced to justify their decision to decline a mandate.

There may, however, be legal or regulatory justifications for limiting that freedom. For instance, rules on legal aid could restrict the right of a lawyer to decline a matter received under a legal aid program.

7. Communication with clients

Lawyers must communicate with their clients on a regular basis and in a manner, which is clear, understandable, and appropriate to their clients' needs.

Such communication shall include all information reasonably necessary for the client to appreciate the nature and scope of the services that the lawyer renders or intends to render, as well as providing for periodic reporting on the progress in rendering such services.

Clear and straightforward communication between a lawyer and a client, given as regularly as the circumstances may require, is important to foster their relationship and mutual trust.

8. Safeguarding clients' funds and property

A lawyer shall hold funds and other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own funds and property. Funds shall be kept in one or more separate accounts clearly segregated from all other accounts of the lawyer and, to the maximum extent permitted by law, exclusively dedicated to the safeguarding of third-party funds.

Other property shall be identified as such and appropriately safeguarded.

Complete records of such funds and other property shall be kept by the lawyer at least for as long as required by applicable limitation periods.

Upon receiving funds or other property in which a client or third party has an interest, a lawyer shall promptly inform such client or third party thereof. The lawyer shall promptly deliver to such client or third party any funds or other property that such person is entitled to receive, to the extent permitted by law, pursuant to the agreement with such client or third party and, shall promptly render to that person a full accounting of such funds or property, as well as of any financial benefits earned thereon.

The duty of loyalty and the duty to act in the client's best interest entails the obligation to carefully hold the assets of clients or third parties which a lawyer receives in the course of executing a mandate, separated from the lawyer's own assets. This obligation should not only ensure a correct settlement of costs and proceeds of the custody, in particular of accrued interest, but also that the

assets are as far as possible protected against claims from the lawyer's creditors. In this respect, the lawyer is obliged to keep the assets in the manner which, under applicable law, offers the greatest protection against claims from the lawyer's own creditors. Accordingly, it is prohibited for a lawyer to commingle the assets held in custody with his own assets or to use them – even temporarily – for the lawyer's own interests or the interests of other persons who have no interest in the assets held in custody by the lawyer.

This provision does not only apply to funds but also to all other assets which the lawyer keeps in custody on behalf of clients or third parties: such property shall be appropriately safeguarded and clearly identified as clients or third-party property.

It is for the lawyer, subject to complying with any applicable legal or regulatory requirements, to decide whether to hold funds held on behalf of different clients in separate accounts or in a collective account.

The last paragraph of the rule imposes obligations on a lawyer who receives funds (or other property), to those, clients or third parties, who have an interest in them but did not provide such funds (or other property) themselves.

That will be the case, for instance, when the lawyer receives funds from another lawyer or third party for the account of the lawyer's client, in satisfaction of a judgement in favour of such client. Another example is when a lawyer has agreed with a client and a third party that the client will remit to the lawyer amounts claimed by the third party from such client, to be held in escrow by the lawyer until a final decision has been rendered on the merit of the third-party's claim, upon which the lawyer must release the funds held in escrow in accordance with the terms of the decision. In that case indeed, the third party has an interest in knowing that the client has made the required payment under the escrow agreement.

In such a case, the lawyer needs to inform the client (as in the first example) or the third party (as in the second example) of the receipt of the funds (or other property), since they have an interest therein and are not necessarily aware that such payment has been made. The information needs to be given as promptly as practical after receipt of the funds (or other property).

In addition, the lawyer is required to deliver them to such client or third party promptly when they are entitled to them. However, the lawyer is not required to do so when the law would prohibit it (for instance, because the funds have been attached), or when the person entitled to them has explicitly agreed otherwise (for instance, that the funds should remain in escrow until certain events have occurred). The lawyer should in that case obtain and keep satisfactory evidence of such agreement.

Finally, the lawyer has a duty to promptly render a full accounting of such funds (or other property) to the party having an interest in them, including any financial benefits relating thereto, such as investment income earned on such funds (or other property).

9. Communication with opposing parties

A lawyer shall refrain from communicating about a particular case or matter with any person who the lawyer knows to be represented or advised in the case or matter by another lawyer, without the prior consent of that other lawyer and shall keep the other lawyer informed of any such communications.

This provision reflects a principle accepted in many jurisdictions which is designed to avoid a lawyer taking undue advantage of the client of another lawyer.

10. Termination of representation

As a rule, a lawyer and a client may terminate their relationship at any time.

However, if the lawyer terminates the relationship, he or she shall give such notice thereof to the client as may be necessary to safeguard the client's interests.

When the relation of trust inherent to the client-lawyer relationship is broken, each party must have the right to terminate it, without having to justify the reasons thereof.

This principle, however, is subject to the following observations and qualifications:

First, rules and regulations may provide for certain exceptions, for instance when a lawyer has been designated pursuant to rules and regulations organising legal aid.

Second, the rule is without prejudice to the lawyer's right to be paid for services already provided and costs incurred (excluding, however, any compensation for loss of future profits).

Third, if the lawyer terminates the relationship, sufficient advance notice thereof must be given to the client in order to safeguard the client's interests. Factors that need to be taken into account in determining the appropriate length of such notice include the time needed for the client to find alternative counsel and for such counsel to be ready to take over the matter and the time needed for the lawyer to complete assignments that cannot be interrupted without harming the client's interests, such as urgent or imminent courts proceedings.

A similar notice requirement is not necessary to safeguard the lawyer's interests in the case of termination by the client, as those interests can be met through monetary compensation, as described above. In accordance with the lawyer's overriding duty always to act in the best interest of the client, the lawyer must, however, inform the client of the risks he or she would be taking by not allowing the lawyer to complete assignments that cannot be interrupted without harming the client's interests.

11. Delivery of documents upon termination of the mandate

Upon termination of representation, the lawyer shall, at the client's request, hand over the complete file, in originals when available and permissible, except for any of the lawyer's internal documents which were not communicated to the client or third parties and documents which are considered as confidential or privileged under applicable rules.

If the client requests the lawyer to transmit the file to another lawyer, such file shall include documents which are considered as confidential or privileged under applicable rules.

The lawyer shall always be entitled to keep a copy of any such documents for his or her own files.

This rule does not address and is without prejudice to any applicable rules regarding liens or retention rights which the lawyer might invoke in respect of the client's documents.

12. Duty to inform about the availability of legal aid

Lawyers have the duty to inform their clients about the availability of legal aid and the conditions thereof.

Before accepting representation, lawyers have a duty to inform their clients of the availability of legal aid and the conditions for obtaining it. Lawyers do not have, however, an affirmative duty to determine whether their client is eligible for legal aid under the client's specific circumstances.

In addition, lawyers do not have such duty if it is clear that their client is not eligible for legal aid.

If, in the course of advising the client, the lawyer discovers that the client may be entitled to legal aid, the lawyer shall inform the client accordingly: this follows from the lawyer's duty to act in the best interest of the client.