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THE RULES OF PROFESSIONAL CONDUCT

(To be used by the Bar Council from 1 July 2019)

1. The position of the lawyer in society

The lawyer occupies a special position in a legal community. The lawyer's task is to promote justice and counter injustice.

The lawyer must actively protect and defend his client's rights and freedoms and be the client's adviser.

In representing his client, the lawyer shall observe confidentiality and maintain his independence and integrity, including in relation to the State.

The lawyer has legal and ethical obligations to the client.

The lawyer shall also, in the performance of his duties for the client, show due respect to persons and authorities with whom the lawyer has contact on behalf of the client.

2. Code of Professional Conduct

2.1

Pursuant to Article 126(1) of the Rules of Procedure, a lawyer must conduct himself in a manner consistent with good legal practice. Pursuant to Article 126(4) of the Rules of Procedure, a lawyer shall not engage in conduct unbecoming a lawyer outside his practice, in business relations or in other relations of a financial nature.

2.2

The Bar Council supervises lawyers' compliance with the rules of professional conduct. The Bar Council, which deals with complaints against lawyers, determines the content of the Code of Judicial Procedure's standard of good legal practice and imposes disciplinary sanctions in accordance with Chapter 15b of the Code of Judicial Procedure.

3. Status and purpose of the rules of professional conduct

3.1 *Status of the rules*

The Rules of Professional Conduct apply to all lawyers, whether they practise law or are employed by undertakings or organisations which cannot practise law, cf. rpl. § 124.

The rules express the requirements which, in view of the special position of lawyers in society

and in the light of the practice of the Bar Council and the courts, are, in the opinion of the Bar Council the professional standards and ethics of lawyers in the exercise of their activities using the title of lawyer.

3.2 Purpose of the rules

These rules are intended to provide guidance to lawyers, their clients and the public as to the duties of a legal nature incumbent on lawyers when practising under the title of lawyer. The Rules are also intended to contribute to the determination by the Bar Council of the standard of good legal practice under the Code of Judicial Procedure.

4. Scope of the rules

4.1

These rules shall apply to the practice of law by lawyers using the title of lawyer in Denmark and to the practice of such law by Danish lawyers abroad.

4.2

The Code of Conduct for lawyers in the European Union, adopted by the CCBE, also applies to the cross-border activities of lawyers within the EU.

5. Confidentiality

5.1

Confidentiality is a condition of the lawyer's activity and a fundamental duty and right which must be respected not only in the interests of the individual but also in the interests of the legal community.

It is therefore essential that a lawyer can receive information about matters that the client would not entrust to others and that the lawyer can be made aware of the information in confidence.

The lawyer shall treat as confidential all information which comes to his knowledge in the course of his duties.

5.2

The obligation of confidentiality shall apply for an unlimited period.

5.3

The lawyer shall ensure that the lawyer's authorised representatives, partners, as referred to in Article 124c(1)(2) of the Rules of Procedure, staff and others otherwise engaged in the practice of law are made aware that they are bound by the same duty of confidentiality as the lawyer, whether or not they are lawyers.

5.4

Where lawyers practise in a joint practice, in a law firm as defined in Article 124 of the Rules of Professional Conduct, or in a joint practice, the rules set out in paragraphs 5.1 to 5.3 shall apply to

the joint practice, the law firm and the joint practice and to the relationship between its participants, including the lawyers employed by it.

Similarly, the rules in 5.1-5.3 apply to other collaborations, partnerships and joint ventures between lawyers or law firms if they appear to third parties as a joint venture or a law firm.

6. Name etc.

6.1

The name of a law firm must be capable of identifying the law firm concerned in a clear and specific manner and must indicate, by its name or by an addition thereto, that it is a law firm.

6.2

The name and other business characteristics of a law firm, including its logo, shall not be such as to create the impression that the business of lawyers is carried on by persons other than those who, under Article 124 of the Regulation, may be co-owners of a law firm, cf. Article 124c.

7. Agents - the lawyer's responsibility

It is the responsibility of lawyers who employ authorised representatives to ensure that the representative receives proper practical training for the purpose of becoming a lawyer, including an understanding of the importance of the rules of professional conduct.

The principal is responsible for ensuring that authorised representatives act in accordance with these rules. Thus, the principal may not require his agent to engage in conduct that would be contrary to these rules if engaged in by the lawyer himself.

8. Receipt of cases

8.1

A lawyer may only take on a case for a client at the direct request of the client, from another lawyer on behalf of the client or at the request of a public authority or other competent body.

8.2

The lawyer may not displace a lawyer from a case.

A lawyer shall not take any unsolicited action which has the purpose or is likely to influence the choice of lawyer in a particular case by a particularly vulnerable or exposed person, such as a defendant or accused person.

The lawyer may not seek to influence the choice of lawyer by prisoners or residents through marketing activities in prisons, juvenile institutions, asylum centres and similar institutions.

8.3

A lawyer shall not take on a case for the conduct of which the lawyer lacks the necessary competence, unless the lawyer, in agreement with the client, secures the cooperation of a suitably qualified colleague.

8.4

A lawyer must not take on a case if it cannot be dealt with quickly enough.

In particular, when taking on a case of public interest, the lawyer must ensure that the lawyer's circumstances do not prevent the case from being dealt with by the court or other authority with sufficient speed.

9. Execution of the task

9.1

A lawyer, as the client's independent adviser, shall act in the client's interests thoroughly, conscientiously and in accordance with the best interests of the client.

9.2

The lawyer shall keep the client informed of the progress of the case as appropriate.

10. Storage of files

After the closure of a case, the case file, including electronic data, shall be kept for an appropriate period, which may be determined in general terms according to the type of case, taking into account the specificities of the case.

11. Withdrawal

A lawyer shall not cease to conduct a case in such a manner and under such circumstances as to prevent the client from seeking other legal assistance in a timely and appropriate manner.

12. Conflicts of interest

12.1

When accepting any new case, the lawyer shall take reasonable precautions to avoid any doubt as to the lawyer's compliance with the conflict of interest rules.

12.2

A lawyer shall not assist a client in situations where a conflict of interest has arisen or where there is a substantial risk that such a conflict will arise.

Such situations exist when:

- 1) a lawyer assists clients in the same case if the clients have conflicting interests of a not insignificant nature.
- 2) a lawyer assists a party after having previously assisted the other party in the same case.
- 3) a lawyer assists clients in several related cases at the same time, if there is a risk that confidential information received by the lawyer in one of the cases may be relevant in another of the cases.
- 4) a lawyer has a close family or not insignificant financial, professional or other relationship with a party who has conflicting interests with the client in the case.
- 5) a lawyer has such business or other relations or arrangements with the client that there is a risk that the lawyer will not be able to give advice to the client independently of extraneous interests.
- 6) a lawyer agrees with clients or others to receive a fee in the form of shares or other ownership interests in a company, the value of which will be affected by the outcome of the case. This also applies to other cases where such remuneration is agreed if this could affect the lawyer's independence and personal integrity in the performance of his duties.
- 7) a lawyer who has assisted in the formation or settlement of a legal relationship on behalf of the parties subsequently assists one of the parties in relation to that legal relationship if the assistance has or may have an impact on the other party.

Such situations may also arise when:

- 8) a lawyer assists a client in a case if, without representing the opposing party in the specific case, he has an established client relationship with the latter.

In assessing whether a client relationship is stable, consideration shall be given, inter alia, to whether the client has previously sought the assistance of the lawyer on a regular basis in relation to the client's need for assistance and whether the client is expected to continue to do so.

- 9) A lawyer assists competing businesses.
- 10) a lawyer assists several parties in establishing or settling a legal relationship on which the parties have agreed.
- 11) a lawyer assists a client in one case after having previously assisted a client in another case, where the cases are related and there is a risk that confidential information received by the lawyer in one of the cases may be relevant in another of the cases.

12.3

A lawyer may not act as an arbitrator, mediator or conciliator for several parties if he has previously assisted any of the parties as a party representative in matters relating to the dispute. A lawyer shall not, after having acted as arbitrator, mediator or conciliator, assist any of the parties as party representative in matters related to the dispute.

12.4

Where lawyers practise in a group, in a law firm as referred to in Article 124 of the Rules of Professional Conduct, or in a group of offices, the rules set out in 12.2 and 12.3 shall apply to the group, the law firm and the group of offices and to the relationship between its members, including the lawyers employed by it.

Similarly, the rules in 12.2 and 12.3 apply to other collaborations, partnerships and joint ventures between lawyers or law firms, if they appear to third parties as a joint venture or a law firm.

12.5

A consent of the parties involved to the assistance of the lawyer will in cases covered by 12.2, points 1-7, 12.3 and 12.4 shall not, in principle, affect the assessment of whether a conflict of interest exists. In cases covered by 12.2, points 8-11, the significance of such consent will depend on a specific assessment.

12.6

Where, under these rules, a conflict of interest exists or is likely to exist, the lawyer must withdraw from the specific case or cases in relation to all clients involved. In cases covered by 12.2(1), (3), (9) and (10), if the lawyer has received material information from only some of the clients, the lawyer's withdrawal may be limited to the remaining clients. The lawyer's resignation shall be immediate. However, the lawyer shall do what is necessary to ensure that the client does not suffer legal prejudice.

12.7

If the lawyer's withdrawal from the case pursuant to 12.6 is due to a conflict of interest which has

arisen solely or mainly as a result of the lawyer's conduct, the lawyer may not charge a fee for that part of the work on the case which is also to be carried out by the lawyer who takes over the case. To the extent that such fees have been paid by the client, the lawyer shall reimburse them.

12.8

Law firms and other collaborative arrangements covered by 12.4 shall establish written guidelines for managing conflicts of interest. This does not apply to sole traders without employees or to law firms where only one lawyer is practising. The guidelines should be suitable for avoiding conflicts of interest, for detecting and identifying conflicts at the earliest possible stage and for describing the procedure to be followed when a conflict is identified.

The guidelines shall be forwarded to the Bar Council upon request.

13. General information duties

13.1

The lawyer must inform the client of the following on his own initiative:

- 1) the lawyer's name, address (including legal address) and other contact details, including telephone number and e-mail address, if any; and
- 2) the name of the firm from which the lawyer carries on his activity, the form of the firm and the CVR number,
- 3) that the lawyer has been instructed by the Ministry of Justice in Denmark, although EU lawyers must instead state that the lawyer is registered with the Danish Bar Association,
- 4) that the lawyer is part of the Bar Association,
- 5) that the lawyer has taken out liability insurance and provided a guarantee in accordance with the rules laid down by the Bar Association, and that the liability insurance covers all legal activities, wherever the legal activity is carried out,
- 6) the name and address, if any, of the insurer and guarantor,
- 7) the name of the financial institution or institutions where the lawyer holds joint client accounts,
- 8) the limits of protection of deposits under the Law on the Guarantee Fund for Depositors and Investors,
- 9) the rules on coverage for multiple deposits of one person in the same financial institution,
- 10) whether the lawyer uses choice of law and/or choice of forum clauses, and general terms and conditions if these are used.

13.2

The lawyer must inform his client in a clear and unambiguous manner, on his own initiative, of existing possibilities for public or insurance-covered legal aid. Where the lawyer's fee is to be paid provisionally or definitively by the public authorities or by an insurance undertaking, the lawyer must, when accepting the task, inform his client of the principles governing the determination of the fee and of the possible consequences for the client.

13.3

The lawyer must disclose the information referred to in 13.1 in a clear and unambiguous manner, but the lawyer may decide how to do so, including whether the information is to be communicated to the client directly or made easily available to the client at the lawyer's business address, by electronic means or otherwise.

The information in 13.1 and 13.2 must be provided or made available at the time of the conclusion of a written agreement for the provision of assistance. In the absence of a written agreement, the information shall be provided or made available before the assistance is provided.

13.4

If the lawyer cooperates with others in the provision of assistance, the lawyer must disclose, at the request of the client, the measures taken by the lawyer to avoid any conflict of interest.

13.5

The lawyer shall, at the request of the client, disclose that the lawyer is subject to the supervisory and disciplinary system of the Bar Association and to the rules of professional conduct, cf. Article 126 of the Rules of Professional Conduct, and disclose the existence of the Code of Professional Conduct.

13.6

The lawyer shall, at the request of the client, inform the client of the rules specifically applicable to the practice of the profession of lawyer and how the client can access the rules, for example by referring to www.advokatsamfundet.dk.

13.7

In the event that there is a change in the circumstances referred to in 13.1, 7), the lawyer shall, of his own motion, give individual notice to the clients affected by the change.

13.8

If the lawyer collects funds on behalf of the client which are deposited in a separate client bank account, the lawyer must of his own accord provide the client with information on the name of the financial institution where the account has been set up, unless this has been agreed with the client or it is otherwise clear from the circumstances which financial institution is being used. In the event that the lawyer transfers the deposit to another financial institution, the lawyer shall inform the client of the name of that financial institution, unless the change is agreed with the client or is apparent from the circumstances.

13.9

Lawyers who, outside their professional activities, carry on other activities which clients may confuse with the activities of a lawyer, must inform their clients of their own accord that they do not carry on the activities of a lawyer and are therefore not subject to the rules governing the activities of a lawyer, and that they are not subject to supervision by the Bar Council.

14.Contract and price information in business relationships

14.1

Where the client is acting in the course of his profession, the lawyer must, when concluding the contract for assistance, inform the client in a clear and unambiguous manner of the essential elements of the assistance envisaged, unless this is already apparent from the context. Where the lawyer has fixed a fee in advance, the lawyer shall disclose the amount of the fee in a clear and unambiguous manner when concluding the self-help agreement. In the absence of a written agreement, the information referred to in points 1 and 2 must be given or made available before the assistance is provided.

14.2

If it is not possible to calculate the amount of the fee in advance, the lawyer must, at the client's request, either indicate the manner in which the fee will be calculated or provide a reasoned estimate. The lawyer must also indicate the costs involved in the assistance.

14.3

If the lawyer provides an estimate, the client must be informed as soon as possible if the total fee is expected to exceed the amount indicated in the estimate.

14.4

If additional assistance in the case is agreed, 14.1-14.3 shall apply mutatis mutandis to such agreement.

15.Contract and price information in consumer relations

15.1

Where the client is a consumer, the lawyer must, when concluding the contract for assistance, inform the client in a clear and unambiguous manner, in writing and directly, of the main elements of the assistance envisaged, of the determination of the fee referred to in 15.2, and of the costs associated with the assistance.

If the lawyer does not have a website in accordance with point 15.6, the lawyer must also provide the physical address and website address of the Bar Council, as well as the jurisdiction of the Bar Council to deal with conduct complaints and disputes concerning the lawyer's fees.

15.2

If the assistance is provided for a fixed fee, this must be disclosed. If it is not possible to calculate the amount of the fee in advance, the lawyer must either indicate the manner in which the fee will be calculated or provide a reasoned estimate. Amounts should be inclusive of VAT.

15.3

If the lawyer gives an estimate, the client must be informed in writing as early as possible if it

total fee is expected to exceed the amount indicated in the estimate. The lawyer must inform the client directly in a clear and unambiguous manner.

15.4

If additional assistance is agreed in the case, 15.1-15.3 shall apply *mutatis mutandis* to such agreement.

15.5

If the contract between the lawyer and the client is concluded away from the lawyer's place of business or as a distance contract, the lawyer must comply with the disclosure obligations set out in Article 8 of the Consumer Contract Act.

If the lawyer concludes assistance agreements via the Internet or online marketplaces, the lawyer must provide his/her e-mail address and link to the European Online Dispute Resolution (ODR) platform.

15.6

If the lawyer has a website or uses terms and conditions, the lawyer must indicate here the physical address and website address of the Bar Council, as well as the jurisdiction of the Bar Council to deal with conduct complaints and disputes concerning the lawyer's fees.

15.7

If a lawyer rejects a consumer client's complaint about the lawyer's fee, the lawyer must inform the client in writing, directly and on his own initiative, of the physical address and website address of the Bar Council, as well as of the Bar Council's competence to deal with disputes concerning the lawyer's fee.

15.8

In the cases referred to in point 16.11, the lawyer must, on request, inform the client in writing of the information provided to the authority.

16. Fees

16.1 Reasonable fee

A lawyer may not charge more for his work than what can be considered reasonable, cf. rpl. Section 126(2). The same shall apply to fees paid on account.

The fee, including an agreed fee, shall be fixed on a discretionary basis, taking into account, *inter alia*, the importance and value of the case to the client, the outcome of the case, the nature and extent of the work done by the lawyer and the liability involved in the case.

16.2 Performance-based fee agreement

A lawyer may not conclude fee agreements for the payment of a share of the profits that may be obtained from the conduct of a case (*pactum de quota litis*).

16.3 Information on fees

The client must be informed of any fee charged by the lawyer.

16.4 The settlement

Settlement shall be made without undue delay. The invoice shall contain the description of the work for which payment is required, as appropriate to the circumstances.

The lawyer may make a set-off when the lawyer has invoiced the client, unless there are special circumstances which would make the set-off unreasonable.

16.5 Commissions etc.

Commissions, discounts and the like received from third parties in connection with the handling of the client's case shall be unconditionally credited to the client.

16.6 Deposit

The lawyer may not demand a deposit in excess of what, in a prudent estimate, may be considered a reasonable fee.

The rules on interest on fiduciary funds shall apply to deposits.

16.7 Fee-sharing with non-lawyers

A lawyer may not agree to share his fee with someone who is not a lawyer.

However, a lawyer may pay a fee, commission or other consideration to the transferor of a law practice.

16.8 Legal costs

The lawyer must work for a solution to the client's case at the lowest possible cost, taking into account the client's wishes and instructions.

16.9 Process considerations

The lawyer should at appropriate times suggest that the client consider settlement or refer the case to mediation or similar.

16.10 Referral fees

A lawyer may not charge or receive a fee, commission or other consideration from colleagues or others for referring or recommending a client. Similarly, a lawyer shall not pay a fee, commission or other consideration for referring a client.

16.11

Where the lawyer's fee is fixed by the court or other public authority, the information provided by the lawyer to the authority for the purpose of fixing the fee must be sufficient and appropriate to enable the authority to fix the fee in accordance with the guidelines applicable to it.

17. Limits to the assistance of a lawyer

17.1

In conducting a case, a lawyer may not go beyond what is justified by the legitimate interests of the client.

The lawyer shall not take unnecessary legal steps or improperly promote the interests of the client.

17.2

A lawyer should not oppose the appointment of another lawyer and should, where appropriate, encourage the other party to seek a lawyer.

17.3

A lawyer may not, in a particular case, address himself directly to any person who is represented in the case by another lawyer without the latter's consent. This shall not apply, however, if the approach is made in the legitimate interests of a client or of the lawyer himself, or if the other lawyer, despite being reminded, fails to act in accordance with his duty to act in accordance with good legal practice. In all cases, the lawyer shall inform the other lawyer of any such request at the same time or without undue delay.

17.4

A lawyer shall not record or participate in the recording of telephone conversations or other communications on audiotape or otherwise without the prior consent of the other party or participants.

18. The lawyer's relationship with the court etc.

18.1

The lawyer must carry out his duties with due respect for the law and other authorities.

The lawyer shall not prevent the proceedings from being conducted and decided in accordance with the rules applicable to them.

18.2

The lawyer must respect the adversarial principle of the process and the negotiation. The lawyer shall not, without prior or simultaneous communication to the other party, make any enquiry concerning the case to the judge or other persons dealing with the dispute, or provide them with annexes, notes or documents.

The lawyer shall at the latest at the same time provide the opposing party with a copy of the document so transmitted.

18.3

A lawyer representing a party in court proceedings may contact a witness prior to the hearing to clarify what the witness can explain and to enable the witness to prepare for the hearing.

A lawyer's dialogue with a witness must always be conducted in a manner that is conducive to the witness contributing as accurately as possible to the information of the case. In any approach to a witness prior to the examination of the witness, a lawyer shall ensure that the witness is aware that the witness is under no obligation to make a statement to the lawyer.

When required, the lawyer should inform the opposing lawyer of the contact the lawyer intends to make or has made with a witness. Such information should be given in particular if the witness has a special relationship with the opposing party. There will normally be no need to inform the opposing party if the lawyer has conducted the witness in a prior instance, if the witness is employed by the party whom the lawyer represents, or if the party has some other special relationship with the witness. The fact that a witness is led by the opposing party does not in itself affect the lawyer's ability to contact a witness.

19. Lawyer's respect for settlement negotiations

If a party has offered settlement prior to or during pending litigation, arbitration or other dispute resolution, the opposing party's lawyer shall not present or otherwise disclose the proposal to the deciding authority without the express consent of the opposing party.

The lawyer is allowed to present and inform about settlement proposals from his own client.

20. Specific on tax advice by lawyers

20.1

Advice from lawyers should be based as far as possible on the necessary information about the facts. Where advice is given on a general basis without factual information and without precise knowledge of the intended use of the advice, the lawyer shall pay particular attention. Particular attention must also be paid if the advice involves the use of so-called tax havens.

20.2

Any advice should presuppose that all relevant information will be available to the relevant authorities. Advice should not be based on the assumption that a situation will not be detected.

20.3

If there is reasonable doubt about the tax assessment and it is not resolved, the advice should include a note to that effect. Depending on the specific assignment and the circumstances of the specific client, there may be a need to further assess the risk of the authorities challenging the tax assessment.

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