

# **Code of Conduct for the Danish Bar and Law Society**

(Will be applied by the General Council of the Danish Bar and Law Society as of 1 October 2011)

## **1 The lawyer's position in society**

In a community founded on the rule of law, the lawyer occupies a special position.

A lawyer's professional remit is to promote justice and to counter injustice.

A lawyer shall assert and defend his clients' rights and freedoms and act as their counsel.

In his representation of clients, a lawyer shall observe confidentiality and maintain his independence and integrity, including in his conduct vis-à-vis the State.

A lawyer has legal and moral obligations towards his clients.

In performance of his duties towards clients, a lawyer shall show the necessary respect for persons and authorities with which he makes contact on behalf of those clients.

## **2 Administration of Justice Act's rules regarding best practice for lawyers**

### **2.1**

Pursuant to section 126 (1) of the Administration of Justice Act, a lawyer shall conduct himself in a manner consistent with best practice for lawyers. Pursuant to section 126 (4) of the Administration of Justice Act a lawyer shall likewise, outside of his professional legal undertakings, in matters of a business or financial nature, not display conduct unworthy of a lawyer.

### **2.2**

The General Council of the Danish Bar and Law Society supervises compliance with the rules regarding best practice for lawyers. The Board of the Danish Bar and Law Society, which hears complaints concerning lawyers, determines the particulars of the contents of the Administration of Justice Act's standard of best practice for lawyers and imposes disciplinary sanctions pursuant to Chapter 15b of the Administration of Justice Act.

## **3 Status and purpose of the Code of Conduct**

### ***3.1 Status of the Code of Conduct***

This Code of Conduct applies to all lawyers, irrespective of whether they practise in a law firm or are employed by companies or organisations not authorised to practise law, cf. section 124 of the Administration of Justice Act. The Code of Conduct lays down the requirements, which, out of regard for the special position of lawyers in society and on the basis of the Board of the Danish Bar and Law Society's practices and the practices of the courts of law and according to the General Council of the Danish Bar and Law Society's understanding, determine the professional standards and ethics to be observed by lawyers in practising law under the professional title of lawyer.

### ***3.2. Purpose of the Code***

This Code of Conduct shall serve as a guide for lawyers, their clients and the general public with regard to the duties of a professional ethical nature that are incumbent on lawyers in practising law under the title of lawyer. The purpose of the Code of Conduct is further to contribute to the Board of the Danish Bar and Law Society's prescriptions for the Administration of Justice Act's standard of best practice for lawyers.

## **4 Applicability of the Code of Conduct**

### ***4.1***

This Code of Conduct is applicable to lawyers practising in Denmark under the title of lawyer (Danish: *Advokat*) and Danish lawyers practising abroad.

### ***4.2***

The Code of Conduct for Lawyers in the European Union adopted by the CCBE shall likewise apply to the cross-border activities of lawyers within the EU.

## **5 Confidentiality**

### ***5.1.***

Confidentiality is a precondition for the lawyer's function and is a fundamental obligation and right which shall be respected in the interests not only of the individual but also of the community governed by law.

It is therefore of paramount importance that a lawyer can receive information about matters which his clients would not confide in others, and that such information can be disclosed to a lawyer in the strictest confidence.

A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

## **5.2**

The obligation of confidentiality is not limited in time.

## **5.3**

A lawyer shall ensure that his chartered junior lawyers, partners, cf. section 124 c (1)(ii) of the Administration of Justice Act, staff and other persons employed by the law firm are instructed that they are subject to the same obligation of confidentiality as the lawyer, regardless of whether or not they are lawyers.

## **5.4.**

If lawyers practise in a partnership, in a law firm, cf. section 124 of the Administration of Justice Act, or in joint offices, the rules in 5.1-5.3 shall apply to the partnership, law firm or the joint offices and in the mutual relations between its participants, including employed lawyers.

The rules in 5.1-5.3 apply equally to other joint undertakings, alliances and partnerships between lawyers or law firms if they, from a third-party perspective, give the appearance of being a partnership or law firm.

## **6 Name etc**

### **6.1**

The company name of a law firm must be suitable for unique and specific identification of that firm. The company name and extensions thereto shall indicate that the undertaking is a law firm.

### **6.2**

The name of the law firm and other business trademarks, including logos, of a law firm must not be designed to give the impression that the firm is operated by parties other than those, who, pursuant to section 124, cf. section 124 c of the Administration of Justice Act are permitted to be co-owners of a law firm.

## **7 Junior lawyers – the employer’s responsibilities**

It is incumbent upon lawyers who employ chartered junior lawyers to ensure that they receive the proper practical training to enable them to qualify as “advokat”, including insight into and appreciation of the significance of the Code of Conduct for the Danish Bar and Law Society.

The employer is responsible for ensuring that chartered junior lawyers act in accordance with this Code. The employer must therefore not instruct his junior lawyers – or others – to conduct themselves in a manner which if displayed by the lawyer himself would be in breach of this Code.

## **8 Acceptance of cases**

### **8.1**

A lawyer may solely undertake a case for a client on the direct instructions of that client, from another lawyer on behalf of that client or on the instructions of a public authority or other competent body.

### **8.2**

A lawyer must not undertake a case which he is not fully competent to handle, unless, by agreement with the client, he can arrange to cooperate with a suitably qualified colleague.

### **8.3**

A lawyer must not accept a case unless he can handle that case promptly.

## **9 Handling of cases**

### **9.1**

A lawyer shall as the client's independent adviser protect the client's interests diligently, conscientiously and in accordance with the requirements of due protection of the client's best interests.

### **9.2**

The lawyer shall to a reasonable extent keep his client informed as to the progress of the case entrusted to him.

## **10 Retention of case documents**

On the conclusion of a case, the documents pertaining to that case, including electronic data, shall be retained for a suitable period, which may be determined generally by case type with due regard for specific circumstances.

## **11 Withdrawal from cases**

A lawyer must not cease to handle a case in such a way or under such circumstances that the client is prevented from retaining alternative legal services in a timely manner and without prejudice to his case.

## **12 Conflicts of interest**

### **12.1**

In accepting any new case, a lawyer shall to a reasonable extent take measures to protect himself against any doubt arising concerning his observance of the rules regarding conflicts of interest.

### **12.2**

A lawyer may not counsel or act for a client in situations where a conflict of interest has arisen or where there is an immediate risk that such a conflict may arise.

Such situations are present if:

- 1)  
a lawyer assists clients in the same case if they have conflicting interests of a not-insignificant nature;
- 2)  
a lawyer assists one party after having assisted the opposing party in the case;
- 3)  
a lawyer concurrently assists clients in several cases if there is a risk that confidential information which the lawyer has received in one of the cases might have implications in another of the cases;
- 4)  
a lawyer has a close family relationship or not-insignificant financial, commercial or other connection with a party whose interests in the case conflict with those of the client;
- 5)  
a lawyer has such commercial or other connections to or agreements with the client that there is a risk of the lawyer being unable to counsel the client independently of ulterior interests;
- 6)  
a lawyer signs an agreement with clients or others that his fee is to be paid in the form of shares or other holdings in a company, where the outcome of the case will influence the value of those shares or holdings. This applies likewise to other instances of this form of remuneration if this might influence the lawyer's independent and personal integrity in rendering his legal services.
- 7)  
a lawyer who on behalf of the parties has assisted in establishing or rectifying a legal matter subsequently assists one of the parties concerning the same legal matter if that assistance has or might have implications for the opposing party.

Such situations may also arise if:

8)

a lawyer counsels or acts for a client in a case if he, without representing the opposing party, is however on a permanent retainer with that party.

In any assessment of whether a client relationship is permanent, consideration shall be given to whether the client has sought the lawyer's services on a regular basis in relation to that 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 rectifying a legal matter on which the parties are agreed, or

11)

a lawyer assists a client in one case after having previously assisted a client in another case, and there is a risk that confidential information received by the lawyer in one of the cases may have implications for another of the cases.

### **12.3**

A lawyer may not act as an arbitrator, conciliator or mediator for several parties if he has previously acted for or counselled any of those parties as their representative in matters connected with the dispute at issue. A lawyer may not, after having acted as an arbitrator, conciliator or mediator, act for or counsel any of the parties as their representative in matters pertaining to the dispute at issue.

### **12.4**

If lawyers practise in a partnership, in a law firm, cf. section 124 Administration of Justice Act, or in joint offices, the rules in 12.2 and 12.3 shall apply to the partnership, law firm or joint offices and in the mutual relations between its participants, including employed lawyers.

The rules in 12.2 and 12.3 apply equally to other joint undertakings, alliances and partnerships between lawyers or law firms if they, from a third-party perspective, give the appearance of being a partnership or law firm.

### **12.5**

The consent of the parties retaining the lawyer's services shall not in the instances cited in 12.2 paragraphs 1)-7), 12.3 and 12.4 influence assessment as to whether a conflict of interest is present. In the instances cited in 12.2, paragraphs 8)-11) the significance of such consent will be subject to specific assessment.

### **12.6**

If a conflict of interest as defined in this Code of Conduct has arisen or is at immediate risk of arising, the lawyer shall withdraw from the case(s) in question in respect of all the clients involved.

If, in the instances cited in 12.2, paragraphs 1), 3), 9) and 10), the lawyer has received significant information from some of the clients only, his withdrawal may be limited to the remaining clients. The lawyer's withdrawal shall be immediate. The lawyer shall however do what is necessary to ensure that the client does not thereby forfeit any rights.

### **12.7**

If the lawyer's withdrawal from a case in accordance with 12.6 is due to a conflict of interest that has arisen exclusively or in the main as a result of the lawyer's own circumstances, he shall waive his fee for that part of the case that must also be undertaken by a replacement lawyer. If such a fee has already been paid by the client, the lawyer shall refund it.

### **12.8**

All law firms comprised by 12.4 shall draw up written guidelines for dealing with conflicts of interest. This does not apply to lawyers operating as sole traders with no employees, or to law firms where only a single lawyer practises in the firm. The guidelines shall be designed to avoid conflicts of interest, to intercept and identify conflicts as they arise at the earliest possible stage and shall contain a description of the procedure to be followed on identification of a conflict.

These guidelines shall be submitted to the General Council of the Danish Bar and Law Society on request.

## **13 General duty to provide information**

### **13.1**

A lawyer shall on his own initiative inform his clients of the following:

- 1) the lawyer's name, address (including legal address) and other contact details, including telephone number and any email address, and
- 2) the name of the firm from which the lawyer practises, the company form and its CVR number,
- 3) that the lawyer holds a law licence granted by the Danish Ministry of Justice. EU lawyers shall however inform their clients that the lawyer is registered with the Danish Bar and Law Society,
- 4) that the lawyer is a member of the Danish Bar and Law Society
- 5) that the lawyer has taken out professional indemnity insurance and furnished a guarantee in accordance with the rules laid down by the Danish Bar and Law Society and that the professional indemnity insurance covers all legal services regardless of where they are rendered,
- 6) the name and address of the insurer and guarantor
- 7) the name(s) of the bank(s) where the lawyer has joint client accounts.
- 8) the cover limits of deposits under the Danish Guarantee Fund for Depositors and Investors Act.
- 9) the rules on cover of more deposits belonging to one person in the same bank.

**13.2**

A lawyer shall on his own initiative in a clear and unequivocal manner inform his client of the availability of legal aid or legal aid under insurance cover. If a lawyer's fee is to be examined provisionally or ultimately by a public body or by an insurance company, on accepting the assignment, the lawyer shall advise his client of the principles by which the fee is calculated and as to the possible consequences for the client.

**13.3**

A lawyer shall on his own initiative inform his client of the extent to which contractual clauses concerning applicable law and/or legal venue are applied, and shall provide his client with information concerning ordinary terms and conditions of business if such apply.

**13.4**

A lawyer shall provide information concerning the matters mentioned in 13.1 and 13.3 in a clear and unequivocal manner, but may decide at his own discretion how this is effected, including whether the information is to be provided directly to the client or made available to the client at the lawyer's business address by electronic means or the like.

The information in 13.1-13.3 shall be provided or made available in connection with the signing of a written agreement concerning provision of legal services. In the absence of a written agreement, the information shall be provided or made available before the services are rendered.

**13.5**

If a lawyer works in partnership with others to provide legal services, the lawyer shall at the client's request provide information concerning any measures instituted by the lawyer to prevent potential conflicts of interest.

**13.6**

A lawyer shall at the client's request provide information to demonstrate that he is comprised by the Danish Bar and Law Society's supervisory and disciplinary system, and by the rules regarding best practice for lawyers, cf. section 126 of the Administration of Justice Act, and shall provide information as to the existence of the Code of Conduct for the Danish Bar and Law Society.

**13.7**

A lawyer shall at his client's request provide information concerning the rules that apply specifically to practising as a lawyer and how the client may gain access to those rules, e.g. by referring the client to [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk).



**13.8**

In case of changes in the matters stated in 13.1.7, the lawyer shall on his own initiative directly inform the clients that are affected by the change.

**13.9**

If the lawyer receives funds for the client's account which have been deposited in a separate client account, the lawyer shall on his own initiative inform the client of the name of the bank where the account has been opened unless the bank in question has already been agreed with the client or is evident from circumstances.

If the lawyer moves the deposit to another bank, the lawyer shall inform the client of the name of the bank unless the change has been agreed with the client or is evident from circumstances.

**14 Information concerning the legal brief and pricing information in commercial relationships****14.1**

If a client is acting within his profession or trade, the lawyer shall on his own initiative prior to concluding any contract to provide legal services, inform the client in a clear and unequivocal manner of the principal elements in the anticipated legal services, unless these are already apparent from the circumstances. If the lawyer has set a specific fee in advance, the lawyer shall prior to entry into any contract to provide legal services, inform the client in a clear and unequivocal manner of the size of the fee. In the absence of a written agreement, the information in paragraphs 1 and 2 shall be provided or made available before the legal services are rendered.

**14.2**

If it is not feasible to calculate the size of the fee in advance, the lawyer shall at the client's request either indicate the manner by which the fee will be calculated or provide an itemised estimate. The lawyer shall furthermore inform his client of anticipated costs, including statutory taxes and charges.

**14.3**

If the lawyer has provided an estimate, the client shall be notified at the earliest if the total fee is expected to exceed the amount indicated by the estimate.

**14.4**

If an agreement is concluded concerning further assistance in the case, 14.1-14.3 shall likewise apply to that agreement.

## **15 Information concerning the legal brief and pricing information in consumer relationships**

### ***15.1***

If the client is a consumer, the lawyer shall on his own initiative prior to concluding any contract to provide legal services, inform the client in a clear and unequivocal manner in writing and directly of the principal elements in the anticipated legal services and if the lawyer has set a specific fee in advance as to the size of the fee the lawyer intends to charge.

### ***15.2***

If it is not feasible to calculate the size of the fee in advance, the lawyer shall on his own initiative and prior to concluding any contract to provide legal services, clearly and unequivocally and in writing and directly either indicate the manner by which the fee will be calculated or provide an itemised estimate. The lawyer shall furthermore inform his client of anticipated costs, including statutory taxes and charges.

### ***15.3***

If the lawyer has provided an estimate, the client shall be notified at the earliest if the total fee is expected to exceed the amount indicated by the estimate. The lawyer shall on his own initiative notify the client of this directly in a clear and unequivocal manner.

### ***15.4***

If an agreement is concluded concerning further assistance in the case, 15.1-15.3 shall likewise apply to that agreement.

## **16 Fees**

### ***16.1 Reasonable fees***

A fee charged by a lawyer for his work shall not be higher than what may be regarded as fair and reasonable, cf. section 126 (2) of the Administration of Justice Act. The same applies to fees payable on account.

The fee, including an agreed fee, shall be set at the lawyer's discretion taking account of factors such as the significance and value of the case for the client, the outcome of the case, the nature and extent of the work the lawyer has performed, and the responsibility entailed by the case.

***16.2 Pactum de quota litis***

A lawyer shall not make a *pactum de quota litis*, that is, agree to receive a share of any result achieved by the client upon conclusion of the case.

***16.3 Information concerning fees***

The client shall be informed of any fee the lawyer intends to charge.

***16.4 Invoicing of fees***

Invoices shall be issued for fees without undue delay and should, as dictated by the particular circumstances, itemise the services rendered for which payment is demanded.

The lawyer must offset his final fee against any advance invoice issued to the client, except in the event of special circumstances rendering any offset unreasonable.

***16.5 Commission etc.***

Any commission, discounts and the like received from a third party in connection with handling of the client's case shall unconditionally be credited to the client.

***16.6 Deposits***

A lawyer may not demand payment of a deposit exceeding what by a cautious estimate would be assumed a reasonable fee.

The rules regarding the interest accruing to funds held on trust shall apply to deposits.

***16.7 Fee-sharing with non-lawyers***

A lawyer may not enter into any agreement to share his fees with a person who is not a lawyer.

A lawyer may however pay fees, commission or other remuneration to the transferor of a law firm.

***16.8 Costs of litigation***

A lawyer shall make every effort to find a solution to the client's case at the lowest possible cost, taking into account the client's wishes and instructions.

***16.9 Counsel regarding litigation***

A lawyer should at appropriate junctures counsel the client to consider a settlement or should refer the case for mediation or the like.

***16.10 Referral fees***

A lawyer may not demand or accept from any colleague a fee, commission or any other compensation for referring or recommending the lawyer to a client.

Similarly, a lawyer may not pay anyone a fee, commission or any other compensation for referring a client to himself.

**17 Limitations on a lawyer's services*****17.1***

In pursuing a case, a lawyer may not go beyond what is dictated by justified regard for defending the client's interests.

A lawyer may not effect unnecessary legal measures or attempt to advance the client's interests in an improper manner.

***17.2***

A lawyer must not obstruct the summoning of another lawyer and should, depending on the circumstances, urge the opposing party to seek his own counsel.

A lawyer must not displace another lawyer from a case.

***17.3***

A lawyer must not communicate about a particular case directly with anyone who is represented by another lawyer without that lawyer's consent. This does not apply however if the communication is in the interests of protecting a client's or the lawyer's own interests or if the other lawyer fails, in spite of reminders, to fulfil his duty according to best practice for lawyers. The lawyer shall in any event concurrently or without undue delay inform the other lawyer of any such communication.

***17.4***

A lawyer must not record or be instrumental in the recording of telephone calls or other communications on audio tape or the like without the opposing party or the other participants having given their prior consent to such recording.

**18 A lawyer's conduct in court etc.*****18.1***

A lawyer shall practise his profession with due respect for the court and other authorities. He may not unduly prevent the case from being heard and adjudicated under the relevant rules.

**18.2**

A lawyer shall respect the contradictory nature of judicial proceedings. He must not make contact with the judge or other parties hearing disputes, or submit exhibits, notes or documents to such persons without advising the opposing party to that effect in advance or concurrently and in the latter event furnishing the opposing party with a copy of such papers concurrently at the latest.

**18.3**

A lawyer representing a party in a lawsuit may contact a witness before that witness gives evidence to ascertain what the witness is able to account for and to enable the witness to prepare to give evidence.

A lawyer's dialogue with a witness shall at all times be conducted in a manner suited to supporting the witness in contributing as accurately as possible to elucidation of the case. A lawyer shall in connection with any contact he makes with a witness and prior to obtaining a witness statement ensure that the witness is aware that he or she is under no obligation to make any disclosures to the lawyer.

If required, the lawyer may inform the opposing party's legal counsel of any contact the lawyer intends to make or has had with a witness. Such information shall be provided notably if the witness has a special relationship with the opposing party. There is not normally any need to inform the opposing party if the lawyer has called the witness before a prior instance if the witness is employed by the party which the lawyer is representing or if the party has any other special association with the witness. The fact that a witness is called by the opposing party does not in itself affect the lawyer's access to contact a witness.

**19 A lawyer's respect for settlement negotiations**

If a party prior to or during an ongoing court case, tribunal or other dispute resolution makes a settlement offer, the lawyer acting on behalf of the opposing party must not submit or divulge to the adjudicating body that settlement offer without the express consent of the opposing party.

The lawyer is however permitted to submit and disclose information concerning his own client's settlement offer.

**Adopted at the meeting of the General Council of the Danish Bar and Law Society on 7 April 2011**