

Code of Ethics

CODE OF ETHICS OF THE ESTONIAN BAR ASSOCIATION

Adopted by Resolution No. 5 of the General Assembly of the Estonian Bar Association on 8 April 1999

Amended by Resolution No. 4 of the General Assembly of the Estonian Bar Association on 5 May 2005

Amended by Resolution No. 4 of the General Assembly of the Estonian Bar Association on 13 March 2007

Amended by Resolution No. 4 of the General Assembly of the Estonian Bar Association on 21 February 2008

Amended by Resolution No. 3 of the General Assembly of the Estonian Bar Association on 1 March 2013

Chapter I

GENERAL PROVISIONS

§ 1. Scope of regulation of the Code of Ethics

The Code of Ethics comprises the rules of professional ethics and good professional practice of an attorney.

(5 May 2005)

§ 2. Adherence to the rules of professional ethics

(1) The attorney profession obligates the attorney to adhere to the rules of professional ethics.

(2) Adherence to the rules of professional ethics is ensured by the awareness of each attorney of the duties arising from the legal practice and the prevalent public opinion in the Bar.

(3) Where the attorney is unsure how to act, they should consult a senior colleague in order to prevent a breach of the rules of professional ethics.

(4) Ethics Tribunal proceedings may be instituted against and a disciplinary penalty may be imposed on an attorney for a breach of the rules of professional ethics set out in the Code of Ethics.

§ 3. Interpretation of the rules of professional ethics

The rules of professional ethics are interpreted on the basis of statutes, resolutions of the General Assembly and Board of the Bar, decisions of the Ethics Tribunal, recommendations of the Ethics and Methodology Committee, the practice and custom established in the Bar, a senior colleague's opinion and the attorney's own conscience.

(5 May 2005)

(2) (Revoked as of 5 May 2005)

Chapter II

GENERAL PRINCIPLES

§ 4. Independence of the attorney

(1) When providing a legal service, the attorney follows the law, the legal instruments and resolutions of the bodies of the Bar, the rules of professional ethics, good manners and practice and their own conscience.

(2) When providing a legal service, the attorney must not yield to the pressure of the public opinion, state or local authorities or agencies or any other direct or indirect influence which compromises the attorney's independence in their legal practice.

(3) An attorney may be a member of a political party, a non-profit organisation and their management bodies but must not be guided by their own political, religious, philosophical or other views or their party membership in providing legal assistance.

(5 May 2005)

(4) It is prohibited for the attorney to engage in a profession that conflicts with the rules of professional ethics or the principle of attorney independence or that is otherwise incompatible with the attorney profession.

(5) Within the authority granted by the client, the attorney chooses lawful ways and means of protecting the client's interests.

(6) The attorney must not be equated with the client or the client's case due to performing the client's assignments.

§ 5. Attorney-client privilege

(1) The relationship between the attorney and the client is based on trust. Therefore, any information that the attorney has received in connection with the provision of a legal service is confidential.

(2) The attorney must maintain the confidentiality of any information that they have received in relation to providing legal assistance as well as the source of such information, unless the law explicitly provides for the duty to disclose such information or the client's consent to the disclosure of the information arises from the authorisation granted or the assignments given by the client.

(5 May 2005)

(3) The fact of seeking a legal service from the attorney as well as the content of legal assistance and the fees are covered by the attorney-client privilege. Disclosure of the amount of the attorney fee to the court for the purpose of awarding the court costs does not constitute a breach of the attorney-client privilege.

(4) The attorney must ensure that no third party has access to the client's documents, correspondence or other data media or to any documents drawn up by the attorney in the course of provision of the client with a legal service, which are in the attorney's possession in connection with handling the client's assignments.

(5) The attorney may not give an account of or testify as a witness regarding facts that have become known to the attorney in the course of providing the client with a legal service.

(6) The attorney must not give documents or other data media related to their legal practice to third parties, including to authorities whom the respective documents and data media are not

addressed, unless there is an explicit statutory duty to submit such data media or the client's consent to the submission of such data media arises from the authorisation granted or the assignment given by the client. Giving the aforementioned documents and data media and disclosing the data contained thereon to the Board of the Bar exercising supervision or to the Ethics Tribunal hearing a disciplinary case of an attorney does not constitute a breach of the attorney-client privilege.

(5 May 2005)

(7) The attorney-client privilege is not limited in terms of time. The attorney is required to continue to comply with the attorney-client privilege also after closing their legal practice. A breach of the attorney-client privilege cannot be justified by public interest or the fact that it would allow for protecting the interests of the client better.

(5 May 2005)

(8) Only the client or their legal successor can release the attorney from the attorney-client privilege by written consent.

(5 May 2005)

§ 6. Commercial communication

(1) A law firm may provide information aimed at the public regarding its activities, including communicate information about the business name, areas of activity, seat and office hours of the law firm as well as the names, prior professional activities, areas of activity and academic degrees of the attorneys practising in the law office and the price list of the provided legal services.

(13 March 2007)

(2) Commercial communication of the activities of an attorney and a law firm must be in compliance with the rules of professional ethics, including the independence of the attorney, the attorney-client privilege and principles of dignity and collegiality.

(5 May 2005)

§ 7. Unfair competition

(1) An attorney must not get clients in an unfair way by inducing a client of another attorney to change their attorney or for the same purpose belittle their colleagues, other law firms or the legal assistance provided by them.

(2) An attorney may take over the provision of a client with a legal service in a matter in which another attorney used to provide a legal service only after the attorney has notified the other attorney who formerly provided the client with the legal service of taking over the assignment. The attorney is discharged from the duty to notify the attorney who formerly provided the legal service where such notification could harm the client's interests.

(3) Where an attorney accepts the assignment of representing or defending a person for the representation or defence of whom another attorney has, to their knowledge, been appointed by means of state-funded legal aid, the attorney who accepted the assignment must immediately notify the attorney appointed to provide state-funded legal aid thereof.

(21 February 2008)

(4) In communication with a client or a person seeking legal assistance, the attorney must not make belittling assessments or comparisons with other law firms or attorneys.

(5) An attorney does not make any assertions that belittle a colleague or undermine a colleague's expertise.

6) (Revoked 13 March 2007)

§ 8. Protection of the client's interests

(1) In providing a legal service, the attorney must always act solely in the interests of their client, putting the client's interests above those of their own and those of third parties, including colleagues. The attorney is required to use in the interests of the client any and all of the means and ways that are not against the law or the rules of professional ethics, without compromising the attorney's honour and dignity.

(2) When performing a client's assignment, the attorney uses ways and means that are in accordance with the law, which allow for defending the client's interests better. Thereby the attorney follows the law, their knowledge, experience and conscience. If this is not against the law, the rules of professional ethics or the client's interests, the attorney takes into account the client's preferences in choosing the ways and means of defending or representing the client. If the client has limited the attorney's right to use certain ways or means of defence or representation in a legal service agreement, the limitation is mandatory for the attorney.

(5 May 2005)

(3) In providing legal assistance, the attorney may perform only those assignments of the client which are not unlawful or compromise the honour and dignity of the attorney. If the client's preferences are against the client's actual interests, the law or the honour and dignity of the attorney, the attorney will explain their views and the possible consequences of the client's unlawful or unreasonable demands to the client. If the client does not waive their demands, the attorney has the right to terminate the legal service agreement.

§ 9. Honour and dignity

(1) The attorney must act with honesty and dignity and in accordance with good manners, good practice and the rules of professional ethics in communication with clients, the court, colleagues and the public. The attorney must refrain from behaviour that harms the attorney profession and the reputation of the Bar.

(2) Subsection 1 also applies to the attorney's behaviour outside of their legal practice.

Chapter III

RELATIONS IN THE LAW FIRM

§ 10. Supervision over adherence to the rules of professional ethics

(1) Supervision over adherence to the rules of professional ethics in a law firm is exercised by the owner of the law firm.

(5 May 2005)

(2) The duty of an attorney-at-law who is a patron is to make certain that the assistant attorneys-at-law supervised by them follow the rules of professional ethics.

(1 March 2013)

§ 11. Attorney-client privilege in the law firm

(1) The law firm owner ensures the upholding of the attorney-client privilege in the law firm.

(5 May 2005)

(2) The law firm owner organises the keeping of confidential documents and other data media related to the legal practice of attorneys in such a manner that third parties do not gain access thereto. Data media received or obtained upon provision of a legal service must not be given to third parties.

(5 May 2005)

(3) The law firm owner ensures that the blank letter forms or other blank documents or printed matter or the insignia of the law firm are not used by a third party.

(5 May 2005)

Chapter IV

RELATIONS WITH THE CLIENT

§ 12. Acceptance of an assignment

(1) The attorney has the right to decide whether to accept an assignment from a person seeking a legal service.

2) (Revoked 5 May 2005)

(3) The attorney must not accept an assignment where it is obvious that legal assistance is sought for defending an unlawful interest or where the client's claim is not based on the law or where there is no procedural way to defend the client's interests.

(4) The attorney does not accept an assignment where their workload does not allow for it or where the attorney's professional skills and knowledge in the field do not allow for defending the client's interest in the best possible manner.

(5) Where a person seeking legal assistance so requests, the attorney discloses the reason for refusal to accept the assignment.

(6) The attorney is deemed to have accepted an assignment once a legal service agreement has been concluded regarding it in accordance with the law.

§ 13. Conflict of interests

(1) The attorney must not represent or defend two or more clients or provide them with another legal service in the same case where the persons' interests conflict. The attorney must not provide a client with a legal service where there is a circumstance that harms or could harm the ability of the attorney to adhere to the requirements of subsection 1 of § 8 of this Code and act solely in the interests of the client (a conflict of interests), unless the attorney has notified of the client of such circumstance and the client still wants the attorney to provide them with the legal service.

(5 May 2005)

(2) Where a conflict of interests becomes evident, the attorney refuses to accept an assignment of from a person seeking a legal service.

The attorney is required to terminate the performance of an assignment where a fact that, under the preceding subsection, would have precluded acceptance of the assignment becomes evident after the acceptance of the assignment.

(5 May 2005)

(3) The attorney may provide multiple persons with a legal service in the same matter, unless there is a conflict of interests. There is no conflict of interests, among other things, if all of the persons agree and request that the attorney provide a legal service to other clients in the same matter. If later a dispute arises in the same matter, the attorney is not allowed to provide any of the clients with a legal service.

(5 May 2005)

§ 14. Provision of a legal service

(1) When accepting or refusing an assignment as well as upon performance or termination of the performance of an assignment, the attorney is required to treat all persons equally, regardless of their citizenship, nationality, race, skin colour, gender, language, origin, religion, political views or other views as well as of their financial or social status or other similar circumstances.

(2) A legal service provided by the attorney must be professional and be based on a thorough examination of the specific circumstances, evidence, legislation and case-law. A prerequisite for a professional legal service is that the attorney regularly refreshes their professional knowledge and skills. The attorney must not use unlawful ways or means to defend the client's interests.

(2¹) The attorney must explain to the client what the options and prerequisites for the attainment of the solution sought by the client are. The client decides whether to institute proceedings.

(5 May 2005)

(3) The attorney performs the client's assignment within a reasonable time or by the deadline agreed on in a legal service agreement and refrains from giving rise to unreasonable costs on the part of the client.

(4) The attorney must regularly inform the client of circumstances related to the performance of an assignment and reply to the client's enquiries adequately and in a timely manner, where possible, in the language used when contacting the attorney.

(5) The attorney is not required to verify the correctness of the information entrusted with the attorney by the client. The attorney is not liable for the truthfulness of the information given to the attorney by the client.

(6) The law firm owner ensures that the money that the client has entrusted with the attorney for the performance of an assignment or the money, securities and other assets received in the name of the client in performing an assignment are kept separately from the assets of the law firm or attorneys and that separate accounts are kept thereof.

(5 May 2005)

§ 15. Performance of a legal service agreement

The attorney is required to perform an assignment received from the client carefully and accurately in accordance with the legal service agreement concluded with the client. Where the client has given the attorney assignments that go beyond the boundaries of the legal service agreement or where assignments that go beyond the boundaries of the legal service agreement are necessary for defending the client's interests, the attorney may perform these by agreement with the client or waive the performance of these assignments.

§ 16. Materials of the client's matter

(1) The materials of the client's matter consist of the documents given to the attorney by the client in the course of performing the assignment, the correspondence and the legal documents drawn up by the attorney at the request of the client. The attorney is required to keep the materials of each client's matter separately and ensure their retention and confidentiality.

(5 May 2005)

(2) Information saved on a data medium by the attorney for their own purposes is not part of the materials of the client's matter, but it is subject to the attorney-client privilege.

(3) Original documents handed over to the attorney are returned to the client at the client's request after the performance of the assignment as well as where the legal service agreement is terminated or the performance of the assignment is waived, unless these documents have been included in a court case file.

(4) The attorney has the right to withhold documents drawn up at the client's request or given to the attorney by the client, provided that the client has failed to pay for a legal service.

(5 May 2005)

§ 17. Fee for the provision of a legal service

(1) The amount and form of the fee for the provision of a legal service (the attorney fee) are determined by agreement with the client and set out in a legal service agreement.

(2) Where the client has not paid the fee on the agreed terms, the attorney has the right to refuse to provide the client with the legal service and to terminate the legal service agreement.

(3) The attorney may provide fee-of-charge (pro bono) legal assistance.

(4) If a person may be entitled to state-funded legal aid, the attorney must inform them of the option.

(5 May 2005; 21 February 2008)

(5) Where the state has paid for legal assistance, the attorney does not have the right to charge the client any other sums of money in the form of the attorney fee or reimbursement of costs.

§ 18. Withdrawal from provision of a legal service

(1) The attorney is required to withdraw from the performance of an assignment provided for in a legal service agreement and terminate the agreement where the client:

1. presents falsified evidence and the attorney is aware of the falsification of the evidence;
2. demands that, in spite of the attorney's explanations, the attorney use unlawful means or ways of defending the client's interests;
3. the client demands that the attorney act in a way that is not in accordance with the honour dignity of an attorney or with the rules of professional ethics.

(2) On their own initiative, the attorney may withdraw from the performance of an assignment assumed under a legal service agreement or terminate the legal service agreement where:

1. a conflict of interests specified in § 13 becomes evident in performing the assignment;
2. the client does not perform the legal service agreement or breaches a crucial term of the legal service agreement;
3. the client acts against the instructions of the attorney or otherwise clearly demonstrates that the client has lost trust in the attorney;

4. the client gives the attorney instructions that harm the client's interests or that are clearly useless for performance of the assignment and, regardless of the attorney's explanations, continues to demand that the instructions be followed.

(3) (Revoked 21 February .2008)

(4) Withdrawal from the provision of a legal service does not deprive the attorney of the right to a fee for the legal assistance already provided.

§ 19. Relations with the client in criminal proceedings

(1) The attorney cannot withdraw from an assignment of defending a suspect, an accused or a person tried in court.

(2) The duty specified in subsection 1 applies within the boundaries of the procedural operation (stage in the proceedings) agreed on in a legal service agreement or for which the assignment has been given to the attorney in accordance with the established procedure. The assignment of defence in a court of the first or second instance also includes the attorney's duty to appeal against a court decision where the defendant requests it and there is a legal ground for it.

(3) Where the defendant denies the commitment of an act incriminated to them, the attorney is bound by the defendant's position. The attorney is not bound by the defendant's position in giving a legal qualification to the act incriminated to the defendant but must disclose the defence position to the defendant.

(4) When defending a person tried in court whose interests are in conflict with the interests of another person tried in court in the same criminal case, the attorney refrains from unreasonably accusing the other person tried in court, thereby without harming the interests of the person whom the attorney defends.

Chapter V

RELATIONS WITH THE COURT

§ 20. Communication with the court

(1) The attorney is required to act with dignity, appropriately and respectfully towards the court orally, in writing as well as in terms of their demeanour. The attorney must refrain from inappropriate criticism of the court's actions and decisions. The attorney does not criticise the actions of the court or final judgments in the media or in public. Expressing an opinion on legal theory positions and legal reasons contained in a final court decision is not considered criticism.

(2) The attorney is required to in a timely manner inform the court of solving a case by agreement as well as of circumstances that may bring about the postponement of a court hearing.

(3) The attorney must not influence a judge in any way outside of the court proceedings.

§ 21. Defending the client's interests in court proceedings

(1) The attorney does not have the right to submit evidence or assertions that harm their client's interests.

(2) The attorney is prohibited to intentionally mislead the court, submit false or misleading information to the court, submit to the court evidence that, to the knowledge of the attorney, is falsified or otherwise intentionally impede the correct and swift hearing of the case.

(3) The attorney should not make assertions that refer to any racial, religious, national or gender bias.

§ 22. Communication with the parties and witnesses

(1) The attorney is required to act with dignity, politely and respectfully towards the opposing party and other participants in the proceedings orally, in writing as well as in terms of their demeanour. The attorney refrains from belittling the participants in the proceedings.

(2) The attorney must not knowingly submit false or misleading information to participants in the proceedings.

(3) The attorney must not influence witnesses outside the court or exert pressure on other participants in the proceedings or knowingly mislead them or maliciously exercise the attorney's procedural rights.

§ 23. Communication with other authorities and persons

The requirements that apply to the attorney's communication with the court also apply to the attorney's communication with an arbitral tribunal as well as other authorities and persons.

Chapter VI

RELATIONS WITH COLLEAGUES

§ 24. Communication with colleagues

(1) The attorney's relations with their colleagues are based on mutual respect and trust. The attorney treats their colleagues benevolently, fairly, politely and appropriately, is considerate and open to cooperation. Adherence to these requirements must not harm the client's interests.

(5 May 2005)

(2) Disagreements between attorneys, which arise from professional and personal matters, should be resolved by agreement. Failing agreement, an attorney may bring the dispute between colleagues to the attention of the Board or the Ethics Tribunal of the Bar.

(3) The attorney uses legal remedies against their colleague only where all of the other options of settling the dispute have been exhausted.

(4) The attorney does not solve collegial disputes in the media or in public.

(5) Where the attorney provides legal assistance in a matter where, to their knowledge, the opposing party is also advised by an attorney, the attorney communicates with the opposing party usually with the knowledge of or via their attorney. If the attorney contacts the opposing party directly in attending to the client's matter, the attorney informs the opposing party's attorney thereof.

(5 May 2005)

Chapter VII

RELATIONS WITH THE PUBLIC

§ 25. Communication with the public and the media

(1) In communicating with the public, the attorney takes into account the rules of professional ethics.

(5 May 2005)

(2) In public and in the media the attorney acts solely on their own behalf, unless they are entitled to act in the name of the Bar owing to their position or where they have been authorised to do so.

Chapter VIII

IMPLEMENTING PROVISION

§ 26. Entry into force of the Code of Ethics

The Code of Ethics of the Estonian Bar Association enters into force on 1 June 1999.