



Ethics for Lawyers

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1. Introduction

“Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living.”

International Bar Association’s International Principles on Conduct for the Legal Profession

The above excerpt sums up the important role that lawyers play in society and the demanding responsibilities they have. This Booklet aims to highlight the importance of ethics for lawyers and to set out the key principles that apply to the legal profession. It is not intended to serve as a complete code of conduct. Instead, it is a brief practical guide for lawyers so that they may understand the importance of maintaining high professional standards and are aware of their main duties.

1.1. What are Ethics?

Ethics are principles and values, which together with rules of conduct and laws, regulate a profession, such as the legal profession. They act as an important guide to ensure right and proper conduct in the daily practise of the law. Areas covered by ethical standards include:

- Independence, honesty and integrity.
- The lawyer and client relationship, in particular, the duties owed by the lawyer to his or her client. This includes matters such as client care, conflict of interest, confidentiality, dealing with client money, and fees.
- The lawyer as an advocate, in particular, a lawyer’s duties to the court.
- Competence, which encompasses academic qualifications and training, and meeting other practising requirements such as holding a valid practising certificate or licence.
- A lawyer’s duties to persons other than a client.
- A lawyer’s duties to other lawyers.
- Advertising of legal services.
- Human rights and access to justice.

1.2 Who Develops Ethical Standards?

“Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognised international standards and norms.”

Principle 26 of the UN Basic Principles on the Role of Lawyers

Ethical standards should be developed by the legal profession in order to ensure independence of the profession. The standards are usually derived from domestic legislation but may also be consistent with international and regional standards.

2. Importance of Ethics for Lawyers

2.1 Upholding the Rule of Law and Access to Justice

“...an independent legal profession is integral to upholding the rule of law. Whereas adequate protection of human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.”

Preamble to the UN Basic Principles on the Role of Lawyers

If lawyers do not adhere to, and promote, principles of justice, fairness and equity, the law itself is brought into disrepute and public confidence in the law will be undermined, thereby hindering access to justice. Therefore, the legal profession has a huge responsibility within society as upholders of the rule of law, and protectors of individual rights against abuses of power.

2.2 Maintaining the Reputation of the Legal Profession

“Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.”

Principle 12 of the UN Basic Principles on the Role of Lawyers

A profession’s collective reputation is crucial to the confidence it inspires. The reputation of the legal profession is linked to how the public views the administration of justice. Where there is no public confidence in the legal profession, trust in the justice system itself is undermined.

2.3 Accountability

If ethical standards exist and clearly define the duties of lawyers, they can be brought to account where they fall short of these standards. In order to achieve accountability, it is also important to ensure that rules of ethics, once developed, are publicised amongst the legal profession and the public. To ensure that ethics are enforceable, the legal profession should also put in place effective disciplinary procedures.

3. Key Ethical Standards

3.1 Introduction

The following is not an exhaustive list of ethical standards. Rather, it is an outline of some of the key areas that lawyers must be aware of in their practise of the law and that should be addressed by any code of professional ethics or code of conduct.

3.2 Independence, Honesty and Integrity

It is difficult for a lawyer to protect the interests of their client if they are subject to interference from others, especially those in power. Therefore, independence is key to providing unbiased advice and representation to a client. Lawyers must also maintain the highest standard of honesty, integrity and fairness towards a client, the court, other lawyers, and members of the public. This includes promptly honouring any undertaking given in the course of a lawyer's practise.

3.3 Lawyer-Client Relationship

The lawyer and client relationship has several aspects to it. Below is an outline of some of the areas it encompasses.

a) Competence and Professionalism:

Competent representation requires the legal knowledge, skill, thoroughness and preparation that is reasonably necessary to represent a client. Lawyers should also act diligently and promptly. A lawyer should not accept work that he or she cannot carry out in a competent and timely manner.

b) Client Care:

The relationship between a lawyer and client is a contractual one. Lawyers have legal obligations towards their client but there are also important ethical principles governing the way lawyers should conduct themselves towards their clients. The following are some of the principles that lawyers must adhere to in the context of client care:

- Treat the client fairly, in a manner which protects their interests.
- Ensure the resources and ability to act for the client and to advise and represent the client in a competent and timely manner.
- Ensure there is a complaints procedure in place, inform the client at the outset of the right to make a complaint, and deal with any complaints promptly.

- Agree on how the client’s matter or case will be conducted, including for example, how often the client will be updated, who will be the main person dealing with the case, how long the matter may take, and what the likely costs will be.
- Ensure the client understands any advice given and is able to make informed decisions.

c) Confidentiality:

A well-established principle of ethics for the legal profession is that of legal professional privilege. Lawyers have a duty to keep affairs of their client confidential and the circumstances that they are able to disclose client information, is strictly limited.

What is confidential?

Communications between a lawyer and client are subject to legal professional privilege where they are for the purpose of seeking legal advice from a lawyer or giving legal advice to a client and are confidential. For example, notes of open court proceedings, or minutes of meetings, or correspondence with opposing lawyers are not subject to legal professional privilege.

Exceptions

There are exceptions to this rule. For example, the duty of confidentiality does not extend to documents which form part of a criminal or fraudulent act, or communications which take place in order to obtain advice with the intention of carrying out an offence. If a lawyer knows that the transaction they are working on is a principal offence, they risk committing an offence themselves.

Who does it apply to?

The duty of confidentiality applies to all staff employed by the lawyer. All employees must be made aware of their obligation to keep client matters confidential.

Once litigation has started, the duty of confidentiality is usually wider. It applies to any communications between a lawyer and a client, a lawyer and an agent, or a lawyer and a third party. The sole or main purpose of the communication must be for seeking or giving advice in relation to the litigation, or for obtaining evidence to be used in the litigation.

d) Avoiding a Conflict of Interest:

“Lawyers shall always loyally respect the interests of their clients.”

Principle 15 of the UN Basic Principles on the Role of Lawyers.

Acting in the best interests of the client requires that lawyers avoid a conflict of interest. The following are situations where a conflict of interest may arise:

- The lawyer owes separate duties to two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict. This could also encompass a client who the lawyer acted for in the past. The lawyer's duties towards that client (in particular, the duty of confidentiality) continue, even when the case has completed.
- The lawyer's duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with the lawyer's own interests with regard to that or a related matter.

In these situations, a lawyer should inform his or her client, or clients, of the conflict or potential conflict of interest. In most cases, it is better to refuse to act for the client where a conflict of interest has been identified. In some cases, a lawyer cannot act where there is a clear conflict of interest. For example, a lawyer cannot represent both parties in the same or related litigation.

In some situations, lawyers can act where there is conflict or potential conflict of interest but the lawyer must seek consent from the client or clients to act despite the conflict. The lawyer should take the following steps:

- Explain the issues and risks to the clients. The lawyer must have a reasonable belief that the clients understand those issues and risks.
- Ensure that the clients give informed consent in writing to the lawyer.
- The lawyer should be satisfied that it is reasonable to act for all the clients and that it is in their best interests.
- The lawyer should be satisfied that the benefits of acting for the clients outweigh any risks.

e) Client Money:

Bar associations with developed codes and rules relating to professional conduct often include very detailed provisions relating to a lawyer's or law firm's accounts. Most importantly, money received from a client or clients must be held separately from office money. A lawyer or a law firm may open a designated client account relating to a specific client, or, a general client account containing money belonging to several clients.

Money held in a client account must be immediately available. Any money recovered on behalf of a client, such as compensation monies, must be paid into a client account before any fees are deducted. Where any money from a client account is retained by a lawyer, the lawyer should inform the client in writing of the reason for retaining the money.

f) Fees:

The principle of fairness should govern the fees that a lawyer charges his or her client. The lawyer should inform the client of fee arrangements. Fees should be clearly explained and if and when they may change.

The client should be billed for fees and the invoice should include disbursements. Where a lawyer receives any financial benefit on behalf of a client, he or she should ensure that it is either paid to the client or offset against fees. If the latter, the lawyer should ensure that he or she has already sent an invoice to the client and that the client understands that the money is being used to pay fees.

3.4 Lawyers as Advocates

Lawyers are officers of the court and, therefore, owe duties to the court. These include:

- Not to mislead the court or be complicit in misleading the court. This encompasses the duty to:
 - Disclose any relevant law or information that has not been disclosed by the opposing party, even where it may adversely affect the lawyer's own client's case;
 - Inform the court immediately where he or she has inadvertently misled the court and refuse to continue acting for a client where he or she becomes aware that the client has committed perjury or misled the court; and
 - Ensure that facts are fairly and accurately presented, even where this may go against a lawyer's own interests.
- Present and conduct the client's case in a timely manner.
- Comply with court orders and advise the client to comply with court orders.
- Ensure that confidential matters or statements remain confidential.

3.5 Human Rights

“Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.”

Principle 4 of the UN Basic Principles on the Role of Lawyers

“Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognised by national and international law and shall at all times act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession.”

Principle 14 of the UN Basic Principles on the Role of Lawyers

“States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms.”

Principle G (c) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

The above standards demonstrate that lawyers have a duty to act in accordance with, and to promote, human rights. An element of protecting the interests of the client is working to uphold fundamental rights. Rules of ethics are also informed by human rights standards. For example:

- The right to be tried without undue delay or within a reasonable time is relevant to the lawyer’s duty to act diligently.
- The right to a defence, including the right to be defended by counsel of one’s own choice and to receive legal assistance without payment where an individual has insufficient means to pay for legal services, is linked to a lawyer’s duty to put the client’s interests and the exigencies of the administration of justice before payment for services. Where possible, lawyers should also undertake pro bono work.
- The right to privileged communications with one’s lawyer is relevant to the principle of client confidentiality.

- The principles of fairness and equality form part of ethical standards which must be respected by all lawyers at all time.

3.6 Advertising and Soliciting for Business

Codes of ethics usually prohibit lawyers from soliciting for business from a potential client. This means that a lawyer should not approach a prospective client for work. Lawyers may advertise for work but there are usually strict rules applying to advertising for lawyers. For example, advertising should not bring the profession into disrepute or reflect unfavourably on other lawyers and should not be misleading or false. Some jurisdictions also prohibit advertising in certain places, such as, hospitals, a doctor’s surgery or a funeral home.

Adverts should not amount to solicitation and should be limited to: the lawyer’s name, address and contact details; place of business; lawyers’ qualifications and expertise; areas of law in which the lawyer or law firm operates; details regarding fees; hours of business; membership of any organisations and perhaps reference to particular clients where consent from the clients has been obtained.

4. Mechanisms for Ensuring Ethics

4.1 Enforcing Ethics through Disciplinary Procedures

In order for ethical standards or a code of conduct to be effective, they must be enforceable. Disciplinary proceedings are key to ensuring that rules of ethics are enforceable. Principle 27 of the UN Basic Principles on the Role of Lawyers provides that any charges or complaints against lawyers in their professional capacity must be processed expeditiously and fairly. Principle 28 states that they shall be brought before an impartial disciplinary committee and be subject to independent judicial review. Principle 29 requires that disciplinary proceedings will be determined in accordance with the code of professional conduct and other recognised standards and ethics of the legal profession.

4.2 Raising Awareness amongst Lawyers

“Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognised by national and international law.”

Principle 9 of the UN Basic Principles on the Role of Lawyers

In order for ethics and codes of conduct to be relevant and enforceable, lawyers must be aware of them. Usually the study and understanding of ethics is a prerequisite to qualifying as a lawyer. Ethics can also form part of a continuing legal education programme. The legal

profession has a duty to raise awareness of ethical duties and to ensure that lawyers receive training and education on ethical standards.

4.3 Raising Awareness amongst the Public

Lawyers are essential providers of access to justice and for ethical standards to be effective, the public must know when lawyers have fallen short of their duties. Therefore, rules and principles of ethics must be clearly written and accessible for the public. Once developed, information on ethics or a copy of an eventual code of conduct could be made available at public places, such as, libraries, courts, hospitals, universities, mosques or other information points.

4.4 Adopting Regional or International Standards on Ethics

Where a bar association or law society does not yet have its own code of conduct or ethics, it can look to international or regional lawyers' associations who have well established codes of conduct. For example, the International Bar Association has a code of conduct which could be adopted by a bar association until their own code is developed. Bar associations can also look to regional associations such as the East African Law Society or the Southern African Development Community's Lawyers Association.

4.5 Useful Resources on Ethics

Below are useful resources on ethics which bar associations can refer to and that can be publicised amongst the legal profession in order to encourage compliance with ethical standards:

- Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>
- IBA International Principles on Conduct for the Legal Profession available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUId=bc99fd2c-d253-4bfe-a3b9-c13f196d9e60>
- Law Society of Kenya's Digest of Professional Conduct and Etiquette available at http://www.lsk.or.ke/index.php?option=com_content&view=article&id=64&Itemid=70
- Solicitors Regulation Authority Handbook available at <http://www.sra.org.uk/handbook/>

- American Bar Association’s Model Rules of Professional Conduct available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html
- New York Lawyer’s Code of Professional Responsibility available at <https://www.nycourts.gov/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>
- International Covenant on Civil and Political Rights available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- African Charter on Human and Peoples’ Rights available at <http://www.achpr.org/instruments/achpr/>
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa available at http://www1.umn.edu/humanrts/research/ZIM%20Principles_And_G.pdf

5. Case Studies

The following are examples of problems that lawyers and their clients may experience in Somaliland. The advice given in this section is based on commonly accepted principles of ethics for lawyers that have been adopted by most established independent bar associations.

Issues: Client Care and Complaints, Competency, Case Management

I am a lawyer and a client approached me to take on his case. I work alone and am already dealing with several cases. Although I had too much work, I did not want to refuse the case because it is an interesting matter and the client is able to pay my fees in advance. I am now struggling to handle the client’s case and he is complaining about delays.

As a lawyer, you have a duty to represent your client competently and without limitations. This includes the duty to ensure that you have the knowledge, skill and time necessary to carry out the work diligently and promptly. If you knew you had too much work and would not be able to represent the client diligently and promptly, you should have informed the client and refused to take on the case. If you think your workload is going to affect your client’s case, you should inform your client and refer him to another lawyer. If he instructs another lawyer, you will have to transfer the client’s file.

With regard to the client complaining about delays, it is important to have client care procedure in place. This includes explaining to your client the work you will do for the client, how long it will take, and how often you will be in touch with updates. The client care procedure should also explain how the client can make a complaint, how the complaint will

be dealt with and how long it will take to deal with the complaint. If you have not already done so, you should inform the client of the procedure for making a complaint against a lawyer.

Issues: Accounts, Client Money, Fees

I am a lawyer acting in a personal injury case and the opposing party has made an offer of compensation to my client. I decided to accept the offer on behalf of my client as I thought it was a good offer. I have given the opposing party's lawyer my bank details so that they can deposit the money into my account. Once I receive the money, I will deduct my fees and transfer the money over to my client. I will also deduct some money for expenses. Do I need to inform my client of all the details or can I just give him the money after I have made the deductions?

You should not have accepted any offer of payment without first informing your client of the offer. You should also have advised your client of the reasons why it was a good offer. Once you considered that your client understood your advice, you should have asked your client for consent before accepting the offer. It is essential that a client gives informed consent.

Where you are receiving money on behalf of a client, or holding any money for a client, you should have a separate client bank account. You should not be receiving or holding any money for a client in your own personal bank account. As soon as you receive any money on behalf of a client, you should immediately inform the client. Where you intend to deduct your fees and expenses from money held for your client, you should first provide your client with an invoice which includes a breakdown of your fees and details of any reasonable expenses. Where possible, you should also attach copies of receipts for expenses.

Issues: Client Care, Complaints, Fees, Transferring Client File

I am a lawyer and my client told me that he is unhappy with my representation. I thought he was being unreasonable and told him that if he had a problem with my work, he could go to another lawyer. The client has asked me for his case file as he has now instructed another lawyer but has not paid my outstanding fees. Do I need to transfer the file to the client's new lawyer?

Firstly, all lawyers should ensure that they have a complaints procedure in place. This should form part of the client care procedure. During your initial meeting with a client, the client should be informed of the complaints procedure. If you are a sole practitioner, the client should be informed of the appropriate body to which a complaint can be made. The client should also be informed of how the complaint will be dealt with and how long it will take.

Where a client wishes to instruct another lawyer, you should allow access to the file. All papers should be delivered to the client expeditiously and in good order and you should cooperate with the new lawyer. Where there are outstanding fees for work you have done,

there are different steps you can take as a lawyer. You may retain the client's file until the fees are paid. However, you should not refuse to transfer the client file if you think this may prejudice the client's case. If there is a risk the client will be prejudiced, you should transfer the file to the new lawyer but inform the new lawyer that there are outstanding fees. The new lawyer also has an ethical duty to try to recover any fees owed to you.

Where there is a complaint about the service you have provided, and a dispute over fees, this needs to be resolved following any procedures that are in place. If you do not have a complaints procedure, you should ensure that the matter is referred to the appropriate body to resolve the issue of fees.

Issues: Legal Aid, Fees

I am a lawyer doing legal aid work and have been assigned a case through legal aid. My client is in prison charged with theft and is awaiting trial. When I am paid for a legal aid case, the money is not enough to cover the time I spend on a case and sometimes I do not even get paid. Am I allowed to ask the client for some extra money, as he may be able to borrow money from family or friends?

Lawyers must maintain the highest standards of fairness towards a client and the legal profession also has a duty to promote access to justice. You have been assigned the case through legal aid. As a result, you have a duty to represent the client without asking for any payment. If you believe you will not be able to carry out the work diligently and promptly due to lack of time and a heavy caseload, you can refuse the instructions but you should never ask a legal aid client to pay for your representation.

Issues: Confidentiality, Lawyers and their Practice

I am going through a divorce and am represented by a lawyer who does not have an office. The lawyer usually meets me at court. After an initial hearing before a judge, my lawyer started asking me questions about the case outside the courtroom. I felt that I could not speak freely as my spouse was also standing outside the courtroom. What should I do to make sure this does not happen again?

Although your lawyer does not have an office, he has a duty of confidentiality towards you. He should ensure that he takes you to a private place where you feel that you can speak freely. The lawyer should ensure that you are in a place where your conversation will remain confidential and not be heard by any third parties. If your lawyer has any staff with him, he should also ensure that his staff are aware of the duty of confidentiality owed by all staff to you. You should insist that any further meetings with your lawyer take place in private, and that any staff who are present are told that they are also bound by the duty of confidentiality.

Issues: Legal Professional Privilege

I am a lawyer acting in a case where I received a letter from the opposing party's lawyer. The letter is addressed to his client and it seems that it was accidentally sent to me. What should I do?

If the letter from the opposing party's lawyer is addressed to his client, it appears to be subject to legal professional privilege and, therefore, confidential. This means that you should not examine the contents of the letter. You have a duty to immediately inform the opposing party's lawyer and return the letter to him without examining it.

Issues: Confidentiality

I am a lawyer and have recently learnt that my assistant disclosed information from a meeting I had with a client. I was informed by another lawyer. What should I do?

If you were having a meeting with your client for the purpose of giving advice, any information disclosed during that meeting is confidential. The duty of confidentiality applies to you and all your staff, even if they are not lawyers. It is important that you have procedure at your office to ensure that all your staff understand their duty of confidentiality and that it is a serious act of misconduct to disclose confidential client information to a third party.

You now need to inform your client that information from the meeting was disclosed to a third party. If you had not already done so, you should also inform your client about your complaints procedure. If you do not have any complaints procedure, you should inform your client of the appropriate body that he can complain to, should he wish to do so.

You also need to take steps to ensure that the third party does not pass on the confidential information to anyone else. The third party, who in this instance was a lawyer, also has a duty of confidentiality. You should ensure that the lawyer to whom the information was disclosed understands that it is subject to lawyer-client privilege and that it will not be used or disclosed to anyone else. You should also ensure that the staff member who disclosed the information understands the duty of confidentiality and that they have not disclosed the information to anyone else.

Issues: Duty to the Court, False Evidence, Confidentiality

I am a lawyer and during a court hearing, I realised that my client gave evidence that was different to what he had previously told me. I think my client may have given false evidence. What should I do?

As a lawyer, you are an officer of the court and owe a duty to the court which includes the duty not to mislead the court. If your client has given evidence which is inconsistent with a prior statement, you should approach your client and ask him why there is an inconsistency. If the client informs you that he lied to the court, you must advise the client that he must

retract the evidence and admit to the court that he gave false evidence. If your client refuses, you should inform the client that you have a duty to withdraw from the case. If your client still refuses to confess to giving false evidence, you must withdraw from the case and no longer act for the client. However, if you withdraw from the case, your duty of confidentiality continues. This means that if the court asks you why you have withdrawn from the case, you should not disclose that your client may have given false evidence. You can only state that due to professional considerations, you can no longer represent the client.

Issues: Duty to the Court, Disclosure of Adverse Information

I am a lawyer and have discovered a section of relevant law which assists the opposing party. I am surprised that the opposing party's lawyer has not yet referred to it during the trial proceedings. The judge also appears to be unaware of it. As the information assists the opposing party, I think I will leave it to the opposing party's lawyer to raise it.

As a lawyer, you are an officer of the court and owe a duty not to mislead the court. This includes the duty to disclose adverse legal authority that has not been disclosed by the opposing party's lawyer. A lawyer, while an advocate, has a duty to prevent the court being misled by false statements of law. You should inform the judge of the relevant law you have discovered.

Issues: Bribery

I am a lawyer acting for a defendant in an assault case. He informed me that elders who are related to him have a lot of influence and money and want to approach the judge to persuade him to drop charges. The elders have a lot of influence and I am not sure what I should do.

If you suspect that the judge may be approached by the elders and that there may be an interference in the prosecution, you should immediately notify the prosecution counsel and the judge. Any offer of a bribe, whether to a lawyer, a party to a case, or to a judge, is an offence. Even where there is no bribe, any form of interference in the administration of justice should be an offence. Judges and prosecutors should be able to carry out their duties independently without any interference.

Issue: Conflict of Interest

I am a lawyer and after my first meeting with a new client, I realised that the opposing party is my uncle. However, I will not let this affect my advice and representation. Do I still need to inform the client?

Yes, you should definitely inform the client. This is a clear case of conflict of interest between your interests and your client's interests. There is a real risk that your independent

judgment will be influenced by your relationship with the opposing party. Even though you may honestly believe that you can provide independent advice and representation, there is still a risk that you may not do so. As a result, you should inform the client and tell him that you cannot represent him due to the conflict of interest.

Issues: Conflict of Interest, Confidentiality

I am a lawyer and have been approached by a client who is seeking advice about property which he owns with his ex-wife. After the initial meeting with him, I realised that I have acted for his ex-wife in the past on an unrelated matter. Do I need to inform him?

Yes, you should definitely inform the client as there is a potential conflict of interest between the client's interests and his ex-wife's interests. However, if you represented the ex-wife in an unrelated matter, you may still be able to act for the client. Before continuing to act for him, you must take the following steps:

- Inform the client that you previously acted for his ex-wife in an unrelated matter.
- Ask yourself whether you know any information from the previous case that may affect your judgment when dealing with the present client. If the answer is yes, you should inform the client that you cannot act for him due to a conflict of interest. If the answer is no, you may continue to act.
- Where you decide that you can continue to act, you must ensure that your client understands that you had previously acted for his ex-wife in an unrelated matter. After explaining this to your client, you should obtain written consent from your client to continue acting for him.
- You still have a duty of confidentiality towards the client's ex-wife as she was your previous client. The duty of confidentiality continues even if you are no longer acting for the client.

Issues: Non-Discrimination

I am a female lawyer. I and my client had a meeting with the opposing party and his male lawyer. The male lawyer commented that I would “definitely lose the case as women do not make good lawyers” and that my client should find another lawyer. I have experienced similar discriminatory remarks from other male lawyers. What should I do?

Lawyers are professionals and should conduct themselves in a professional manner. Principles of fairness and equality should form part of any rules of ethics or professional

conduct. This includes treating colleagues with respect and as equals regardless of their gender, race or ethnicity. The male lawyer's remarks are discriminatory and unprofessional. You should make a complaint to the appropriate body regarding the male lawyer's conduct.

6. Conclusion

Professional ethics are key to ensuring an independent, competent, effective and accountable legal profession. Where comprehensive rules of ethics or professional conduct exist, they should ensure that lawyers are required to follow client care procedures, act in the best interests of the client, and fulfil their duties as advocates. Ethics can further instil principles of fairness, honesty and integrity in the way that lawyers conduct themselves and strengthen public confidence in the administration of justice.

Where a bar association has not developed its own rules of ethics, it can turn to regional or international codes for guidance to ensure that its lawyers adhere to important standards of professional conduct. Crucial to making ethical standards a reality is the ability to enforce them. It is, therefore, vital that bar associations develop disciplinary procedures. Equally important is ensuring that lawyers have complaints procedures in place and that their clients are made aware of these.

The important role of lawyers as ultimate guardians of the law means that the legal profession has a huge responsibility in ensuring that rules of ethics are developed, that lawyers and the public are educated about ethics and that ethics are made effective through disciplinary mechanisms. Without ethics, trust in the legal profession and, as a result, the justice system itself, is undermined.