Code of Professional Conduct

Adopted and issued, with commentary, by the Board of the Swedish Bar Association on 29 August 2008, to enter into force as of 1 January 2009.

Most recently revised on 13 June 2024.

Contents

Generally regarding the commentary 3

1 The role and primary obligations of the member 4

2 General professional duties 8
- 2.1 Execution of an engagement 8
- 2.2 Duty of confidentiality and duty of discretion 10
- 2.3 Information to the client 13
- 2.4 Information from the client 13
- 2.5 Professional competence 14
- 2.6 Insurance obligation 14
- 2.7 Financial relations with the client 15
- 2.8 Client funds and other property belonging to the client 18
- 2.9 Upholding human rights in the practice of law 19

3 Declining and withdrawing from an engagement 20
- 3.1 Offer of an engagement 20
- 3.2 Conflicts of interest 20
- 3.3 Duty of disclosure and consent 22
- 3.4 Obligation to withdraw from an engagement 24
- 3.5 Colleagues' conflicts of interest 26
- 3.6 Right to withdraw from an engagement without having an obligation to do so 28
- 3.7 Stating reasons for withdrawing, etc. 28
- 3.8 Appointment as an arbitrator or a judge 29

4 Fees and accounting, etc. 30
- 4.1 Calculation of the fee and invoicing 30
- 4.2 Contingency fee agreements 34
- 4.3 Fee for legal proceedings 36
- 4.4 Financing the engagement 36

4.5 Advances 39
4.6 Final invoicing and accounting 40

5 Relations with the opposing party 43
5.1 Improper measures 43
5.2 Advance notice of legal action 43
5.3 Disparaging information 44
5.4 Misleading information 44
5.5 If the opposing party lacks counsel or legal representation 44
5.6 If the opposing party retains a member 46
5.7 Settlement offers 46

6 Relations with courts and public authorities 46
6.1 Generally 46
6.2 Facts and evidence 48
6.3 Demeanour towards witnesses, etc. 49
6.4 Procedures other than trial 50

7 Organisation of the law firm, etc. 51
7.1 Maintaining independence 51
7.2 Business name 51
7.3 Office organisation 52
7.4 Legal practice in the form of a company 52
7.5 Organisation of a law firm 54
7.6 Employment conditions, etc. 57
7.7 Co-operation 59
7.8 Solicitation and marketing 62
7.9 Compensation for soliciting engagements 63
7.10 Liability for costs 63
7.11 Providing distinctive marks to another 63
7.12 Disclosure and archiving of documents 64

8 Relationship to the Swedish Bar Association 65

Generally regarding the commentary

The initiative to issue a Code of Professional Conduct was taken by the General Assembly of the Swedish Bar Association in 1967 and the first version was adopted in 1971 by the Board of the Swedish Bar Association. The Code has since undergone amendment a number of times and the main wording was finalised in 1984. In 1994 there were two amendments which concerned marketing and operating a legal practice in the form of a limited liability company.

In line with a decision taken by the General Assembly of the Bar Association in June 2005, the Board of the Bar Association decided to appoint a working group, known as the Ethics Committee, the purpose of which was to review the current Code of Professional Conduct. In November 2007, the Ethics Committee submitted a proposal for a new Code of Professional Conduct to the Board. On 29 August 2008, the Board of the Bar Association, having made certain amendments and additions, adopted and issued a new Code of Professional Conduct, effective as of 1 January 2009. These rules and the additional subsequent amendments and additions are commented upon below. In 2010, an amendment added made regarding financing of engagements (4.4.2) and, in 2012, an amendment was added concerning the obligation to withdraw from an engagement (3.4.1). Certain changes and additions have subsequently been made as a result of the Bar Association's Consumer Disputes Committee (amendments to provision 8 and new provisions 4.1.5–4.1.7) that came into force on 1 January 2016. On 9 June 2016, a decision was taken to add a provision regarding upholding of human rights in the practice of law (2.9). The provision entered into force on 15 June 2016. As a result of the establishment of the Consumer Disputes Committee in 2024, an amendment was made to section 8. On the 13 June 2024, a provision was decided prescribing that a member must not accept an engagement if they lack the competence and experience required for the engagement (2.1.3). The provision entered into force on 14 June 2024.

The commentaries are not binding and should not be perceived as categorical or exhaustive, but merely serve as supplementary guidelines to facilitate the understanding of the individual rules.

In the event that the phrasing of a regulation differs from that of a previous regulation, the general rule is that there has been no substantive change to that regulation unless specifically mentioned in the commentary.

In some cases, previous regulations may have been eliminated in line with applicable laws, regulations or other binding legislative acts. Therefore, in some cases, the decision has been made that there is no need for the regulation. In other cases, drawing attention to the existence of other regulations has been found to be important for practical reasons.

No commentary has been made in relation to regulations that are deemed fully understandable and unambiguous.

These commentaries are regularly updated on the basis of guidelines from the Board of the Swedish Bar Association, guidelines from the Disciplinary Committee, EU guidelines, etc. In this edition, such revisions have been made up to and including June 2020.

Stockholm, June 2024

1. The role and primary obligations of the member

A free and independent legal profession operating in accordance with sound rules developed by the members themselves is an important part of a society governed by the rule of law and a prerequisite for the protection of individual freedoms and rights. Consequently, a member holds a position of significant responsibility in our society.

The principal responsibility of a member is to show fidelity and loyalty towards the client. As an independent adviser, the member is obliged to represent and act in the client’s best interests within the established framework of the law and good professional conduct. The member must not allow their actions to be influenced by possible personal gain or inconvenience or by any other irrelevant circumstances.

A member must practise with integrity and, in this way, promote a society governed by the rule of law. A member must act impartially and correctly and in such a way as to uphold confidence in the members of the legal profession.

A member must not promote injustice.

Commentary (last revised in June 2024):

The role of the member

A basic principle recognised throughout the democratic world and for interpretation of the rules governing professional conduct is that members of a bar association must be free and independent of courts and authorities, as well as any other interests that may impinge upon the members' prospects of fulfilling their professional obligations.

A free and independent legal profession that works in accordance with an ethical regulatory framework developed by an independent bar association constitutes an important part of a society founded on the rule of law and is a prerequisite for individuals' rights and freedoms being upheld. A member therefore has a special position and responsibility in a well-functioning society based on the rule of law.

A prerequisite for members to be able to operate in the way that can be expected of them in a state governed by the rule of law is that special requirements can be imposed on members and that the legal profession can be practiced under special conditions.

In all countries that claim to be states governed by the rule of law, there are specific rules governing lawyers and specific rules on the conditions under which they operate. With the primary aim of safeguarding the interests of the client, there are a number of special rules, most of which are aimed at preserving loyalty, trust and confidentiality between the member and the client, while others are aimed at ensuring that individuals have access to legal advice and assistance. There are some particularly important principles of a fundamental nature – core values – that underlie these rules. These are independence, loyalty to the client, confidentiality, and avoidance of conflicts of interest. Further principles that should guide the member in their professional conduct are those stated in the *Charter of Core Principles of the European Legal Profession* and *Code of Conduct for European Lawyers*, adopted by the member organisations of the Council of Bars and Law Societies of Europe (CCBE) in 2006.

The role of the member has developed and changed over time. The member competent in general law, who assists clients in disputes and legal proceedings, has been joined by the business-oriented member. The legal profession consists today of both the

member in general practice, who accepts engagements within a broad area of law, and the highly specialised member, who only accepts engagements within their specialist area. Despite these differences, the ethical regulatory system must be applicable to, and function in, all legal practice.

The member's obligations

Chapter 8 of the Swedish Code of Judicial Procedure contains a number of rules concerning a member's obligations. It states that a member's obligation to comply with good professional conduct is limited to the member's practice of law and does not apply to other activities. However, there is no legal definition of the concept of legal practice by a member. The Disciplinary Committee has instead been given a significant degree of discretion as to the detailed meaning of the term. The Code of Judicial Procedure also states, however, that the Bar Association's disciplinary supervision is not limited solely to practice of law; instead it also covers all dishonest conduct. Dishonest conduct can lead to expulsion or, if there are mitigating circumstances, a warning. However, the term "dishonest" is not unambiguous. It should primarily refer to financial conduct that cannot be considered acceptable for a member. The Procedural Law Committee emphasised that dishonest conduct is subject to supervision even if it occurs outside the member's practice, such as when the member is guilty of fraudulent or other dishonest conduct in their own affairs (*see* NJA II 1943, p. 86; cf. also NJA 1992 C 43 and JK 1984 p. 147 and 1985 p. 36). Some guidance on interpretation of the term dishonesty can also be found in NJA 1994 p. 688.

The Code of Judicial Procedure was amended with a new provision on 1 January 2018.[1] It extends the possibility of disqualification to include cases where a member, outside of the practice of law, has demonstrated that they are clearly unfit to practise law because the member has committed a criminal offence.

A member's primary obligation is to protect their clients' interests in the best way possible and to the best of their ability.

---

[1] *See* Chapter 8, section 7a of the Code of Judicial Procedure; cf. Code of Judicial Procedure (Amendment) Act (2017:1024).

This means that they must show fidelity and loyalty to the client. A member must not, however, act in violation of applicable law or contrary to good professional conduct. Within the scope of the duty of loyalty, the member must therefore always act in an upright and honest manner.

A member must always be free and independent. The fact that a member is independent of the state is necessary, *inter alia*, so that the member can protect the client's interests also against the state. The member must also be free and independent in relation to other interests in order to be able to fulfil their obligations to the client. The fact that a member is ultimately also free and independent of the client is necessary, not only because the member may otherwise overstep the limits that the law and good professional conduct mark out for the member's freedom of action, but also because the member must be able to give the client the advice and assistance that are objectively best for the client and not the advice and assistance the client wants.

A client–lawyer relationship based on trust, like society's confidence in the legal profession, can only be maintained if the member's personal honour, honesty, and integrity are beyond all doubt.

Compare the guideline of 11 June 2009 concerning members entering into agency agreements with clients, pursuant to which an agency agreement that binds a client to a specific member for a specified period is not considered to be consistent with the obligations that follow from this provision.[2]

A member must not promote injustice

The requirement to comply with the good professional conduct leads to restrictions on freedom of action when a client's interests are to be protected. As a result of the due regard to be shown for the legal system, the opposing party, and third parties, a member cannot use any means available in the practice of their profession. It goes without saying that a member may not aid and abet in the commission of a crime. Moreover, pursuant to standards of good professional conduct, they may not pave the way for another person's criminal activities or promote a client's interests in an undue manner. A member must not, for example, enable a legal

[2] *See* Circular no. 15/2009.

action that is invalid. A member must decline an engagement that is intended to mislead any person, or which, in another improper manner, causes someone to perform a legally binding act. A member must also decline an engagement that may result in an unauthorised violation of another person's rights. Moreover, a member must not participate in drawing up any sham document or other written documents with false content. A member also may not participate in drawing up agreements or other written documents with content which entails a risk that the documents will be used for improper purposes. In other words, in order to comply with the standards of good professional conduct, it is not enough for a member to ascertain that the approach that the member recommends or otherwise assists in does not violate the law. The member must also act in a manner that promotes honesty and integrity within a society governed by the rule of law.

2. General professional duties

2.1 Execution of an engagement

2.1.1. A member must carry out an engagement with care, accuracy, and due timeliness. The member must ensure that the client does not incur unnecessary costs.

Commentary:
This rule corresponds, in substance, with section 23, second paragraph of the previous rules. However, the member's obligation to take into consideration that neither the state nor an insurance company is burdened with unnecessary costs in connection with legal aid or legal protection has been eliminated. The reason for this is that the member should, in all contexts, put the best interests of the client in the forefront and, consequently, the client's interests must not be weighed against the interests of the state or the insurance company in keeping the costs down. At the same time, it is clear that the member must not do unnecessary work, notwithstanding that the client is not personally paying for the work.

2.1.2. Legal advice must be based on necessary examinations of applicable law.

Provision 2.1.3 was adopted on 13 June 2024 and entered into force on 14 June 2024.[3]

2.1.3. A member must not accept an assignment if the member lacks the competence and experience required for the assignment.

Commentary:
A member must possess the competence and experience that the assignment demands. This provision is a codification of existing practice and is an expression of section 1 concerning the member 's role and primary obligations, as well as section 2.5 concerning professional competence.

To some extent, the provision is also an expression of section 6.1.1 regarding the member's duty of care towards courts and public authorities in appointed assignments, and sections 2.1.1 and 2.1.2 regarding the execution of assignments.

Under certain circumstances, a member may accept an assignment without having the prescribed competence and experience. However, a condition for this is that the member, by agreement with the client, can guarantee sufficiently qualified assistance for carrying out the assignment. This requires that the client has consented to the lawyer having to collaborate with or seek assistance from a colleague or another person in order to obtain the necessary expertise, which may result in increased costs for the client.

A member appointed by a court as legal counsel must always personally possess the competence and experience required for the assignment.

The fact that a member does not decline an assignment for which they lack competence and experience is evidence of insufficient independence and lack of integrity.

Most jurisdictions have ethical rules emphasizing the importance of lawyers' competence when accepting assignments. Within the Council of Bars and Law Societies of Europe (CCBE) and its Code of Conduct, it is also emphasized that a lawyer should not handle a case that the lawyer knows or ought to know they are not competent to handle without collaborating with a lawyer who possesses the necessary competence.

[3] *See* Circular no. 16/2024.

Regarding qualification requirements for public defender assignments, there is a guideline of 13 June 2024 which will take effect on 1 January 2025.[4]

2.2 Duty of confidentiality and duty of discretion

2.2.1 A member has a duty of confidentiality in respect of matters disclosed to the member within the scope of their legal practice or which the member learns in connection therewith. Exemptions from the duty of confidentiality apply if the client consents thereto or where there is a legal obligation to provide information. Exemptions also apply to the extent the disclosure is necessary to enable the member to defend against complaints by the client or to pursue a justified claim for compensation in respect of the engagement in question.

Commentary (last revised on 1 February 2016):
The practice of law sets the parameters for the duty of confidentiality. The practice of law is a wider framework than the engagement and entails, for example, that information provided to the member by a prospective client, where an engagement does not yet exist, may also be subject to the duty of confidentiality. The intention is not, however, that all such information is to be covered. The information which is intended to be subject to the duty of confidentiality is, above all, such information as the member personally requests, for example to be able to decide whether the member can or wishes to accept the engagement, while the opposite is normally intended to apply to such information as a prospective client provides without the member asking for it. In such a situation, the member may even be obliged to allow an existing client to be made privy to information provided to the member.

Just as in the former section 19, there are exceptions to the duty of confidentiality if the client agrees to the information being disclosed or if there is a legal obligation to disclose information. The rule also contains, however, an explicit exception to the duty of confidentiality to allow a member to defend against complaints on the part of the client, e.g. in a dispute concerning a claim for damages made by the client. Exceptions to the duty of

[4] *See* Circular no. 17/2024.

confidentiality may in such case also apply towards an insurer in such cases where this is occasioned by the terms and conditions of the insurance (*see* 2.6). Exceptions also apply to allow a member to claim justifiable payment from the client, e.g. in legal proceedings concerning the reasonableness of a fee the member has requested from the client. It should, however, be emphasised that the exception in such a situation applies only to making a claim originating from the engagement in question and not a claim against the client that has its origin elsewhere. A member should, on the whole, be able to disclose such information as is necessary for the member to be able to defend themselves in legal proceedings against the client. It should, however, be emphasised that the member may never disclose information to an extent greater than is necessary for the member to be able to protect their rights against the client.

It is quite clear today that, in some cases, legislation undermines the fact that the duty of confidentiality also includes the client's identity, *inter alia* in connection with compliance with money laundering legislation and the EU directive that stipulates the responsibility to report VAT registration numbers to national tax agencies. Regarding the latter, *see* the guideline of 15 October 2010 (Circular no. 18/2010), concerning the member's obligation when accepting an engagement from a client who operates a business in another EU member state to inform the client that the member is legally obliged to report the client's VAT number to the Swedish Tax Agency for periodic reporting of certain services that the member sells, free of VAT, to other states in the EU's VAT area.

Cf. also the guideline of 13 November 2009 (Circular no. 25/2009) concerning the member's obligation to give references in connection with a procurement.

See also the guideline of 13 June 2013 (Circular no. 21/2013) concerning the scope of the member's duty of confidentiality as regards the extent to which new or other representatives or owners of a limited liability company can relieve the member of their duty of confidentiality as regards what took place before the representatives' or owners' entry into the company. This states, *inter alia*, that a member, in their dealings with an bankruptcy receiver, is probably not bound by a duty of confidentiality as

regards circumstances that have a bearing on the company itself, albeit the duty of confidentiality continues to apply in other respects, and that a new board of a limited liability company should not generally be able to relieve the member of their of confidentiality concerning past events. *See also* Code of Conduct 7.12.1 concerning the member's obligation to hand over documents.

2.2.2 A member is obliged to exercise discretion in respect of client matters. A member must not, without cause, enquire about engagements handled by the member's law firm if the member is not personally charged with such work.

Commentary (last revised on 18 February 2012)
The question has arisen as to whether the duty of discretion is general or whether this is limited to relationships within the law firm.

Information confided to the member within the scope of the practice of law or that the member has learned in conjunction therewith can, in the opinion of the Board, be subject to the duty of discretion even if the information is not subject to the member's duty of confidentiality. Examples of information covered under the duty of discretion include judgments, decisions, articles in the media, and other public documents. In the Board's opinion, no restriction exists that entails that the duty of discretion refers only to information originating from relationships within the firm. The consequence of such a restriction would be that the member would be more limited as regards their possibilities to communicate internally at the law firm than they would be outside it. This cannot be the case. In the Board's opinion, the duty of discretion is general and applies to information that the member obtains both inside and outside the firm. (*See* the guideline of 7 December 2012 on the scope of the duty of discretion, Circular no. 24/2012.)

The definition in the second sentence specifying what a duty of discretion constitutes is intended to prohibit prying in cases in which the member is not personally involved. On the other hand, the rule is not intended to apply to the many situations where a member has legitimate reason in the pursuit of their professional duties to obtain information concerning a client or information in a matter in which the member is not personally involved. In the

normal case, this takes place in agreement with the colleague who is responsible for the client or matter. It may, for example, concern an exchange of knowledge or other forms of justified contact between colleagues or obtaining information to assess issues of conflict of interest, but situations may also arise where a member has reason to keep themselves informed about a colleague's matters without consulting the colleague. An example of such a situation might be that the colleague is absent due to illness or for some other reason. On the whole, the rule is intended only to prevent such obtaining of information that the member has no use for in their professional capacity.

2.2.3 A member is obliged to impose upon their staff the same duty of confidentiality and duty of discretion as that which applies to the member personally.

2.3 Information to the client

The client must be kept informed of what transpires in the execution of an engagement. Questions from the client concerning the engagement must be answered without delay.

Commentary:
Although the wording "in an appropriate manner" in the former section 24 has been removed, no change in the substantive meaning of section 24 was intended. Ultimately, the member may, in their own discretion, decide what information the client needs from time to time in order to best follow the progress and development in a matter.

2.4 Information from the client

A member is not, except for special cause, obliged to verify the accuracy of information provided by the client.

Commentary:
The requirement to verify accuracy is, of course, dependent on the type of information provided by a client. The member is normally entitled to assume that the factual information provided by their principal is accurate. However, if the information is more sensational in nature, the member should have a certain obligation to take such reasonable measures to investigate the accuracy of

the information received. Information indicating that another person may be accountable for a crime or a dishonourable act should be used with great caution and only following such verification as is reasonable in view of the possible consequence of such information. In any event, it should be required that the use of such sensational information is relevant to the engagement undertaken by the member.

2.5 Professional competence

A member is obliged to maintain and develop their professional competence by monitoring the development of the law in the fields in which the member is active and to undergo necessary continuing education.

Commentary:
This guideline did not exist in the previous regulations. However, section 36 of the Bar Association's Code of Conduct does contain a provision on the responsibility of a member to maintain and develop their professional competence. Based on the second paragraph of the provision, the Board of the Swedish Bar Association also requires that its members undergo further training on an annual basis and in line with the guidelines for further professional training of members, and that members must submit details of such further training to the Board.
Notwithstanding the provisions of the Charter, the overwhelming importance of a member's professional competence from an ethical perspective as well has led to a provision also being added to the Code of Professional Conduct. However, it should be mentioned that the further training imposed upon members by the Board is not always sufficient to fully comply with the requirements for necessary continuing education.

2.6 Insurance obligation

A member is obliged to purchase liability insurance cover appropriate to their practice and to maintain such insurance cover by complying with the applicable policy terms and conditions.

Commentary:
This guideline does not exist in the previous regulations. It should be specifically noted that the insurance cover offered by the Swedish Bar Association within the scope of the members' service fee to the Bar Association is often not adequate for the insurance cover to be considered adapted to the member's practice. Consequently, the member often needs to take out additional insurance cover. Even where the insurance held by the member is well suited to their legal practice, it is appropriate for the member to pay extra attention to the policy terms and conditions so as to maintain adequate insurance cover. For example, this may entail an obligation to notify the insurer of a claim made against the member within a specific period of time. The member must also pay attention to any complications that may arise from changing insurer. For these reasons, the rule includes an obligation for the member not only to have sufficient insurance cover, but also to maintain adequate insurance cover by paying due attention to relevant policy terms and conditions.

2.7 Financial relations with the client

2.7.1 Financial transactions between a member and their client are prohibited unless resulting from an engagement. However, if a client operates a business, normal transactions within the scope of that business are allowed.

Commentary:
The fact that any financial transactions with a client are conditional on the transaction following from the engagement requires a clear and virtually direct connection between the transaction and the engagement. The previous rule in section 22 that advises against a member lending money to the client, acting as their personal guarantor, or borrowing money from the client has been eliminated as such transactions are now covered by the proposed principal rule. These types of transactions are only permissible if arising directly out of an engagement that has been accepted by a member. One example of when this condition can be deemed met is when a member personally guarantees a client's application for attachment. No financial transaction with a client should ever take place if there is a risk of the member becoming dependent on the client.

According to the exemption specified in the second sentence of the provision, financial transactions between a member and their client that do not stem from an engagement are also allowed, provided that the transaction falls within the parameters of a standard business transaction for the client. Thus, the determining factor is that the transaction is a standard transaction for the client's business, i.e. it must take place on the same terms and conditions as the client applies in its business in relation to other contracting parties. If, for example, the member's client is a bank, the member can take out a loan from that bank as long as the loan is agreed on the bank's normal terms and conditions. If the member's client is a car retailer, the member may purchase a car from that client – even if it is a very expensive car – provided, however, that the transaction is a standard business transaction for the car retailer. A further example is when the member's client is an estate agent. The member is then permitted to purchase a house from that client's enterprise, but only if the purchase takes place on terms and conditions that are customary for the client enterprise. However, this does not mean that the member cans also take advantage of certain types of discounts, e.g. staff discounts that the client enterprise customarily offers in the course of its business.

However, even if a transaction appears to be a standard business transaction for the client, the member should not enter into the transaction if there is a noteworthy risk that the transaction could lead to a dispute with the client or a conflict of interest with the client.

2.7.2 It is not permissible for a member to own shares, or have a participating right in, a client enterprise. However, a member may own shares or participating rights in a client enterprise if the ownership is spread to a wider group of stakeholders. Any such share or participating right may be acquired from the client or someone closely related to the client only if offered to a wider group and if the acquisition takes place on the same terms and conditions as those applicable to others within that group. A member may also own a share or participating right in their own family business.

Commentary:

On 26 May 2000, the Board of the Bar Association issued a guideline regarding the acquisition and holding of shares in a client enterprise.[5] The statement is as follows.

> *"Good professional conduct" entails that a member should not become financially involved in the business of the client. However, this does not prevent a member from directly or indirectly holding shares in a client enterprise, the ownership of which is or, at the time of the member's acquisition, will be distributed to a wider group of stakeholders. The term 'a wider group of stakeholders' is further explained in Chapter 4, section 18 of the Companies Act* [6]. *However, regardless of the requirement for diversification mentioned above, a member is entitled to own shares in their own family business.*
>
> *The member's acquisition or holding of shares in a client enterprise must not lead to other rules regarding good professional conduct being disregarded; e.g. the acquisition or holding of shares must not lead to the member thereby having or, insofar as can be assessed at the time of the acquisition, potentially having, the possibility of a conflict of interest with the client.*
>
> *The fact that a member may, under certain circumstances, hold shares in a client enterprise does not change the rule that no other financial transactions should take place between the member and the client other than those arising out of an engagement and that the member, as a rule, should not enter into a business relationship with a client. Hence, shares in a client enterprise should normally be acquired from someone other than the client. However, shares may be acquired directly from the client provided that such acquisition will result in a diversification of the ownership to the extent required in the first paragraph, provided that the acquisition is subject to the same terms and conditions offered to other acquiring parties.*
>
> *The above-mentioned shall also apply to participating rights, issue certificates, interim certificates, convertible debentures, debentures with warrants, participating debentures, options on shares or participating rights, as well as other share or participating rights derivatives of any type whatsoever.*

The aim of this provision is to codify the guidelines issued by the Board in the Code of Professional Conduct. However, it should be pointed out that the rule which allows a member, under certain circumstances, to hold shares or participating rights in a client enterprise company and acquire such shares or interests directly

---

[5] *See* Circular no. 16/2000.

[6] The former Companies Act (1975:1385) as amended (SFS 1994:802).

from a client is to be regarded as an exception to the fundamental rule that a financial transaction between a member and a client may only take place where the transaction arises out of the engagement for the client.

2.7.3 A member's acquisition or holding of any share or participating right in a client enterprise must not cause, or be expected to cause, a conflict of interest.

Commentary:
This regulation codifies the second paragraph in the guidelines issued by the Board on 26 May 2000. Even if the conditions for ownership or acquisition of shares or participating rights in a client enterprise are, *per se*, met, such ownership or acquisition is nevertheless not permitted if, in the specific case, it leads to or is expected to lead to a conflict of interest with the client.

2.7.4 The above-mentioned rule concerning shares and participating rights also applies to other securities or rights that entitle the holder to a participating right in the enterprise, or where the outcome is dependent on the enterprise's earnings or other similar circumstance.

Commentary:
This regulation codifies the last paragraph in the guidelines issued by the Board on 26 May 2000.

2.8 Client funds and other property belonging to the client

Money, valuable documents, and other property entrusted to a member by a client or by another on behalf of a client must have a connection to the engagement. An engagement must not, except for special cause, entail only the management and brokering of funds or safekeeping of property.

Commentary (last revised on 11 May 2011)
The provision codifies the prohibition on using a law firm as a "parking place" for money or other property. In order for it to be permissible for a member to manage or hold money or other property, this must not constitute the engagement in itself; instead, there must be an engagement in place to which the management or safekeeping of the property is connected. If, for example, a

client asks the member to take custody of a sum of money or to store a painting for a period of time or until further notice, the member is not permitted to do so unless it can be said to be part of an engagement the member has for the client.

The exception for special cause applies to absolute emergency situations where a client is, for example, being threatened or persecuted or where the client would otherwise have a legitimate need to have money or property deposited with the member without it being connected to any other engagement that the member has for the client. An example of the latter would be that a member should be able to undertake to manage property for a client who, due to advanced age or for other reasons, finds it difficult to do so personally or that the client or their relatives do not wish to apply for appointment of a guardian or trustee.

Cf. also the guideline of 3 December 2010 concerning a member's obligation – taking the provisions of the Swedish Code of Judicial Procedure, the Charter and the Accounting Regulations into consideration – to open a client funds account in the client's name and to deposit client funds in an interest-bearing account.[7]

2.9 Upholding human rights in the practice of law

A member must not give advice with the purpose of counteracting or circumventing human rights and basic freedoms covered by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (with protocols). A member should, in their practice of law, also otherwise work to uphold human rights and freedoms.

Commentary:

The provision was adopted on 9 July 2016 and entered into force on 15 June 2016.[8]

Cf. also the guideline of 26 January 2018 on combating various forms of discrimination and harassment, etc.[9]

---

[7] *See* Circular no. 26/2010.

[8] *See* Circular no. 17/2016.

[9] *See* Circular no. 3/2018.

3. Declining and withdrawing from an engagement

3.1 Offer of an engagement

A member is not obliged to accept an engagement which has been offered but must immediately give notice of their decision to decline an engagement. A member is not required to state reasons for not accepting an engagement.

Commentary:
If the engagement is offered by a previous client who has cause to believe that the member will accept the engagement, the member may nevertheless be obliged to take measures that the member realises are so urgent that if the engagement is declined, the client will not have time to find other counsel and thereby run the risk of losing their rights.

3.2 Conflicts of interest

3.2.1 A member must not accept an engagement if there is a conflict of interest or a significant risk of a conflict of interest. A conflict of interest exists if:

1. the member assists or has previously assisted the opposing party in the same matter;
2. the member is assisting another client in the same matter and the clients have conflicting interests;
3. the member is assisting another client in a closely-related matter and the clients have conflicting interests;
4. there is a risk that knowledge covered by the member’s duty of confidentiality may be of relevance in the matter;
5. the member or a close relative has an interest related to the matter which is contrary to that of the client; or
6. there is otherwise any other circumstance which prevents the member from fully protecting the client’s best interests in respect of the engagement.

Commentary:
The “mandatory” conflict of interest situations may, based on the relevant conflict of interests, be divided into the client’s engagement interest (items 1, 2 and 3), the client’s confidentiality interest (item 4), and the member’s self-interest (item 5).

The expression “significant risk” means that the member must also consider whether a conflict of interest may arise in the future. Therefore, it is permissible for defence counsel to accept an engagement on behalf of two defendants in the same case only in a clearly exceptional situation, even if it is not immediately obvious that they have conflicting interests.

3.2.2 A conflict of interest may be at hand if the member is assisting or has previously assisted the opposing party in another matter.

Commentary:
The use of the word “may” means that there is not necessarily a conflict of interest if the member has ongoing engagements for the opposing party. The opposing party’s interest is a general interest in loyalty. The fact that the member has an ongoing engagement for the opposing party may often be detrimental to trust and, if so, there is a conflict of interest. However, sometimes the circumstances may be such that neither client can be assumed to consider it disloyal, e.g. if a member who has been instructed to represent a party in a tax case is asked to represent another client in reviewing a proposed agreement with the tax client and neither matter is more extensive or significant to the member or either of the clients.

A previous (completed) engagement by the member for the opposing party is generally not considered to be detrimental to trust. However, it should be noted in this context that the phrase “knowledge covered by the member’s duty of confidentiality” in 3.2.1, item 4, is not limited to the knowledge of factual circumstances. In addition, knowledge of an individual’s personality and demeanour may be used in a negotiating situation and encompassed by the wording. If the member can expect a future engagement from the previous opposing party, it is more likely that a conflict of interest will be deemed to exist.

By way of example, a member who regularly has represented or represents the social welfare board of a municipality in matters under the Care of Young Persons (Special Provisions) Act should not accept an engagement on behalf of an individual in another such matter against that municipality unless it is clear that the engagement on behalf of the municipality may be considered completed.

3.2.3 When assessing whether there is a conflict of interest in relation to clients and opposing parties which are legal entities, it may be the case, depending on the circumstances in the individual case, that the client or opposing party is deemed to constitute all or part of the group of companies or interest grouping which includes the legal entity. The provisions applicable to interest groupings may also apply to an individual in their capacity as the owner of a legal entity. On the other hand, in such an analysis, the client or opposing party may be considered to constitute merely a part of the legal entity where the legal entity has extensive operations.

Commentary:
The first two sentences entail that there may be a conflict of interest if the first engagement has come from an individual or legal entity other than the intended client in the subsequent engagement, where these have a common interest. The last sentence, on the other hand, means that a member may be able, for example, to represent a local office in Haparanda while simultaneously acting against the local office of the same legal entity in Ystad. Whether this is acceptable depends on the circumstances in each individual case, *inter alia* the importance of the engagements for the client and the member, and if there is a risk that both engagements are handled by the same persons in the client's organisation; in the latter case, a conflict of interest is ordinarily considered to exist.

3.3 Duty of disclosure and consent

3.3.1 A member who is considering accepting an engagement is obliged to consider, as soon as possible, whether there is a conflict of interest which precludes the member from accepting the engagement. If the member finds that no obstacle is at hand but, nevertheless, there is a circumstance which may lead the client to a different assessment, the member is obliged to notify the client immediately. If such information cannot be provided without breaching the member's duty of confidentiality, the member must decline the engagement.

Commentary:
The rule means that the member is obliged not only to consider whether there is a conflict of interest from an objective

perspective, but also how the situation appears from the point of view of the client. Even if the member is of the opinion that no conflict of interest exists and the engagement may be accepted, there may be circumstances that could have affected the client's choice of counsel had the client known about such circumstances. If that is the case, the client must be given the opportunity to consider these circumstances before the engagement is made.

3.3.2 If express consent can be obtained without setting aside the member's duty of confidentiality, the member, as an exception and after having obtained such consent, may accept an engagement even if a conflict of interest under 3.2.1, items 3 or 4 or 3.2.2 above is deemed to exist, provided that the circumstances are not such as to give cause to doubt the member's ability to fully safeguard the client's interests.

Commentary:
The rule under 3.3.2 considers the exceptional cases where consent from the client may affect the ability to accept an engagement although a conflict of interest is assumed to exist, as well as the requirements for such consent to obtain significance.

The rule is not aimed at, nor is it applicable to, mergers and acquisitions through controlled auctions, such that consent could, in any case, make it possible for one law firm to represent two or more competing bidders in such an auction process.

It is clear that a client may waive their confidentiality interest, and there is also a reason to permit affected clients to influence the issue of whether the general duty of loyalty must prevent the member from accepting an engagement. In practice, it is fairly common for the member to request, for example, the opinion of a corporate client as to whether the member may accept an engagement against the company or another group entity. If the client in such a case declares that is has no objections to this, such declaration should be considered a material element in the member's assessment of whether the client's loyalty interest is impaired by the member accepting the engagement. One example where consent may enable the member to represent more than one interest is when more than multiple parties jointly ask for the member's assistance in drafting a contract between the parties. If the interests of the clients come into conflict during the course of

the engagement, the member will not be able to continue with the engagement, *see* 3.4.1 below.

See also the guideline of 18 December 2012 (Circular no. 24/2012).

3.4 Obligation to withdraw from an engagement

Provision 3.4.1 was revised on 18 December 2012.[10]

3.4.1 If, after accepting an engagement, a member identifies the existence of such a circumstance that would have obliged them to decline the engagement had they been aware of the circumstance when the engagement was offered, the member must, as a primary rule, withdraw from the engagement. The duty of disclosure under 3.3 also applies when a circumstance that raises the question of a conflict of interest does not arise or is not discovered until after the engagement has been accepted.

Commentary (last revised on 16 June 2016)
The assessment concerning the obligation to withdraw from an engagement is, in principle, the same during the course of the engagement as when the engagement is accepted. However, it can have far-reaching consequences for a client if the member withdraws from an ongoing engagement, and the member must consider whether the harm to the client would be so great that the member should not, nonetheless, withdraw from the engagement. The question thus becomes a weighing of interests, where it is not a given fact that the member, in the situation that has arisen, must always act as the member should have acted if the circumstances had been known to the member before accepting the engagement. If a member is representing several clients in the same matter and a conflict of interest arises between them while the matter is ongoing (for example during a defence engagement or an engagement for several people who have custody of a child in accordance with the Care of Young People (Special Provisions) Act), the member must withdraw from the engagement for all of the clients. In such a situation, other lawyers at the same law firm or in a shared office organisation are also prohibited from taking over any of the engagements.

[10] *See* Circular no. 24/2012.

On 9 June 2016, the Board of the Bar Association adopted a guideline concerning weighing of interests in the event of a conflict of interest in conjunction with transfers between law firms.[11] The guideline states that should a conflict of interest arise in conjunction with a transfer between law firms, a weighing of interests must be made where certain factors may mean that the new firm, despite a conflict of interest, does not need to withdraw from an ongoing engagement. Examples of such factors include the following.

- The conflict-of-interest situation has arisen despite the firm, during the course of the recruitment, having performed the checks that could reasonably be demanded.
- The matter in which the conflict of interest arises has been administered by the new firm for a considerable time and with the use of considerable resources.
- The costs and inconvenience to the client of the new firm who would be subject to a withdrawal would be disproportionately high.
- The extent of the work done by the old firm on the matter where conflict of interest has arisen has been minor and the person concerned has not been given insight into case-specific details of a strongly confidential nature, e.g. assessment of critical legal or evidentiary issues, tactical considerations concerning the legal proceedings, etc.
- Considerable time has passed between employment at the old firm and employment at the new firm.

3.4.2 A member is also obliged to withdraw from an engagement if:

1. the member is prevented from carrying out the engagement because of a legally valid reason or similar circumstances;
2. the client requests the member to act criminally or in breach of good professional conduct and, despite having been made aware thereof maintains their request;
3. the client suppresses or distorts evidence or acts deceitfully and cannot be induced to rectify; or
4. the member, in order to avoid violation of anti-money laundering legislation, reports a client to the police.

[11] *See* the full wording of the guideline (Circular no. 18/2016).

Commentary:
The first three items of the provision correspond to the applicable provisions of items 1–3 of the second paragraph of former section 15. The obligation to withdraw under the fourth item is a consequence of anti-money laundering legislation.

3.5 Colleagues' conflicts of interest

For the purposes of 3.2 and 3.4, a conflict of interest for someone else in the firm or in a shared office where a member practises normally constitutes a conflict of interest for the member as well. An exception applies if a conflict of interest occurs due to a colleague's entry into the firm and the conflict of interest for that colleague arises merely because of an engagement of a former colleague. Another exception arises when the colleague's conflict of interest is of the type stated in 3.2.1, item 5, and circumstances are not such that item 6 is applicable.

Commentary (last revised on 18 December 2012)
The provision expresses the so-called contamination rule. From a substantive point of view, the new main rule corresponds to the provision in the former section 14. However, it has been deemed appropriate to provide for two particular exceptions. The term "someone else" refers to another colleague from the legal staff but the rule also applies to a managing director who is not a member of the Bar Association.

According to the main rule, a conflict of interest for one member will thus infect all others at the firm or in the shared work situation where the member practises law. A shared work situation can be created in different ways. One is that the member, without there existing a formal company or partnership, co-operates with others in a shared office. The underlying idea is that the conflict of interest can contaminate all those who co-operate in a manner such that, typically, there is a significant risk of unauthorised disclosure, to a third party, of information that is subject to the member's duty of confidentiality or duty of discretion. Examples of cases where such a risk must be deemed to exist are when the member shares premises, support staff, computer systems, printers, faxes, and other similar office equipment with someone else. The contamination rule means that a conflict of interest

which has arisen in one law office is spread to all other offices of that law firm, including those located in other places within or outside Sweden. It is, in principle, impossible to avoid a conflict of interest by erecting information barriers.

There are two exceptions to the main rule. The first applies to the common situation where a member transfers from one law firm to another while the firm that the member is leaving (the old firm) is handling a matter where the client's opposing party is assisted by a member at the firm the member is joining (the new firm). According to the main rule, the transfer could cause contamination of the new firm that results in the new firm being obliged to withdraw from its engagement for the opposing party. This would entail that clients – not infrequently – would be compelled to change legal representative without there being any actual substantive reason to do so. The rule would often appear to be too strict. As a result, an exception to the main rule is necessary. An absolute precondition for application of the exception is that when the transferring member practised law at the old firm, they had no dealings with, or otherwise received confidential information about, the engagement in question and that the conflict of interest on the part of that member has been entirely brought about by conflict contamination from someone else at the old firm. The second exception concerns a member at a firm having an interest of a personal nature in a specific matter. A typical case is that the member or a close relative has a financial interest in a company. In such cases, it has been deemed too strict to allow these circumstances to unconditionally mean that someone else at the firm cannot deal with an engagement where the client has an interest opposing that of the company in which the colleague has an interest. However, there may be circumstances in individual cases such that there may doubt as to whether the member handling the matter can, in fact, fully represent the client's interests against the interests of someone else at the law firm. Such a situation might be that the firm's engagement is such that the personal finances of a colleague at the firm might be affected by the outcome of the client engagement. The exception does not apply in such cases.

The question has arisen in the context of a so-called split receivership in a bankruptcy case as to whether one receiver's

conflict of interest constitutes a conflict of interest for the other receiver.

Split receivership with receivers from different firms is an efficient way of handling large, complicated bankruptcies. Such a receivership does not entail that a conflict of interest arises on that basis (*see* Circular no. 24/2012).

3.6 Right to withdraw from an engagement without having an obligation to do so

A member may not withdraw from an engagement without the consent of the client unless the member is obliged to withdraw from the engagement or can rely on another valid reason. A valid reason for withdrawing from an engagement may be that:

1. the client, when turning the engagement over to the member, intentionally withheld facts which would have been material to the member's decision to accept the engagement;
2. the client unreasonably burdens or bothers the member and cannot be induced to rectify;
3. the client instructs the member to handle the engagement in a manner which is futile or contrary to the best interests of the client and, despite being made aware of this, maintains these instructions;
4. the client, in material respects, acts against the member's advice or otherwise clearly makes it known that they have lost confidence in the member; or
5. despite reminders, the client fails to effect an advance payment or compensation to which the member is entitled as a consequence of the engagement.

Commentary:
The rule clarifies that the right of a member to withdraw from an engagement when the member's acceptance of the engagement was based on inaccurate information given to the member.

3.7 Stating reasons for withdrawing, etc.

3.7.1 A member wishing to withdraw from an engagement must inform the client of the reason therefor and, at the client's request, give written notice thereof. Before withdrawing, the member must give the client reasonable time to retain another

member. When withdrawing from an engagement as counsel of record, the member must, in accordance with the provisions of Chapter 12, section 18 of the Code of Judicial Procedure and on the basis of the power of attorney, protect the client's interests until the client has been able to take measures for legal representation.

3.7.2 The stipulations stated in 3.7.1 do not apply when the member must report a client to the police to avoid violation of anti-money laundering legislation.

Commentary:
The provision has been amended to accommodate for the provisions of anti-money laundering legislation.

3.8 Appointment as an arbitrator or a judge

The rules on conflicts of interest set out above do not apply when a member is subject to conflict-of-interest rules as an arbitrator or a judge.

Commentary:
The appointment of a member as an arbitrator has become commonplace. In such a case, the member is, as a rule, subject to the specific bias rules which, by law and/or the relevant arbitration rules, apply to an arbitrator. These specific bias rules are, in general, drafted so that a party wishing to challenge on the basis of bias must do so within a certain period of time after having become aware of the fact on which the bias is based. Otherwise, the right to challenge on the basis of bias is precluded. The purpose of the preclusion rules is to prevent bad faith use of the rule concerning bias.

Members of the Swedish Bar Association frequently serve as arbitrators in proceedings where the other arbitrators are lawyers, usually members of bar associations, from other countries. It is important that all arbitrators are subject to the same bias rules. It would be undesirable if different bias rules were to apply to different members of the same arbitral tribunal, in that the Swedish members are subject not only to the bias rules applicable to the relevant arbitration but also to the bias rules that follow from the ethical rules of the Swedish Bar Association. In addition, the effect of the arbitral preclusion rule is weakened since a party

that missed the deadline would, in fact, often be able to compel an arbitrator to resign by threatening them with disciplinary action. The bias rules applicable to arbitral proceedings have been formulated by the legislature for that purpose. Thus, there is no need for additional regulation. To some extent, this rule means a return to the legal state of affairs that prevailed under the earlier precedents of the Disciplinary Committee, to the effect that a member when sitting as an arbitrator is exempt from disciplinary supervision since such activity is not deemed to constitute legal practice. However, entirely removing the ethical rules applicable to members with an arbitration commitment is unwarranted. In a conflict of interest, it is sufficient to give precedence to the arbitration rules.

In the event of a conflict of interest of a colleague and that of an arbitrator in connection with a new engagement, appointment as an arbitrator shall, of course, be assessed in the same way as a regular client engagement, i.e. a conflict of interest relating to appointment as an arbitrator has normal conflict of interest effects for others at the law firm.

The provisions applicable to appointment as an arbitrator apply to a member who acts as an adjunct judge in court on a temporary basis. The bias rules of the Code of Judicial Procedure are sufficient in this context.

4 Fees and accounting, etc.

4.1 Calculation of the fee and invoicing

4.1.1 The fee charged by a member must be reasonable.

Commentary:
The client shall enjoy the privilege of being charged a reasonable fee. According to the legislative history of Chapter 8, section 7, second paragraph of the Code of Judicial Procedure, charging unreasonable fees in an example of an action that could lead to disciplinary measures against a member. Since the determination of reasonableness of a professional fee is dependent on a multitude of factors, each of which is difficult to assess and delineate from the others, one must accept that the assessment of a professional fee can be discretionary. As a result, the fact that the

member's assessment was not consistent with a decision in a legal proceeding is not necessarily a breach of good professional conduct. The rule should not be seen as an impediment to the member's latitude to decide on their own fee, with a certain margin. However, the objectives of good professional conduct are violated when the member has flagrantly ignored the rule. (*See* Wiklund, *God advokatsed (Good Professional Conduct for Members of the Bar Association)* p. 360).

When the reason for withdrawing from an engagement can be attributable to the member, the determination of the fee must allow for the additional costs that the client may thereby incur.

4.1.2 In determining what constitutes a reasonable fee for an engagement, regard may be had to what has been agreed with the client, the extent of the engagement, its nature, the degree of complexity and importance, as well as the member's expertise, the result of the work, and other such circumstances.

Commentary:
The rule exemplifies what may be taken into consideration when assessing what constitutes a reasonable fee. The fee payable by a client for engagement of a member is subject to the provisions of civil law and can be addressed in an agreement between the client and the member. However, standards of good professional conduct require that the agreed fee must be reasonable, irrespective of whether it is an agreed fixed fee or at an agreed hourly rate. A fixed fee agreement in connection with acceptance of an engagement requires that the scope of the engagement can be foreseen, to a reasonable extent.

Where a member accepts an engagement subject to statutorily compliant compensation standards or compensation standards applied by insurers or the like (such as an interest group), a fee agreement pursuant to the norm is deemed to exist. However, in connection with insurance cover or the like, the member may reserve the right to deviate from such compensation standard in respect of the client, provided this is explained to the client when the engagement is accepted (cf. 4.4.2 and 4.4.3).

"Scope of the engagement" refers to, *inter alia*, its length, which does not mean the actual time expended by the member but, instead, the time that the engagement normally requires for completion. "Nature of the engagement" may refer to a

requirement for expedited handling of a matter and, consequently, the constant availability of the member or specific demands on the member's organisation. The scope and nature of an engagement may also include constraints on the member in the sense that the member is prevented from accepting other engagements. The novelty of a problem to be solved by the member can be attributed to the nature of the engagement, as well as to the degree of complexity and the member's expertise. The importance of the engagement and outcome of the work refers, in both respects, to the ultimate benefit to the client. The importance of the engagement can be limited to refer to the financial value of the subject matter of the dispute, but may also involve taking into consideration, for example, a specific responsibility entrusted to the member or which otherwise follows from the engagement. Expertise includes, *inter alia*, the member's specialist knowledge in the area to which the engagement relates.

4.1.3 A member may only receive compensation in the form of customary means of payment. The fee charged does not need to be itemised but, on request, the member is obliged to provide the client with a written report of the work carried out. If the member charges the client for disbursements, the nature thereof such must be clearly specified.

Commentary:
"Customary means of payment" include cash, cheques, cashier's cheques and the like (*see* the guideline issued by the Board of the Swedish Bar Association on 26 May 2000[12]). A set-off payment is also considered to be a customary means of payment when deducted from a client funds account. The client's right to request a written report of the work carried out also applies to publicly funded engagements where the client can be ordered to pay all or part of the fee. A written report must be detailed and comprehensible to allow for an assessment of the reasonability of the fee charged.

4.1.4 In connection with accepting the engagement, the member must state the charging principles and inform the client regarding the invoicing routines which the member intends to apply. Fees may be invoiced as partial invoicing, invoicing on account, or invoicing after completion of the engagement.

[12] Circular no. 16/2000.

"Partial invoicing" means charging a final fee for part of the member's work attributable to a certain period or for a specific task. Invoicing on account means invoicing part of the final fee without specific attribution to a certain part of the work. Invoicing for work on account must be reported in the final invoice.

Commentary:
When an engagement is accepted, the member must provide details about the invoicing principles and routines that will be applied. "Invoicing principles" means the basis for determining the fee (*cf.* 4.1.2) and invoicing routines means the selection of the type of invoice and frequency of the invoicing. In the event that the cost for the services is agreed prior to the start of the engagement, the member is obliged to notify the client of such cost and, in other cases, such information shall be provided when requested by the client. This rule has been added due to the Services Directive (Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market). The information about the invoicing routines is a prerequisite for withdrawing from an engagement on the basis of a payment default (*cf.* 3.6, item 5). In the event of recurrent engagements from the same client, the member is considered to have fulfilled their disclosure obligation if the information has been provided once and no change is intended. In the event of a dispute with a client, the member has the burden of proving that they have fulfilled their disclosure obligation. Consequently, in many cases, there is cause to document clear information regarding the invoicing principles and routines. *See also* 4.4.1 and 4.4.3.

The second paragraph of the rule explains the forms of invoicing. The advantage of partial invoicing is that the fee charged is settled each time invoicing takes place. There is no need for a final invoice if partial invoicing is the exclusive form used. The disadvantage of partial invoicing is that it is not possible to review the final outcome of the services rendered in the same way as with a final invoice following invoicing on account. When invoicing on account is used, a reasonable estimate for the work carried out, plus any so-called wasted time or time set aside by the member on behalf of the client, may be charged. If the engagement is in the form of a retainer agreement,

the member may receive advance payment of the fee agreed with the client for the execution of a any engagements during a specific coming period of time. If the work is not performed, payment of the fee is set off against the advance on a partial basis as the agreed period of availability progresses. Retainer engagements where the sole purpose is to prevent a member from acting on behalf of a potential opposing party are prohibited.

Provisions 4.1.5–4.1.7 were adopted on 4 December 2015 and entered into force on 1 January 2016.[13]

4.1.5 A member who accepts an engagement for a consumer is obliged to provide information about the Consumer Disputes Committee on the law firm's website and, where applicable, in general terms and conditions.

A member is also obliged to inform the client about the possibility of having the matter adjudicated by the Consumer Disputes Committee as soon as the client has reported dissatisfaction or lodged a claim.

Commentary (5 February 2016):
The information referred to in the first paragraph must include the alternative dispute resolution body's website address and postal address.

4.1.6 A member is obliged to participate in the Consumer Dispute Committee's adjudication if it has not been possible to resolve the matter amicably.

4.1.7 A member is obliged to abide by decisions issued by the Consumer Disputes Committee.

4.2 Contingency fee agreements

4.2.1 A member may not enter into a professional fee agreement with a client which confers the right to a share of the result of the engagement unless special cause exists.

Commentary:
The rule prohibits, in principle, a member from entering into a professional fee agreement that entitles a member to a share of the result of an engagement unless special cause exists. Special cause

[13] *See* Circular no. 1/2016.

for allowing such an agreement may include representation in a case under the Group Proceedings Act or representation in a cross-border engagement where such an agreement is adopted for handling outside of Sweden and is a condition for the engagement. However, in the latter case, there can be a question as to whether an engagement concerning parts of a dispute could be handled in Sweden. Yet another exception is when a client finds it difficult to have their matter tried on the merits – to get access to justice – without a contingency fee agreement. The rule conforms with the CCBE Code of Conduct for European Lawyers (*see* item 3.3 therein) on the prohibition of agreements linked to results, known as *pactum de quota litis* or *contingency fees*, but it also takes into account such specific circumstances as may justify allowing such an agreement in the individual case.

4.2.2 An agreement which entails that the member takes a financial risk in the outcome of the matter must not entail that the member's financial self-interest in the matter becomes disproportional or otherwise has an adverse effect on the member's carrying out of the engagement.

Commentary:
Contingency fee agreements have never been expressly prohibited under Swedish law. However, the Swedish Bar Association has historically seen contingency fee agreements as inappropriate. The primary reason for this is that a contingency fee agreement is seen as possibly violating the rule that the member's fee must be reasonable and circumventing principles to prevent the member's involvement from becoming a direct financial element of the client's matter.

Under all circumstances, the rule prohibits a professional fee agreement where the member is taking such a financial risk in the outcome of the matter that the member may find it financially beneficial to act or omit to act in a way that could damage the client's interests. An example of such a circumstance is when a member advises the client to accept a settlement which results in a worse outcome for the client than would otherwise have been the case. Moreover, the member may not become so financially dependent on the outcome of an engagement so as to jeopardise their independence.

4.3 Fee for legal proceedings

A fee charged as a consequence of a legal proceeding may not exceed the fee for which the member claims, on behalf of the client, that the opposing party be ordered to pay, unless special cause exists.

Commentary:
"Legal proceeding" in this context means a proceeding in which a court or other authority adjudicates a party's claim for costs. There are a number of factors that can affect the determination of the professional fee to be paid in a legal proceeding. The legal adjudication of a claim for costs is, ultimately, a determination of reasonableness of what the opposing party must pay to the client. Such an adjudication can, of course, also give the client an idea of what is a reasonable professional fee.

Special cause for seeking more from the client than the claim for costs submitted in a legal proceeding may be that the client, for business reasons or to protect consumer or employer interests, does not wish the opposing party to pay an amount higher than what was claimed. Other special cause may be of a more tactical nature, i.e. refraining from submitting a claim for costs which is attributable to an expert opinion which does not promote the client's case or examination of witnesses who will not be called. In the event of a deviation that does not comply with the client's instructions, the member is obliged to consult the client prior to submitting the claim. Other special cause is when a member, acting as private defence counsel and in connection with certain other types of cases (e.g. a tax matter) submits a claim for compensation relating to services rendered as defence counsel or representative in a matter where the client prevails in an amount entirely consistent with statutory standards for compensation, irrespective of whether the member has reserved the right to charge the client more.

4.4 Financing the engagement

4.4.1 A member must inform the client of the possibilities which are available for having the engagement financed by public means or by insurance and explain the terms and conditions

therefor. A member shall assist in safeguarding the rights of the client in this regard.

Commentary:
The rule must not be understood to mean that a member would be prevented from declining financing by public means or an insurance cover or similar when accepting an engagement. The duty to inform the client of the terms and conditions for such financing is important and must take place in connection with the engagement being accepted and includes, where applicable, information that such financing does not cover the costs of the opposing party. It is also important to inform the client of the other restrictions that may exist and which could result in the financing being insufficient. In connection with acceptance of an engagement to be financed by public means, insurance cover or similar, the member must assist the client with the application, registration, and settlement procedures. It is not ordinarily deemed permissible to directly ask the client to advance payment other than any excess due in those cases where there is an intention to take recourse to insurance cover or the like, and instead instruct the client to obtain the indemnification personally.

Prior to accepting a defence engagement which does not entail the member acting as a public defence counsel (private defence counsel), the member must, in the way prescribed in 4.1.4, clarify for the client the invoicing principles and routines which they intend to use. The member must also clarify for the client whether the member intends to deviate from the statutory compensation normally applicable for public defence counsel and whether the compensation paid by public means in the event of a successful court ruling may ultimately be limited to the compensation which would be awarded to public defence counsel. Regarding the document of such disclosure, please *see* the commentary to 4.1.4.

Provision 4.4.2 was revised on 11 December 2009, to enter into force as of 1 January 2010.[14]

4.4.2 In respect of work comprising engagement as public defence counsel, representation under the Legal Aid Act, or other legal assistance for the client or a third party, a member may not reserve the right to receive, or receive, a fee or any

[14] *See* Circular no. 29/2009.

compensation from the client or a third party other than the compensation determined by a competent authority, unless otherwise follows from any law.

Commentary (last revised on 1 February 2016):
The rule prescribes the same prohibitions concerning fees as stated in statutory provisions. However, the rule does not prevent a member from reserving the right to, and receiving from a client, reasonable compensation for time wasted and expenditures, in accordance with Chapter 21, section 10, fifth paragraph of the Code of Judicial Procedure and section 29 of the Legal Aid Act which, in accordance with Chapter 21, section 10, fourth paragraph of the Code of Judicial Procedure and Chapter 27 of the Legal Aid Act, are not included in the representative's right to compensation. The rule applies to all types of appointment as a legal representative.

Defence engagements may initially be accepted without the client desiring the appointment of public defence counsel; this may be the case if, for example, the client wishes to avoid the publicity that may ensue from a decision to appoint public defence counsel. Under such circumstances, if it has not been possible to obtain a secrecy order and the initial assistance has not been compensated in a later order to appoint a public defence counsel, the member should be entitled to invoice the client for such representation. A precondition for this is that the assistance can be separated and that a clear reservation about this was made when the engagement was accepted.

As regards whether it is consistent with standards of good professional conduct for a member representing a client against the Chancellor of Justice in a matter concerning a claim for compensation for deprivation of liberty to request payment from the client in addition to the payment determined by the Chancellor of Justice, the guideline of 26 August 2011 (Circular no. 21/2011) states that such an engagement is not considered to constitute an engagement as a legal representative and is therefore not such an engagement where the possibility to claim payment of a fee is limited. In such cases, the member is therefore seen as free, within the bounds of what constitutes a reasonable fee, to request payment from the client in addition to the determined payment, including outside the hourly rate norm.

4.4.3 When accepting an engagement covered by legal cost insurance, the member must clarify for the client whether the member intends to deviate from the norms for compensation specified in the terms and conditions of the insurance policy.

Commentary:
The obligation to make such clarification is concurrent with the obligation to provide information, at the same time, about invoicing principles and routines which are intended to apply to the engagement (*cf.* 4.1.4).

4.5 Advances

A member may ask for advances to cover disbursements on behalf of the client. The member may also request an advance payment on the professional fee, provided such a reservation is made when the engagement is accepted or if otherwise reasonable. An advance payment constitutes client funds. When a professional fee is paid out from a client funds account, an invoice showing the payment is sent to the client at the same time.

Commentary:
An advance payment always constitutes client funds. The accounting regulations include specific rules for the management of client funds. When a professional fee is settled from a client funds account, an invoice showing the payment, and thus the withdrawal from the account, must be issued to the client at the same time, irrespective of whether it is a partial invoice, invoice on account, or final invoice. The member does not need the client's approval before settling against the client funds account.

In the event that a reservation for an advance is not made when the engagement is accepted, the member is nevertheless entitled to ask for an advance payment of their professional fee if it can be deemed reasonable. For example, it may be the case that the circumstances that existed when the engagement was received were incorrect or incomplete. This is deemed to apply to all incorrect or incomplete circumstances, whether they are attributable to the engagement or more attributable to the client. If the member, when receiving an engagement, is under the impression that the engagement in question is fairly

straightforward and it later transpires that the engagement is of a more complex and demanding nature than could initially be anticipated, the member is entitled to ask the client to make an advance payment in light of the changed circumstances. The same must be deemed reasonable if there is a considerable risk of the member not being paid for services rendered. The question in this context may be whether the client initially misled the member about their financial situation. A member is always entitled to ask for an advance payment to cover ongoing expenditures even if no reservation to this effect was made at the time the engagement was accepted. Accordingly, a member is entitled to request that the client provides them with the funds necessary to cover any expenditures arising on behalf of the client. In accordance with this, the member is also entitled to ask for compensation from the client for expenditures even where the engagement is not yet completed.

The rules affect the member's right to withdraw from an engagement due to non-payment on the part of the client. As with every withdrawal from an engagement, the member must take special consideration of the situation in which they place a client by withdrawing from the engagement. Consequently, the member may not require an unreasonable advance payment and must, under any circumstances, always give the client reasonable time to pay. During such time, the member is obliged to take the necessary measures to ensure that the client's legal rights are unaffected.

4.6 Final invoicing and accounting

4.6.1 When an engagement has been completed or is otherwise terminated, a final invoice shall be sent to the client without delay, other than in cases where only partial invoicing is applied.

Commentary:

The nature of the engagement is indicative of when the engagement will be completed and when the obligation to issue a final invoice arises. If the engagement is to provide representation in a legal proceeding, the engagement is normally not deemed completed until there is a final decision in the matter. Representation in connection with execution following a decision in a legal proceeding may be deemed to be a different engagement

unless otherwise specified. A final invoice is always required when invoicing on account is used. The final invoice must, in such case, report the entire cost upon termination and report set-off for previous charges on account.

Partial invoicing may refer to representation over time on an ongoing basis in multiple matters for the same client, for example representation in different matters during a specific quarter of the year or specific month. Such ongoing representation may also be subject to invoicing on account, but in such case, it must be followed up with a final invoice, for instance on an annual basis.

4.6.2 If the member receives funds during the course of the engagement, a final statement of account must be submitted to the client without delay and any balance in the client's favour must be immediately refunded to the client unless otherwise agreed or follows from the nature of the engagement. A member may not, as a condition for such refund, demand that the client approves the professional fee charged or the final statement of account. Moreover, a member may not disclaim their accounting obligation by means of an agreement or a reservation.

Commentary:
The main rule is that any balance due to the client must immediately be refunded to the client unless otherwise agreed or because of the nature of the engagement. The agreement is an understanding to secure the lawyer's right to compensation, in which case an advance payment is involved. "Nature of the engagement" refers, for example, to management and liquidation engagements that require continuous funding for the performance of the member's engagement.

The rule is also an expression of the proposition that a member's engagement is not normally exclusively for the management of funds.

4.6.3 A member's statement of account must be clear and unambiguous. The statement of account must always specify what the member has received as a consequence of the engagement and the member's expenditures, as well as the fees withdrawn through invoices. Dates of receipt and payment of each specific amount must be specified. The statement of account must be dated.

Commentary:
If the statement of account meets the basic requirements of the rule for clarity and non-ambiguity and the other provisions of the rule, a computer-based statement of account may be provided and referred to in connection with invoicing. As regards expenditures, the rule stipulates that the nature of each expenditure must be clearly stated in writing (*cf.* 4.1.3). Consequently, expenditures cannot be shown as a summary item. Invoiced expenditures must correspond to an actual cost unless otherwise agreed with the client. For example, a member is not usually permitted to charge a standardised amount to a client for their own office costs.

4.6.4 In certain cases, the duty to account for management of funds on an annual basis and submit a statement of income to the authorities is regulated by law and the Accounting Regulations of the Bar Association.

Commentary:
The rule relates to the special accounting obligation that applies to the management of funds in addition to what follows from the rules for a final statement of account. According to section 5 of the Accounting Regulations, such an accounting must be submitted not later than 1 April each year and include details of the management of funds during the previous calendar year if the member, at any time during that year, had an account claim in excess of one base amount, or using current terminology, one statutory price base amount. If a final statement of account for the engagement has been submitted prior to 1 April, the Accounting Regulations do not require a statement of account for the previous calendar year. With regard to requirements for the structure of the statement of account and other provisions, please *see* the Accounting Regulations. The obligation to submit a statement of income includes management of funds on behalf of an individual or an estate of a deceased person as provided in the Income Tax Act (2011:1244).

5 Relations with the opposing party

5.1 Improper measures

A member must not seek to promote the client's cause by taking improper measures in relation to the opposing party.

Improper measures are, *inter alia*:

1. reporting to an authority about a crime or other matter which lacks foundation or a connection to the engagement or threatening to file such a report;
2. applying for a summary payment order, filing an application for bankruptcy, or making a payment demand before applying for bankruptcy in cases where the member knows that the claim for payment is contested on a basis which is not clearly unfounded;
3. disgracing the opposing party or threatening to do so; or
4. making unwarranted contact with a third party or threatening such conduct.

Commentary (last revised on 16 April 2009)
The rule corresponds, in part, to the former section 37. The rule has been clarified and adapted to the Disciplinary Committee's praxis through the second item in the second paragraph. An amendment has been made to the third item in the same paragraph to include every instance of disgracing the opposing party and a threat to do so, regardless of where it takes place. "Disgracing" means that the member reaches out to an unspecified circle of individuals with inappropriate statements.

5.2 Advance notice of legal action

5.2.1 Legal action must not be taken against an opposing party unless the opposing party is first given reasonable time to consider the client's claim and to reach an amicable settlement.

5.2.2 However, legal action may be taken without prior notice if a delay would entail a risk of loss of the legal rights or other damage to the client, or if there are other special reasons for taking such action promptly.

5.3 Disparaging information

A member may not, in the course of a legal proceeding, submit evidence of circumstances which are disparaging to the opposing party or make offensive or disparaging statements about the opposing party unless, in the relevant situation, this appears justifiable in order to act in the best interests of the client. Generally, a member must refrain from actions or statements which are likely to unnecessarily offend or insult the opposing party.

Commentary:
The rule highlights the responsibility of the member to act in the best interest of the client at the same time as showing consideration for the opposing party. A statement about the opposing party must be justified by the situation of the member when the statement is made. This avoids an unduly critical assessment in hindsight. *See also* the provisions in 6.3.2 and the commentary to that provision.

5.4 Misleading information

A member must not mislead the opposing party by making any statement about a factual circumstance or the content of legal rule which the member knows is inaccurate.

Commentary:
The rule is aimed solely at the member's knowledge. It would go too far to extend it to what the member should know since, in such case, this could excessively impede the legal and factual analysis. However, a member is assumed to have, or in any event obtain, sound knowledge of the content and import of relevant legal rules. In the event that a clear statement regarding a legal rule was unequivocally inaccurate, the member has probably breached this rule or the rule in 2.1.2.

5.5 If the opposing party lacks counsel or legal representation

5.5.1 In connection with contact with an opposing party who has not retained legal counsel or representation, the member, where appropriate, must inform the opposing party that the

member's engagement does not include protecting the opposing party's interests and advise them to retain a member.

5.5.2 A draft prenuptial agreement, instrument regarding division of property, agreement for sole custody of a child and other similar documents may not normally be issued without prior contact with both parties. However, a member may provide a party with whom the member has had no previous contact with a proposal for such a document if, in a covering letter, the member gives the information specified in 5.5.1.

5.5.3 Documents containing deeds of gift may normally only be prepared in consultation with the party intending to provide the deed.

Commentary:
These rules express the duty of a member to show consideration for the opposing party. This specifically applies when the opposing party is not represented by a member and also cannot be deemed fully aware of how to protect their own interests. However, the duty to show consideration does not extend beyond confirming for such opposing party that the member is only required to represent their own client and that the opposing party may need to appoint their own legal representative.

The use of the word "contact" under 5.5.1 above expands the scope of application of the rule as compared to what was previously the case. The obligation to inform the opposing party must be assessed on a case-by-case basis. The obligation exists when it is appropriate to inform the opposing party. Whether this is the case depends, *inter alia*, on the identity of the opposing party.

Rule 5.5.2 is new and is, in part, a codification of the recommended practice of the Disciplinary Committee. The rule does not limit the member's obligation to protect their client's best interests and is aimed at circumstances relating to family law. If the member has not been in contact with the opposing party, certain types of family law documents cannot be disclosed before the opposing party is informed that the member's engagement does not include protecting the opposing party's interests and they are advised to retain a member.

Rule 5.5.3 is intended to address all documents that include a gift element and which are not covered by 5.5.2. No such

consultation is normally required in the case of a deed of gift relating to a legal entity.

5.6 If the opposing party retains a member

If the opposing party retains a member, all negotiations in the matter shall be carried out with the member and all communications sent to them. In such case, it is not permitted for the member to make direct contact with the opposing party unless this involves a measure that must be brought directly against the opposing party or, for special reasons, it is otherwise clearly necessary. In such cases, the member representing the opposing party must be notified.

Commentary:
The rule corresponds to the first paragraph of section 49 of the former rules. The same principle should apply if the opposing party retains a legally-educated external representative who is not a member.

5.7 Settlement offers

A member may not disclose an offer of settlement made by the opposing party in legal proceedings without the consent of the opposing party.

Commentary:
The purpose of this rule is to facilitate settlement negotiations. However, there is no prohibition against disclosing one's own settlement offer.

6 Relations with courts and public authorities

6.1 Generally

6.1.1 When acting as counsel or as a representative in a trial, a member is obliged to observe the requirements of the Code of Judicial Procedure and other statutory instruments in respect of litigation. The member must ensure that they are well-acquainted

with the matter and pursue the matter with such care and in such manner as required by the proper administration of justice.

Commentary:
The rule corresponds to the previous section 44, first paragraph, however the requirement of timeliness of that section has been deleted. “Timeliness” is incorporated in the requirement of “care” which also includes other important requirements. It was not deemed necessary to emphasise timeliness other than as can be deemed to follow from “care”, since “timeliness” can sometimes be seen to conflict with the client’s best interests.

The Code of Judicial Procedure does not stipulate a requirement of care and thus it should be included in these rules. The requirement of care is fundamental to all legal practice in the relationship with the client, as well as in relation to the court and administration of justice. The aim of the rule is to counteract situations such appearing in court unprepared, deliberately waiting to call a witness or introducing other evidence in order to gain an advantage by using an element of surprise (unless this can be deemed justified), failing to appear in court despite the risk of a default judgement in order to be able to reopen the case following a motion for retrial, stating long-term impediments to be present at proceedings in order to cause delays, etc.

Although the principal responsibility of the member is to protect the client’s best interests during trial, the member also has an obligation to protect the public interest by acting with speed, efficiency and quality. In addition, proper administration of justice without unnecessary duplication of effort is in the best interest of clients as a whole.

6.1.2 A member shall endeavour to ensure that there is compliance with court orders and that enquiries from the court are answered without delay.

Commentary (last revised on 11 December 2009):
Since a court order is directed at the party, it is not always possible for the member to ensure that an order or enquiry is followed or answered without delay. The member must, however, work to ensure that this is done by doing what can be deemed to be their duty to comply with the court order. A member is also otherwise obliged to work to ensure compliance with the court order in the best possible way.

Cf. also the guideline of 21 August 2009 concerning a member's participation in service of process of documents on the client regarding an order to appear in person.[15]

6.1.3 The court must be promptly informed of any impediment to appearance or the like.

6.1.4 If the member's engagement as counsel or representative is terminated, the member is obliged to inform the court without delay.

6.2 Facts and evidence

6.2.1 A member must not provide information to the court which the member knows is false and must not dispute information that the member knows to be true.

Commentary:
The rule corresponds to the previous rule in section 45 and no substantive change is intended. The rule is aimed at substantive information, i.e. objective circumstances, rather than values and impressions. The rule refers to both verbal and written information. As was the case previously, this refers to absolute knowledge in respect of the information.

The rule concerning a party's duty of truthfulness set out in Chapter 43, section 6 of the Code of Judicial Procedure is not deemed to apply to a defendant in a criminal case, and thus the position of the defence counsel is somewhat different from that of other legal counsel and legal assistants. If a member acting as legal counsel in a civil action or as counsel for an injured party in a criminal case knows that the client is lying in respect of any relevant question, the question of withdrawal may arise. This does not normally apply in a case where a member, in their capacity as defence counsel in a criminal case, becomes aware that the client is lying. However, a member must never submit factual information that they know is false, nor may a member dispute information that they know is true. If the client submits such false information or disputes information that is true, the member must not invoke the information or use it to support their client's case. A member's obligations under this provision do not, however,

[15] *See* Circular no. 19/2009.

mean that the member is obliged to advise the client to stipulate to any information stated by the opposing party, notwithstanding that the member personally believes that the information is true.

Examples of impermissible actions in this respect are calling a witness who the member knows will commit perjury, introducing and invoking, in bad faith, on forged written evidence, knowingly presenting or invoking inaccurate factual particulars, or disputing true factual particulars irrespective of who introduced them into the proceedings.

6.2.2 A member may not be complicit in the suppression or distortion of evidence. However, a member is not obliged to produce or invoke evidence or adduce facts detrimental to the client unless the member has a legal obligation to do so.

Commentary:
In relation to the former section 45, the rule has been expanded to cover all legal obligations to disclose information. The only aspects not covered are the obligation to produce documents and the obligation to give evidence. The obligation to present information may also apply to, for example, the Tax Agency and in accordance with anti-money laundering legislation. However, the fact that a member does not usually have an obligation to submit information to the detriment of their client remains a key principle.

Cf. also the guideline of 16 December 2016 regarding medical age assessments in asylum matters.[16]

6.3 Demeanour towards witnesses, etc.

6.3.1 A member must not exercise undue influence upon a witness or any other person called to testify in a trial. However, the member is free to contact such person to obtain information regarding what that person might say, even where they are called to testify by the prosecutor or another opposing party.

Commentary:
Actively seeking evidence is generally included in a member's duty of care and often means that the member should also investigate what the other party's witnesses and other persons who

[16] *See* Circular no. 32/2016.

will be heard will say. However, the member must never exercise undue influence over any person who will be heard. This applies regardless of whether the person, in their capacity as a witness, injured party, expert, or other capacity, has been relied on by their own client or the opposing party and regardless of whether they are to be heard under oath. Naturally, the member is not permitted to bypass counsel for an injured party or the legal representative, counsel, or guardian of a child. There is no impediment to defence counsel contacting an injured party who is not represented by counsel for an injured party, provided that consideration and caution are observed.

6.3.2 A member must not give demeaning information or make offensive or disparaging statements about a witness or another person unless this appears to be justified in the situation at hand in order to safeguard the interests of the client.

Commentary:
Offensive information should be avoided and is seldom reconcilable with the best interest of the client. However, it is important that a member is able to present information to support their client's best interests, even if this offends another person. The member may not yield to the unpleasantness of the situation. The expression "appears to be justified" signifies that the starting point should be the member's situation when the statement or the written text was presented. There must be latitude for some errors in judgment. Obviously, the requirement of discretion and moderation is greater in respect of the written word than for a statement made in the heat of the moment, when the time for reflection is so much shorter. The true intent of a statement is the decisive factor. The rule entails some relaxation in relation to what previously applied, giving priority to the client's best interests. The standard for the requirement of moderation may not set so high as to hamper the member's actions on behalf of the client.

6.4 Procedures other than trial

The provisions set out in 6.1–6.3 also apply to proceedings before authorities other than courts.

Commentary:
Arbitration proceedings are not generally covered by the provisions. Other than the provisions specifically aimed at the relationship with the court, these provisions should, however, probably also apply to such proceedings.

7 Organisation of the law firm, etc.

7.1 Maintaining independence

A member must operate their legal practice so as not to jeopardise their independence.

Commentary:
A member's independence does not just refer to their independence in relation to government authorities and how a legal practice is to be owned and managed. The way in which a law firm is operated may also jeopardise its independence, for example if the member becomes insolvent or works for only one client other than on a temporary basis.

7.2 Business name

A member shall conduct their legal practice under a business name which contains the word "advokat" unless an exemption is granted by the Board of the Swedish Bar Association. The correct and complete business name must clearly appear on all written and electronic communications and any other material whereby the legal services of the firm are being presented.

Commentary:
It must be clearly evident to prospective clients and others who come into contact with the member that they are a qualified member of the Bar Association and, when the legal practice is operated in the form of a company, the type of legal entity in question. "Other material" refers to, for example, websites and advertisements. In these contexts, the entire business name must be stated. However, this is not normally required in the case of signage. Because many law firms collaborate, it is important that the client and others are clear as to who they are dealing with.

7.3 Office Organisation

7.3.1 A member is obliged to ensure that the office organisation is in good order, that it has equipment and staffing appropriate for the legal practice, and that all client engagements are monitored.

7.3.2 Communications addressed to a member in the course of their legal practice must be answered without delay unless it is evident from the circumstances that a response is not needed. If a response cannot be given without delay, receipt of the communication must be acknowledged and a response sent as soon as possible.

7.3.3 A member is obliged to ensure that all accounting and management of clients' funds and valuable instruments complies with all legal requirements and the Accounting Regulations of the Swedish Bar Association.

7.3.4 The member must carefully follow the financial development of the law practice and ensure that all debts arising from the operations of the practice are timely paid.

Commentary:
A smooth-running office organisation is normally a prerequisite for safeguarding clients' best interests. Accordingly, it is the responsibility of the member to acquire the staffing and equipment so that it is possible to contact the member during office hours, deadlines are monitored, and communications are responded to in a timely manner. This also applies to when the member has time off from work or is otherwise absent. In addition, it can be deemed the member's responsibility to be well-versed in the finances of the law firm. One cannot impose a general requirement that the legal practice must be profitable but there is a general requirement that the member promptly take necessary measures if this is not the case.

7.4 Legal practice in the form of a company

7.4.1 If a member's legal practice is conducted in the form of a company, such company may not engage in activities other than the practice of law. All legal services must also be carried out through, and income reported in, that company other than in cases where, as a result of the personal nature of an

engagement, it follows that the fee is attributable to income from services.

Commentary:
As a matter of principle, it is important that a company conducting a legal practice cannot conduct any other business activities to such an extent that it may lead to doubts as to the primary business activities of the company or jeopardise the company's position or ability to take out insurance or receive indemnification from insurance in relation to the legal practice. It is also important that income from the legal practice is invoiced, and reported as income, by the company that the client has retained for the engagement. As regards liability, it is important that the client knows which law firm they have retained and who they can contact if necessary.

7.4.2 A member is permitted to practise law through more than one company only if an exemption is granted by the Board of the Swedish Bar Association. The same applies if the legal practice is simultaneously conducted by a sole proprietorship and a limited liability company.

Commentary:
The Board of the Bar Association may grant an exemption from the main rule that a legal practice may not be conducted through more than one company. However, it is not normally necessary to apply for an exemption if, seen from the outside, it is clear how the legal practice is conducted and it does not render it difficult for a client to understand which firm they have retained. The Board of the Bar Association can probably grant an exemption for law firms with operations in both Sweden and abroad, provided that the operations of the foreign firm are conducted in an acceptable form. Similarly, there is probably a possibility to organise the operations under more than one Swedish company, provided that it is clearly evident to the client which company has been retained.

7.4.3 Notwithstanding the provisions of 7.4.1, a law firm may manage its own funds in the customary manner or, to a limited extent, may own property which is not directly associated with the legal practice.

Commentary:
In a guideline regarding the acquisition and possession of assets in a legal practice dated 14 December 2000, the Board of the Bar Association stated, *inter alia*, that good professional conduct does not prevent a member from acquiring or possessing such assets in their law firm which the member is personally entitled to acquire or possess, or from conducting customary asset management of the assets of the law firm. The scope of such investments may not be such that the member, within the parameters of their legal practice, can thus be deemed to conduct business other than the practice of law, and may also not entail exceptional risk or be incompatible with the good reputation of the legal profession. It stipulates that it is not compatible with good professional conduct for a law firm in the form of a limited liability company to trade in securities or carry out other asset management to such an extent that the business in question meets the requirements for business activities under income tax legislation (*see* Chapter 13, section 1 of the Income Tax Act and the revoked Chapter 3, section 21 of the Municipal Tax Act). According to this guideline, good professional conduct also does not allow a law firm to have provisions in its articles of association whereby the company will conduct any business other than the practice of law. A specific question has arisen regarding the acquisition of private residences, residential rental properties, or agricultural properties. The basic principle is that ownership or management of such assets may not pose any exceptional risk or be incompatible with the good reputation of the legal profession. The limited extent of the business entailed in the ownership of such properties is probably not normally incompatible with good professional conduct.

7.5 Organisation of a law firm

7.5.1 Only a member may be appointed as a director or deputy director, or be a shareholder or partner in a law firm.

Commentary:
The main rule is not intended to prevent union representatives or others who may have a statutory right or obligation to sit on the board of a law firm from being able to do so. Partial ownership of

a law firm in the form of a limited liability company is subject to an exemption as provided below in 7.5.3.

7.5.2 Following the grant of a waiver by the Board of the Swedish Bar Association, the managing director of a law firm in the form of a limited liability company need not be a member, provided that the person in question has undertaken to comply with the regulations applicable to the business, including good professional conduct. In such case, the managing director may also be authorised to sign on behalf of the company jointly with a member. However, other than as follows from Chapter 8, section 36 of the Swedish Companies Act, the company name cannot be signed without the participation of a member working at the company.

Commentary:
The rule makes it possible for a law firm in the form of a limited liability company to employ a managing director who is not a member. As is the case in respect of an ownership interest in a law firm under 7.5.3 by a managing director who is not a member, employment of a managing director who is not a member requires a waiver from the Board of the Bar Association. The requirement that the managing director undertakes to comply with the regulations applicable to the business, including good professional conduct, is a significant factor for a waiver by the Board. If the possibility to appoint a managing director who is not a member is utilised, it is important for the law firm to have clear rules in order to ensure that such part of the legal practice as involves advice to clients is carried out by members or associates who are supervised by members. Naturally, the same applies to other employees of the law firm who are not members or associates. The rule is considered to include an obligation for a law firm that obtains a waiver to notify the Bar Association immediately if a circumstance that was a prerequisite for the waiver is no longer in place. Failing to comply, in any respect, with the conditions for a waiver after it is granted may result in the Board of the Bar Association revoking the waiver.

7.5.3 Notwithstanding the provisions of 7.5.1 above, following the grant of a waiver by the Board of the Swedish Bar Association, a managing director who is not a member may own shares or participating rights in a law firm, subject to the

following conditions. Such ownership may only constitute less than ten percent of the capital and represent less than ten percent of the voting interests. In addition, such ownership requires the managing director to undertake to transfer their shares or participating rights to the other owners immediately upon termination of the employment.

Commentary:
Pursuant to section 38 of the Charter of the Swedish Bar Association and Chapter 8, section 4 of the Code of Judicial Procedure, only members may be shareholders or partners in a legal practice that is conducted in the form of a company, unless the Board of the Bar Association grants an exemption.

In light of the growing size of law firms and an increasing desire to make it easier for law firms to recruit and retain key people who are not members of the Bar Association, there is a reason to open up for ownership by people who are not members. Against this background, the rule has been introduced in order to define, more clearly, the fundamental conditions for the Board of the Bar Association to grant such a waiver. The possibility for external ownership according to this provision is limited to the managing director. In order for a waiver to be granted, it is essential to restrict ownership or influence, as well as to impose the requirement in 7.5.2 that the managing director must undertake to abide by applicable rules, including good professional conduct. These circumstances are, of course, also important in a case where there is cause to revoke the waiver. The reporting requirement concerning the prerequisites for employment as a managing director also applies to the managing director's ownership interest in the law firm (*see* the commentary to 7.5.2).

This provision does not restrict the Board of the Bar Association, in accordance with section 38 of the Charter and Chapter 8, section 4 of the Code of Judicial Procedure, from granting an exemption from the requirement that only a member may be an owner or partner in a law firm also in cases other than those stated here.

7.6 Employment conditions, etc

7.6.1 A member may not be employed by anyone other than a member or a law firm unless an exemption is granted by the Board of the Swedish Bar Association. However, a member may, without the approval of the Board, accept employment at a foreign law firm domiciled in a state within the EU or EEA, or in Switzerland.

Commentary:
The rule follows from section 3, seventh paragraph of the Charter of the Swedish Bar Association. The reason why a waiver is required in order to take up employment with a law firm in a country outside of the EU, EEA, or Switzerland is that it is difficult to obtain a general overview of the structure of the rules governing law firms in other countries. If the regulatory framework in another country meets the reasonable requirements that can be imposed by the Swedish Bar Association, it should be possible to grant a waiver.

7.6.2 A member or a law firm may employ associates and other staff to assist in the operations of the firm. If several members conduct their practice in a law firm, they shall, as between themselves, clarify which of them is to be responsible for training and supervision of other staff in various respects. A member who has such a responsibility must take the measures which can reasonably be required of them in order to ensure that the staff carries out their duties in the manner required by good professional conduct. No person other than a lawyer may independently render assistance to the general public.

Commentary:
Supervision of associates and other staff is central to all legal practice. It is difficult to define the exact parameters of the measures required of a member in this respect, and the ruling of the court in the case reported at NJA 1985, p. 856 essentially indicates that a member has almost strict liability in terms of supervising the work of an associate. However, when deciding upon the degree of supervision, it must be possible to take into consideration the associate's experience, the nature of the matter, and other relevant circumstances. Even when a law firm employs, for example, a patent engineer or another expert who is not a

lawyer (which is allowed), these persons must work with employed members or associates and these lawyers are the persons who assist the clients, i.e. the general public. A legal practice may not be combined with non-legal consultancy services.

7.6.3 A member or a law firm may not employ associates who are not members if the latter are employed under conditions where the associate's work cannot be satisfactorily supervised. An associate may not be permitted to conduct a legal practice on their own behalf. Associates may not be employed on terms which are unreasonable in respect of non-competition or in any other respect.

Commentary:
The first sentence is aimed at both situations where an associate is carrying out their work at the premises of a law firm without the possibility for continuous and satisfactory monitoring of the work, and situations where a law firm lends or outsources the services of an associate to a client enterprise or other party. As regards the first situation, an associate should only be contracted out to an office where members from the law firm are already working. There is a guideline dated 9 December 2004 on outsourcing, whereby outsourcing of associates from a law firm is permissible under the following conditions.

1. The associate must remain employed by the law firm during the outsourcing period.
2. It must be evident throughout the outsourcing period that the work is carried out as an associate of the law firm in question. Accordingly, external documents signed by the associate must be drafted on the law firm's headed stationery and any business card given out by the associate must be from the law firm.
3. The associate must report directly to a principal at the law firm and not, e.g., to a manager at the client enterprise.
4. All engagements received must be registered as matters with the law firm and, in that context, a customary conflict of interest check must be carried out.
5. The law firm must draw up routines to satisfy the requirement of continuous supervision of the associate.

If these conditions cannot be fulfilled, one alternative could be to grant the associate a leave of absence to work at another company.

In the event of a shorter outsourcing or when an associate only works one day a week at a client enterprise, the problems pertaining to the difficulties of supervision and ambiguities regarding the employment conditions should be manageable. The same should be the case when an associate works at a bank or any other company for the purpose of training or gaining general knowledge and therefore does work that is not legal in nature. The provision in the last sentence specifying that associates cannot be employed on terms which are unreasonable means, *inter alia*, that salary, particularly for new employees, may not be based on, for example, a variable salary or commission salary in such a way that may render it difficult for the associate to bring in a reasonable salary.

7.6.4 A member or a law firm must not, in their practice, retain the services of lawyers who are not employed by the law firm. However, such lawyers may be engaged for educational purposes or to perform expert engagements in individual matters.

Commentary:
The hiring of personnel from a temporary recruitment agency or the like may present problems as regards confidentiality and conflicts of interest, particularly if the persons in question do temporary work at several law firms or other companies. The main principal must be that the lawyers working at a legal practice must also be employed there. However, as is clear, it should be possible, through agreements and confidentiality undertakings, to manage lawyers from, for example, client enterprises who work at the law firm for a shorter period for training purposes or to generate expert opinions or the like. Should the lawyer remain an employee of the client company or another company during such time, it must be made clear that the person in question is not an employee of the law firm.

7.7 Co-operation

7.7.1 A member or a law firm may conduct operations in co-operation with other members or law firms. If such co-operation entails a closer, long-term relationship with respect to engagements or financial communities of interest that are permanent in nature, the co-operation must be clearly disclosed

on letterhead and other material used in the practice, e.g. through the use of a common trade name. If such case, conflicts of interest issues must be determined on the basis of all of the engagements of the co-operating parties and other circumstances. When a common trade name is used, the insurance obligation set out in 2.6 must be determined based on all business performed under the trade name.

Commentary:
A member's right to conduct their practice in co-operation with other members does not include the right to conduct their practice with lawyers who are not members. There is a provision in 7.7.5 below on sharing an office with legal specialists who are not members.

If the co-operating members use a common trade name, the insurance obligation under 2.6 must be determined by taking into consideration all work carried out under the trade name. This rule is new and entails an expansion of the insurance obligation. It is reasonable for clients who consult a larger organisation, regardless of whether its co-operating members conduct separately organised businesses, to be able to expect that the insurance cover is adapted to the size of the entire organisation.

7.7.2 Such close co-operation with foreign lawyers or law firms requires special permission from the Board of the Swedish Bar Association.

Commentary:
Co-operation between members and foreign qualified lawyers or law firms is an increasing occurrence. This is a natural development in light of the increasing internationalisation of society. Such co-operation often involves complex relationships. Using these rules to prescribe the conditions for co-operative efforts is not practical, not in the least in view of the fact that the actual circumstances in Sweden and abroad are subject to change over time. In a number of waiver matters, the Board of the Bar Association has already developed a standard practice for international co-operations. The natural course of things is to let the Board continue with this standardisation.

7.7.3 Other co-operation may not take place under a common trade name or in any other manner which gives the impression that the co-operating parties are part of the same practice.

Commentary:
The aim of this provision is to prevent activities which do not involve co-operation as specified under 7.7.1 above to be perceived as a single business.

7.7.4 Co-operation with respect to premises or equipment which involves a risk of setting aside the member's duty of confidentiality and duty of discretion entails sharing an office. When members or law firms share an office, conflict of interest issues shall be assessed taking into consideration the engagements and other circumstances of all members and law firms involved, regardless of the financial arrangements. The same applies to each and every other co-operative effort that entails a risk of setting aside the member's duty of confidentiality and duty of discretion.

Commentary:
The crucial issue for application of this rule is the risk of spreading information that is subject to a duty of confidentiality or discretion. This may be the case when utilising the same personnel, photocopier, fax machine, reception, etc. However, it does not apply to law firms situated on the same floor of a serviced office centre. The objective is not to tighten up the rules or render the practical application more difficult.

7.7.5 Sharing an office with persons other than members is not permitted. However, an office may be shared with legal specialists who are not members but who have a background in the judiciary or who have another specialised, qualified legal background. If such specialists conduct business under their own business name, the member or law firm has no obligation to monitor such business. However, such specialists must be reminded of the regulations applying to legal practice, in particular the duty of confidentiality and conflicts of interest, and shall undertake to comply with such regulations.

Commentary:
A member is obliged to monitor its employees, associates and others. It is not unusual for law firms to associate with various types of consultants. These consultants may include former

partners, judges, professors, or other individuals. As a practical matter, it is often difficult for the law firm to supervise the consultants. In order to make it possible for law firms to associate with qualified individuals, such as a former Supreme Court justice, other judges, or law professors, the rule makes it possible for members to share office premises with such persons who have legal qualifications. The condition is that any such consultant conducts business under their own business name. When sharing an office, the law firm must also ensure that the consultants contractually undertake to comply with the Code of Professional Conduct.

7.8 Solicitation and marketing

7.8.1 A member may not solicit engagements in a way which entails exploitation of someone else's distress or vulnerable position.

Commentary:
The previous prohibition against a member soliciting engagements by directly contacting a party and offering their services has been eliminated. However, there is still a prohibition on exploiting the misfortune of another, known as "ambulance chasing".

7.8.2 A member may only state a particular focus for their practice if the member has specific knowledge and experience in the stated practice area.

Commentary:
Members often claim to be specialists in a large number of areas. The rule aims to curb this. The previous prohibition against a member marketing their services in a distasteful and misleading manner has been eliminated, since such a prohibition is already codified in the Marketing Practices Act.[17]

7.8.3 A member may not participate in, or condone another party conducting, solicitation activities or marketing on behalf of the member in a manner that is not permitted for the member personally.

[17] *See also* the guideline of 5 December 2019 regarding considerations in connection with members' use of social media for marketing purposes (Circular no. 24/2019).

7.9 Compensation for soliciting engagements

7.9.1 A member may not surrender part of the fee to another person or compensate such person in another form because such person has referred or brought engagements to the member or undertaken to work to do so. Nor may such compensation be accepted.

7.9.2 The rule stated in 7.9.1 does not prevent fee sharing between the member and the member's partner, associate, or such co-operating partner as referred to in 7.7.1.

7.10 Liability for costs

7.10.1 If a member retains an expert on behalf of a client for the purpose of carrying out an investigation, rendering an opinion or otherwise, the member must make it clear before the start of the engagement that they will not bear the costs and fees of the expert, unless the member intends to bear such costs and fees.

7.10.2 If a member engages a colleague on behalf of a client, e.g. as local counsel, the member is liable for the fees and expenses of that colleague unless a different arrangement has been agreed.

Commentary:
The purpose of this rule is to clarify how the member is to act from an ethical perspective and not according to civil law.

7.11 Providing distinctive marks to another

A member may not allow others to use letterhead or distinctive marks in a manner which incorrectly gives the impression that the member or their legal practice is the sender, created the document, or is in any other way responsible for its contents.

Commentary:
The rule does not prevent the member from sending an unlocked Word document to the client. However, the member must not allow the client to make changes to the document and then present it as if it was sent by the member.

7.12 Disclosure and archiving of documents

7.12.1 Upon the completion or other termination of an engagement, the member shall promptly surrender to the client all documents belonging to the client unless the client explicitly requests that the member continue to store the documents and the member agrees to do so. A member may not condition the surrender of such documents on the client approving the fee charged or a statement of account rendered by the member.

7.12.2 A member is obliged to archive originals or copies of all documents accumulated during the engagement. However, this does not apply to duplicates, printed documents and similar material which can be obtained elsewhere without significant difficulty. The archival period shall be ten years or such longer period as is required due to the nature of the engagement. Documents other than original documents which belong to the client may be archived in either photographic or electronic form.

Commentary (last revised on 1 February 2016): The provisions clarify that the member is obliged to release documents belonging to the client. The member is entitled to reasonable compensation for making copies. The member's obligation to keep the documents archived for at least ten years applies even if the client requests that the period be truncated or that any document be destroyed earlier.

See also the Board's guideline of 17 March 1995 concerning a member's obligation to turn over documents in a matter to the client following termination of an engagement. Pursuant to the guideline of 28 January 2011 (Circular no. 5/2011) regarding the obligation of members to release documents in the matter to a client, etc., this obligation also applies where the engagement has involved more than one client, as well as where the obligation involves electronically stored documents, irrespective of whether any of the clients opposes such documents being released.

See also the Board's guideline of 13 June 2013 (Circular no. 21/2013) concerning a member's obligation, in light of the duty of confidentiality by which the member is bound in relation to an earlier representative or owner of a client company, to release documents in the matter, in particular such documents as have been saved electronically, after the engagement has ended. Regardless of whether the member has represented or been a

board member of the company, there is no general obligation for the member to provide information or release documents to a new board or other representative of the company. An assessment of what information or documents can be released must be made on a case-by case basis, taking into consideration the member's duty of confidentiality (cf. the commentary on Code of Conduct 2.2.1).

8 Relationship to the Swedish Bar Association

The provision was revised on 4 December 2015, to enter into force as of 1 January 2016,[18] *and on 7 December 2023 to enter into force as of 1 January 2024.*

A member is obliged, within the time prescribed, to provide a statement or a defence as is requested by the Board of the Swedish Bar Association, the Disciplinary Committee, the Penalty Fine Committee, the Secretary General or their assistants, or the Consumer Disputes Committee. In such context, the member is not bound by the duty of confidentiality that otherwise applies. The information provided by the member must be truthful.

Commentary (last revised on 1 February 2016):
In relation to the wording of the former section 52, the provision does not include an obligation on the part of a member to exhaustively answer questions posed and to provide requested information to the Bar Association. The amendment of the ethical regulatory framework has been made taking into consideration the right to a fair trial, including the right to remain silent and the right not to contribute to incriminating oneself, laid down in the European Convention on Human Rights (Article 6.1). The amendment has been made despite the fact that the Bar Association is essentially an association subject to private law and the fact that Sweden does not require representation in court by a member of the Bar Association or by counsel, as well as the absence of a monopoly on legal services in Sweden, and the significance this may have in relation to the rights in question laid down in the convention.

---

[18] *See* Circular no. 1/2016.

However, a member's statutory obligation to provide the Bar Association with the information needed for supervision still applies (*see* Chapter 8, section 6, first paragraph of the Code of Judicial Procedure), as does the obligation stipulated in section 43, second paragraph of the Charter of the Bar Association to submit a written statement upon request, produce the documents ordered by the Disciplinary Committee, the Penalty Fine Committee or the Secretary General, and to appear before the Disciplinary Committee if ordered to do so. Accordingly, a failure to comply with the duty to provide information entails that the member may be subject to disciplinary action.

Regarding a member's obligation to provide information as a consequence of the Bar Association's supervision in respect of statutory compliance with rules etc., *see* Circular no. 26/2009 and its attached memorandum *Proactive supervision of members and law firms*.

Since 1 January 2016, the duty to provide information also applies to requests from the Consumer Disputes Committee, and since 1 January 2024, it also applies to the Penalty Fine Committee. The rules for the Consumer Disputes Committee and its activities are laid down in sections 47, 51 and 52–68 of the Charter of the Swedish Bar Association.[19]

The statutory duty to provide information does not entail any duty on the part of a member to provide information concerning another member's actions which are contrary to good professional conduct.

A member's obligation to provide information in a supervision matter also applies to such information that is subject to the member's duty of confidentiality towards the client.

The information provided by the member must, as before, be truthful.

---

[19] 17. *See* Circular no. 1/2016 and Swedish Code of Statutes 2015:416.