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Code of Professional Conduct for counsel

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Resolution ICC-ASP/4/Res.1

Adopted at the 3rd plenary meeting on 2 December 2005, by consensus

ICC-ASP/4/Res.1
Code of Professional Conduct for counsel

The Assembly of State Parties,

Having regard to rule 8 of the Rules of Procedure and Evidence;

Having regard to rule 20, sub-rule 3;

Having regard to the consultations conducted by the Registrar with independent representative bodies of counsel or legal associations;

Recognizing the general principles governing the practice and ethics of the legal profession;

Recalling resolution ICC-ASP/3/Res.3, of 10 September 2004, whereby the Assembly of States Parties requested the Bureau of Assembly of States Parties to prepare an amended draft Code for adoption by the Assembly at its fourth session;

Having regard to the Report of the Bureau on the draft Code of Professional Conduct for counsel,[1] submitted pursuant to the above resolution;

Decides to adopt the Code of Professional Conduct for counsel, the text of which is annexed hereto.

1 ICC-ASP/4/21.

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Code of Professional Conduct for counsel

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Code of Professional Conduct for counsel

Chapter 1 General provisions

Article 1
Scope

This Code shall apply to defence counsel, counsel acting for States, *amici curiae* and counsel or legal representatives for victims and witnesses practising at the International Criminal Court, hereinafter referred to as "counsel".

Article 2
Use of terms

1. Unless otherwise defined in this Code, all terms are used as defined in the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

2. In this Code:

- "Court" refers to the International Criminal Court;

- "associate" refers to lawyers who practise in the same law firm as counsel;

- "national authority" refers to the bar association of which counsel is a member or any other organ competent to regulate and control the activity of lawyers, judges, prosecutors or professors of law, or other qualified counsel according to rule 22, paragraph 1, of the Rules of Procedure and Evidence;

- "client" refers to all those assisted or represented by counsel;

- "defence team" refers to counsel and all persons working under his or her oversight; and

- "agreement" refers to the oral or written legal relationship which binds counsel to his or her client before the Court.

Article 3
Amendment procedure

1. States Parties, judges, the Registrar, counsel and independent organizations representing lawyers' associations and counsel may submit proposals for amendments to this Code. Any proposal for amendments to this Code shall be submitted to the Registrar, together with explanatory material, in one or both working languages of the Court.

2. The Registrar shall transmit the proposals to the Presidency, together with a reasoned report prepared after consultation with the Prosecutor and, as appropriate, with any independent organization representing lawyers' associations and counsel.

3. Any proposal to amend this Code, submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar.

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4. Any proposal to amend this Code, other than one submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar. In such circumstances, the Presidency shall provide the Assembly of States Parties with the Presidency's reasoned recommendations as to whether or not any such proposal should be adopted. If the Presidency recommends adoption, it shall submit a draft amendment in relation to that proposal to the Assembly of States Parties for the purpose of adoption.

5. Amendments to this Code shall be adopted by the Assembly of States Parties in accordance with article 112, paragraph 7, of the Statute.

Article 4
Primacy of the Code of Professional Conduct for counsel

Where there is any inconsistency between this Code and any other code of ethics or professional responsibility which counsel are bound to honour, the terms of this Code shall prevail in respect of the practice and professional ethics of counsel when practising before the Court.

Article 5
Solemn undertaking by counsel

Before taking office, counsel shall give the following solemn undertaking before the Court: "I solemnly declare that I will perform my duties and exercise my mission before the International Criminal Court with integrity and diligence, honourably, freely, independently, expeditiously and conscientiously, and that I will scrupulously respect professional secrecy and the other duties imposed by the Code of Professional Conduct for Counsel before the International Criminal Court".

Article 6
Independence of counsel

1. Counsel shall act honourably, independently and freely.

2. Counsel shall not:

   (a) Permit his or her independence, integrity or freedom to be compromised by external pressure; or

   (b) Do anything which may lead to any reasonable inference that his or her independence has been compromised.

Article 7
Professional conduct of counsel

1. Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings.

2. Counsel shall maintain a high level of competence in the law applicable before the Court. He or she shall participate in training initiatives required to maintain such competence.

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3. Counsel shall comply at all times with the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and such rulings as to conduct and procedure as may be made by the Court, including the enforcement of this Code.

4. Counsel shall supervise the work of his or her assistants and other staff, including investigators, clerks and researchers, to ensure that they comply with this Code.

Article 8
Respect for professional secrecy and confidentiality

1. Counsel shall respect and actively exercise all care to ensure respect for professional secrecy and the confidentiality of information in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

2. The relevant provisions referred to in paragraph 1 of this article include, *inter alia*, article 64, paragraph 6 (c), article 64, paragraph 7, article 67, paragraph 1 (b), article 68, and article 72 of the Statute, rules 72, 73, and 81 of the Rules of Procedure and Evidence and regulation 97 of the Regulations of the Court. Counsel shall also comply with the relevant provisions of this Code and any order of the Court.

3. Counsel may only reveal the information protected under paragraphs 1 and 2 of this article to co-counsel, assistants and other staff working on the particular case to which the information relates and solely to enable the exercise of his or her functions in relation to that case.

4. Subject to paragraph 3 of this article, counsel may only disclose the information protected under paragraphs 1 and 2 of this article, where such disclosure is provided for by a particular provision of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court or this Code or where such disclosure is ordered by the Court. In particular, Counsel shall not reveal the identity of protected victims and witnesses, or any confidential information that may reveal their identity and whereabouts, unless he or she has been authorized to do so by an order of the Court.

Article 9
Counsel-client relationship

1. Counsel shall not engage in any discriminatory conduct in relation to any other person, in particular his or her client, on grounds of race, colour, ethnic or national origin, nationality, citizenship, political opinions, religious convictions, gender, sexual orientation, disability, marital status or any other personal or economic status.

2. In his or her relations with the client, counsel shall take into account the client's personal circumstances and specific needs, in particular where counsel is representing victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

3. Where a client's ability to make decisions concerning representation is impaired because of mental disability or for any other reason, counsel shall inform the Registrar and the relevant Chamber. Counsel shall also take the steps necessary to ensure proper legal representation of the client according to the Statute and the Rules of Procedure and Evidence.

4. Counsel shall not engage in any improper conduct, such as demanding sexual relations, coercion, intimidation, or exercise any other undue influence in his or her relations with a client.

Article 10
Advertising

Counsel may advertise provided the information is:

(a) Accurate; and

(b) Respectful of counsel's obligations regarding confidentiality and privilege.

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Chapter 2 Representation by counsel

Article 11
Establishment of the representation agreement

The agreement is established when counsel accepts a request from a client seeking representation or from the Chamber.

Article 12
Impediments to representation

1. Counsel shall not represent a client in a case:

   (a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation; or

   (b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.

2. In the case of paragraph 1 (a) of this article, where consent has been obtained after consultation, counsel shall inform the Chamber of the Court seized with the situation or case of the conflict and the consent obtained. Such notice shall be provided in a manner consistent with counsel's duties of confidentiality pursuant to article 8 of this Code and rule 73, sub-rule 1 of the Rules of Procedure and Evidence.

3. Counsel shall not act in proceedings in which there is a substantial probability that counsel or an associate of counsel will be called to appear as a witness unless:

   (a) The testimony relates to an uncontested issue; or

   (b) The testimony relates to the nature and value of legal services rendered in the case.

4. This article is without prejudice to article 16 of this Code.

Article 13
Refusal by counsel of a representation agreement

1. Counsel has the right to refuse an agreement without stating reasons.

2. Counsel has a duty to refuse an agreement where:

   (a) There is a conflict of interest under article 16 of this Code;

   (b) Counsel is incapable of dealing with the matter diligently; or

   (c) Counsel does not consider that he or she has the requisite expertise.

Article 14
Performance in good faith of a representation agreement

1. The relationship of client and counsel is one of candid exchange and trust, binding counsel to act in good faith when dealing with the client. In discharging that duty, counsel shall act at all times with fairness, integrity and candour towards the client.

2. When representing a client, counsel shall:

   (a) Abide by the client's decisions concerning the objectives of his or her representation as long as they are not inconsistent with counsel's duties under the Statute, the Rules of Procedure and Evidence, and this Code; and

   (b) Consult the client on the means by which the objectives of his or her representation are to be pursued.

Article 15
Communication between counsel and the client

1. Counsel shall provide the client with all explanations reasonably needed to make informed decisions regarding his or her representation.

2. When counsel is discharged from or terminates the agreement, he or she shall convey as promptly as possible to the former client or replacement counsel any communication that counsel received relating to the representation, without prejudice to the duties which subsist after the end of the representation.

3. When communicating with the client, counsel shall ensure the confidentiality of such communication.

Article 16
Conflict of interest

1. Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client's interests before counsel's own interests or those of any other person, organization or State, having due regard to the provisions of the Statute, the Rules of Procedure and Evidence, and this Code.

2. Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients.

3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:

   (a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or

   (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation.

Article 17
Duration of the representation agreement

1. Counsel shall advise and represent a client until:

   (a) The case before the Court has been finally determined, including all appeals;

   (b) Counsel has withdrawn from the agreement in accordance with article 16 or 18 of this Code; or

   (c) A counsel assigned by the Court has been withdrawn.

2. The duties of counsel towards the client continue until the representation has ended, except for those duties which subsist under this Code.

Article 18
Termination of the representation

1. With the prior consent of the Chamber, counsel may withdraw from the agreement in accordance with the Regulations of the Court if:

   (a) The client insists on pursuing an objective that counsel considers repugnant; or

   (b) The client fails to fulfil an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled.

2. Where counsel withdraws from the agreement, he or she remains subject to article 8 of this Code, as well as any provisions of the Statute and the Rules of Procedure and Evidence relating to confidentiality.

3. Where counsel is discharged by the client, counsel may be discharged in accordance with the Regulations of the Court.

4. Where counsel's physical or mental condition materially impairs his or her ability to represent the client, counsel may be withdrawn by the Chamber at his or her request or at the request of the client or the Registrar.

5. In addition to complying with the duties imposed by article 15, paragraph 2, of this Code, counsel shall convey to replacement counsel the entire case file, including any material or document relating to it.

Article 19
Conservation of files

Following the termination of the representation, counsel shall keep files containing documents and records of work carried out in fulfilment of the agreement for five years. Counsel shall allow the former client to inspect the file unless he or she has substantial grounds for refusing to do so. After this time counsel shall seek instructions from the former client, his or her heirs or the Registrar on the disposal of the files, with due regard to confidentiality.

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Article 20
Counsel's fees

Prior to establishing an agreement, counsel shall inform the client in writing of the rate of fees to be charged and the criteria for setting them, the basis for calculating the costs, the billing arrangements and the client's right to receive a bill of costs.

Article 21
Prohibitions

1. Notwithstanding article 22, counsel shall not accept remuneration, in cash or in kind, from a source other than the client unless the client consents thereto in writing after consultation and counsel's independence and relationship with the client are not thereby affected.

2. Counsel shall never make his or her fees contingent on the outcome of a case in which he or she is involved.

3. Counsel shall not mix funds of a client with his or her own funds, or with funds of counsel's employer or associates. Counsel shall not retain money received on behalf of a client.

4. Counsel shall not borrow monies or assets from the client.

Article 22
Remuneration of counsel in the framework of legal assistance

1. The fees of counsel where his or her client benefits from legal assistance shall be paid exclusively by the Registry of the Court. Counsel shall not accept remuneration in cash or in kind from any other source.

2. Counsel shall neither transfer nor lend all or part of the fees received for representation of a client or any other assets or monies to a client, his or her relatives, acquaintances, or any other third person or organization in relation to which the client has a personal interest.

3. Counsel shall sign an undertaking to respect the obligations under this article when accepting the appointment to provide legal assistance. The signed undertaking shall be sent to the Registry.

4. Where counsel is requested, induced or encouraged to violate the obligations under this article, counsel shall advise the client of the prohibition of such conduct.

5. Breach of any obligations under this article by Counsel shall amount to misconduct and shall be subject to a disciplinary procedure pursuant to this Code. This may lead to a permanent ban on practising before the Court and being struck off the list of counsel, with transmission to the respective national authority.

Chapter 3 Relations with the Court and others

Article 23
Communications with the Chambers and judges

Unless the judge or the Chamber dealing with a case permits counsel to do so in exceptional circumstances, counsel shall not:

(a) Make contact with a judge or Chamber relative to the merits of a particular case other than within the proper context of the proceedings; or

(b) Transmit evidence, notes or documents to a judge or Chamber except through the Registry.

Article 24
Duties towards the Court

1. Counsel shall take all necessary steps to ensure that his or her actions or those of counsel's assistants or staff are not prejudicial to the ongoing proceedings and do not bring the Court into disrepute.

2. Counsel is personally responsible for the conduct and presentation of the client's case and shall exercise personal judgement on the substance and purpose of statements made and questions asked.

3. Counsel shall not deceive or knowingly mislead the Court. He or she shall take all steps necessary to correct an erroneous statement made by him or her or by assistants or staff as soon as possible after becoming aware that the statement was erroneous.

4. Counsel shall not submit any request or document with the sole aim of harming one or more of the participants in the proceedings.

5. Counsel shall represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings.

Article 25
Evidence

1. Counsel shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is submitted to the Court. He or she shall not introduce evidence which he or she knows to be incorrect.

2. If counsel, while collecting evidence, reasonably believes that the evidence found may be destroyed or tampered with, counsel shall request the Chamber to issue an order to collect the evidence pursuant to rule 116 of the Rules of Procedure and Evidence.

Article 26
Relations with unrepresented persons

1. When required in the course of representation, counsel may communicate with and meet an unrepresented person in the client's interest.

2. When counsel communicates with unrepresented persons he or she shall:

   (a) Inform them of their right to assistance from counsel and, if applicable, to their right to legal assistance; and

   (b) Without infringing upon the confidentiality of counsel-client privilege, inform them of the interest that counsel represents and the purpose of the communication.

3. If counsel becomes aware of a potential conflict of interest in the course of a communication or meeting with an unrepresented person, he or she shall, notwithstanding paragraph 1 of this article, refrain immediately from engaging in any further contact or communication with the person.

Article 27
Relations with other counsel

1. In dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously.

2. All correspondence between counsel representing clients with a common interest in a litigated or non-litigated matter and who agree on exchanging information concerning the matter, shall be presumed confidential and privileged by counsel.

3. When counsel does not expect particular correspondence between counsel to be confidential, he or she shall state clearly at the outset that such correspondence is not confidential.

Article 28
Relations with persons already represented by counsel

Counsel shall not address directly the client of another counsel except through or with the permission of that counsel.

Article 29
Relations with witnesses and victims

1. Counsel shall refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom.

2. Counsel shall have particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

Chapter 4 Disciplinary regime

Article 30
Conflict with other disciplinary regimes

Subject to article 38 of this Code, the present chapter is without prejudice to the disciplinary powers of any other disciplinary authority that may apply to counsel subject to this Code.

Article 31
Misconduct

Counsel commits misconduct when he or she:

(a) Violates or attempts to violate any provisions of this Code, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or of the Registry in force imposing a substantial ethical or professional duty on him or her;

(b) Knowingly assists or induces another person to commit any misconduct, referred to in paragraph (a) of this article, or does so through the acts of another person; or

(c) Fails to comply with a disciplinary decision rendered pursuant to this chapter.

Article 32
Liability for conduct of assistants or other staff

1. Counsel shall be liable for misconduct under article 31 of this Code by his or her assistants or staff when he or she:

   (a) Orders or approves the conduct involved; or

   (b) Knows or has information suggesting that violations may be committed and takes no reasonable remedial action.

2. Counsel shall instruct his or her assistants or staff in the standards set by this Code.

Article 33
The Commissioner

1. A Commissioner responsible for investigating complaints of misconduct in accordance with this chapter shall be appointed for four years by the Presidency. The Commissioner shall be chosen from amongst persons with established competence in professional ethics and legal matters.

2. The Commissioner shall not be eligible for re-appointment. A Commissioner who is involved in an investigation when his or her mandate expires shall continue to conduct such an investigation until it is concluded.

Article 34
Filing a complaint of misconduct

1. Complaints against counsel regarding misconduct as referred to in articles 31 and 32 of this Code may be submitted to the Registry by:

   (a) The Chamber dealing with the case;

   (b) The Prosecutor; or

   (c) Any person or group of persons whose rights or interests may have been affected by the alleged misconduct.

2. The complaint shall be made in writing or, if the complainant is unable to do so, orally before a staff member of the Registry. It shall identify the complainant and the counsel against whom the complaint is made and shall describe in sufficient detail the alleged misconduct.

3. The Registrar shall transmit the complaint to the Commissioner.

4. The Registrar may, on his or her own initiative, make complaints to the Commissioner regarding the misconduct referred to in articles 31 and 32 of this Code.

5. All complaints shall be kept confidential by the Registry.

Article 35
Limitation period

The right to file a complaint against counsel for misconduct shall lapse five years after the termination of the representation agreement.

Article 36
Composition and management of the Disciplinary Board

1. The Disciplinary Board shall comprise three members, two of whom shall be permanent and one *ad hoc*.

2. The members of the Disciplinary Board shall perform their functions under this Code in an independent and impartial manner.

3. The Registry shall make appropriate arrangements for the elections, provided for in paragraph 4 of this article, in consultation with counsel and, as appropriate, national authorities.

4. The two permanent members, as well as one alternate member who may serve as a replacement in accordance with paragraph 10 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.

5. The *ad hoc* member shall be a person appointed by the national authority competent to regulate and control the activities of counsel subject to the disciplinary procedure.

6. The permanent members shall not be eligible for re-election.

7. Notwithstanding paragraph 4 of this article, at the first election one of the permanent members shall be selected by lot to serve for a term of six years.

8. After each election and in advance of the first meeting of the newly-elected Disciplinary Board, the permanent and alternate members shall elect one of the permanent members as a chairperson.

9. All members of the Disciplinary Board shall have the same rights and votes. The Disciplinary Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 10 of this article shall have the same rights and votes as permanent and *ad hoc* members serving on the same case.

10. If one of the permanent members is unavailable to deal with the case or serve on the Disciplinary Board, the chairperson or, where the chairperson is the permanent member concerned, the other permanent member, shall request the alternate member to serve as a replacement on the Disciplinary Board.

11. Permanent members or the alternate member whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined including all appeals.

12. The Registrar shall appoint a staff member of the Registry who will render secretariat services to the Disciplinary Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry and, subject to article 44, paragraph 12 of this Code, solely as the secretariat of the Disciplinary Board.

Article 37
Preliminary procedures

1. If the complaint filed meets the requirements in article 34 of this Code, the Commissioner shall forward it to counsel subject to the disciplinary procedure, who shall submit a response within sixty days from the date the complaint is forwarded.

2. The response shall indicate whether the alleged misconduct has been or is the subject of a disciplinary procedure before the national authority. If so, it shall include:

   (a) The identity of the national authority deciding on the alleged misconduct; and

   (b) A certified communication by the national authority stating the alleged facts that are the basis of the disciplinary procedure before it.

Article 38
Complementarity of disciplinary measures

1. The disciplinary procedure in this Code shall be applied by the Disciplinary Board.

2. The *ad hoc* member of the Disciplinary Board shall serve as the contact point with the relevant national authority for all communication and consultation regarding the procedure.

3. Counsel subject to the disciplinary procedure shall request the national authority dealing with the matter to inform the Disciplinary Board of the progress of any national disciplinary procedure concerning the alleged misconduct and of its final decision, and shall take all measures necessary to facilitate such communication.

4. When the alleged misconduct is the basis of a disciplinary procedure which has already been initiated before the relevant national authority, the procedure before the Disciplinary Board shall be suspended until a final decision is reached regarding the former procedure, unless:

   (a) the national authority does not respond to communications and consultations in accordance with paragraph 2 of this article within a reasonable time;

   (b) the Disciplinary Board considers that the information received is not satisfactory; or

   (c) the Disciplinary Board considers that, in the light of the information received, the national authority is unable or unwilling to conclude the disciplinary procedure.

5. As soon as it receives the decision of the national authority, the Disciplinary Board shall:

   (a) declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code; or

   (b) declare that the decision of the national authority does not cover or only partially covers the misconduct brought before the Disciplinary Board and that therefore the procedure is to be continued.

6. In the case of paragraphs 3 and paragraph 4 (b) of this article, the Disciplinary Board may ask counsel subject to the disciplinary procedure to provide detailed information about the procedure, including any minute or evidence which might have been submitted.

7. A decision by the Disciplinary Board based on this article may be appealed before the Disciplinary Appeals Board.

Article 39
Disciplinary procedure

1. The Commissioner conducting the investigation may dismiss a complaint without any further investigation if he or she considers on the basis of the information at his or her disposal that the allegation of misconduct is unfounded in fact or in law. He or she shall notify the complainant accordingly.

2. Should the Commissioner consider otherwise, he or she shall promptly investigate the counsel's alleged misconduct and decide either to submit a report to the Disciplinary Board or to bring the procedure to an end.

3. The Commissioner shall take into consideration all evidence, whether oral, written or any other form, which is relevant and has probative value. He or she shall keep all information concerning the disciplinary procedure confidential.

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4. The Commissioner may try to find an amicable settlement if he or she deems it appropriate. The Commissioner shall report the outcome of any such efforts to reach an amicable settlement to the Disciplinary Board, which may take it into consideration. Any amicable settlement shall be without prejudice to the competence or powers of the Disciplinary Board under this Code.

5. The report of the Commissioner shall be submitted to the Disciplinary Board.

6. The Disciplinary Board hearing shall be public. However, the Disciplinary Board may decide to hold a hearing or parts of it in closed session, in particular to safeguard the confidentiality of information in the report of the Commissioner or to protect victims and witnesses.

7. The Commissioner and the counsel subject to the disciplinary procedure shall be called and heard. The Disciplinary Board may also call and hear any other person deemed useful for the establishment of the truth.

8. In exceptional cases, where the alleged misconduct is of such a nature as to seriously prejudice the interests of justice, the Commissioner may lodge an urgent motion with the Chamber before which the counsel who is the subject of the complaint is appearing, so that it may, as appropriate, declare a temporary suspension of such counsel.

Article 40
Rights of counsel subject to the disciplinary procedure

1. Counsel subject to the disciplinary procedure shall be entitled to assistance from other counsel.

2. Counsel shall have the right to remain silent before the Disciplinary Board, which may draw any inferences it deems appropriate and reasonable from such silence in the light of all the information submitted to it.

3. Counsel shall have the right to full disclosure of the information and evidence gathered by the Commissioner as well as the Commissioner's report.

4. Counsel shall be given the time required to prepare his or her defence.

5. Counsel shall have the right to question, personally or through his or her counsel, any person called by the Disciplinary Board to testify before it.

Article 41
Decisions by the Disciplinary Board

1. The Disciplinary Board may conclude the procedure finding no misconduct on the basis of the evidence submitted to it or finding that counsel subject to disciplinary procedure committed the alleged misconduct.

2. The decision shall be made public. It shall be reasoned and issued in writing.

3. The decision shall be notified to counsel subject to the disciplinary procedure and to the Registrar.

4. When the decision is final, it shall be published in the Official Journal of the Court and transmitted to the national authority.

Article 42
Sanctions

1. When misconduct has been established, the Disciplinary Board may impose one or more of the following sanctions:

   (a) Admonishment;

   (b) Public reprimand with an entry in counsel's personal file;

   (c) Payment of a fine of up to €30,000;

   (d) Suspension of the right to practise before the Court for a period not exceeding two years; and

   (e) Permanent ban on practising before the Court and striking off the list of counsel.

2. The admonishment may include recommendations by the Disciplinary Board.

3. The costs of the disciplinary procedure shall be within the discretion of the Disciplinary Board.

Article 43
Appeals

1. Sanctioned counsel and the Commissioner shall have the right to appeal the decision of the Disciplinary Board on factual or legal grounds.

2. The appeal shall be notified to the secretariat of the Disciplinary Board within thirty days from the day on which the decision has been delivered.

3. The secretariat of the Disciplinary Board shall transmit the notification of the appeal to the secretariat of the Disciplinary Appeals Board.

4. The Disciplinary Appeals Board shall decide on the appeal according to the procedure followed before the Disciplinary Board.

Article 44
Composition and management of the Disciplinary Appeals Board

1. The Disciplinary Appeals Board shall decide on appeals against decisions of the Disciplinary Board.

2. The members of the Disciplinary Appeals Board shall perform their functions under this Code in an independent and impartial manner.

3. The Registry shall make appropriate arrangements for the elections provided for in paragraph 5 of this article, in consultation with counsel and, as appropriate, national authorities.

4. The Disciplinary Appeals Board shall comprise five members:

   (a) The three judges of the Court who take precedence under regulation 10 of the Regulations of the Court, not including:

      (i) the judges dealing with the case from which the complaint subject to the disciplinary procedure arose; or

      (ii) any members or former members of the Presidency who appointed the Commissioner.

   (b) Two persons elected in accordance with paragraph 5 of this article.

5. The two members of the Disciplinary Appeals Board referred to in paragraph 4 (b) of this article, as well as an alternate member who may serve as a replacement in accordance with paragraph 6 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.

6. If one of the elected members is unavailable to deal with the case or serve on the Disciplinary Appeal Board, the chairperson shall request the alternate member to serve as a replacement on the Disciplinary Appeals Board.

7. The functions of members of the Disciplinary Appeals Board are incompatible with those of members of the Disciplinary Board.

8. The elected members shall not be eligible for re-election.

9. The judge who takes precedence among the three judges referred to in paragraph 4 (a) of this article shall be the chairperson of the Disciplinary Appeals Board.

10. All members of the Disciplinary Appeals Board shall have the same rights and votes. The Disciplinary Appeals Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 6 of this article shall have the same rights and votes as other members serving on the same case.

11. Members whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined.

12. The staff member of the Registry appointed by the Registrar pursuant to article 36, paragraph 12, of this Code to provide secretariat services to the Disciplinary Board shall also act as the secretariat of the Disciplinary Appeals Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry.

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Chapter 5 Final provisions

Article 45
Entry into force

This Code and any amendments to it shall enter into force 30 days after their adoption by the Assembly of States Parties in accordance with article 112, paragraph 2, of the Rome Statute.

Article 46
Publication

The Code adopted by the Assembly of States Parties shall be published in the Official Journal of the Court.