

Code of Ethics for legal business

Ukrainian Bar Association

**CODE OF ETHICS FOR LEGAL BUSINESS**

**WORKING DRAFT**

**UBA 2023**

**EXPLANATORY NOTE  
TO THE CODE OF ETHICS FOR LEGAL BUSINESS**

In 2012, the UBA General Assembly approved the "Ethical Rules of the Lawyer", which contain standards of ethical and professional behavior and are binding on all members of the UBA regardless of their professional affiliation (lawyers, judges, academics, notaries, bailiffs, etc.). An Ethics Commission was established to monitor compliance with the Rules. The Rules also explicitly state that lawyers must comply with the rules of industry-specific ethics rules applicable to certain categories of lawyers (judges, lawyers, prosecutors, notaries, etc.).

Since, with certain exceptions, a lawyer does not have to be an attorney to practice law (provide legal assistance or legal services), a separate industry has actually emerged in Ukraine that can be identified as "legal business". This industry includes lawyers of law firms (companies) and self-employed lawyers, regardless of whether they have the status of an attorney or act as legal consultants without attorney status. In particular, both attorneys and non-attorneys may work within the same law firm or law firm association. At the same time, more than half of the UBA members are representatives of the legal business. Given the nature of the services provided by the legal business, as well as the relationship with clients, such clients, and quite often other stakeholders (contractors/competitors/opponents of clients, administrative authorities, courts, etc.), expect the legal business to comply with high ethical standards. At the same time, this level of expectation is as close as possible to the level of ethical standards and requirements applicable to the legal profession worldwide.

However, there is virtually no regulation of the legal business as such by the state or centralized industry organizations. Accordingly, there is an urgent need to create appropriate self-regulatory mechanisms.

Although such self-regulation is primarily needed by non-attorneys (since no other industry standards apply to them), it should also regulate the ethical standards of the legal business in general (covering the ethical and professional aspects of the conduct of attorneys, non-attorneys, and all other legal business personnel).

Given the UBA's leading role in the legal community and the active participation of representatives of the systemic legal business in the Association's activities, its leadership in self-regulation and ability to create appropriate mechanisms are undeniable. Moreover, the UBA's steps in this direction are natural and expected, both by UBA members and external stakeholders.

The first such steps were: (1) the creation of a relevant working group within the UBA, (2) its diagnosis of the most pressing issues of legal business ethics (including a review of the previous practice of the UBA Ethics Commission, analysis of ethical incidents known in the legal market, surveys of lawyers, clients and other stakeholders on painful ethical issues, study of international experience in regulating legal ethics, etc.

These steps resulted in the draft Code of Ethics for the Legal Business developed by the UBA, which the working group is honored to present to the UBA Board for consideration and further broader consultations with the UBA community.

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**TERMS AND DEFINITIONS**

In this Code, terms and definitions have the following meanings:

1. A lawyer - a member of the UBA who provides Services or another participant of the legal business who provides Services (law firm, attorneys' association and bureau, attorney, individual entrepreneur, etc.) and has separately acceded to this Code by signing the relevant declaration.
2. A client - a person to whom the Lawyer provides the Services; where the context requires, it also includes a potential or former Client.
3. An employee - an employee of the Lawyer, including, but not limited to, a lawyer, administrative and other employees who ensures the professional activity of the Lawyer on a permanent basis, regardless of whether the relationship with him/her is based on an employment contract or otherwise.
4. Services - any legal services, including legal aid, legal advice, etc.
5. Case - a court case, transaction, consultation, or any other project in which the Lawyer provides services to the Client.
6. 6. Fee – remuneration for Services.

## **PREAMBLE**

As representatives of the legal profession, lawyers care about ensuring human rights and freedoms and bear a special responsibility to society for implementing the rule of law, building the rule-of-law state, and developing legal awareness and the legal profession.

This Code was adopted to create an ethical framework for the effective, rational, and fair functioning of the legal services market, to raise the level of legal culture and awareness, and to prevent the use of unethical practices related to the provision of legal services.

This Code has been developed taking into account the provisions of the Code of Conduct for European Lawyers, the Charter of Fundamental Principles of the European Legal Profession, and reflects the general principles of a modern democratic society, with which the legal profession is inextricably linked.

In determining the meaning of the provisions of this Code, they shall be interpreted fairly and in good faith, in accordance with the understanding that an impartial person of ordinary skill and professional competence would have in similar circumstances, based on the purpose of this Code and high moral standards.

## **1. GENERAL PROVISIONS**

1.1. This Code defines the ethical principles of the legal business, provision of Services, organization of the Lawyers' work and their interaction with each other, Clients, Employees and other persons.

1.2. This Code shall be applied only to the extent that it does not directly contradict other codes, rules and standards and other norms that are legally binding on representatives of certain legal professions.

1.3. This Code shall apply to the Lawyers regardless of how the relationship between the relevant Lawyer and the Client is regulated (directly or indirectly, with the Lawyer or his or her Employee,

through other legal entities or individuals, with the involvement of subcontractors, whether the Lawyer receives a Fee or provides Services on a pro bono basis, etc.

## 2. CONFLICT OF INTEREST

2.1. A conflict of interest is a contradiction between the Lawyer's professional duties, in which the provision of Services to one Client of the Lawyer may conflict with the interests of his or her other Client in the same Case, or otherwise prevent the Lawyer from providing the Services in a quality and impartial manner.

2.2. A conflict of interest is also a contradiction between the Lawyer's professional duties and his or her private interests, which shall be understood as

2.2.1. personal interests of the Lawyer, his or her family members, relatives, friends, acquaintances

2.2.2. interests of a legal entity and/or entity without the status of a legal entity, in which the Lawyer is an employee, member, participant, shareholder, or has other similar or identical status.

2.3. Prior to the provision of the Services, the Lawyer shall check for a conflict of interest and, if any, refuse to provide the Services to such Client.

2.4. If the Lawyer discovers a conflict of interest at the stage of provision of the Services, such Lawyer shall immediately notify all Clients whose interests are in conflict and terminate the provision of the Services to the Client whose provision of the Services in the Case was started later.

The Lawyer shall also terminate the provision of the Services to all other Clients who are parties to the conflict of interest and who request termination of the provision of the Services to them in connection with the identified conflict of interest.

2.5. The Client in respect of whom a conflict of interest has arisen may claim compensation of losses from the Lawyer if such losses were caused by improper verification of the conflict of interest and it is established that the conflict of interest could have been detected by the Lawyer at the stage of its verification.

2.6. As an exception to the rules set forth in clauses 2.3 and 2.4 of the Code, the Lawyer may provide services to Clients in the event of a conflict of interest only under the following conditions:

2.6.1. all Clients whose interests are in conflict or may be in conflict have given their informed consent to the provision of the Services by the Lawyer in such circumstances;

2.6.2. according to the Lawyer's assessment, the provision of the Services to such Clients will not cause negative consequences for any of them;

2.6.3. maintaining the same level of quality of provision of Services to the Clients and ensuring their rights and interests as in the situation of absence of a conflict of interest; and

2.6.4. provision of such Services does not contradict the legislation of Ukraine.

2.7. If, during the provision of the Service, at least one of the conditions provided for in clause 2.6 of the Code ceases to be fulfilled in relation to a particular Client (for example, due to changes in the situation or in the relations between the parties), the Lawyer shall immediately notify all Clients

involved in the conflict of interest and transfer the Case within a reasonable time in accordance with the Client's instructions. At the same time, the Lawyer shall refrain from any actions that may prejudice the rights and interests of the Client, whose Case is transferred, in this Case or directly related Cases.

2.8. The Lawyer shall not act contrary to the interests of the Client to whom the Lawyer has ceased to provide the relevant Service in the following cases

2.8.1. in the Case against the former Client, in which the Lawyer acted as his or her representative;

2.8.2. in the Case directly related to the Case against the former Client, in which the Lawyer acted as his or her representative;

2.8.3. in other Cases, using the information received in connection with the provision of Services to the former Client.

2.9. The provisions of clause 2.8 of the Code shall not apply in case the Lawyer receives the Client's informed consent to provide such Services (2.8.1, 2.8.2) or to use the information of the Client to whom the provision of the relevant Service has been terminated (2.8.3).

2.10. Creating a situation where the Client engages the Lawyer in order to prevent the provision of Services to opponents, competitors or other third parties is not allowed and shall not be considered a conflict of interest. An artificial conflict of interest may arise, in particular, if the scope of the Services actually ordered by the Client is significantly less than previously agreed, the Lawyer has not received information from the Client about the presence or role of other external legal advisers or the information received is unreliable, etc.

2.11. If the Lawyer has reason to believe that the Client has created an artificial conflict of interest in relation to him, the Lawyer shall immediately notify the Client in writing, providing appropriate justification. In the absence of such notification, the relevant conflict of interest shall not be deemed artificial.

2.12. As a rule, a conflict of interest is determined in relation to a particular Client's Case. An industry conflict of interest - a general prohibition to serve any or certain competitors of the Client - is atypical and restricts the Lawyer's ability to apply industry expertise and experience. The Lawyer has the choice to agree or not to agree to the terms and conditions proposed by the Client to avoid an industry conflict of interest. If the requirement to avoid industry conflicts of interest has not been agreed upon in writing, the provision of Services to Clients from the same industry shall not be considered.

2.13. In case the Services are provided to a person other than their client (payer) (for example, the target company orders and/or pays for the Services provided to the buyer of this company; one party to a joint venture agreement orders and/or pays for the Services provided to the other party, etc. At the same time, the Client of the Lawyer is the person to whom the Services are provided, and the Lawyer always acts in the interests of such person, regardless of who is the customer (payer) of the Services.

2.14. The Lawyer's investment in the Client's business, receipt of the Fee by a share in the Client's business and other similar transactions require fulfillment of the following conditions

2.14.1. the relevant agreement is concluded in writing and its terms are fair, reasonable and understandable;

2.14.2. the Lawyer has informed the Client in writing of all potential conflicts of interest that may arise from the relevant agreement and has recommended that the Client obtain independent legal advice regarding such agreement with the Lawyer;

2.14.3. the existence of an agreement and/or investment (share) of the Lawyer in the Client's business does not prevent the Client at any time, at his own discretion, to refuse the further provision of Services by the Lawyer; and

2.14.4. [the Lawyer's investment (share) in the Client's business is insignificant for both the Lawyer and the Client.]

Додано примітку [C1]: Here and further in [] - the provisions in question. We collect opinions on feasibility.

### 3. CONFIDENTIALITY

3.1 The Lawyer shall adhere to the principles of reasonableness and expediency in the storage, use and dissemination of confidential information.

3.2. Any information directly or indirectly (through another person) received by the Lawyer from the Client or in connection with the provision of the Services to the Client shall be confidential and may not be disclosed to third parties, regardless of whether such disclosure would be contrary to the interests of the Client.

3.3 As an exception to clause 3.2, the Client's confidential information may be disclosed by the Lawyer

3.3.1. with the written permission of the Client, and the Client shall be informed in advance of the ways and scope of use of such confidential information;

3.3.2. in the event of a dispute with the Client regarding the recovery of the unpaid Fee from the Client and only to the extent necessary to resolve such dispute;

3.3.3. in the event that such disclosure is necessary to prevent harm to human life or health; or

3.3.4. in cases and in the manner prescribed by law.

3.4. The Lawyer shall make sure that the terms and conditions of the provision of the Services to the Client contain provisions on confidentiality, including the term of the relevant confidentiality obligation.

3.5. Unless otherwise provided, the Lawyer shall apply to the information directly or indirectly received by the Lawyer from the Client:

3.5.1. the confidentiality provisions that the Lawyer usually applies when providing Services to Clients; and

3.5.2. the standard of confidentiality is not lower than the one applied to the Lawyer's own confidential information.

3.6. At the request of the Client or in the cases provided for in Clause 2.6 of the Code, the Lawyer may offer the Client the establishment of additional protection of information confidentiality - an ethical wall - a mode of operation (including exchange or storage of information, communication), which ensures that information, received by a part of the Lawyer's team during the provision of Services to one Client, will not get to another part of the Lawyer's team that provides Services to another Client.

3.7. If the Lawyer becomes aware of the leakage or threat of leakage of the Client's confidential information, he shall immediately, but no later than 48 hours, inform the latter about it, providing all the circumstances known to the Lawyer.

#### **4. ATTRACTION OF AND INTERACTION WITH CLIENTS**

4.1 The Lawyer shall use ethical methods of attracting Clients. Aggressive practices of attracting Clients (e.g., unfair advertising, excessive intrusiveness, use of unfairly obtained information, deliberate exaggeration of the expected risks for the Client or the results of the provision of Services, disclosure of false information about other Lawyers, etc. are unacceptable.

4.2 [The Lawyer may cooperate with third parties on a compensatory basis (e.g., commission, referral or engagement fee, etc.) in order to attract a particular Client, provided that the Client is informed of such compensation basis before the Client makes a decision to engage the relevant Lawyer. If the Client has not been duly notified, the Lawyer is prohibited from making such payments in favor of third parties. At the same time, the Lawyer's cooperation with advertising firms, PR agencies, etc. does not require mandatory disclosure. ] / [4.2. The Lawyer shall not demand or accept from other Lawyers or any other person a commission or any other remuneration for referring the Client to another Lawyer or recommending such Lawyer to the Client. The Lawyer shall not pay any commission or any other remuneration to anyone for referring a Client to him or her].

4.3. The Lawyer shall not, directly or indirectly, including with the involvement of third parties, exercise unfair influence on the Client (for example, offer material or other benefits to the person who makes a decision on behalf of the Client to engage the Lawyer, etc).

4.4. [The Lawyer shall not enter into sexual relations with the Client. The Lawyer may provide the Services to the Client with whom the relationship of a sexual nature began before the provision of the Services, provided that (i) such relationship does not affect the Lawyer's ability to provide the Services of proper quality, and (ii) the emotional connection does not prevent the Client from making balanced and adequate decisions regarding the Case. If the Client is a legal entity, this rule shall apply to persons who, on behalf of the Client, coordinate the Lawyer's work, formulate assignments or regularly consult with the Lawyer regarding the Client's Case].

4.5. The Lawyer shall prevent unfair treatment of Clients by other Lawyers.

4.6. If the Lawyer becomes aware that the Client has an outstanding debt for the Services rendered by another Lawyer, the Lawyer may refuse to provide the Services to such Client, including termination of the Services with notification of the reason for refusal to the Client. The rules of this clause shall not apply to reasonably disputable obligations of the Client.

4.7. The Clients are free to choose the Lawyer, including in case of transformation of the Lawyer (for example, liquidation or division of the Lawyer, resignation (transfer) of the Employee responsible for the Client or the Case, etc.)

4.8. In case of the transformation of the Lawyer, persons related (or who were related) to him, act based solely on the interests of the Client. Such Lawyer shall immediately notify about the transformation the Client directly and significantly affected by it and the ability to continue to provide Services in relation to all or some of the Client's Cases.



4.9. Persons associated (or who have been associated) with the Lawyer may also offer Services to the Client, simultaneously notifying the ability to provide such Services in relation to all or individual Client's Cases.

4.10. After the Client notifies the Lawyers of their choice, they transfer the relevant Client Cases, ensuring the continuity of the Services and protection of the Client's interests

## **5. TERMINATION OF SERVICES TO CLIENTS**

5.1. The lawyer may prematurely terminate the provision of Services by mutual agreement with the Client and/or for other reasons permitted by law.

5.2. The Lawyer shall terminate the provision of Services in the Case if the further provision of such Services would violate the rules on conflict of interest, compliance and integrity, and/or other rules provided by law (for example, if the result that the Client wants to achieve or the means of achieving it, which he insists, are illegal; the execution of the mandate for the provision of Services violates the professional rights and obligations of the Lawyer, etc.).

5.3. In case of termination of the provision of the Services, the Lawyer shall comply with the following requirements:

5.3.1. at the Client's request, the Lawyer shall hand over to the Client or another person designated by the Client all documents, draft documents and other materials related to the provision of the Services;

5.3.2. return a part of the Fee for the Services that have not been provided, unless otherwise agreed with the Client;

5.3.3. comply with the obligations arising from the principles of confidentiality, prevention of conflicts of interest and all other rules provided for by this Code; and

5.3.4. in case of termination of the provision of the Services at the initiative of the Lawyer, notify the Client in advance of the intention to terminate the Services and, if possible, provide the Client with time to find another Lawyer to provide the Services.

## **6. PREVENTION OF CORRUPTION**

6.1. The Lawyer shall provide the Services based on the principles of integrity, transparency and compliance. The Lawyer follows the principle of zero tolerance to corruption in any of its manifestations.

6.2. Any involvement of the Lawyer in Services, Cases or actions that contain signs of corruption is not allowed. This includes any participation of the Lawyer in the development, implementation or discussion of measures that directly or indirectly contain a corruption component, directly by the Lawyer and/or with the involvement of other persons, in the interests of the Client, the Lawyer or third parties, etc.

6.3. [The Lawyer shall notify law enforcement authorities in case of availability of information about the actions of other Lawyers that reasonably contain signs of corruption, taking into account the requirements of confidentiality and other requirements applicable to the Lawyer].

## **7. PUBLIC COMMUNICATION**

7.1. The Lawyers shall interact with each other on the basis of respect, honesty and fair competition. Impartial and polite attitude to colleagues is the basis of relations between Lawyers.

7.2. Any dissemination by the Lawyer (including on his or her behalf, at his or her request, etc.) of false information or expression of personal or value judgments aimed at harming the business reputation of another Lawyer or discrediting him or her, including with respect to the position of another Lawyer in the Case, shall not be permitted

7.3. Personal or evaluative judgments of the Lawyer are allowed if they do not violate the norms of this Code and the legislation of Ukraine.

7.4. Any identification of the Lawyer with the Client is not allowed. The Lawyer's representation of the Client does not in itself mean that the Lawyer shares the Client's political, economic, social or moral views or approves of the Client's activities.

## **8. INTERACTION WITH THE STAFF**

8.1. The relationship between the Lawyer, as an employer, and his or her Employees shall be built in accordance with the labor legislation unless otherwise follows from the nature of the relationship.

8.2. The Lawyer, as an employer, shall maintain a positive culture and ensure respectful and dignified treatment of the Employees, including with respect to the length of working hours, and the exercise of all labor and other rights of the Employees.

8.3. Any manifestations of discrimination in the field of labor (both at the stage of recruitment of Employees and in the process of implementation of labor relations) are not allowed, in particular, violation of the principle of equality of rights and opportunities or creation of barriers, direct or indirect restriction of the rights of Employees based on race, color, political, religious and other beliefs and values, gender, gender identity, sexual orientation, ethnic, social or another origin, age, health status, physical capabilities, marital and property status, language or other characteristics.

8.4. Any manifestations of mobbing, bullying, harassment, or other abusive behavior against an Employee are not allowed.

8.5. Competition for talent is an important element of fair competition. Aggressive practices to retain Employees (e.g., agreements not to poach Employees, harassment or damage to the Employee's reputation due to a change of employer, pressure on the Employee or his/her potential employers to retain the Employee, etc) are unacceptable.

## **9. FEE AND PRICE COMPETITION**

9.1. The Lawyer and the Client freely determine the amount of the Fee, the method and form of its payment, based on the principles of reasonableness, transparency and clarity for the Client. The Fee may be determined as a fixed amount (cost), hourly fee, weighted average hourly fee, payment with a maximum fee limitation, success fee, subscription fee, mixed payment, or in any other way agreed by the Lawyer and the Client.

9.2. Regardless of the amount of the agreed Fee, the Lawyer shall provide quality Services and give each Case the attention reasonably necessary for its successful completion.

9.3. When agreeing on the amount of the Fee, the complexity and urgency of the Case, qualifications and workload of the Lawyer may be taken into account, inter alia, among other things. At the same time, the Lawyer shall strive for the most cost-effective provision of the Services to the Client, including:

9.3.1. not to create or perform unnecessary (redundant, irrelevant) work; and

9.3.2. not to use unfair billing and timekeeping practices (for example, artificially increasing the amount of time actually spent or the volume of Services provided, duplication of work, charging for unpaid work, etc.)

9.4. The amount, method and form of payment of the Fee may be changed only by mutual agreement between the Lawyer and the Client. In case of agreement of a fixed amount of the Fee with reservations regarding the possible increase of the Fee, the Lawyer may insist on its increase only in case of advance notice to the Client of the occurrence of the conditions provided for in the relevant reservation.

9.5. The Lawyer and the Client may agree on the Success Fee (contingent fee), which shall be paid upon achievement of the result agreed with the Client and may be determined as a fixed amount or as a certain calculation or calculation (for example, proportion, percentage, formula, etc.) of the amount of the transaction, dispute, property value, etc.

9.6. The lawyers shall compete with each other honestly and in good faith, including through price competition. Non-transparent or unfair pricing, such as misleading the Client about the Fee or the scope of the Services offered, deliberate underestimation of the Fee at the initial stage of provision of the Services in the expectation of receiving additional compensation by artificially increasing the Fee at the subsequent stages of provision of the Services, and other unfair or manipulative approaches are not allowed.

## 10. BUSINESS STRUCTURING

10.1. Lawyers shall build their business on the principles of transparency, compliance and integrity.

10.2. Non-compliance, tax evasion, aggressive tax optimization and creation of other unfair advantages (e.g., avoidance of payroll taxation, substitution of labor relations with business relations, unaccounted cash and cryptocurrency Fees, structuring through offshore or artificially created multiple legal entities, unauthorized subcontracting, etc.

## 11. [OTHER PROVISIONS]

11.1. The Lawyer is free to choose and use the methods of communication with the Client, provided that they are acceptable to the Client.

11.2. [...]

**Додано примітку [C2]:** In case of additional comments or proposals for additional provisions that do not fall within the scope of regulation by other sections of the Code, it is proposed to add them to Section 11