

**THE CODE OF PROFESSIONAL  
CONDUCT FOR COUNSEL APPEARING  
BEFORE THE  
INTERNATIONAL CRIMINAL COURT**



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**THE CODE OF PROFESSIONAL CONDUCT FOR  
COUNSEL APPEARING BEFORE THE  
INTERNATIONAL CRIMINAL COURT**

**1. PREAMBLE**

This Code is made in the belief that:

1. As legal practitioners, Counsel must maintain high standards of professional conduct.
2. The role of Counsel as specialist advocates in the administration of justice requires them to act honestly, fairly, skillfully, diligently and courageously.
3. Counsel have a duty to the Court and the Client to act with independence, in the interests of justice and in the best interests of the Client.
4. Counsel may be subject to disciplinary proceedings under Rule 27 of the Rules of Procedure and Evidence and Articles 46 and 47 of the Rome Statute. It is therefore necessary that Counsel be aware of their rights and obligations towards the Court.

To these ends, this Code and its Articles of conduct have been formulated.

**2. PRELIMINARY**

Article 1.  
Definitions

(1) In this Code, unless a different interpretation is required by the provisions of the Code or the context in which they appear, the following definitions apply:

- 'Client'            an Accused, Suspect, Detainee, Witness, Victim or other Person who has engaged or been assigned Counsel for the purposes of his or her legal representation before the Court.
- 'Counsel'           any person who is competent in international or criminal law and procedure, and has the necessary relevant experience, whether as judge, prosecutor or advocate or in other similar capacity, in criminal proceedings according to Rule 22 of the Rules of Procedure and Evidence, and
- (a) has filed his or her power of attorney with the Registrar; or
  - (b) has been assigned under the Rules to a Suspect, Accused Detainee, or Witness.

Any reference to Counsel includes a reference to any co-counsel jointly and to each of them severally.

- 'Court' the International Criminal Court since 1998, established by United Nations Conference on the Establishment of an International Criminal Court and by UN Resolution [ ] of [ ].
- 'Directive' the Directive entitled 'Directive on Assignment of Defence Counsel'. This is Directive [ ], as amended.
- 'Regulations' the Regulations of the Court adopted on [ ], as amended.
- 'Rules' the Rules of Procedure and Evidence of the Court adopted on [ ], as amended.
- 'Statute' the Rome Statute of the International Criminal Court adopted by [ ] resolution [ ] of [ ].

(2) In the event of any inconsistency between this Code and the Directive or the Rules, the provisions of the Directive or Rules, as the case may be, prevail.

(3) Any term not defined in this Code has the same meaning given to it by the Statute or by the Rules.

(4) While Counsel are bound by this Code, it is not and should not be read as if it were a complete or detailed code of conduct for Counsel. Additional standards and requirements may be imposed on the conduct of Counsel by virtue of the Court's inherent jurisdiction.

(5) This Code must be read and applied so as to attain most effectively the objects and uphold the values expressed in the Preamble.

(6) General provisions of this Code should not be read or applied in a restrictive way by reason of any particular or illustrative provisions.

(7) The singular includes the plural and vice versa.

## Article 2. Entry into Force

This Code enters into force on [ ]

## Article 3. General Purpose and Application

(1) The general purpose of this Code is to provide for standards of conduct on the part of Counsel, which are appropriate in the interests of the fair and proper administration of justice.

(2) This Code applies to Counsel as defined in Article 5(1) of this Code.

### 3. GENERAL OBLIGATIONS OF COUNSEL TO CLIENTS

#### Article 4. Scope and Termination of Representation

- (1) Counsel shall not consent to handle a case unless:
  - (a) the Client gives direct instructions; or
  - (b) the case is assigned by the Registrar to Counsel in accordance with the Rules and Directive; or
  - (c) instructions are given in any other manner permissible under the Statute, the Rules, the Regulations or the Directive.
  
- (2) Counsel must advise and represent a Client until the Client duly terminates that Counsel's position or the matter before the Court has been finally determined, including all appeals, or Counsel withdraws or is withdrawn for good cause with the consent of the Court. Any withdrawal of Counsel shall be done in such a manner as to have a minimum adverse effect on the interests of the Client.

When representing a Client, Counsel must:

- (a) consult with the Client concerning the objectives of representation and the means by which those objectives are to be pursued; and
  - (b) abide by a Client's decisions concerning such objectives, if not inconsistent with Counsel's duties under the Code as well as Counsel's best professional judgment.
- (4) Counsel must not advise or assist a Client to engage in conduct that Counsel knows is in breach of the Statute, the Rules, the Regulations or this Code.

Counsel shall not handle a matter, which he or she knows or ought to know he or she is not competent to handle. Counsel shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.

#### Article 5. Competence and Independence

In providing representation to a Client, Counsel shall:

- (a) act with competence, skill, care and honesty;
  - (b) exercise independent professional judgment and render open and honest advice.
- (2) Counsel must not:

- (a) permit his or her absolute independence, integrity and freedom from external pressure to be compromised;
- (b) do anything as may lead to any inference that his or her independence may be compromised;
- (c) compromise his or her professional standards in order to please the Client, the Court or a third party.

Article 6.  
Diligence

Counsel must represent a Client diligently in order to protect the Client's best interests. Counsel must carry through to conclusion all matters undertaken for a Client within the scope of his or her legal representation until such representation is terminated or terminates.

Article 7.  
Communication

Counsel must keep a Client informed about the status of a matter before the Court in which the Client is an interested party and must promptly comply with all reasonable requests for information. Counsel shall undertake personal responsibility for the discharge of instructions given to him or her by a Client.

Article 8.  
Confidentiality

Counsel shall respect the confidentiality of all information that becomes known to him or her in connection with his or her representation of a Client, even after Counsel has ceased to represent such Client.

- (2) Whether or not the relationship of Counsel and Client continues, Counsel must preserve the confidentiality of his or her Client's affairs and, subject to sub-article (3), must not:
  - (a) reveal to any other person information that has been entrusted to Counsel in confidence, provided that Counsel may reveal such information to associates and staff and anyone engaged by Counsel in the course of providing professional services to a Client; or
  - (b) use such information to a Client's detriment or to Counsel's own or another client's advantage.

Notwithstanding sub-article (2), Counsel may reveal information which has been entrusted to him or her in confidence in any one of the following circumstances:

- (a) when the Client has been fully consulted and knowingly consents in writing;

- (b) when the Client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure;
- (c) when essential to establish a defence to a criminal or disciplinary charge or civil claim formally instituted against Counsel or Counsel's associates and staff; or
- (d) to prevent an act which Counsel reasonably believes:

is, or may be, criminal within the territory in which it may occur or under the Statute, the Rules or the Regulations; and

- (ii) may result in death or substantial bodily harm to any person unless the information is disclosed.
- (4) Counsel shall require his or her associates and staff and anyone engaged by Counsel in the course of providing professional services to a Client to observe the same obligation of confidentiality described in this Article 8, even after Counsel has ceased to represent such Client.

#### Article 9. Conflict of Interest

Counsel have a duty to the Court and the Client to act at all times with independence. In the event of a conflict arising between the duty of Counsel to act in the best interest of the Client and the interest of justice, the latter shall prevail. Counsel shall put such interests before his or her own interests or those of any other person, organisation or state.

- (2) Counsel shall exercise all care to ensure that no conflict of interest arises. Where there is doubt as to the existence of such conflict, it should be resolved against Counsel's own interest.

Counsel shall not represent a Client in connection with any matter in which Counsel participated as an official or staff member of the Court or in any other capacity or otherwise, unless the Registrar consents after consultation with the parties.

- (4) Counsel or his or her firm must not represent a Client with respect to a matter if.
  - (a) there is a conflict, or significant risk of conflict, between the interests such Client or any other client or clients.
  - (b) the matter is the same or substantially related to another matter in which Counsel or his or her firm had formerly represented another client ('the former client'), and the interests of the Client are materially adverse to the interests of the former client, unless the Client and the former client consent after consultation;
  - (c) Counsel's professional judgment on behalf of the Client will be, or may reasonably be expected to be, adversely affected by:

- (i) the Counsel's responsibilities to, or interests in, a third party; or
  - (ii) the Counsel's own financial, business, property or personal interests.
- Counsel must not accept compensation for representing a Client from a source other than that Client, unless:
- (a) that Client consents after consultation; and
  - (b) there is no interference thereby with the Counsel's independence of professional judgment nor with the Client-Counsel relationship.
  - (6) Counsel must not accept compensation for representing a Client assigned by the Court from a source other than the Court.
  - (7) Where a conflict of interest does arise, Counsel shall:
    - (a) promptly and fully inform each potentially affected client of the existence of the conflict; and
    - (b) either:
      - (i) cease to act for each potentially affected Client; or
      - (ii) obtain the full and informed consent in writing of all potentially affected clients to continue their representation, but only if such consent, in the best judgment of Counsel, is unlikely to prejudice in any way the administration of justice.

#### Article 10. Prospective Clients

Counsel shall not:

- (a) contact a prospective Client, his or her relatives or acquaintances in an attempt to solicit work from such prospective Client; or
- (b) make false, misleading or deceptive communications about Counsel's services to a prospective Client, his or her relatives or acquaintances.

#### Article 11. Financial Arrangements between Counsel and Client

Assigned Counsel shall not permanently transfer all or part of his or her fees earned in connection with the representation of a Client or any other monies or assets to such Client, his or her relatives, acquaintances, or any other third person or organisation from which the Client benefits or in which he or she has a personal interest.

- (2) Assigned Counsel shall not lend or temporarily transfer all or part of his or her fees earned in connection with the representation of a Client or any other monies or assets

to such Client, his or her relatives, acquaintances, or any other third person or organisation from which the Client benefits or in which he or she has a personal interest.

- (3) Assigned Counsel shall not borrow monies or assets from a Client.
- (4) A Client is presumed to have a personal interest in a third person, organisation or State under paragraphs (1) and (2) if such Client would derive any personal and direct advantage from the transfer.

Sub-articles (1)-(4) do not apply to the temporary or permanent transfer of items of *de minimis* value, as determined by the Registrar.

- (6) Counsel shall not acquire a financial interest in the subject matter of a case which he or she is conducting.

Counsel shall never mingle funds of a Client with his or her own or with the funds of Counsel's employer or law firm, and Counsel should at all times be able to refund money held for a Client. Counsel shall not retain money received for a Client for longer than is absolutely necessary.

- (8) An estimate of fees to be charged by Counsel shall be fully disclosed in advance to a Client and shall be fair and reasonable.

#### Article 12. Client under a Disability

When a Client's ability to make reasonably considered decisions in connection with his or her representation is impaired because of minority, mental disability or any other reason, Counsel must:

- (a) inform the Presiding Judge or Chamber of the Court hearing the matter, if any, of the disability;
- (b) take such steps as are necessary to ensure the adequate legal representation of such Client; and
- (c) as far as reasonably possible maintain a normal Counsel-Client relationship with the Client.

#### Article 13. Accounting for Time

Counsel should account in good faith for the time spent working on a case and maintain and preserve detailed records of time spent and account for expenses on behalf of the Client in the manner directed by the Registrar.

## 4. CONDUCT BEFORE THE COURT

### Article 14. Rules of the Court

- (1) Counsel must at all times comply with the Rules and such rulings as to conduct and procedure as may be applied by the Court in its proceedings. Counsel must at all times have due regard to the fair conduct of proceedings.
- (2) Counsel must not, unless permitted by the Rules or this Code or the Chamber of the Court hearing the matter:
  - (a) make contact with a Judge or Chamber of the Court concerning proceedings in which he or she is involved without first or concurrently informing counsel acting for any other party to the proceedings; or
  - (b) submit exhibits, notes or documents relating to proceedings in which he or she is involved to the Judge without communicating them first or concurrently to counsel acting for any other party to the proceedings.

### Article 15. Candour Towards the Court

- (1) Counsel are personally responsible for the conduct and presentation of his or her Client's case, and must exercise personal judgment on the substance and purpose of statements made and questions asked.
- (2) Counsel must not deceive or knowingly or recklessly mislead the Court.
- (3) Counsel must take all necessary steps to correct an incorrect statement made by Counsel in ongoing proceedings before the Court as soon as possible after Counsel becomes aware that the statement was incorrect.

### Article 16. Integrity of Evidence

Counsel must at all times maintain the integrity of the evidence, whether in written, oral or any other form, which is to be submitted to the Court.

### Article 17. Impartiality of the Court

- (1) Counsel must take all necessary steps to ensure that his or her actions do not bring proceedings before the Court into disrepute.
- (2) Counsel must not seek to influence a Judge or other official of the Court in an improper manner.

Article 18. Counsel  
as Witness

Counsel shall not to act in any matter in which the Counsel is likely to be a witness.

**5. DUTY OF COUNSEL TO  
OTHERS**

Article 19. Fairness and Courtesy to Opposing Party and  
Counsel

- (1) Counsel must recognise all other Counsel appearing or acting in relation to proceedings before the Court as professional colleagues and must act fairly, honestly and courteously towards them and their Clients.
- (2) Counsel must not communicate with the Client of another Counsel except through or with the permission of that Client's Counsel.

Article 20. Dealing with Unrepresented  
Persons

- (1) If, on behalf of a Client, Counsel is dealing with a person who is not represented by Counsel, Counsel must not give advice to this unrepresented person if the interests of the person are, or have a reasonable possibility of being, in conflict with the interests of Counsel's Client.
- (2) Counsel must inform the unrepresented person of the role Counsel plays in the matter, the person's right to counsel under the Rules, and the nature of legal representation in general. This information must be given whether or not a conflict exists or may exist with the interests of Counsel's Client.

**6. MAINTENANCE OF THE INTEGRITY OF THE  
PROFESSION**

Article 21.  
Conflicts

If there is any inconsistency between this Code and any other code of ethics or professional responsibility, which Counsel is bound to honour, the terms of this Code shall prevail in respect of Counsel's conduct before the Court. In the event of conflict arising from applications of this Code in relation to the requirements of any other code of ethics or professional responsibility, the Registrar shall establish any such means for consultations with the relevant parties as will facilitate resolutions of conflict.

Article 22.  
Misconduct

It is professional misconduct for Counsel, *inter alia*, to:

- (a) violate or attempt to violate this Code or to assist knowingly in the violation or attempted violation of this Code or to induce another person to violate or attempt to violate this Code through the acts of another person;
  - (b) commit a criminal act which reflects adversely on Counsel's honesty, trustworthiness or fitness as Counsel;
  - (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
  - (d) engage in conduct which is prejudicial to the proper administration of justice before the Court; or
  - (e) seek to influence a Judge or other official of the Court by means prohibited by the Statute, the Rules, or this Code; or
- engage in any other conduct that adversely reflects on Counsel's fitness as a counsel.

Article 23. Reporting  
Misconduct

Counsel must inform the appropriate body for enforcement and disciplinary proceedings in accordance with the Rules, if:

- (a) Counsel knows that another Counsel has breached this Code; or
- (b) that violation or conduct raises a substantial question as to the other Counsel's honesty, trustworthiness or fitness as Counsel; and
- (c) Counsel's knowledge of such breach is not protected by Article 8.

Article 24.  
Enforcement

Counsel must abide by and voluntarily submit to any enforcement and disciplinary procedures as may be established by the Court in accordance with the Rules.

Article 25.  
Amendment

This Code may be amended by the Registrar, after consultation with the Judges and the Prosecutor and in accordance with the consultation process established in Rules 20(3) of the Rules. Any amendments made shall not apply retroactively.

## **7. SOURCES**

The following codes of professional conduct and related sources have been consulted:

1. International Criminal Tribunal for Yugoslavia, Code of Professional Conduct for Defence Counsel Appearing before the International Tribunal.
2. International Criminal Tribunal for Rwanda, Code of Professional Conduct for Defence Counsel.
3. International Bar Association, International Code of Ethics.
4. Bars and Law Societies of the European Union, Code of Conduct for Lawyers in the European Union.
5. New York State Bar Association, The Lawyer's Code of Professional Responsibility.