

Code of Professional
Conduct
for Members of the
Swedish Bar Association

*Adopted and issued by the Board of the
Swedish Bar Association on 29 August 2008
with Commentary
Revised June 2016*

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About the comments in general

The initiative to issue Guiding Principles for Good Advocate Conduct was taken by delegates of the Swedish Bar Association in 1967 with the first version being adopted in 1971 by the Board of the Swedish Bar Association. The directives have since undergone a few amendments, the principal wording of which was finalised in 1984. However, 1994 saw two further amendments being added concerning the marketing and running of a legal operation within an existing company.

In line with a decision taken by the delegates of the Swedish Bar Association in June 2005, the Board of the Swedish Bar Association decided to appoint a working group, i.e. an Ethics Committee, the purpose of which was to review the current Guiding Principles for Good Advocate Conduct. In November 2007, the Ethics Committee submitted to the Board a proposal for new Guiding Principles for Good Advocate Conduct. On 29 August 2008, the Board of the Swedish Bar Association, following a few amendments and additions, adopted and issued new Guiding Principles for Good Advocate Conduct valid as of 1 January 2009. These rules and the additional amendments and additions made subsequently are commented upon below. In 2010, an amendment was made regarding financing of mandates (4.4.2) and in 2012 concerning the obligation to resign from a mandate (3.4.1). Certain changes and additions have subsequently been made due to the Swedish Bar Association's Consumer Dispute Committee (changes under 8 and new provisions under 4.1.5–4.1.7) that came into force on 1 January 2016. A new provision on the upholding of human rights in the legal profession (2.9) came into force on 15 June 2016.

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 individual regulations.

In the event that the phrasing of a regulation differentiates from that of a previous regulation, the meaning of that regulation will in principal not have changed unless specifically mentioned in the commentary.

One or two previous regulations may have been eliminated in line with applicable laws, regulations or other binding legislative acts. Consequently, the need for a regulation is sometimes considered groundless while attention is drawn to the practical importance of other regulations.

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

These commentaries are regularly updated with declarations from the Board of the Swedish Bar Association, resolutions from the Disciplinary Committee, EU directives, etc. Such revisions have in this edition been made up to and including June 2016.

Stockholm, June 2016

1 The role and primary responsibilities of an Advocate

A free and independent legal profession operating in accordance with sound rules developed by the Advocates 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, an Advocate holds a position of significant responsibility in our society.

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

An Advocate must practise with integrity and so as to promote a society governed by the rule of law. An Advocate must act impartially and correctly and so as to uphold confidence in the members of the Advocate's profession.

An Advocate must not promote injustice.

Commentary (last revised on 11 December 2009)

The role of the advocate

A basic principle recognised throughout the democratic world and for interpretation of the rules governing good advocate conduct is that an advocate should be free and independent of courts of law and authorities as well as any other interests that may impinge upon the advocates' prospect 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 community founded on the rule of law and is a prerequisite for individuals' rights and freedoms being upheld. An advocate therefore has a special standing and a special responsibility in a well-functioning community founded on the rule of law.

A prerequisite for lawyers to be able to work in the manner expected of them in a state governed by law is that particular requirements can be placed on the advocates and that the profession of advocate can be carried on under particular terms and conditions.

All countries that claim to be states governed by law have instituted special rules concerning advocates and special provisions concerning the terms and conditions

governing how they conduct their profession. With the primary purpose of safeguarding their clients' interests, a number of special rules are in place, most aiming to preserve loyalty, trust and confidentiality between advocate and client, others to ensure individual people's access to legal counselling and legal representation. Behind these rules can be discerned a number of particularly important principles of a fundamental nature referred to as core principles. These are independence, loyalty to the client, confidentiality and avoidance of conflicts of interest. Further principles that should guide the advocate in his/her professional work are those stated in the *Charter of Core Principles of the European Legal Profession* och *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 advocate has developed and changed over time. The advocate competent in general law, who assists clients in disputes and legal proceedings, has been joined by the business-oriented advocate. The legal profession consists today of both advocates in general practice, who accept mandates within a broad area of law, and the highly specialised advocate, who only accepts mandates within his or her specialist area. The ethical regulatory system must in spite of these differences be applicable to and function in all legal practice.

The advocate's obligations

Chapter 8 of the Swedish Code of Judicial Procedure contains a number of rules concerning an advocate's obligations from which it can be concluded that the obligation to observe the principles of good advocate conduct only applies to an advocate's practice of law and thus not to other work. What constitutes practice of law, however, is not defined in law. The Disciplinary Committee has instead been given a substantial margin of interpretation as regards the precise content of the concept. The Swedish Code of Judicial Procedure, however, also states that the Bar Association's disciplinary supervision is not limited solely to practice of law but that it also covers all dishonest action. Dishonest action can lead to expulsion or, if there are mitigating circumstances, a warning. Nor is the term dishonesty unambiguous. It should however primarily refer to conduct in a financial context that cannot be considered acceptable for an advocate. The Commission of Inquiry on the Code of Judicial Procedure emphasised that dishonesty may also occur outside the practice of law, for example when an advocate commits a fraudulent or otherwise dishonest act in a private matter (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 main obligation of an advocate is to protect his or her clients' interests in the best way possible and to the best of his or her ability, meaning that he or she be loyal and truthful to the client. An advocate must not however act in violation of the law or the principles of good advocate conduct. Under the duty of loyalty, an advocate is thus always to act in an upright and honest manner.

An advocate must always be free and independent. That an advocate be independent of the state is necessary particularly to be able to protect the client's best interests also against the Government. An advocate must also be free and independent in relation to other interests to fulfil his or her obligations to the client. That an advocate finally also be free

and independent of the client is necessary not only because the advocate may otherwise overstep the limits that the law and good advocate conduct mark out for the advocate's freedom of action but also because an advocate is to be able to give clients the advice and assistance that are best for them from the point of view of objectivity and not the advice and assistance the client wants.

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

Cf. the guideline of 11 June 2009 concerning advocates' entering into agency agreements with clients, according to which an agency agreement that for a period binds a client to a specific advocate is not considered to be consistent with the obligations that follow from this provision.

An advocate must not promote injustice

The requirement to observe good advocate conduct leads to restriction of freedom of action when a client's interests are to be protected. The due regard to be shown for the legal system, the opposing party and third parties prohibits an advocate from taking advantage of all options available in the pursuance of his profession. It goes without saying that an advocate must not aid crime. Nor may he or she, according to the principles of good advocate conduct, pave the way for another person's criminal activities or promote a client's interests in an inappropriate manner. An advocate must not for example aid or abet a legal action that is dishonest. An advocate must decline a mandate that is intended to mislead or in any other inappropriate manner cause someone to perform a legal act. An advocate is also to decline a mandate that may result in the unauthorised violations of another person's rights. Nor must an advocate assist in drawing up written documents for the sake of appearances or assist in drawing up agreements or other written documents with such content that it may be feared that they will be used for dishonest purposes. To comply with the demand to observe good advocate conduct, it is not enough for an advocate to ensure that the approach he or she recommends or in some other way assists in does not violate the law. The advocate must also act in a manner that promotes honesty and integrity within a society governed by the rule of law.

2 Professional Duties in General

2.1 The Execution of a Mandate

2.1.1 An Advocate must carry out a mandate with care, accuracy and due timeliness. The Advocate must ensure that the client is not burdened with unnecessary cost.

Commentary:

This directive corresponds in substance with Section 23, second paragraph of the previous regulations. However, the advocate's obligation to endeavour that neither a public authority nor an insurance company is burdened with unnecessary costs in the event of

legal aid or legal protection has been eliminated. The reason for this is that the advocate must always put the best interests of the client in the forefront and not weigh this against a public authority or insurance company that is keen to keep the costs down. Then again, the advocate must not spend undue time on a matter that is not payable by the client.

2.1.2 Legal advice must be based on the necessary examination of the law.

2.2 The Duty of Confidentiality and the Duty of Discretion

2.2.1 An Advocate has a duty of confidentiality in respect of matters disclosed to the Advocate within the framework of the legal practice or which in connection therewith becomes known to the Advocate. Exceptions from the duty of confidentiality apply if the client consents thereto or where a legal obligation to provide the information is at hand. An exception also applies if disclosure is necessary to enable the Advocate to aver complaints by the client or to pursue a justified claim for compensation in respect of the mandate concerned.

Commentary (last revised on 1 February 2016)

It is the practice of law that constitutes the framework for the duty of confidentiality. The practice of law is a wider framework than the mandate and means for example that information provided to the advocate by a prospective client, where a mandate does not yet exist, may also be covered by the duty of confidentiality. The intention, however, is that all such information is to be covered. It is above all such information that the advocate requests himself or herself, for example to be able to decide whether he or she can or wishes to accept the mandate, which is intended to be covered by the duty of confidentiality, while the opposite is normally intended to apply in the case of information that a prospective client provides without the advocate asking for it. In such a situation, the advocate may also be obliged to allow an existing client to be made privy to information provided to the advocate.

Just as in the former Section 19, exemptions from the duty of confidentiality also exist if the client agrees to the information being disclosed or if a legal obligation exists to disclose information. The rule however also contains an explicit exemption from the duty of confidentiality to allow an advocate to defend himself or herself from complaints on the part of the client, e.g. in a dispute concerning a claim for damages from the client. Exemption from the duty of confidentiality may then also apply towards an insurance provider in such cases where the terms and conditions of insurance occasion this (see 2.6). Exemptions also apply to allow an advocate to claim justifiable payment from the client, e.g. in legal proceedings concerning the reasonableness of a fee the advocate has requested from the client. It should however be emphasised that the exemption in such a situation applies only to making a claim originating from the mandate in question and not a claim against the client that has its origin elsewhere. An advocate should on the whole be able to disclose such information that is necessary for the advocate to be able to defend himself or herself in legal proceedings against a client. It should however be emphasised that the advocate must never disclose information other than is necessary for the advocate to be able to maintain his or her rights against the client.

It is quite clear today that legislation in some cases undermines the circumstance that the duty of confidentiality also applies to the client's identity, notably when considering the money laundering legislation and the EU directive that defines 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 advocates' obligation when accepting a mandate from a client who operates a business in another EU member state to inform the client that the advocate is legally obliged to report the client's VAT number to the National Tax Agency for periodic reporting of certain services that the advocate 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 advocates' obligation to give references when conducting a procurement.

See also the guideline of 13 June 2013 (Circular no 21/2013) concerning the scope of advocates' duty of confidentiality as regards to what extent new or other representatives or owners of a limited company can relieve the advocate of his or her duty of confidentiality as regards what took place before the representatives' or owners' entry into the company, where it is notably stated that an advocate in his or her dealings with an official receiver should not be bound by a duty of confidentiality as regards circumstances that have a bearing on the company itself while the duty of confidentiality continues to apply in other respects, and that a new board of a limited company should not generally be able to relieve the advocate of his or her duty of confidentiality concerning past events. See also 7.12.1 concerning the advocate's obligation to hand over documents.

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

Commentary (last revised on 18 February 2012)

The question has arisen as to whether the duty to exercise discretion is general or whether this is limited to relationships within the law firm.

Information confided to an advocate within the frame of the practice of law or that the advocate has been made aware of in conjunction therewith can in the opinion of the Board be subject to the duty to exercise discretion even if the information is not subject to the advocate's duty of confidentiality. Examples of information that is subject to a duty to exercise discretion includes judgments, decisions, articles in the media and other public documents. In the Board's opinion, no restriction exists that means that the duty to exercise discretion refers only to information originating from relationships within the firm. The consequence of such a restriction would be that the advocate would be more limited as regards his or her possibilities to communicate internally at the firm than outside it. This cannot be the case. In the Board's opinion, the duty to exercise discretion is general and applies to information that the advocate is given inside and outside the firm. (See the guideline on the scope of the duty to exercise discretion, Circular no 24/2012).

The definition in the second sentence of what a duty of discretion constitutes is intended to prohibit “prying” in cases in which the advocate is not involved. On the other hand, the rule is not intended to apply to the many situations where an advocate has legitimate reason in the pursuance of his or her professional duties to obtain information concerning a client or information in a matter in which he or she is not involved. This should in normal cases be done in agreement with the colleague who is responsible for the client or matter in question. 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 an advocate has reason to keep himself or herself informed about a colleague’s cases 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 advocate has no use for in his or her professional capacity.

2.2.3 An Advocate is obliged to impose upon his staff the same duty of confidentiality and duty of discretion as that which applies to the Advocate himself.

2.3 Information to the client

A client should be kept informed of what transpires in the accomplishment of a mandate. Questions from the client concerning the mandate should be answered without delay.

Commentary:

Although the wording ‘in an appropriate manner’ has been removed from the preceding Section 24, a change in the actual meaning of Section 24 was never intended. The advocate may at his/her own discretion decide what information the client needs in order to follow the progress and development in a matter.

2.4 Information from the client

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

Commentary:

The compulsion to check for accuracy is of course dependent on the type of information provided by a client. The advocate is usually entitled to assume that the factual information provided by his or her principal is correct. However, if the information is of a more sensational nature, the advocate should act responsibly and take such reasonable measures necessary to investigate the correctness of the information received. Information indicating that another person may be accountable for a crime or a dishonourable act should always be handled with extra caution and checked vigilantly in view of the possible consequence of such information. In any event, the use of such sensational information must be of utmost relevance to the mandate in question.

2.5 Professional competence

An Advocate is obliged to maintain and develop his professional competence by monitoring the development of the law in the fields in which the Advocate is active and to submit to the necessary continued training.

Commentary:

This guideline did not exist in the previous regulations. However, Section 36 of the Swedish Bar Association's Code of Conduct does incorporate a rule on the responsibility of its members to sustain and develop their professional competence. Furthermore, the Board of the Swedish Bar Association requires that its members undergo further training on an annual basis and in line with the guidelines for further training of advocates whereupon details of such further training must be submitted to the Board. Notwithstanding the rules set forth in the Swedish Bar Association's Code of Conduct, the significant importance of an advocate's professional competence has led to a supplementary guideline being added to the Guiding Principles for Good Advocate Conduct. However, it ought to be mentioned that the further training imposed upon members by the Board is not always enough to fully comply with the requirements for further training.

2.6 Insurance obligation

An Advocate is obliged to purchase liability insurance cover appropriate to his 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 is important to note that the insurance cover offered by the Swedish Bar Association within the scope of the membership fee payable to the association is usually not adequate or adapted to the operations of an advocate. Consequently, an additional insurance cover is usually required. Even though the insurance cover held by an advocate is well suited to his or her legal operation, extra attention should be given to the policy terms and conditions so as to maintain an adequate insurance cover. For example, this may entail having to notify the insurer of a claim made against the advocate within a specific period of time. The advocate should also pay attention to any complications that may arise from changing insurer. On account of the above, the obligation to take out an adequate insurance cover is now supplemented with the additional obligation for an advocate to maintain an adequate insurance cover by paying due attention to relevant policy terms and conditions.

2.7 Economic Transactions with the Client

2.7.1 Economic transactions between an Advocate and his clients are prohibited unless resulting from a mandate. However, if a client runs a business, normal transactions within the scope of that business are allowed.

Commentary:

The fact that any financial transaction with a client is conditional on the existence of a mandate requires a clear and virtually direct connection between the transaction and mandate. The previous regulations of Section 22 that advise against an advocate lending money to, acting as a personal guarantor on behalf of or borrowing money from a client have been eliminated as such transactions are now covered by the proposed principal rule. These types of transactions are only sanctioned if arising directly out of a mandate that has been accepted by an advocate. A symbolic example is when an advocate personally guarantees a client's application for sequestration. No financial transaction with a client should ever take place if there is a risk of the advocate becoming financially dependent on the client.

According to the exemption specified in the second sentence, a financial transaction between an advocate and his/her clients that does not stem from a mandate is also allowed on condition that the transaction falls within the framework 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 takes place in the same way as any other transaction between the client and associated contractors. If for example the advocate's client is a bank, the advocate 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 advocate's client is a car retailer, the advocate may purchase a car from that client, even if it is a very expensive car, conditional on the transaction being a standard business transaction for the car retailer. A further example is when the advocate's client is an estate agent. The advocate is then permitted to purchase a house from that client conditional on the purchase taking place in a normal business manner for the estate agent. However, this does not allow the advocate to take advantage of certain discounts, e.g. staff discounts that are usually offered by the client's business.

However, even if a transaction appears to be a standard business transaction for the client, the advocate is recommended not to enter into the transaction if there is any risk at all of the transaction leading to a dispute with the client or a conflict of interest.

2.7.2 It is not permissible for an Advocate to own a share of or have an interest in a client's enterprise. However, an Advocate may own shares or participations in a client enterprise if the ownership is spread to a wider circle of owners. Such shares or participations may be acquired from the client or someone closely related to the client only if offered to a wider circle and the acquisition takes place on the same terms and conditions as those applicable to others within that circle. An Advocate may also own a share or participation in a business of his own family.

Commentary:

On 26 May 2000, the Board of the Swedish Bar Association issued the following guidelines on the acquisition and holding of shares in a client's business.

'Good advocate conduct means that an advocate should refrain from becoming financially engaged in the business of a client. However, this does not prevent an advocate from directly or indirectly holding shares in a client's business, the ownership of which is or will become distributed to a wider group of stakeholders following the advocate's acquisition. The term 'a wider group of stakeholders' is further explained in Section 4, Section 18 of the Companies Act. However, regardless of the requirement for dispersion mentioned above, an advocate has the right to own shares in a privately owned family business.

An advocate's acquisition or holding of shares in a client's business must not lead to other guiding principles for good advocate conduct being ignored. For example, the acquisition or holding of shares must not result in or, at the time of the acquisition, be deemed to result in a conflict of interest with the client.

The fact that an advocate may under certain circumstances hold shares in a client's business does not change the rule that no other financial transactions should take place between an advocate and a client other than those arising out of a mandate and that an advocate generally should not enter into a business relationship with a client. Hence, shares in a client's business should normally be acquired from someone other than the client. However, shares may be acquired directly from the client on condition that such acquisition will result in a dispersion of the ownership as specified in the first paragraph and is subject to the same terms and conditions offered to other transferees.

The abovementioned shall also apply to interests, securities, interim certificates, convertible bonds, bonds with equity warrant, participating securities, share and security options in addition to other share or security derivatives regardless of type'.

The aim of this regulation is to codify the guidelines issued by the Board in the Guiding Principles for Good Advocate Conduct. However, it should be pointed out that the regulation which under certain circumstances allows for an advocate to hold shares or interests in a client's company and acquire such shares or interests directly from a client should be perceived as an exemption from the fundamental rule that any financial transaction taking place between an advocate and a client must have arisen out of the mandate assigned by the client.

2.7.3 An Advocate's acquisition of, or holding of a share or participation in a client's business 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 an ownership or acquisition of shares or interests in a client's company are met, such ownership or acquisition is evidently not permitted if it leads to or is expected to lead to a conflict of interest with the client.

2.7.4 The abovementioned rule concerning shares and participations also applies to other securities or rights that entitle the holder to a participation in the client's business or where the result is dependent on the business results or another similar circumstance.

Commentary:

This regulation modifies the last paragraph of the guidelines issued on 26 May 2000.

2.8 Client Funds and other Property Belonging to the Client

Monetary funds, valuable documents and other property entrusted to an Advocate by a client or by another on behalf of a client must be linked to the mandate. A mandate must not, except for special cause, entail only the management and brokering of funds or safe-keeping of property.

Commentary (last revised on 11 May 2011)

The provision states that it is not permitted to make a legal firm available as a “parking place” for money or other property. For it to be permissible for an advocate to manage or keep money or other property, this must not constitute the mandate in itself but that a mandate exist to which the management or keeping of the property is connected. If, for example, a client asks the advocate to take custody of a sum of money or to store a painting for a period of time or until further notice, the advocate is not permitted to do so unless it can be said to be part of a mandate the advocate has for the client.

The exemption for special circumstances applies to purely 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 advocate without it being connected to any other mandate that the advocate has for the client. An example of the latter would be that an advocate 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 himself or herself or that the client or his or her relatives do not wish to apply for appointment of a guardian or trustee.

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

Provision 2.9 decided on 9 June 2016, entering into force on 15 June 2016¹

2.9 Upholding of Human Rights in the Practice of Law

An advocate 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). An advocate should in his or her practice of law also otherwise work to uphold human rights and freedoms.

¹ See Circular no 17/2016.

3 Declining to Act and Discontinuing a Mandate

3.1 Offer of a Mandate

An Advocate is not obliged to accept a mandate offered but must immediately give notice of his decision to decline a mandate. An Advocate is not required to state reasons for not accepting a mandate.

Commentary:

If a mandate is offered by a previous client who has every reason to believe that the advocate will accept the mandate, the advocate is obliged to take the necessary measures to give the client time to find another representative without the risk of losing his or her case as a consequence of the advocate declining the mandate.

3.2 Conflicts of Interest

3.2.1 An Advocate must not accept a mandate if there exists a conflict of interest or a significant risk of a conflict of interest. A conflict of interest exists if:

- 1. the Advocate assists or has previously assisted the opposing party in the same matter,*
- 2. the Advocate is assisting another client in the same matter and the clients have conflicting interests,*
- 3. the Advocate 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 Advocate's duty of confidentiality may be of relevance in the matter,*
- 5. the Advocate or a close relative has an interest related to the matter which is contrary to that of the client, or*
- 6. the existence of any other circumstance which prevents the Advocate from acting in the client's best interests in respect of the mandate.*

Commentary:

The 'mandatory' conflict of interest situations may, according to the conflictin interests affected, be divided into the client's mandate interest (items 1, 2 and 3), the client's confidentiality interest (item 4) and the advocate's own interest (item5).

The expression 'significant risk' indicates that the advocate must also consider whether a conflict of interest may arise in the future. Therefore, it is permissible in an exceptional situation for a defence counsel to accept a mandate on behalf of two defendants in the same case if it is not immediately obvious that they have conflicting interests.

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

Commentary:

The expression 'may' indicates that there is not necessarily a conflict of interest if the advocate has ongoing mandates for the opposing party. The opposing party's interest is a general loyalty interest. The fact that the advocate has an ongoing mandate 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 may be expected to consider it disloyal, e.g. if an advocate 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 of a greater extent or significance to the advocate or any of the clients.

A previous (completed) mandate assigned to an advocate on behalf of the opposing party is generally not considered to be detrimental to trust. However, it should be noted in this context that the expression 'knowledge comprised by the advocate's professional confidentiality' under 3.2.1, item 4 is not limited to the knowledge of a factual circumstance. Also knowledge of an individual's personality and demeanour may be used in a negotiating situation and comprised by the locution. If the advocate can expect a future mandate from a previous opposing party, a conflict of interest is usually considered to exist.

By way of example, an advocate who regularly has represented or represents the social welfare board of a municipality in matters concerning the care of young people should not accept a mandate on behalf of an individual in another matter against the municipality unless it is clear that the mandate assigned by the municipality may be considered completed.

3.2.3 When considering whether there is a conflict of interest in relation to clients or opposing parties which are legal entities then, subject to the specific circumstances, the client or opposing party may be deemed to constitute all or part of the group of companies or interest group of which the legal entity forms a part. The provisions applicable to interest groups may also apply to an individual in his capacity of owner of a legal entity. On the other hand, in such analysis, the client or opposing party may be considered to constitute merely a part of the legal entity, if that legal entity conducts extensive business.

Commentary:

The first two sentences signify that there may be a conflict of interest if the first mandate has come from an individual or legal entity other than the intended client in the subsequent mandate, where these have a common interest. The last sentence on the other hand means that an advocate may be able to for example represent a local office in Haparanda while simultaneously acting against the local office of the same legal entity's in Ystad. Whether this is acceptable depends on the circumstances in each individual case, i.e. the importance of the mandates for the client and for the advocate and if there is a risk that both mandates are handled by the same persons whereupon a conflict of interest is considered to exist in the latter case.

3.3 Duty of Disclosure and Consent

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

Commentary:

The rule means that the advocate is obligated not only to consider whether there is an objective conflict of interest, but also how the situation appears from the point of view of the client. Even if the advocate is of the opinion that no conflict of interest exists and the mandate may be accepted, there are perhaps circumstances that could have affected the client's choice of counsel if the client had know about such circumstances. If that is the case, the client must be granted the opportunity to consider these circumstances before the mandate is assigned.

3.3.2 If express consent can be obtained without setting aside the Advocate's duty of confidentiality, the Advocate may, exceptionally, and after having obtained such consent, accept a mandate even if a conflict of interest under 3.2.1, subsections 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 Advocate ability fully to 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 a mandate even though a conflict of interest is assumed to exist as well as the requirements for such consent to be relevant.

The rule does not emphasise nor is it applicable to mergers and acquisitions by means of controlled auctions so that a waiver 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 his/her confidentiality interest and there is also reason to permit affected clients to influence the issue of whether the general duty of loyalty should prevent an advocate from accepting a mandate. In practice, it is fairly common for an advocate to for example request the opinion of a corporate client as to whether the advocate may accept a mandate against the company or another group entity. If in such case the client declares not to have any objections thereto, such declaration must be considered as a material element in the advocate's analysis as to whether the client's loyalty interest is impaired by the advocate accepting the mandate. One example where consent may enable the advocate to represent more than one interest is when more than

one party jointly asks for assistance by the advocate in drafting a contract between the parties. If in the course of the mandate the interests of the clients are subject to conflict, the advocate will not be able to continue with the mandate, see 3.4.1 below.

3.4 Duty to Decline a Mandate

Provision 3.4.1 was revised on 18 December 2012²

3.4.1 An advocate who after having accepted a mandate identifies the existence of such a circumstance that would have obliged the advocate to decline the mandate had the advocate been aware of the circumstance when the mandate was offered, the primary rule is that he or she must resign from the mandate. The duty of disclosure under 3.3 applies also when a circumstance that gives rise to an issue as to the risk of a conflict of interest arises or is discovered after the mandate has been accepted.

Commentary (last revised on 16 June 2016)

The assessment concerning the obligation to resign from a mandate is in principle the same during the course of the mandate as when the mandate is accepted. It can however have far-reaching consequences for a client if the advocate resigns from an ongoing mandate and the advocate must consider whether the harm to the client would be so great that the mandate should nonetheless not be resigned. The question thus concerns a weighing of interests where it is not a given fact that the advocate in the situation that has arisen always has to act as the advocate should have acted if the circumstances had been known to the advocate before accepting the mandate. If an advocate 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 mandate or a mandate for several people who have custody of a child in accordance with the Care of Young People [Special Provisions] Act), the advocate must resign from the mandate for all 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 mandates.

On 9 June 2016, the Board of the Swedish Bar Association adopted a guideline concerning weighing of interests in case of a conflict of interest in conjunction with transfers between law firms.³ 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 resign from an ongoing mandate. Examples of such factors are:

- The conflict of interest situation has arisen despite the firm during the course of the recruitment performed those checks that could reasonably be demanded.
- The new firm has thereby been in good faith concerning the conflict of interest.
- The matter concerned by the conflict of interest has been administered by the new firm for a considerable time and with the use of considerable resources.

² See Circular no 24/2012.

³ See the full wording of the guideline, Circular no 18/2016.

- The costs and inconvenience to the client at the new firm who would suffer from a resignation would be disproportionately high.
- The work done by the old firm on the matter where conflict of interest has arisen has been of a minor extent 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 evidential issues, tactical considerations concerning the legal proceedings, etc.
- Considerable time has passed between employment at the old office and employment at the new office.

3.4.2 An Advocate is also obliged to resign from a mandate if:

- 1. the Advocate is prevented from carrying out the mandate because of a statutory bar or similar circumstances,*
- 2. the client demands that the Advocate should act criminally or in breach of Good Advocate's Practice and despite having been made aware thereof maintains the demand,*
- 3. the client suppresses or distorts evidence or acts deceitfully and cannot be induced to rectify, or*
- 4. the Advocate, in order to avoid violation of the anti-money laundering legislation, reports a client to the police.*

Commentary:

The first three subsections of the rule correspond to the rules in subsections 1–3 of the second paragraph of former Section 15. The obligation to resign under the fourth subsection results from anti-money laundering legislation.

3.5 Conflicts of Interest of Colleagues

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 an Advocate practises normally constitutes a conflict of interest also for the Advocate. An exception applies if a conflict of interest occurs due to the entry into the firm of a colleague and the conflict of interest for that colleague arises merely because of a mandate of a former colleague. Another exception arises when the colleague's conflict of interest is of the nature stated in 3.2.1, subsection 5, and circumstances are not such to make subsection 6 applicable.

Commentary (last revised on 18 December 2012)

The provision expresses the so-called contagion 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 not practising law.

According to the main rule, a conflict of interest for one advocate will thus infect all others at the firm or in the shared office of which the advocate is part. The sharing relationship may arise in different ways, one being that the advocate, without there existing a formal company or partnership, collaborates with others in the shared office. The underlying principle is that a conflict of interest contagion will affect all those who collaborate in a manner such that, typically, there is a significant risk of information that is subject to the advocate's duty of confidentiality or duty of discretion being unduly disclosed to a third party. Examples of cases where such a risk must be deemed to exist are when the advocate shares premises, support staff, computer systems, printers, faxes and other similar office equipment. The contagion 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 an advocate transfers from one law firm to another while the firm that the advocate is leaving (the old firm) is handling a matter where the client's opposing party is assisted by an advocate at the firm the advocate is joining (the new firm). According to the main rule, the transfer could cause a contagion of the new firm that results in the new firm being obliged to resign from its mandate for the opposing party. Such a course of events would mean that clients not seldom have to change legal representative without there being any material reason to do so. The rule would often appear to be too strict and an exception from the main rule is thus called for. An absolute precondition for the exception rule to be applied is that the transferring advocate when practising law at the old firm had no dealings with or otherwise received confidential information about the mandate concerned and that the conflict of interest on the part of that advocate has been entirely brought about by conflict contagion from someone else at the old firm. The second exception concerns an advocate at a firm having an interest of a personal nature in a certain matter. A typical case is that the advocate or a close relative has a financial interest in a company. It has in such cases been deemed too strict to allow these circumstances to unconditionally mean that someone else at the firm cannot deal with a mandate where the client has an interest opposing that of the company in which the colleague has an interest. Circumstances in individual cases may however be such that it may be called into question whether the advocate handling the case can truly represent the client's interests against the interests of someone else at the law firm. Such a situation might be that the firm's mandate is such that the personal finances of a colleague at the firm might be affected by the outcome of the client mandate. The exception rule does not apply in such cases.

The question has arisen as to whether one receiver's conflict of interest constitutes a conflict of interest for the other receiver in case of so-called split receivership in bankruptcy cases.

Split receivership with receivers from different firms is an efficient way of handling large, complicated bankruptcies. Such receiverships do not mean that a conflict of interest arises on that basis (see Circular 24/2012).

3.6 Right to Cease Acting when no such Obligation is at Hand

An Advocate may not without consent of the client resign from a mandate unless the Advocate is obliged to do so or if a valid cause may be invoked. A valid cause for resigning from a mandate may be that:

- 1. the client, when retaining the Advocate, intentionally withheld information which would have been essential for the Advocate's decision to accept the mandate,*
- 2. the client unreasonably burdens or troubles the Advocate and cannot be induced to rectification,*
- 3. the client instructs the Advocate to handle the mandate in a manner which is futile or contrary to the best interests of the client, and despite being made aware thereof, maintains the instruction,*
- 4. the client in essential respects acts against the Advocate's advice or otherwise demonstrates a loss of confidence in the Advocate, or despite reminders, fails to effect an advance payment or compensation to which the advocate is entitled on account of the mandate.*

Commentary:

The rule clearly stipulates the right of an advocate to renounce a mandate when the information given by a client and on the basis of which the advocate has accepted the mandate is false or incorrect.

3.7 Stating Reasons for Ceasing to Act.

3.7.1 An Advocate wishing to resign from a mandate must inform the client of the reason therefore and at the client's request, give written notice thereof. Before resigning the Advocate must give the client reasonable time to retain another Advocate. Should an Advocate wish to cease acting as legal counsel in Court, it is the duty of the Advocate in accordance with Chapter 12, Section 18 of the Code of Judicial Procedure, on the basis of the power of attorney to safeguard the client's interests until the client has been able to take measures for legal representation.

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

Commentary:

The rule has been reviewed and amended to accommodate for the provisions of the Anti-Money Laundering Act.

3.8 Assignment as an Arbitrator or a Judge

The rules on conflicts of interest set out above do not apply when an Advocate is subject to conflict of interest rules of an arbitrator or a judge in a Court of Law.

Commentary:

The appointment of an advocate as an arbitrator has become common place. In such cases, the advocate is generally subject to the particular conflict rules which by law and/or the relevant institutional rules apply to arbitrators. These particular conflict rules are drafted so that a party wishing to challenge on the basis of a conflict of interest must do so within a certain period of time after having become aware of the relevant conflict circumstance. Otherwise, the right to challenge becomes precluded. The purpose of the preclusion rules is to prevent disloyal use of the rule concerning conflicts of interest.

Swedish advocates frequently participate in proceedings where the co-arbitrators are lawyers from other countries. It is important that all arbitrators are subject to the same rules on conflicts of interest. It would be undesirable if different bias rules were to apply to different members of the same arbitral tribunal, in that the Swedish advocates are subject not only to the bias rules applicable to the actual arbitration but also to the rule on conflicts of interest that follow from the deontology of the Swedish Bar. In addition, the effect of the arbitral preclusion rule is weakened if a party omitting to observe the time restriction may in fact force an arbitrator to resign by threatening him or her with disciplinary action. The bias rules applicable to arbitral proceedings have been appropriately composed by the legislator. Thus, there is no need for an additional regulation. To some extent, the present rule means a return to the legal state that prevailed under the earlier precedents of the Disciplinary Committee to the effect that an advocate when sitting as an arbitrator is exempt from disciplinary supervision since such activity is not deemed to constitute good advocate conduct. However, entirely removing the ethical rules applicable to advocates with an arbitration commitment is unwarranted. In a conflict of interest it is sufficient to give precedence to the arbitration rules.

In case of a conflict of interest of a colleague and that of an arbitrator in connection with a new assignment, the mandate of an arbitrator shall of course be assessed in the same way as a regular client mandate, i.e. a conflict of interest relating to an arbitration mandate will have an overall effect on a law firm.

The same applies to an advocate who acts as an adjunct judge in court on a temporary basis. The conflict rules of the Swedish Code of Judicial Procedure are here sufficient.

4 Fee and Statements of Accounts, etc.

4.1 Calculation of the Fee and Invoicing

4.1.1 The fee charged by an Advocate must be reasonable.

Commentary:

The client shall enjoy the privilege of being charged a reasonable fee. According to the legislative history of Section 8, subsection 7, second paragraph of the Code of Judicial Procedure, a professional fee is unreasonable when there is cause to take disciplinary action against an advocate. Seeing as the legitimacy of a professional fee is dependent on a multitude of factors, each of which is difficult to assess and hold separate, the assessment of a professional fee must be exercised with discretion. Hence, the assessment may not be based on the advocate failing to comply with good advocate conduct or arriving at the same decision as a court of law. The rule should not be seen as an impediment for the advocate to use his/her own discretion to decide upon a suitable fee. However, the objectives of good advocate conduct are violated when flagrantly ignored by an advocate. (See Wiklund, *God advokatsed*, p. 360).

When the reason for renouncing a mandate can be assignable to the advocate, the professional fee shall allow for any additional expenditure which the client may be encumbered with.

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

Commentary:

The rule exemplifies what should be taken into account when deciding upon a reasonable fee. The professional fee payable by a client in lieu of a mandate is subject to the provisions of civil law and adjusted by way of an agreement between the client and the advocate. However, the agreed professional fee, whether fixed or hourly, must also be assumed reasonable in line with good advocate conduct. A fixed fee that is agreed in connection with an advocate accepting a mandate is conditional on the advocate having a rough idea of the extent of the mandate.

A professional fee agreement is considered to exist when an advocate accepts a mandate subject to statutory compensation or compensation from an insurer or similar entity (such as a non-profit organisation). However, in case of an insurance cover or similar, the advocate may reserve the right to abstain from that type of compensation on condition that this is explained to the client when the mandate is accepted (compare 4.4.2 and 4.4.3).

The extent of a mandate usually means the length of a mandate although not the actual time that the advocate spends on a mandate but the expected time needed to complete a mandate. The character of a mandate may refer to the necessity of an expedited handling

of a matter and consequently, the constant availability of the advocate or specific demands on the law firm of that advocate. The extent and character of a mandate may also incorporate the constraint of the advocate in the sense that the advocate is prevented from accepting other mandates. The novelty of a problem or solution that an advocate may have to face is usually assigned to the complexity of a mandate and expertise of the advocate. The importance and outcome of a mandate is in every respect for the benefit of the client. The importance of a mandate may also refer to the capital value of a disputed object or a specific responsibility entrusted to the advocate or rising from a mandate. Expertise includes the advocate's specialist knowledge in the area to which the mandate relates.

4.1.3 An Advocate may only receive compensation in the form of customary means of payment. The fee charged does not have to be itemised but, on demand, the Advocate is obliged to provide the client with a written account of the work carried out. If the Advocate charges the client for disbursements, the nature thereof must be clearly specified.

Commentary:

Traditional forms of payment include cash, cheques and bank drafts or similar (see the guidelines issued by the Board of the Swedish Bar Association on 26 May 2000). A set-off payment is also considered to be a traditional form of payment when deducted from a client funds account. The client's right to request a written report on work carried out to date also applies to publicly funded mandates where the client is liable to pay the entire or part of the fee. A written report must be detailed and comprehensible to allow for an assessment of the legitimacy of the fee charged.

4.1.4 In connection with accepting a mandate, the Advocate should state charging principles and inform the client invoicing routines which the Advocate intends to apply. Fees may be invoiced either by way of a partial invoice, an invoice on-account or by invoicing after completion of the mandate.

Partial invoicing means charging a final fee for part of the Advocate's work attributable to a certain period or for a specific part of the work. On-account invoicing means invoicing part of the final fee without specific attribution to a certain part of the work. Invoicing of on-account work must be accounted for in the final invoice.

Commentary:

The advocate must when accepting a mandate give details of the invoicing principles and routines that the advocate intends to employ. Invoicing principles determine the size of the fee charged (compare 4.1.2 above) whilst invoicing routines determine the type and frequency of the invoice issued. In the event of the cost of the services rendered by the advocate being agreed prior to the start of the mandate, the advocate is liable to notify the client of such cost or when requested by the client. This rule takes into account the so-called Services Directive (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market). Information about

invoicing routines is conditional if an advocate wants to renounce a mandate on the basis of a payment default (cf. 3.6, subsection 5). In the event of recurrent mandates from the same client, the advocate is considered to have fulfilled his or her duty to inform the client of relevant invoicing routines as long as this is done once and the relevant information has not been changed. In case of a dispute with a client, the advocate has burden of proof that he or she has complied with the duty to inform the client. Consequently, there are various reasons to document the invoicing principles and routines agreed with a client. See also 4.4.1 and 4.4.3.

The second paragraph of the rule refers to different forms of invoicing. The advantage with interim invoicing is that the professional fee charged is settled before each new issue of invoice with no need for a final invoice. The disadvantage with interim 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 an on-account invoice. An on-account invoice only allows for a reasonable estimation of the work carried out plus any so-called wasted time or time set aside by the advocate on behalf of the client. A retainer mandate means that the advocate receives an advance payment of the professional fee agreed with the client for the execution of a specific mandate during a specific period of time. However, if the specific mandate does not go according to plan, the advance amount paid may be deducted as the agreed disposal period passes by. Retainer mandates the prime purpose of which is to prevent an advocate to act on behalf of an opposing party are prohibited.

Provision 4.1.5–4.1.7 decided on 4 December 2015, entering into force on 1 January 2016⁴

4.1.5 An advocate who accepts a mandate for a consumer is obliged to provide information about the Consumer Dispute Committee on the firm's website and where applicable in general terms and conditions.

An advocate is also obliged to inform the client about the possibility to have the case adjudicated by the Consumer Dispute 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 is to include the alternative dispute resolution body's Internet address and postal address.

4.1.6 An advocate is obliged to participate in the Consumer Dispute Committee's adjudication, if resolution in an atmosphere of mutual understanding has not been able to be reached.

⁴ See Circular no 1/2016.

4.1.7 An advocate is obliged to abide by decisions issued by the Consumer Dispute Committee.

4.2 Contingency Fee Agreements

4.2.1 An Advocate may not, except for special cause, enter into a fee agreement with a client which gives right to a quota of the result of the mandate.

Commentary:

The rule generally prohibits an advocate to enter into a professional fee agreement that entitles an advocate to a quota of the result of a mandate unless for specific reasons. Specific reasons for allowing such an agreement are for example when an advocate is representing the interests of a collective action or engaged in a cross-border mandate the handling of which is required outside of Sweden. However, in the latter case, the question is whether parts of a mandate concerning a dispute could be handled in Sweden. Another exception is when a client without a quota agreement finds it difficult to get access to justice. The rule conforms with the CCBE Code of Conduct for European Lawyers (see item 3.3 therein) on the prohibition of profit quota agreements or *pactum de quota litis* or *contingency fees* but it also takes into account such specific circumstances that may motivate the authorisation of a particular profit quota agreement.

4.2.2 An agreement which entails that the Advocate takes a financial risk in the outcome of the mandate must not result in the Advocate's interest in the matter becoming disproportional or otherwise having an adverse effect on the Advocate's carrying out of the mandate.

Commentary:

Risk agreements have never been expressly prohibited in Swedish law. However, risk agreements have traditionally been deemed as incongruous by the Swedish Bar Association. The reason for this is that a risk agreement is considered to intrude on the rule that an advocate's fee should be reasonable and evade the principle of an advocate refraining from all financial involvements with a client.

Whatever the circumstances, the rule prohibits a professional fee agreement where the advocate is taking such a financial risk in the outcome of a matter that the advocate may find it financial benefitting to act or omit to act in the best interest of the client. An example of such a circumstance is when an advocate recommends a client to accept a legal conciliation which results in a worse outcome for the client than what would otherwise have been the case. Nor may an advocate become so financially dependent on the outcome of a case that his or her independence is put in jeopardy.

4.3 Fee for a Legal Procedure

A fee charged on account of a legal procedure may not, unless for special cause, exceed the fee for which the Advocate, on behalf of the client, claims that the opposing party be ordered to pay.

Commentary:

In this context, a legal procedure is when a court of law or any other authority examines the claims for costs submitted by the involved parties. The determination of a professional fee in a legal procedure is dependent on various factors. The examination of a claim for costs ultimately determines the amount payable by the opposing party to the client. The same examination will also give the client an idea of what is a reasonable professional fee.

A specific reason for charging a client more than the claim for costs submitted in a legal procedure may be that the client for business reasons or to protect consumer or employer interests does not wish the opposing party to pay a higher amount than the claim for costs submitted. Another specific reason may be of a more tactical nature, i.e. when a claim for costs is withdrawn on the basis of an expert opinion is thought not to promote the client's case or nonparticipation of a witness. In the event of a deviation that does not comply with the client's instructions, the advocate is obliged to consult the client prior to submitting the claim. Another specific reason is when an advocate acting as private defence counsel or engaged in another type of legal matter (e.g. a fiscal matter) submits a claim for compensation relating to services rendered as a defence counsel or representative on behalf of a client in line with statutory standards for compensation irrespective of whether or not the advocate has reserved the right to charge the client more.

4.4 Financing of the Mandate

4.4.1 An Advocate must inform the client of existing possibilities of having the mandate financed by public means or by insurance and explain the terms and conditions therefore. An Advocate shall assist in safeguarding the rights of the client in this regard.

Commentary:

The rule does not stop an advocate from declining financing by public means or an insurance cover or similar when accepting a mandate. The duty to inform the client of the terms and conditions for such financing of a mandate is very important and must take place in connection with the mandate being accepted whereupon the client should also be advised that such financing does not cover the costs of the opposing party. It is also important to inform the client of other restrictions that may result in a mandate being insufficiently funded. If a mandate financed by public means, an insurance cover or similar is accepted, the advocate is liable to assist the client with the application,

registration and settlement procedures. However, the advocate is usually not permitted to ask the client for an advance payment or that the client pays any excess due in relation to an insurance claim or similar, nor is the advocate permitted to ask the client to personally deal with any insurance claim.

Prior to accepting a defence mandate which does not entail the advocate acting as a public defence counsel (private defence counsel), the advocate shall in line with 4.1.4 clarify to the client the invoicing principles and routines which he or she intends to use. The advocate must also clarify to the client whether he or she intends to deviate from the statutory compensation normally applicable to a public defence counsel and whether the compensation paid by public means in case of a successful court ruling may be limited to the compensation usually awarded a public defence counsel. As regards a written clarification, please refer to the commentary to 4.1.4.

Provision 4.4.2 was revised on 11 December 2009, applying from and including 1 January 2010⁵

4.4.2 An advocate must not for work under a mandate as a public defence counsel or as a representative under the Legal Aid Act or other legal representative of the client or someone else reserve the right to or receive from the client or another party a fee or any other payment in addition to the payment determined by a competent authority unless otherwise stated in law.

Commentary (last revised on 1 February 2016)

The rule prescribes the same prohibitions concerning fees as stated in statutory regulations. The rule does not, however, prevent an advocate from, in accordance with Chapter 21 Section 10 Paragraph 5 of the Swedish Code of Judicial Procedure and Section 29 of the Legal Aid Act, reserving the right to or receive from a client reasonable compensation for time wasted or outlay that according to Chapter 21 Section 10 Paragraph 4 of the Swedish Code of Judicial Procedure and Chapter 27 of the Legal Aid Act is not included in the representative's entitlement to payment. The rule applies to all types of appointment as a legal representative.

Defence mandates may to begin with be accepted without the client desiring the appointment of a public defence counsel, which may for example be the case if the client wishes to avoid the publicity that may ensue from a decision to appoint a public defence counsel. Under such circumstances, if a secrecy order has not been able to be obtained and the initial assistance has not been reimbursed in a later order to appoint a public defence counsel, the advocate should be entitled to invoice the client for such representation. A

⁵ See Circular no 29/2009.

precondition for this is that the assistance can be separated and that a clear reservation about this was made when the mandate was accepted.

As regards whether it is compatible with good advocate conduct that an advocate representing a client against the Chancellor of Justice in a matter concerning a claim for compensation for deprivation of liberty 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 a mandate is not considered to constitute a mandate as legal representative and is therefore not such a mandate where the possibility to claim payment of a fee is limited. It is therefore considered in such cases that the advocate is free within the bounds of what constitutes reasonable payment to request payment from the client in addition to the determined payment, also outside the hourly rate norm.

4.4.3 When accepting a mandate covered by legal cost insurance, the Advocate shall inform the client whether he intends to deviate from the standard compensation specified in the terms of the insurance policy.

Commentary:

The duty to clarify the advocate's intentions as to standard forms of compensation shall apply alongside the duty to inform about invoicing principles and routines (compare with 4.1.4).

4.5 Advance payment

An Advocate may ask for advances to cover disbursements on behalf of the client. The Advocate may also, if agreed on acceptance of the mandate or if otherwise reasonable, demand an advance payment on the fee. An advance payment constitutes client funds. When a fee is paid from a client's account, an invoice showing the payment shall simultaneously be sent to the client.

Commentary:

An advance payment constitutes a deduction from a client's funds account. Accounting regulations include specific rules for the management of client funds. When a professional fee is settled by a client's funds account, the client shall simultaneously be issued with an invoice with details of the payment made and deduction on account regardless of whether it is an interim, on-account or final invoice. The advocate does not need the client's approval before deducting the client's account.

In the event that the possibility of an advance payment is not agreed prior to accepting a mandate, the advocate shall still be entitled to ask for an advance payment if deemed

reasonable. For example, the circumstances that exist when a mandate is assigned may be incorrect or incomplete. This is deemed to apply to all incorrect or incomplete circumstances whether assignable to the mandate or client. If an advocate when receiving a mandate is under the impression that the mandate in question is fairly straightforward and it later transpires that the mandate is of a more complex and demanding nature than initially anticipated, the advocate shall be entitled to ask the client to make an advance payment bearing in mind the changed circumstances. The same shall apply if there is a considerable risk of the advocate not being paid for services rendered. The question is whether the initial intention of the client was to mislead the advocate about his or her financial situation. An advocate shall always have the right to ask for an advance payment to cover for recurring expenditures even if not provisionally agreed at the time of accepting the mandate. Accordingly, an advocate is entitled to request that a client provides him or her with the means necessary to cover for any expenditures arising on behalf of the client. In accordance herewith, the advocate shall also be entitled to ask for compensation from the client for expenditures when a mandate is not yet accomplished.

This rule affects the advocate's right to renounce a mandate owing to a default payment. As with any renouncement of a mandate, the advocate must take into account the situation in which he/she puts a client when renouncing a mandate. Hence, the advocate may not ask for an unreasonable advance payment and should always give the client reasonable time to pay during which the advocate 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 a mandate has been completed or otherwise terminated a final invoice is to be sent to the client, without delay, except where only partial invoicing is applied.

Commentary:

The nature of a mandate is indicative of when it will be completed and the liability to issue a final invoice arises. A mandate relating to representation in a legal proceeding is usually not considered to be completed until the court has reached a final decision. Representation that follows a court ruling is generally seen as a new mandate unless otherwise specified. A final invoice is always required when a mandate is subject to on-account invoicing. The final invoice should give details of the total professional fee charged for the entire mandate plus previous on-account charges.

An interim invoicing may refer to the consecutive services that an advocate provides on behalf of a client in the course of more than one mandate, e.g. representation in different matters during one quarter of the year or a specific month. Such consecutive services may also be subject to on-account invoicing provided that it is followed up with a final invoice, for instance on an annual basis.

4.6.2 If an Advocate receives funds in the course of the mandate, a final statement of account shall be submitted to the client without delay and any balance in the client's favour shall be paid to the client unless otherwise agreed, or results from the nature of the mandate. An Advocate must not, as a condition for payment, request that the client approves the fee charged or the final statement of account. Nor may an Advocate by agreement or reservation relieve himself of the accounting duty.

Commentary:

The principal rule is that any balance due to the client shall immediately be credited the client unless otherwise agreed or because of the nature of the mandate. An agreement is an understanding that gives rise to the question whether an advocate's right to compensation should also entitle him or her to an advance payment. The nature of a mandate refers for example to administration and liquidation mandates that require continuous funding to enable implementation.

The rule also manages to communicate the fact that an advocate's mandate does not only involve the management of funds.

4.6.3 An Advocate's statement of account must be clear and unambiguous. The statement of account must specify what the Advocate has received on account of the mandate and the disbursements made by the Advocate as well as the fees invoiced and deducted. Dates of receipt and payment of each partial amount must be specified. The statement of account must be dated.

Commentary:

If a settlement of account fulfils the basic requirements for clarity and transparency and every other provision of the rule, a computer-based settlement of account may be produced and referred to in connection with invoicing. As regards expenditures, the rule stipulates that it should be clearly specified in writing what each and every expenditure relates to (compare with 4.1.3). Consequently, expenditures cannot be shown as single accounting items. Invoiced expenditures must correspond to an actual cost unless otherwise agreed with the client. For example, an advocate is not usually permitted to charge a standard amount to a client for an individual office expenditure.

4.6.4 The duty, in certain cases, annually to account for management of funds and render a statement of income to the authorities is regulated by law and the Accounting Standards of the Bar Association.

Commentary:

The rule relates to the special accountability that applies to the management of funds in addition to the final settlement of account. According to Section 5 of the Accounting

Standards, an annual account must be submitted no later than 1 April and include details of the management of funds over the past calendar year if the advocate during this year has had an account claim in excess of a basic amount or, if using a slightly more modern term, a price base amount. If a final mandate account has been submitted prior to 1 April, no rendering of accounts for the previous calendar year is required according to the Accounting Standards. With regard to the accounts layout and other rules, please refer to the Accounting Standards. The duty to render a statement of income also applies to the management of funds on behalf of an individual or an estate of a deceased person regulated by the Income Tax Act (2001:1227).

5 Relations to the Opposing Party

5.1 Improper Measures

An Advocate must not seek to promote the client's cause by taking improper measure in relation to the opposing party.

Improper measures are, inter alia,

- 1. reporting to an authority about crime or anything else which lacks foundation or relevance to the mandate or threatening to file such report,*
- 2. applying for a summary payment order, filing an application for bankruptcy or payment demand before applying for bankruptcy in circumstances where the Advocate knows that the claim for payment is contested on a basis which is not manifestly unfounded,*
- 3. scandalising the opposing party or threatening to do so , or*
- 4. unwarranted contact with a third party or threatening such conduct.*

Commentary (last revised on 16 April 2009)

The rule corresponds in part to the previous in Section 37. The rule has been clarified and aligned with 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 scandalisation and threat thereof regardless of where it takes place. By scandalisation is meant that the advocate addresses an unspecified circle 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 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, or if there are other special reasons for taking such action.

5.3 Disparaging Information

An Advocate 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 circumstances, this appears justifiable in order to act in the best interests of the client. Generally, an Advocate should refrain from actions or statements which are liable unnecessarily to offend or insult the opposing party.

Commentary:

The rule highlights the responsibility of an advocate to act in the best interest of the client at the same time as showing consideration for the opposing party. A statement made in relation to an opposing party must be justified by the situation of the advocate when making the statement. Hence, a statement will not be subject to criticism with the benefit of hindsight. See also regulation 6.3.2 including commentary.

5.4 Misleading Information

An Advocate must not mislead the opposing party by making statements about a factual circumstance or the content of legal rule which the Advocate knows are inaccurate.

Commentary:

The rule merely draws attention to the cognizance of an advocate. It is deemed too categorical for the rule to incorporate what an advocate ought to have known as this may impede the legal and factual analysis. However, an advocate is assumed to have or attain a good knowledge of the contents and meaning of the appropriate rules of law. In the event of an incorrect statement concerning a rule of law, an advocate is likely to be in violation of this or the rule under 2.1.2.

5.5 If the Opposing Party Lacks Legal Representation or Assistance

5.5.1 At a contact with an opposing party who does not have a legal representative or counsel, the Advocate, where appropriate, should inform the opposing party that it is not part of the Advocate's mandate to safeguard the opposing party's interests and advise him to retain an Advocate.

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

5.5.3 Documents containing beneficial deeds may normally only be prepared in consultation with the party intending to perform the deed.

Commentary:

These rules express the duty of an advocate to show consideration for the opposing party. This specifically applies when the opposing party is not legally represented by an advocate nor is deemed capable of acting in his or her best interest. However, the duty to show consideration only involves the opposing party confirming that the advocate is only required to represent his or her own client and that the opposing party may need to appoint a legal representative.

The term ‘contacting’ under 5.5.1 above has been given a broader connotation than in the preceding rule. The responsibility to inform the opposing party must be assessed on a case-by-case basis and subject to the circumstances and character of the opposing party is.

Rule 5.5.2 is an addition to the original rule and partly a codification of the recommended practice of the Disciplinary Committee. The rule does not limit the responsibility of an advocate to act in the best interest of a client and is aimed at circumstances relating to family law. If an advocate has not been in contact with the opposing party, certain family law documents cannot be disclosed before the opposing party is informed that it is not the responsibility of the advocate under the relevant mandate to act in the best interest of the opposing party and to recommend the opposing party to appoint an advocate.

Rule 5.5.3 refers to all documentation that incorporates a beneficial legal component and is not subject to 5.5.2. No such consultation is normally required in case of a beneficial legal document relating to a legal entity.

5.6 If the Opposing Party Retains an Advocate

If the opposing party retains an Advocate, all negotiations in the matter concerned shall be carried out with and all communications sent to that Advocate. It is then not permitted for the Advocate to make direct contact with the opposing party except where the action must be brought directly against the opposing party or otherwise, for special reasons, it is necessary. In such a case the Advocate representing the opposing party must be notified.

Commentary:

The rule corresponds to the first paragraph of Section 49 in the preceding rule. The same principle ought to apply if the opposing party appoints a legally competent external representative other than an advocate.

5.7 Settlement Offers

An Advocate may not, without the consent of the opposing party, disclose an offer of settlement made by the opposing party in legal proceedings.

Commentary:

The purpose of this rule is to facilitate for negotiations of conciliation. However, the advocate is allowed to make known the details of his/her own offer of conciliation.

6 Relations to Courts and Public Authorities

6.1 General

6.1.1 When acting as counsel at court, an Advocate is obliged to observe the requirements of the Code of Judicial Procedure and what any other procedural statutes require. An Advocate must be properly acquainted with the matter and pursue the matter with such care and in such manner as the proper administration of justice requires.

Commentary:

The rule corresponds to Section 44, first paragraph of the preceding rule except for the prerequisite of timeliness which has been removed. 'Timeliness' is incorporated in the prerequisite of 'care' which also includes other important prerequisites. It has not been deemed necessary to emphasise the prerequisite of timeliness in addition to 'care' as 'timeliness' is sometimes seen to go against what is in the best interest of the client.

The Code of Judicial Procedure does not stipulate a prerequisite of care and hence, such prerequisite should be incorporated into these regulations. Care is a fundamental component in all advocate work and client relations but also in relations with the court and administration of justice. The rule aims to counteract situations such as when an advocate attends court unprepared or deliberately waits to call a witness or submit any other evidence in order to gain an advantage by using an element of surprise. Other similar situations are when an advocate decides not to appear in court despite the risk of a judgement by default so the case can be reopened at a later date or gives a long-term excuse for not being able to attend court in order to protract the proceedings, etc.

Even if the principal responsibility of an advocate throughout a legal procedure is to act in the best interest of the client, it is also important for an advocate to remember that a speedy, efficient and qualitative service will benefit the general public. In addition, a proper administration of justice without any unnecessary reruns is in the best interest of the client community.

6.1.2 An Advocate promote compliance with court orders and that inquiries from the Court are responded to without delay.

Commentary (last revised on 11 December 2009)

Since the court order is directed at the party, it is not always possible for the advocate to ensure that an order or enquiry is followed or answered without delay. The advocate must

however work to ensure that this is done by doing what is deemed to be his or her duty to comply with the court order. An advocate is also otherwise obliged to work to ensure that the court order is complied with in the best possible way.

Cf. also the guideline of 21 August 2009 concerning an advocate's participation in making possible the serving of documents on a client concerning an order to attend in person.

6.1.3 The Court must be promptly informed of any impediment to appearance.

6.1.4 If the Advocate's mandate is terminated the Advocate is obliged to inform the Court thereof without delay.

6.2 Factual Statements and Evidence

6.2.1 An Advocate must not make statements to the Court which the Advocate knows are false nor contest that which the Advocate knows to be true.

Commentary:

The rule corresponds to Section 45 of the preceding rule, the actual meaning of which has not been changed. 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 and is conditional on the advocate's knowledge of the matter.

The rule on the duty of truthfulness set out in Section 43, subsection 6 of the Code of Judicial Procedure is considered to apply to a defendant in a criminal case whereupon the position of the defence counsel is somewhat different from that of other legal counsels and representatives. An advocate acting as a legal counsel in a civil action or representing the plaintiff in a criminal case while knowing that the client is untruthful in a relevant matter may be requested to withdraw from the matter. This does not apply when an advocate in his or her capacity as a defence counsel becomes aware of the client being untruthful. However, an advocate must never submit such factual information that he or she knows is inaccurate nor must an advocate dispute such information that he or she knows is accurate. If the client submits inaccurate information or disputes information that is accurate, the advocate must never refer to or address the court on behalf of his or her client based on such information or action. An advocate's duties according to this rule do not on the other hand entail advising the client to certify specific information submitted by the opposing party which the advocate knows is accurate.

Examples of actions that are prohibited in this respect are when an advocate knowingly calls a witness who will commit perjury or acts in bad faith and submits or refers to forged written evidence or refers to inaccurate factual particulars or disputes accurate factual particulars regardless of who entered them into the legal procedure.

6.2.2 An Advocate may not be complicit in the suppression or distortion of evidence. However, an Advocate is not obliged to produce or invoke evidence or adduce facts detrimental to the client unless required to do so at law.

Commentary:

In relation to preceding Section 45, the rule has been extended to incorporate all legal liabilities to disclose information and does not just apply to the duty to witness and present written documentation. The duty to present information may also apply to matters pertaining to the tax authorities and consistent with the Anti-Money Laundering Act. However, the fact that an advocate does not usually have to submit information to the detriment of his/her client remains a key principle.

6.3 Demeanour towards Witnesses et al.

6.3.1 An Advocate must not exercise undue influence upon a witness or someone else testifying at Court. However, the Advocate is free to contact such person to obtain information about the testimony of that person even where the person is called to testify by the prosecutor or another opposing party.

Commentary:

To actively seek evidence is generally included in an advocate's duty of care and often involves the advocate hearing witnesses and other examinees of the opposing party. However, the advocate must never put an examinee under undue influence. This applies regardless of whether the same examinee has been referred to in court by the advocate's own client or the opposing party or whether the examinee is to be examined under oath either as a witness, plaintiff, expert or any other capacity. Naturally, the advocate is not permitted to bypass a plaintiff's legal representative or the legal counsel of a child, mediator or guardian. A defence counsel is free to contact a plaintiff that is not legally represented in court provided that caution and consideration is observed.

6.3.2 An Advocate 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:

Any offensive information should be avoided as it does not usually promote what is in the best interest of the client. However, an advocate must be able to present information in support of his/her client's case even if such information may be offensive to another person and should not give way to the unpleasantness of the situation. The term 'justified' refers to the situation at the time of the advocate formulating the expressed or written statement and thus, allows for a certain degree of inexactness. Obviously, a written statement is subject to a greater degree of discretion and moderation than a statement that is express in the heat of the moment when there is less time to give it due consideration. However, the true intent of a statement is the decisive factor. The rule offers a certain alleviation of previous regulations, giving priority to the interests of the client. The demand for moderation must not hamper the advocate'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 the Courts.

Commentary:

These rules do not usually apply to arbitration procedures but perhaps ought to in addition to the rules on relations with the court.

7 The Organisation of a Law Firm, etc.

7.1 Maintaining Independence

An Advocate must operate his legal practice so as not to jeopardise his independence.

Commentary:

An advocate's independence does not just refer to his or her independence in relation to Government authorities and the ownership and management of a law firm. The way in which a law firm is operated may also jeopardize its independence, for example if the advocate becomes insolvent or other than temporary acts on behalf of just one client.

7.2 Practice Name

An Advocate should conduct his business under a name which contains the word 'advokat' unless an exception is granted by the Board of the Bar Association. The correct and complete 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 advocate that he or she is a qualified advocate and when operating as a company, under what type of legal entity. The term 'other material' refers for example to a homepage or advertisements in which case the entire name of the law firm must be displayed. However, this is not normally required in the case of signposts. Because many law firms collaborate, it is important for the client and others to clearly know which firm they are dealing with.

7.3 Office Organisation

7.3.1 An Advocate is obliged to ensure that the office organisation is in good order and that it has equipment and staffing appropriate for the operation and for satisfactory monitoring of client mandates.

7.3.2 Professional communications addressed to an Advocate should 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 the receipt of the communication must be confirmed and a response sent as soon as possible.

7.3.3 An Advocate is obliged to ensure that all accounting and management of clients' funds and valuable instruments complies with all legal requirements and the Accounting Standards of the Bar Association.

7.3.4 An Advocate must carefully follow the financial development of the law practice and ensure that all debt arising from the operations of the practice are timely paid.

Commentary:

A smooth running office organisation is normally a prerequisite for a satisfactory client management. Hence, it is the responsibility of the advocate to employ the staff and equipment needed to facilitate the advocate's accessibility during normal office hours and periods of respite while promptly responding to communications. This also applies to when the advocate has time off work or is absent for whatever the reason. In addition, it should not be considered necessary for the advocate to be well versed in the finances of the law firm. It is not a general requirement that a law firm should be profitable though the advocate is expected to promptly take all appropriate and necessary measures if that is not the case.

7.4 Practice of Law in the Form of a Company

7.4.1 If an Advocate provides legal services in the form of a company, such company may not engage in activities other than the practice of law. All legal services must be carried out through and be accounted for in that company except in cases where the personal nature of a mandate makes the fee resulting from that mandate attributable to income from services.

Commentary:

A company offering legal services cannot offer any other services to the extent that it may lead to any doubts as to the main business of the company or jeopardize the company's position or ability to take out an insurance or receive compensation from an insurance in relation to such legal services. All professional fees arising out of the legal services provided must be invoiced by and entered into the accounts of the company to which a mandate was assigned by a client. As regards liability, it is vital that the client knows which firm he or she has appointed and who to contact at that firm.

7.4.2 An Advocate is permitted to provide legal services through more than one company only if an exception is granted by the Board of the Bar Association. The same applies if legal services are simultaneously offered by a sole proprietorship and by a company.

Commentary:

The Swedish Bar Association may make an exception to the principal rule that legal services cannot be provided under the name of more than one law firm. However, it is not necessary to apply for the approval of the Bar Association if the operation of the law firm is clearly evident and does not render it difficult for a client to understand which firm he or she is dealing with. In case of law firms with operations in both Sweden and overseas, the Board of the Swedish Bar Association may make an exception to the rule subject to such overseas operations being of an acceptable form. There is also a possibility of organising the operations under more than one Swedish company as long as it is clearly evident to the client which company he/she is dealing with.

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

Commentary:

The guiding principle on the acquisition and possession of assets issued by the Board of the Swedish Bar Association on 14 December 2000, notably expresses that good advocate conduct shall not prevent an advocate's law firm from acquiring or being in possession of such assets which the advocate himself/herself has the right to acquire or possess or managing the assets of the law firm as is customary. Aforementioned investments should not reach such proportions that the operation of the advocate is considered to incorporate other than legal services or involve exceptional risks or contradict the good reputation of the legal bar. It is further stipulated that it is not compatible with good advocate conduct for a public limited law firm to handle marketable instruments or provide any other trust fund management services to the extent that such services fulfil the prerequisites for a business operation according to the Income Tax Act (see Section 13, subsection 1 of the Income Tax Act and the revoked Section 3, subsection 21 of the Local Rates Act).

According to the abovementioned guiding principles, a law firm may not in its Articles of Association include an exemption clause that allows it to provide any other services than legal services. However, this raises the question of the acquisition of a private residence, apartment block or agricultural dwelling. The basic principle is that such ownership or management must not impose an exceptional risk to or jeopardize the good reputation of the legal bar. The limited ownership of the properties mentioned above would not usually interfere with good advocate conduct.

7.5 Organisation of a Law Firm

7.5.1 Only an Advocate may be appointed to be a member or deputy member of the board or become a shareholder or partner in a law firm company.

Commentary:

The aim of the principal rule is not to prevent union representatives or others that may with a statutory right or obligation to sit on the board of a law firm. The partnership of a public limited law firm is subject to an exemption clause under 7.5.3 below.

7.5.2 Subject to dispensation by the Board of the Bar Association, the Managing Director of a law firm organised as a limited liability company does not have to be an Advocate provided that the person in question has undertaken to observe the regulations applicable to the law practice including good advocate conduct. In such case, the Managing Director may also be empowered to sign on behalf of the company jointly with an Advocate. However, no one may be authorised to sign on behalf of the company without the participation of one of its active Advocates except in the circumstances set forth in Chapter 8, section 36 of the Companies Act.

Commentary:

The rule allows for a public limited law firm to employ a person for the position of Managing Director that is not an advocate. However, similar to 7.5.3 relating to the ownership of a law firm by a Managing Director that is not an advocate, the employment of a Managing Director that is not an advocate is conditional on the Board of the Swedish Bar Association granting an exemption. The prerequisite for the Managing Director to observe the regulations imposed by the law firm including good advocate conduct is vital for the Board of the Swedish Bar Association to grant such an exemption. If the possibility to appoint a Managing Director that is not an advocate is utilised, it is important for the law firm to incorporate in its regulations that any legal advice must be provided by an advocate or a junior associate in the presence of an advocate. Naturally, the same applies to other employees of the law firm that are not advocates or junior associates. The rule is considered to include the liability for a law firm that is granted an exemption to immediately notify the Swedish Bar Association of any circumstance that may eradicate the prerequisite for an exemption. Failing to comply with the prerequisites for an exemption in one way or another may lead to the Board of the Swedish Bar Association withdrawing the exemption granted.

7.5.3 Notwithstanding the provisions in 7.5.1 above, a Managing Director who is not an Advocate may, if granted an exemption by the Board of the Bar Association, become a shareholder or partner in a law firm company subject to the following conditions. Such ownership may only cover less than ten percent of the capital and represent less than ten percent of the voting power. In addition, such ownership requires the Managing Director to undertake immediately to transfer his shares or share to the other owners upon termination of the employment.

Commentary (last revised on 16 April 2009)

Section 38 of the Swedish Bar Association's charter and Chapter 8 Section 4 of the Code of Judicial Procedure state that only an advocate may be a partner of a law firm that is operated as a company unless the Board of the Swedish Bar Association grants an exemption.

With law firms' growth in size and an increasing desire to make it easier for law firms to recruit and retain key people who are not practising advocates, there is reason to open up for ownership by people who are not practising advocates. Against this background, a rule has been introduced in order to define more clearly the fundamental preconditions for the

Board of the Swedish Bar Association to grant such a dispensation. The possibility for external ownership according to this provision is limited to the managing director. To grant a dispensation a restriction on ownership or influence is essential, as is the requirement in 7.5.2 that the managing director shall undertake to abide by the applicable rules, including good advocate conduct. These circumstances are naturally important in case there would be reason to rescind the dispensation. The reporting requirement concerning the preconditions for employment as a managing director also apply to the managing director's ownership in the law firm (see the commentary on 7.5.2).

This provision does not restrict the Board of the Swedish 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 an advocate may be a partner in a law firm also in cases other than those stated here.

7.6 Terms of Employment, etc.

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

Commentary:

The rule complies with Section 3, seventh paragraph of the Regulations of the Swedish Bar Association. The reason for an exemption being required in order to take up employment with a law firm in a non-member state of the EU, EEA or Switzerland is that it is difficult to obtain a general overview of the structure of law firms in other countries. If the regulations applicable to other countries fulfil the requirements that the Board of the Swedish Bar Association may reasonably make, the granting of an exemption ought to be possible.

7.6.2 An Advocate or partnership of Advocates may employ associates and other staff to assist in the operations of the firm. If more than one Advocate conducts their business in a partnership of Advocates, they shall as between themselves clarify which one of them shall be responsible for the training and supervision of the other staff. The Advocate carrying such responsibility must take all measures reasonable required to ensure that the staff members carry out their duties as required by good advocate conduct. No staff member other than a lawyer may independently render assistance to the public.

Commentary:

The monitoring of junior associates and other staff is central to all types of legal operations. It is difficult to define exactly the measures required by an advocate in this context though the court ruling described on NJA 1985, p. 856 is an indication of the strict duty placed upon an advocate responsible for supervising the work of a junior associates. However, when deciding upon the degree of supervision, any previous experience that the the junior associates may have in addition to the nature of the matter in hand and other

relevant circumstances must be taken into consideration. Even when a law firm decides to recruit for example a patent engineer or any other expert that is not an advocate, a conduct which is allowed, the patent engineer or expert in question is required to work with the advocates or junior associates who assist the clients, i.e. the public. A law firm must not be confused with non-legal consultancy services.

7.6.3 An Advocate or a partnership of Advocates may not employ associates who are not Advocates if they are employed under conditions where the work of the associate cannot be properly supervised. Associates may not be permitted to offer legal services for their own business. Associates may not be employed on terms which in respect of non-competition or otherwise are unreasonable.

Commentary:

The first sentence is not only aimed at a situation where a junior associate is carrying out his or her work at the premises of a law firm without such work being continuously and safely monitored but also at a situation where the law firm outsources the services of or a junior associate to a client company or elsewhere. As regards the first situation, a junior associate should only be contracted out to an office where advocates from the law firm are already working. According to the guiding principle of 9 December 2004 on the outsourcing of a junior associate from a law firm, such outsourcing is conditional on the following.

1. The junior 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 by a junior associate acting on behalf of the law firm in question. Hence, any external documentation signed by the junior associate must be drafted on the law firm's headed stationery and any business card given out by the junior associate must be the law firm's own approved business card.
3. The junior associate shall report directly to a principal at the law firm and not to a Managing Director at the client company.
4. All mandates received must be registered with the law firm whereupon the risk of a conflict of interest shall be checked.
5. The law firm shall draw up routines to guarantee the continuous and safe supervision of the junior associate.

If these conditions cannot be fulfilled then an alternative option is to grant the junior associate absence of leave while being outsourced to another company. In the event of a shorter assignment or when a junior associate only works one day a week at a client company, the problems pertaining to the supervision and transparency of employment terms ought to be manageable. The same ought to apply when a junior associate works at a bank or any other company for the purpose of training or gaining general knowledge and therefore, does other than legal work. The last sentence under 7.6.3 above specifying that the terms of employment of a junior associate should not lead to an unfair restriction of competition or otherwise means that the salary paid, especially to a new employee, should not be based on for example a flexible or commission based salary which may render it difficult for the junior associate to bring in a reasonable salary.

7.6.4 An Advocate or a partnership of Advocates may 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 assignments in individual cases.

Commentary:

The hiring of personnel from a temporary recruitment agency or equivalent may present a problem as regards confidentiality and conflicts of interest, particularly if the personnel in question do temporary work at several law firms or companies. The principal rule is that advocates working at a law firm should also be employed by that law firm. When an advocate from for example a client company works at the law firm for a short period of time so as to gain further knowledge or obtain an expert's opinion, it is of course possible to manage the situation by way of a contract and obligation to observe professional confidentiality. Should the advocate in question remain an employee of the client company or any other company during such time, it must be made manifest that the person in question is not an employee of the law firm.

7.7 Co-operation

7.7.1 An Advocate or a law firm may operate in co-operation with other Advocates or law firms. If such co-operation entails a closer, long-term relationship with respect to mandates or financial connections, the co-operation must be clearly disclosed on the letterhead and any other material of the law firm, for example, through the use of a common firm dominant. If such case, conflicts of interest issues should be determined on the basis of the mandates of all co-operating Advocates and other relevant circumstances. When using a common firm dominant, the insurance obligation set out in 2.6 must be determined having regard to all business performed under such firm dominant.

Commentary:

An advocate's right to operate in collaboration with other advocates does not include the right to operate in collaboration with juriconsults that are not advocates. Item 7.7.5 below includes a rule on sharing office with juriconsults that are not advocates.

When collaborating advocates use a mutual business name dominant, the insurance obligation as detailed in 2.6 must be determined in consideration of all work carried out under that business name dominant. This rule is new and an increase to the insurance obligation. Clients consulting a large organisation, regardless of whether its collaborating advocates run separate operations, should be allowed to assume that the relevant insurance cover applies to the whole organisation.

7.7.2 Close co-operation with foreign lawyers or law firms requires special permission by the Board of the Bar Association.

Commentary:

Collaborations between advocates and foreign advocates or law firms are an increasing occurrence. This is a natural development bearing in mind the internationalisation of our society. However, international collaborations are often complex in nature and hence, it would not serve any purpose to incorporate in these rules conditions for such collaborations, not least in view of circumstances here in Sweden and overseas being subject to constant change. The Board of the Swedish Bar Association has already on account of numerous exemption cases drawn up standards for good international collaborations conduct. 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 firm dominant, 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 rule is to prevent non-collaborating operations as specified under 7.7.1 above to be perceived as collaborating operations.

7.7.4 Co-operation with respect to premises or equipment which entails a risk that the Advocate's duty of confidentiality and duty of discretion be set aside. When Advocates or law firms share a joint office, conflicts of interest issues shall be assessed having regard to the mandates and other circumstances of all Advocates and law firms involved regardless of the financial arrangements. The same applies to all co-operations entailing a risk of the setting aside of the Advocate's duty of confidentiality and duty of discretion.

Commentary:

The application of this rule is contingent upon the risk of spreading information that is subject to confidentiality or discretion as may be the case when utilising the same personnel, photocopier, facsimile, 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 The sharing of a joint office with others than Advocates is not permitted. However, office premises may be shared with legal specialists who are not Advocates but have a background in the judiciary or who possess other special legal qualifications. If such specialist lawyers practise under their own firm name, the Advocate or law firm has no obligation to monitor such work. However, such specialist lawyers must be reminded of the regulations applying to law firms in particular the duty of confidentiality and the duty of discretion, and shall be obliged to comply therewith.

Commentary:

An advocate is liable to monitor its employees, junior associates and other associates. It is not unusual for a law firm to appoint for example a consultant such as a previous partner,

judge, professor or other individuals. In fact, it is often proven difficult for a law firm to adequately monitor the work of consultants. To facilitate for the law firms to appoint competent individuals such as a former Lord Justice, other law lords or professors in law, the rule sanctions advocates sharing office premises with other legally qualified individuals provided that such individuals operate under the name of a private company. When sharing office premises, the law firm must also ensure that appointed consultants by way of contracts pledge to comply with the Guiding Principles of Good Advocate Conduct.

7.8 Procurement and Marketing

7.8.1 An Advocate may not solicit mandates in a way which entails exploitation of someone else's distress or vulnerable position.

Commentary:

The previous prohibition against an advocate to contact an individual and offer his or her legal services in order to acquire a mandate has been eliminated though it is still prohibited to exploit the misfortune of another individual, i.e. so-called 'ambulance chasing'.

7.8.2 An Advocate may only state a particular area of specialisation if the Advocate has special knowledge and experience in the given practice area.

Commentary:

Advocates often claim to be specialists in many different areas, a demeanour which the rule aims to hamper. The previous prohibition against an advocate marketing his or her services in a distasteful or misleading manner has been eliminated seeing as such prohibition is already regulated by the Marketing Act.

7.8.3 An Advocate may not contribute to or permit that someone else solicits legal business or conducts marketing on behalf of the Advocate in a manner which is not permitted for the Advocate himself.

7.9 Compensation for Acquisition of Mandates

7.9.1 An Advocate may not surrender part of the fee to someone else or otherwise compensate another person for referring mandates to the Advocate or for undertaking to act for such purpose. Nor may such compensation be accepted.

7.9.2 The rule in 7.9.1 above does not prevent fee sharing between the Advocate and his partner, associate, or such co-operating partner as is specified in 7.7.1.

7.10 Liability for Costs

7.10.1 If an Advocate retains an expert on behalf of a client for the purpose of carrying out an investigation, rendering an opinion or for any other purpose, the Advocate if he does not intend to assume responsibility for the fee or costs of the expert must make this clear before the start of the assignment.

7.10.2 If an Advocate appoints a colleague on behalf of a client, e.g. as a local counsel, the Advocate 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 what is good advocate conduct from an ethical perspective and not according to civil law.

7.11 Allowing Trade Marks for Use by Others

An Advocate may not permit the use by others of his letterhead or trade marks in a manner which incorrectly implies that the Advocate or his law firm is the sender or has created the document or is in any other way responsible for its contents.

Commentary:

The rule does not prevent the advocate from sending a read-only Word document to a client. However, the advocate must not allow the client to make changes in the document and then present it as if it was sent from the advocate.

7.12 Disclosure and Archiving of Documents

7.12.1 Upon the completion or termination of a mandate, the Advocate shall without delay surrender to the client all documents belonging to the client unless the client explicitly requests the Advocate to store the relevant documents and the Advocate agrees to do so. An Advocate may not as a prerequisite for surrendering such documents to the client require that the client approves of the fee charged or a statement of account rendered by the Advocate.

7.12.2 An Advocate is obliged to archive all relevant documents filed in connection with a mandate either in original or as copies. However, this does not apply to duplicates, printed matter or similar material, which without difficulty can be obtained elsewhere. The archival period shall be ten years or more depending on the nature of the mandate. 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 make clear that the advocate is obliged to release documents belonging to the client. The advocate is entitled to reasonable payment for copying. The advocate's obligation to keep the documents archived for at least ten years applies even if the client requests that the period be made shorter or that a certain document be destroyed earlier.

See also the Board's guideline of 17 March 1995 concerning an advocate's obligation once a mandate has ceased to provide documents in the matter to the client. That this obligation also applies if the mandate has involved more than one client and that the obligation also covers all documents and also electronically stored documents and regardless of whether one of the clients opposes the handing over of the documents, is stated in the guideline of 28 January 2011 (Circular no 5/2011) concerning advocates' obligation to release documents in the matter to clients etc.

See also the Board's guideline of 13 June 2013 (Circular no 21/2013) concerning an advocate's obligation, taking observance of the duty of confidentiality by which the advocate is bound in relation to an earlier representative or owner of a client company into account, to release documents in the matter, in particular such documents that have been saved electronically, once the mandate has ended. Regardless of whether the advocate has represented or been a board member of the company, there is no general obligation for the advocate to provide information or release documents to a new board or other representative of the company. An examination of what information or documents can be released must be made in individual cases taking into account the advocate's duty of confidentiality (cf. the commentary on 2.2.1).

8 Relations to the Bar Association

The provision was revised on 4 December 2015, applying from and including 1 January 2016⁶

An advocate is obliged to, within the time prescribed, provide a statement or a defence as is requested by the Board of the Swedish Bar Association or the Disciplinary Committee or by the Secretary-General or his or her assistants or the Consumer Dispute Committee. The advocate is in such cases not bound by the duty of confidentiality that otherwise applies. The information provided by the advocate shall be truthful.

Commentary (last revised on 1 February 2016)

In relation to the wording in the former Section 52, the provision contains no obligation on the part of an advocate to exhaustively answer questions posed and to provide information requested to the Swedish Bar Association. This amendment to the ethical regulatory framework has been made taking into account the right to a fair trial and the therein included right to remain silent and the right not to contribute to incriminating oneself laid down in Article 6.1 of the European Convention. The amendment has been made disregarding the fact that the Swedish Bar Association is mainly an association

⁶ See Circular no 1/2016.

under civil law and the lack in Sweden of either mandatory legal representation in court or a monopoly of legal services and the significance this may have in relation to the rights in question laid down in the convention.

The legal obligation for an advocate to provide the association with the information needed for supervision still applies however (see Chapter 8 Section 6 Paragraph 2 of the Code of Judicial Procedure) as does the obligation stipulated in Section 43 Paragraph 2 of the Swedish Bar Association's Charter to upon request submit a written statement, produce the documents the Disciplinary Committee or the Secretary-General orders him or her to supply and to appear before the Committee if ordered to do so. Failure to observe the duty to provide information thus still means that the advocate may be the subject of disciplinary action.

Regarding an advocate's obligation to provide information on account of the Swedish Bar Association's supervision as regards statutory observance of rules etc, see Circular no 26/2009 and the associated memorandum *Proactive supervision of advocates and law firms*.

From and including 1 January 2016, the obligation to provide information also applies to requests from the Consumer Dispute Resolution Committee. The regulation of the Consumer Dispute Resolution Committee and its activities is defined in Sections 47, 51 and 52–68 of the Bar Association's Charter.⁷

The statutory obligation to provide information does not entail any obligation on the part of an advocate to provide information concerning another advocate's actions that run counter to good advocate conduct.

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

The information provided by the advocate shall, as before, be truthful.

⁷ See Circular no 1/2016 and Swedish Code of Statutes 2015:416.