Commentary on IBA International Principles on Conduct for the Legal Profession

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Introduction

1 The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By embodying all these elements, the lawyer, who faithfully serves a client's interests and protects the client's rights, also fulfils the functions of the lawyer in society – which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to negotiate and draft agreements and other transactional necessities, to further the development of the law, and to defend liberty, justice and the rule of law

2 The International Principles consist of ten principles common to the legal profession worldwide. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.

3 The International Principles express the common ground which underlies all the national and international rules which govern the conduct of lawyers, principally in relation to their clients. The General Principles do not cover in detail other areas of lawyer conduct, for instance regarding the courts, other lawyers or the lawyer's own bar.

4 The International Principles take into consideration:

- national professional rules from states throughout the world;

- the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990;
- the Universal Declaration of Human Rights.

5 It is hoped that the Principles and this Commentary will be of help, for instance, to bars that are struggling to establish their independence and that of their members in emerging democracies, and to lawyers and bars to understand better the issues arising in cross-border situations as a consequence of conflicting national rules and regulations.

6 It is hoped that the Principles will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.

7 The IBA urges judges, legislators, governments and international organisations to strive, along with lawyers and bars, to uphold the principles set out in the International Principles. However, no statement of principles or code of ethics can provide for every situation or circumstance that may arise. Consequently, lawyers must act not only in accordance with the professional rules and applicable laws in their own state (and maybe also the rules and laws of another state in which they are practising), but also in accordance with the dictates of their conscience, in keeping with the general sense and ethical culture that inspires these International Principles.

8 The Appendix to this Commentary contains definitions of some of the terms contained in it.

1. Independence

1.1 General principle

A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

1.2 Explanatory note

It is indispensable to the administration of justice and the operation of the Rule of Law that a lawyer act for the client in a professional capacity free from direction, control or interference. If a lawyer is not guaranteed independence and is subject to interference from others, especially those in power, it will be difficult for the lawyer fully to protect clients. Therefore, the guarantee of a lawyer's independence is an essential requirement for the protection of citizens' rights in a democratic society. The requirement of independence calls upon the individual practicing lawyer, government and civil society to give priority to the independence of the legal profession over personal aspirations and to respect the need for an independent legal profession. Clients are entitled to expect independent, unbiased and candid advice, irrespective of whether or not the advice is to the client's liking.

Independence requires that a lawyer act for a client in the absence of improper conflicting self-interest, undue external influences or any concern which may interfere with a client's best interest or the lawyer's professional judgment.

Circumstances in which a lawyer's independence will or may be at risk or impaired include:

- the involvement of the lawyer in a business transaction with a client absent proper disclosure and client consent;

- where the lawyer becomes involved in a business, occupation or activity whilst acting for a client and such an interest takes or is likely to take precedence over the client's interest;
- unless otherwise authorised by law, knowingly acquiring an ownership, possessory or security interest adverse to the client; and
- holding or acquiring a financial interest in the subject matter of a case which the lawyer is conducting, whether or not before a court or administrative body, except, where authorised by law, for contingent fee agreements and liens to secure fees.

The fact that lawyers are paid by a third party must not affect their independence and professional judgement in rendering their services to the client.

Independence of a lawyer requires also that the process for the lawyer's admission to the bar, professional discipline, and professional supervision in general, are organised and carried out in a manner that guarantees that administration of the legal profession is free from undue or improper influence, whether governmental, by the courts or otherwise.

1.3 International implications

While the principles of independence of the lawyer and of the legal profession are undisputed in all jurisdictions adhering to, and striving for, the improvement of the Rule of Law, the respective regulatory and organisational frameworks vary significantly from jurisdiction to jurisdiction. In certain jurisdictions, the bars enjoy specific regulatory autonomy on a statutory and sometimes constitutional basis. In others, legal practice is administered by the judicial branch of government and/or governmental bodies or regulatory agencies. Often the courts or statutory bodies are assisted by bar associations established on a private basis. The various systems for the organisation and regulation

of the legal profession should ensure not only the independence of practicing lawyers but also administration of the profession in a manner that is itself in line with the Rule of Law. Therefore, decisions of the Bars should be subject to an appropriate review mechanism. There is an ongoing debate as to the extent to which governmental and legislative interference with the administration and conduct of the legal profession may be warranted. Lawyers and bars should strive for and preserve the true independence of the legal profession and encourage governments to avoid and combat the challenges to the Rule of Law.

Some jurisdictions hold certain types of activities and the handling of certain matters by members of the bar as incompatible with their independent practice; others see no conflict at all. As regards employment of a lawyer admitted to the bar, it is allowed in some jurisdictions and prohibited in others for a lawyer to be employed by another lawyer or a third party (in-house or corporate counsel). Of those jurisdictions that allow a lawyer to be employed, some jurisdictions acknowledge the privileges of a lawyer (protection of independence and confidentiality) only in those cases where the lawyer works for a client other than the lawyer's employer, while other jurisdictions grant this protection also for work performed for the employer.

Differences in jurisdictional approach should be taken into account in cases of cross-border or multi-jurisdictional practice. Every lawyer is called upon to observe applicable rules of professional conduct in both home and host jurisdictions (Double Deontology) when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice. Every international law firm will have to examine whether its entire organisation is in conformity with such rules in every jurisdiction in which it is established or engaged in the provision of legal services. A universally accepted framework for determining proper conduct in the event of

conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

2. Honesty, integrity and fairness

2.1 General principle

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.

2.2 Explanatory note

Trust in the legal profession requires that every member of the legal profession exemplifies personal integrity, honesty and fairness.

A lawyer shall not knowingly make a false statement of fact or law in the course of representing a client or fail to correct a false statement of material fact or law previously made by the lawyer. Lawyers have an obligation to be professional with clients, other parties and counsel, the courts, court personnel, and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution. Lawyers should be mindful that while their duties are often carried out in an adversarial forum, lawyers should not treat the court, other lawyers, or the public in a hostile manner. Nevertheless, it is also true that there are different standards expected towards the client, the court or a professional colleague since the lawyer has different responsibilities towards each category. The expression of these responsibilities varies jurisdiction by jurisdiction.

2.3 International implications

A lawyer who appears before or becomes otherwise engaged with a court or tribunal must comply with the rules applied by such court or tribunal.

Cross-border cooperation between lawyers from different jurisdictions requires respect for the differences that may exist between their respective legal systems, and the relevant rules for the regulation of the legal profession.

A lawyer who undertakes professional work in a jurisdiction where the lawyer is not a full member of the local profession shall adhere to applicable law and the standards of professional ethics in the jurisdiction of which the lawyer is a full member, and the lawyer shall practice only to the extent this is permitted in the host jurisdiction and provided that all applicable law and ethical standards of the host jurisdiction are observed.

3. Conflicts of interest

3.1 General principle

A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.

3.2 Explanatory note

Trust and confidence in the legal profession and the rule of law depends upon lawyers' loyalty to clients. Rules regarding conflicts of interest vary from jurisdiction to jurisdiction. The definition of what constitutes a conflict also differs from jurisdiction to jurisdiction, including (but not exhaustively) whether information barriers are permitted at all, and also whether conflict of interest prohibitions cover all the law firm or whether information barriers can help. Generally, a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, a third person or by a personal interest of the lawyer. Notwithstanding the existence of conflict of interest, in some jurisdictions a lawyer may represent the client if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and each affected client gives informed consent, confirmed in

writing. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not use information relating to the representation to the disadvantage of the former client except when permitted by applicable law or ethics rules.

In some jurisdictions, certain potentially conflicting situations may be permitted subject to proper disclosure to and, to the extent permitted by applicable law or ethics rules, consent by all parties involved, provided always that disclosure may be made without breaching confidentiality obligations. Without prejudice to additional duties, if a conflict becomes apparent only after the lawyer's work has commenced, some jurisdictions require the conflicted lawyer to withdraw from the case in its entirety and in respect of all clients concerned; others require withdrawal from representing one client only, but not all of them.

In addition, legal and professional conduct conflict of interest must be clearly distinguished from commercial conflict of interest. A lawyer should be entitled to defend the interests of or represent a client in a case even if that client is a competitor or its interests conflict with the commercial interests of another present or former client, not involved or related in that particular case assigned to the lawyer. Also, a lawyer may defend the interests of or represent a client against another client in any circumstance where the latter, whether in negotiating an agreement, or in another legal action or arbitration, has chosen to place its interests for those cases with another lawyer; however, in such cases, the first-mentioned lawyer will have to comply with all other applicable rules of professional conduct, and in particular with rules of confidentiality, professional secrecy and independence.

In upholding the interests of clients, lawyers must not allow their own interests to conflict with or

displace those of their client. A lawyer must not exercise any undue influence intended to benefit the lawyer in preference to that of a client. A lawyer must not accept instructions or continue to act for a client, when the lawyer becomes aware that the client's interest in the proceedings would be in conflict with the lawyer's own interest.

3.3 International implications

The differences in national rules on conflicts of interest will have to be taken into account in any case of cross-border practice. Every lawyer is called upon to observe the relevant rules on conflicts of interest when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice. Every international law firm will have to examine whether its entire organisation complies with such rules in every jurisdiction in which it is established and engaged in the provision of legal services. A universally accepted framework for determining proper conduct in the event of conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

4. Confidentiality/ professional secrecy

4.1 General principle

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

4.2 Explanatory note

The right and duty of a lawyer to keep confidential the information received from and advice given to clients is an indispensable feature of the rule of law and another element essential to public trust and confidence in the administration of justice and the independence of the legal profession.

The principles of confidentiality and professional secrecy have two main features. On the one hand there is the contractual, ethical and frequently statutory duty on the part of the lawyer to keep client secrets confidential. The statutory duty is sometimes in the form of an evidentiary attorney-client privilege; this differs from the lawyer's obligations under applicable rules of professional conduct. Such obligations extend beyond the termination of the attorney-client relationship. Most jurisdictions respect and protect such confidentiality obligations, for example, by exempting the lawyer from the duty to testify before courts and other public authorities as to the information the lawyer has gathered from clients, and/or by affording lawyer-client communications special protection.

On the other hand, there are manifest situations in which the principles of confidentiality and professional secrecy of lawyer-client communications no longer apply in full or in part. Lawyers can not claim the protection of confidentiality when assisting

and abetting the unlawful conduct of their clients. Some jurisdictions also allow or require a lawyer to reveal information relating to the representation of the client to the extent the lawyer reasonably believes it necessary to prevent reasonably certain crimes resulting, for example in death or substantial bodily harm, or to prevent the client from committing such a crime in furtherance of which the client has used or is using the lawyer's services. Recent legislation imposing special duties upon lawyers to assist in the prevention of criminal phenomena such as terrorism, money laundering or organised crime has led to further erosion of the protection of the lawyer's duty of confidentiality. Many bars are opposed in principle to the scope of this legislation. Any encroachment on the lawyer's duty should be limited to information that is absolutely indispensable to enable lawyers to comply with their legal obligations or to prevent lawyers from being unknowingly abused by criminals to assist their improper goals. If neither of the above is the case and a suspect of a past crime seeks advice from a lawyer, the duty of confidentiality should be fully protected. However, a lawyer cannot invoke confidentiality/professional secrecy in circumstances where the lawyer acts as an accomplice to a crime.

Jurisdictions differ on the scope of protection and its geographical extension. In some jurisdictions clients may waive the lawyer's obligation of confidentiality and professional secrecy, but in others clients may not. In some jurisdictions, the obligation can be broken for self-defence purposes in judicial proceedings. Apart from client waiver, such self-defence and any requirements imposed by law, the lawyer's obligation of confidentiality and professional secrecy is usually without time limit. The obligation also applies to assistants, interns and all employed within the law firm. In any event, lawyers shall be under a duty to ensure that those who work in the same law firm, in whatever capacity, maintain the obligation of confidentiality and professional secrecy.

Law firms or associations raise different aspects of the duty of confidentiality and professional secrecy. The basic and general rule must be that any information or fact known by a lawyer in a law firm is held to be known by the entire organisation, even if that organisation is present in different branches and countries. This means that extraordinary measures must be adopted within the organisation if a lawyer is involved in a case that should be considered as strictly confidential even beyond the general standards of the professional secrecy principle.

Lawyers should also take care to ensure that confidentiality and professional secrecy are maintained in respect of electronic communications, and data stored on computers. Standards are evolving in this sphere as technology itself evolves, and lawyers are under a duty to keep themselves informed of the required professional standards so as to maintain their professional obligations.

The extent to which clients may waive the right to confidentiality is subject to differing rules in different jurisdictions. Those rules limiting the ability to waive argue that clients frequently cannot properly assess the disadvantages of issuing such a waiver. Restrictions on waivers are of paramount importance to protect against a court or governmental authority putting inappropriate pressure on a client to waive his or her right to confidentiality.

Finally, lawyers should not benefit from the secrets confided to them by their clients.

4.3 International implications

Although there is a clear common goal behind the various regimes governing the duty of confidentiality and its protection, national rules differ substantially. While civil law countries entitle and oblige the lawyer not to testify, and protect the lawyer against search and seizure, common law countries protect the confidentiality of certain attorney-client

communications, even if, for example, privileged correspondence is found with a client suspected of having committed a criminal offence.

Lawyers engaged in cross-border practice and international law firms will have to investigate all rules that may be of relevance and will have to ensure that information to which they gain access and the communication in which they are engaged will in fact enjoy the protection of confidentiality.

Generally, the national rules of all relevant jurisdictions must be complied with (Double Deontology). But national rules sometimes do not address the issue of how to deal with conflicting rules. If the conflicting rules are broadly similar, then the stricter rule should be complied with. There is, however, no universally accepted solution for those cases where the rules contradict each other (for instance secrecy protection versus reporting obligation), although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

Likewise, national rules as to the ability of a client to waive confidentiality vary, and the applicable rule or rules will have to be determined individually in every case.

A special international consideration arises from the fact that some jurisdictions permit employment of a lawyer admitted to the Bar, while others do not permit employment of in-house counsel. Accordingly, the question arises how jurisdictions that do not recognise in whole or in part the duty of confidentiality on the part of in-house counsel deal with foreign in-house counsel who enjoy that protection in their home jurisdiction.

5. Clients' interests

5.1 General principle

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

5.2 Explanatory note

This means that lawyers in all of their dealings with the courts, by written or oral form, or by instructing an advocate on the client's behalf, should act with competence and honesty.

Lawyers should serve their clients competently, diligently, promptly and without any conflict to their duty to the court. They should deal with their clients free of the influence of any interest which may conflict with a client's best interests; and with commitment and dedication to the interest of the client. A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures may be required to vindicate a client's cause or endeavour.

Lawyers should maintain confidentiality. They should also provide all relevant information to their clients, in order to protect their clients' interests and advise them competently, subject to any contrary law or ethics rule.

Lawyers must not engage in, or assist their client with, conduct that is intended to mislead or adversely affect the interest of justice, or wilfully breach the law.

Lawyers' duty to safeguard clients' interests commences from their retainer until their effective release from the case or the final disposition of the whole subject matter of the litigation. During that

period, they are expected to take such steps and such ordinary care as clients' interests may require.

Even if not required by the applicable law of a jurisdiction, it is considered good practice in many jurisdictions for lawyers to ensure that they secure in the interest of their clients adequate insurance cover against claims based on professional negligence or malpractice.

6. Lawyers' undertaking

6.1 General principle

A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

6.2 Explanatory note

A lawyer's undertaking is a personal promise, engagement, stipulation and responsibility, as well as a professional and legal obligation. A lawyer must therefore exercise extreme caution when giving and accepting undertakings. A lawyer may not give an undertaking on behalf of a client if they do not have a prior mandate, unless they are requested to do so by another lawyer representing that client. A lawyer should not give or request an undertaking that cannot be fulfilled, and must exercise due diligence in this regard. This therefore requires that a lawyer has full control over the ability to fulfil any undertaking given. Ideally, a lawyer should provide a written confirmation of an undertaking in clear and unambiguous terms, and in a timely manner – if the lawyer does not intend to accept personal responsibility this should be made clear in the undertaking. Breaches of undertakings adversely affect both the lawyer's own reputation as being honourable and trustworthy, as well as the reputation and trustworthiness of the legal profession as a whole.

In those jurisdictions in which undertakings are not recognised as described here, lawyers should nevertheless exercise the same extreme caution in engaging themselves in the way outlined.

7. Clients' freedom

7.1 General principle

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

7.2 Explanatory note

The client may issue an instruction or mandate to the lawyer, instructing the transfer of all papers and files to another lawyer. The lawyer is under an obligation to comply with the instruction or mandate, subject to any lawful right of retention or lien. A lawyer should not withdraw from representation of a client except for good cause or upon reasonable notice to the client, and must minimize any potential harm to the client's interests, and (where appropriate or required) with the permission of the court. A lawyer should do everything reasonable to mitigate the consequences of the change of instructions.

8. Protection of property of clients and third parties

8.1 General principle

A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.

8.2 Explanatory note

A lawyer shall hold property of clients or third parties that is in the lawyer's possession in connection with a representation separate from the lawyer's own business or personal property. Client or third-party funds should be held in a separate bank account and not commingled with the lawyer's own funds. Property other than funds should be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved after termination of a representation to the extent required by applicable law or professional regulations. The lawyer should ascertain the identity, competence and authority of the third person that is transferring the possession of the property or the funds.

Upon receiving funds or other property in which a client or third person has an interest, the lawyer shall promptly notify the client or third person. Except as permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. A lawyer cannot use a client's property or client's funds in order to set off or compensate any outstanding payment of the lawyers' professional fees or expenses unless so is authorised by law or in writing by the client.

9. Competence

9.1 General principle

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

9.2 Explanatory note

As a member of the legal profession, a lawyer is presumed to be knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf or to procure that somebody else either in or outside the law firm will do it.

Competence is founded upon both ethical and legal principles. It involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied, and includes competent and effective client, file and practice-management strategies.

A lawyer must consider the client's suggestion to obtain other opinions in a complex matter or from a specialist, without deeming such requests to be a lack of trust.

10. Fees

10.1 General principle

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

10.2 Explanatory note

The basis for the claim of a lawyer to fees for services performed may be contractual or statutory. The lawyer shall make a clear and transparent arrangement on fees with the client jointly with the giving and taking of instructions. If permitted by law or applicable rules of professional conduct, such arrangement may contain an agreement on the limitation of the lawyer's liability.

On whatever basis a fee arrangement is made, it shall be reasonable. Reasonableness is normally determined with a view to the nature of the assignment, its difficulty, the amount involved, the scope of work to be undertaken and other suitable criteria. The lawyer shall strive to achieve the most cost effective resolution of the client's dispute.

The lawyer's invoices shall be submitted in accordance with the agreement with the client and statutory rules, if any.

Where permitted, a lawyer may require the payment of reasonable deposits to cover the likely fees and expenses as a condition to commencing or continuing his or her work. As mentioned in Principle 7, the lawyer may have a lawful right of retention or lien if the client instructs the lawyer to transfer all the papers and files to another lawyer. A lawyer shall also hold separate from the lawyer's own business or personal property any legal fees and expenses that a client has paid in advance, to be withdrawn by the lawyer only as those fees are earned or expenses are incurred. If a dispute arises between the client and the lawyer as to the lawyer's entitlement to withdraw

funds for fees or expenses, then, subject to applicable law, the disputed portion of the funds must be held separate until the dispute is resolved. The undisputed portion of the funds shall be promptly distributed to the client.

If a lawyer engages or involves another lawyer to handle a matter, the responsibility for such other lawyer's fees and expenses shall be clarified among the client and the lawyers involved beforehand. In the absence of such clarification and depending on applicable law the lawyer so having involved another lawyer may be liable for the latter lawyer's fees and expenses.

10.3 International implications

When engaging in cross-border practice, the lawyer should investigate whether arrangements on fees, payments of deposits and limitations of liability are permitted under all applicable rules and, if relevant, the rules which govern the responsibility for fees of other lawyers who may become involved. In particular, a contingency fee or *pactum de quota litis* is permitted in certain jurisdictions provided certain requirements are met but prohibited as a matter of public policy in other jurisdictions.

In some jurisdictions, it is not appropriate for a lawyer to ask another lawyer or a third party for a fee, or to pay a fee to another lawyer or a third party for referring work.

Appendix

Definitions

Bar An officially recognised professional organisation consisting of members of the legal profession that is dedicated to serving its members in a representative capacity to maintain the practice of law as profession, and, in many countries possessing regulatory authority over the bar in its jurisdiction. Membership in the bar may be compulsory or voluntary.

Client-lawyer confidentiality Subject to specific exceptions, the lawyer's ethical duty of confidentiality prohibits a lawyer from disclosing information relating to the representation of or advice given to a client from any source, not just to communications between the lawyer and client, and also requires the lawyer to safeguard that information from disclosure. The principle of confidentiality is greater in scope than the legal professional privilege. Matters that are protected by the legal professional privilege are also protected by the principle of confidentiality; the converse, however, is not true.

Confirmed in writing Informed consent provided via a writing from the person from whom such consent is sought or a writing that a lawyer promptly transmits to that person confirming an oral informed consent. The written consent may take the form of a tangible or electronic record. It may consist of handwriting, typewriting, printing, photocopy, photograph, audio or video recording, and electronic communication such as an e-mail or Twitter message.

Court/tribunal An entity, whether part of the judicial, legislative or executive branch of government, including an arbitrator in a binding arbitration proceeding, administrative agency or other body,

acting in an adjudicative capacity. This entity acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Informed consent Agreement by a person to allow something to happen in response to a proposal by a lawyer after the lawyer has made full disclosure of the facts, material risks of, and reasonably available alternatives to the proposed course of action.

Knowingly Actual knowledge of the fact in question. Knowledge may be inferred from the circumstances.

Legal profession The body of lawyers qualified and licensed to practice law in a jurisdiction or before a tribunal, collectively, or any organised subset thereof, and who are subject to regulation by a legally constituted professional body or governmental authority.

Legal professional privilege An evidentiary privilege that protects a lawyer from being compelled to disclose certain communications between a lawyer and a client in a judicial or other proceeding where a lawyer may be called as a witness.

Professional secrecy The handling of information about a client received during the course of the representation from the client or other sources that the lawyer may not be able to disclose, regardless of client consent. This principle is effective in many civil law jurisdictions.

Reasonable or reasonably In reference to a lawyer's actions, the level of conduct of a prudent and competent lawyer.

Reasonably believes or reasonable belief A belief by a prudent and competent lawyer in a fact or set of facts that is appropriate under the circumstances in which that belief exists.

Secrets Information gained by the lawyer in the course of a representation that the client specifically requests that the lawyer not reveal or information the nature of which would be potentially embarrassing or detrimental to the client if revealed.

the global voice of
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