



FINNISH BAR ASSOCIATION





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Lawyer in the crossroads of conflict of interests / Finland

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1. INTRODUCTION



1.1 Binding nature and sources of proper professional conduct for lawyers (1/2)

The requirements of proper professional conduct for lawyers are set forth in the relevant legislation and in the By-laws of the Finnish Bar Association (hereafter the 'Bar Association') as well as in

1. this code of conduct for lawyers (hereafter the 'Code of Conduct');
2. other guidelines that are binding on lawyers;
3. decisions on supervision and disciplinary matters; and
4. acceptable practices approved by the Bar.



1.1 Binding nature and sources of proper professional conduct for lawyers (2/2)

The main elements of proper professional conduct for lawyers have been summarised in this Code of Conduct. The Code of Conduct does not, however, constitute an exhaustive description of proper professional conduct. Therefore, what has not been specifically prohibited in the Code of Conduct cannot necessarily be considered permissible.

The decisions and other opinions of the executive bodies of the Bar Association contain interpretations of proper professional conduct.

A lawyer shall observe proper professional conduct in addition to the legal provisions on the performance of an appointed or other designated assignment.



3. CORE VALUES



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3.3 Conflict of interest

A lawyer shall be free of conflicts of interest when accepting and performing an assignment.



6. CONFLICT OF INTEREST



6.1 Conflict of interest in the same matter

A lawyer may not accept an assignment in the same matter from two or more clients if there is a conflict or a significant risk of a conflict between the interests or rights of those clients.

A lawyer may, however, accept an assignment from two or more clients in matters concerning the drafting of an agreement or mediation, even though the clients may have conflicting interests, provided that all parties request his/her assistance. In such a case, the lawyer has an obligation to equally observe the interests of all the clients, and he/she is prohibited from assisting any of them in case of a later dispute.



6.2 Conflict of interest based on the obligation of loyalty

A lawyer may not accept an assignment against a current or former client if accepting the assignment breaches the obligation of loyalty towards a new client or a current or former client who is the opposing party, unless the clients give their consent.

The extent of a lawyer's obligation of loyalty during an assignment, and the duration of the obligation after end of the assignment, is determined by, among other things, the nature and scope of the assignment, the importance of the matter to the client, as well as the length of the client relationship and the importance of the client to the lawyer.



6.3 Conflict of interest based on the obligations of secrecy and confidentiality

A lawyer may not accept an assignment if facts obtained in another assignment that fall within the scope of the obligation of secrecy or confidentiality could impair the attorney's ability to fully protect the client's interests.

A lawyer may, however, accept an assignment if the lawyer has obtained consent to use the information covered by the obligations of secrecy and confidentiality from the party protected by the said obligations. Consent may not be requested for the purpose of using the information against the party giving the consent.



6.1, 6.2 and 6.3 Conflict of Interest

A lawyer had assisted a housing company against the constructor in a matter regarding construction defects in that company's building. A few months after the conclusion of this assignment, the lawyer had assisted four of the shareholders and sent a letter to the housing company presenting claims against the housing company on the basis of the construction defects.

The Disciplinary Board discovered that after the housing company's assignment had come to an end, the lawyer had presented in the letter claims on behalf of the shareholders against the housing company (which was the lawyer's former principal) regarding, at least partially, the same construction defects. The Board considered that the lawyer had assisted the opposing party in the same matter, due to which the lawyer had been disqualified (conflict of interest) and had thus breached the Code of Conduct for Lawyers. (Warning)



6.2 and 6.3 Conflict of interest based on the obligations of loyalty and secrecy

In the course of several years, a lawyer had handled dozens of assignments received from company A. These assignments had already come to an end when the lawyer accepted an assignment from the company's former employee to assist the employee in an employment dispute with the company. The company had paid the last invoice sent by the lawyer at a time when the lawyer was already working on the assignment against the company.

The Disciplinary Board considered that in pursuing the company's assignments for several years, the lawyer had to have gained such information that might have been relevant in the employee's assignment against the company. Due to this, the lawyer had been disqualified from accepting the employee's assignment (conflict of interest). (Warning)



6.4 Conflict of interest based on financial or personal interests

A lawyer may not accept an assignment if he/she or a person close to him/her or a person working in the same office or office community has a personal or financial connection to that assignment that may impair the lawyers' ability to fully protect his/her client's interests.

Unless the connection is significant, consent by the client authorises the attorney to accept the assignment.



6.5 Conflict of interest in law firms and office communities

The provisions set out in Rules 6.1–6.3 shall apply to a lawyer him/herself, as well as to persons working in the same law firm or office community.

The conflict of interest situation referred to in Rule 6.4 shall not prevent an impartial lawyer practising in the same law firm or office community from handling the assignment.



6.6 Obtaining consent

Prior to obtaining the consent referred to in Rules 6.2, 6.3 and 6.4, a lawyer shall explain to the client in detail the circumstances constituting a conflict of interest, in order for the client to be able to sufficiently consider whether to give consent. A lawyer may not request consent from a client who may be considered unable to comprehend the implication of such consent.

Consent must be obtained without violating a lawyer's obligations of secrecy and confidentiality.



6.7 Change of office (1/9)

Conflict of interest in a new office

When a lawyer has relocated to a new office, the lawyers in the new office shall in their conflict of interest assessments take into account the assignments previously performed by the relocated lawyer, as well as information relating to such assignments otherwise received by the relocated lawyer that is covered by the obligations of secrecy and confidentiality.



6.7 Change of office (2/9)

Personal conflict of interest of a relocated lawyer

A lawyer who has relocated to a new office may not personally perform an assignment in the new office if

1. the previous law firm of such a lawyer represents the opposing party of a client of the new office; and
2. the assignment from the opposing party was given to the previous law firm prior to the lawyers' relocation to the new office.

The conditions mentioned above do not prevent an impartial lawyer in the new office from performing the assignment.



6.7 Change of office (3/9)

Conflict of interest in the previous office

Notwithstanding the relocation of a lawyer to a new office, the lawyers of the previous office shall in their conflict of interest assessments take into consideration the assignments performed by the relocated lawyer at the said previous office.



6.7 Change of office / Case 1 (4/9)

Lawyer A, who is also one of the two partners with Attorneys-at-law A & B Oy (Ltd), had drafted a property division agreement at the request of former spouses. Soon after the agreement had been drafted, Attorneys-at-law A & B Ltd had closed down their business, and lawyer B had founded a new firm, Attorneys-at-law B Ky (LP). Lawyer C had worked for Attorneys-at-law B LP. After this, one of the spouses brought an action for annulment regarding the division of property against the other spouse, and lawyer C assisted the plaintiff.



6.7 Change of office / Case 1 (5/9)

The Disciplinary Board stated that since lawyer B, as a former co-partner of lawyer A (who drafted the property division agreement), would have been disqualified from handling the action for annulment (conflict of interest), also lawyer C, who was working for lawyer B, was disqualified from the task (conflict of interest). (Warning)



6.7 Change of office / Case 2 (6/9)

Lawyers A and B had been partners with the same firm. During that time, lawyer A had assisted Y in 1993 in a divorce litigation regarding, inter alia, custody of the children and maintenance to be paid to them. In 1996, lawyer A assisted Y in a matter concerning the reduction of maintenance awarded to a child where Y's former spouse X was the opposing party.

After lawyers A and B had dissolved their company and were both working in their own firms, lawyer B accepted in 2005 an assignment from Y's former spouse X in a matter concerning education allowance to be paid to Y and X's child.



6.7 Change of office / Case 2 (7/9)

The Disciplinary Board considered that since these matters regard the same child's maintenance, on the one hand, and education allowance, on the other hand, the information revealed in the previous matter, where B's former co-partner A had assisted X's opposing party Y, might be relevant in the matter regarding the education allowance. Since a lawyer and his/her co-partner are comparable with each other in accordance with the Code of Conduct for Lawyers, lawyer B was disqualified from handling X's assignment (conflict of interest).
(Warning)



6.7 Change of office / Case 3 (8/9)

An appellant and another person, i.e. the sellers, and a limited liability company, i.e. the buyer, had concluded an agreement on the sale of shares of a limited liability company engaged in cabin rental activity, a service agreement related thereto and two guarantee commitments. An lawyer who now works for and is a partner with the same law firm as lawyer A had participated in the drafting of the said documents while working for his previous firm.



6.7 Change of office / Case 3 (9/9)

Civil matters arising out of the above-mentioned agreements had become pending between the appellant and the company that bought the shares in the district court. Lawyer A assisted the buyer and guarantor in these matters.

The Disciplinary Board discovered that lawyer A's co-partner had previously assisted the opposing party in the same matter. The Disciplinary Board considered that lawyer A had been disqualified (conflict of interest) and had thus breached the Code of Conduct for Lawyers. (Warning)



6.8 Information of circumstances affecting the assessment of conflicts of interest

If a lawyer deems himself/herself to be free from conflicts of interest, but is aware of circumstances that may give rise to justifiable doubts about his/her impartiality, the lawyer shall inform the client of these circumstances.

The said obligation to inform must be fulfilled without violating the lawyer's obligations of secrecy and confidentiality.



**CCBE (Council of Bars and
Law Societies of Europe)
Code of Conduct for
European lawyers**



CCBE 2.4 Respect for the Rules of Other Bars and Law Societies

When practicing cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current from the Secretariat.



CCBE 3.2 Conflict of Interest (1/2)

A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.



CCBE 3.2 Conflict of Interest (2/2)

A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

Where lawyers are practicing in association, the paragraphs above shall apply to the association and all its members.



1.2 Cross-border activities / Finnish Code of Conduct

In cross-border activities within the European Union and the European Economic Area, lawyers shall primarily observe the Code of Conduct for European lawyers, to the extent the Delegation of the Bar Association has established it to be binding on Finnish lawyers, and secondarily this Code of Conduct.

When performing an assignment in a Member State of the European Union or the European Economic Area other than Finland, a lawyer shall observe the professional rules of conduct of the country in question in addition to what is prescribed above.



Thank you!