



Created by In-House Counsel for In-House

Guidance on Ethics and Standards of Professional Conduct for In-House Counsel



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at the In-House Counsel World Summit 2016

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PREFACE

In-House Counsel Worldwide (ICW) was formed from an affiliation group of In-House Counsel associations around the globe in October 2011 and comprises associates from multiple countries and jurisdictions, operating in all areas of the world.

ICW unites the global In-House legal community, for the benefit of all In-House Counsel, their organisations and the profession, through cooperation and collaboration, to strengthen the profession and contribute to the development of the rule of law, in the interests of its members, their employing organisations and the public interest.

The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards¹.

The rule of law is premised on the legal principle that law should govern a nation, as opposed to that nation being governed by arbitrary decisions of individual government officials. It requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. It is important in all jurisdictions. Its importance is manifested in every legal activity in which citizens engage, including those activities in which In-House Counsel and the In-house community engage.

As participants in a justice system that advances the rule of law, the legal profession, including In-House Counsel, has a responsibility to uphold the rule of law in the various jurisdictions in which they operate. Part of that responsibility is ensuring that the legal profession, and in particular, that In-House Counsel, acts in an ethical and professional manner. Ethical conduct is an expected standard for the legal profession and for In-House Counsel. All persons operating within the legal profession, including In-House Counsel, are expected, without exception, to act in a professional, ethical and law abiding manner.

This Guidance has been drafted as an International guideline for In-House Counsel and is intended to serve as a general guide on the ethical and professional standards expected from the In-House Counsel community as a whole, so that it may be of help in all jurisdictions within which In-House Counsel may operate.

It is recognised that jurisdictional and geographical differences will exist in respect of certain applications of these ethical and professional standards. This Guidance, therefore, seeks to establish and set out a recommended standard of ethical behaviour and professional conduct which should be followed by all In-House Counsel, no matter the jurisdiction in which they operate. It is hoped this Guidance may assist all who make up and comprise the In-House Counsel community in their daily working activities.

INTERPRETATION AND DEFINITION

This document must be read in conjunction with the ICW Constitution and other ICW policies and procedures.

Unless otherwise stated, or the context indicates to the contrary, terms, words and expressions defined and used under the ICW Constitution and other ICW policies and procedures used in this document shall have the same meanings and descriptions when used in this document as have been ascribed to them under the ICW Constitution and other ICW policies and procedures.

Definitions

ICW – means In-House Counsel Worldwide (ICW), a global network of In-House Counsel associations.

Client – means the person, entity or Employer who/which makes use of the expertise and skill of an In-House Counsel.

Guidance – means the ICW Guidance on Ethics and Standards of Professional Conduct for In-House Counsel.

Constitution – means the ICW Constitution.

Conflict of interest – means a situation occurring when an individual or organisation, and in particular, In-House Counsel, is involved in multiple interests which are in conflict with each other and/or those of the Client or the Employer who he/she represents, one of which could possibly adversely influence his/her decision making powers or ability to make an honest and ethical decision.

Employer – means the person or entity who/which employs and makes use of the expertise and skill of an In-House Counsel.

Ethical conduct – means acting in an honest, fair and circumspect manner which is transparent, objective, analytical, free of conflict and which complies with the general rule of law and where the actions are in the public interest.

Financial Interest – means an interest of a pecuniary nature including an interest in, or rights and obligations to acquire such an interest in, equity or other security or debenture, loan or other debt instrument of an entity, or an interest in contractual relationships for goods and services which In-House Counsel may have in a matter in respect of which he/she is advising on.

Independence – means: a) independence of mind - the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional

judgement, thereby allowing an individual to act with Integrity and exercise Objectivity; and b) independence in appearance - the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that an entity or a member of that entity has not been compromised.

Integrity – means an attitude of mind whereby one commits to certain standards of conduct and behaviour in a consistent manner. Behaving with integrity means taking an honest, fair, ethical and transparent approach to everything one does. It is essentially about doing the right thing, with due regard for the avoidance of conflicts between any personal Financial Interest and one's responsibilities to one's employer or client.

In-House Counsel – means a qualified lawyer who is employed by a Client or Employer for the purpose of providing that Client or Employer with a dedicated source of Legal Services and Advice in exchange for a salary or remuneration, and phrases and names such as, but not limited to, "legal advisor", "general counsel", "legal counsel", "in-house legal" and "corporate counsel" have the same meaning.

In-House Counsel profession – means the profession made up of In-House Counsel who are employed by a Client or Employer for the purposes of providing that Client or Employer with a dedicated source of Legal Services and Advice.

Legal profession – means the profession made up of persons holding a legal qualification and having specific legal skill and expertise, including, without detracting from the generality thereof, qualified lawyers, admitted attorneys, In-House Counsel, advocates, state advocates, public prosecutors, magistrates, legal advisors and/or legal compliance officers, who provide Legal Services and Advice to the public and/or the private sector, Clients and Employers.

Legal Services and Advice – means the services provided to a Client or Employer by In-House Counsel.

Member – means an ICW Member.

Objectivity – means the quality of being able to maintain an impartial attitude, and requires one to be fair and not allow prejudice or bias to influence one's judgment or override one's impartiality and Objectivity, working in a manner that maintains the public interest.

Professional misconduct – means, without detracting from the generality thereof, or from similar professional services and related conduct by In-House Counsel:

- conduct occurring in connection with the provision of Legal Services and Advice that involves a substantial or persistent failure to reach or maintain a reasonable standard of competence or diligence;
- conduct that would justify a finding that a Member is not a fit and proper person to engage in the provision of Legal Services and Advice and includes, but is not limited to, acting dishonestly or providing misleading or deceptive Legal Services and Advice; and
- the wilful breaching, subversion or avoidance of any applicable law, directive or relevant requirements imposed under legislation, including subordinate standards and rules.

PURPOSE AND OBJECTIVE OF THIS GUIDANCE

The **purpose** of this Guidance is to set out a recommended level of Ethical behaviour and Standards of Professional Conduct which may assist ICW Members and the In-House Counsel profession in general, which it represents.

The **objective** of this Guidance is to:

- define and promote acceptable ethical behaviour for In-House Counsel based on appropriate values;
- promote desired standards of conduct for In-House Counsel and for the In-House Counsel profession as a whole;
- develop and maintain a high standard of professionalism for In-House Counsel and the In-House Counsel profession;
- provide a benchmark of expected behaviour and conduct for In-House Counsel and the In-House Counsel profession;
- provide practices and standards for In-House Counsel so that they may evaluate their own practices and behaviours when providing Legal Services and Advice;
- provide guidance to In-House Counsel so that In-House Counsel may provide Legal Services and Advice to his/her Client or Employer and where applicable, the public, with Integrity, sincerity and in accordance with the accepted standards;
- ensure that In-House Counsel respects the interests of their Clients and Employers, the public, ICW and the Legal profession in general;
- promote Client and Employer confidence in In-House Counsel employed by them and in the In-House Counsel profession;
- promote the public's confidence in In-House Counsel and the In-House Counsel profession and protect the interests of the public.

APPLICATION

Whilst this is voluntary Guidance on recommended ethical and professional practices for the In-House Counsel profession, In-House Counsel, as and where applicable, are encouraged to adopt and promote this Guidance which will support the credibility and good reputation of In-House Counsel, ICW and its Members and the In-House Counsel profession worldwide.

RECOMMENDED ETHICAL PRACTICES AND STANDARDS OF CONDUCT FOR HOUSE COUNSEL

In-House Counsel has a duty to carry on the practice of law and discharge all responsibilities to Clients and Employers, stakeholders, the public and other members of the Legal profession in a responsible manner and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession. If integrity is lacking, In-House Counsels' effectiveness for their employer/organisation will be lowered, together with his/her reputation, the integrity of the profession and the administration of justice through the rule of law.

[2] In-House Counsel's conduct should reflect positively on the legal profession, inspire confidence, respect and trust of employers /clients and stakeholders, and avoid actions that could bring the profession into disrepute.

[3] Public confidence in the rule of law, the administration of justice and in the legal profession may be eroded by irresponsible conduct of In-House Counsel.

Ethical behaviour

In-House Counsel must at all times **act ethically**, and in discharge of this duty should:

- act in a fair, honest and transparent manner, with dignity and Integrity;
- remain impartial and objective, avoiding the risk of his/her professional judgement being compromised or subject to undue influence by others;
- give effect to legal requirements and treat any gap in a law, regulation, standard or code in an ethical and responsible manner;
- respect and promote the Integrity of the In-House Counsel profession, and not bring it into disrepute at any time;
- not engage in any act of dishonesty, corruption or bribery;
- disclose to the relevant parties any personal, business and/or Financial Interest in his/her Client, Employer, their business or in any stakeholder, to avoid any perceived, real or potential Conflict of interest at all times;

- not knowingly misrepresent or permit misrepresentation of one's qualifications or competency or those of others;
- provide opinions, decisions, and/or Legal Service, Advice and recommendations that are honest, objective and based on facts.

PROFESSIONAL STANDARDS

In-House Counsel has a duty to uphold the standards and reputation of the In-House Counsel profession and those of the legal profession where applicable, and to assist in the advancement of their relevant association or institution's goals.

Commentary

[1] Collectively, In-House Counsel is encouraged to enhance the legal profession through activities such as:

a. sharing knowledge and experience with colleagues and students in day-to-day practice as well as through contribution to professional journals and publications, participation in panel discussions, legal education and the general debate of the legal profession;

b. participating in community programs or providing legal services on a pro bono basis.

In-House Counsel must at all times act in a professional manner and, in discharge of this duty, should follow the below-mentioned standards of conduct:

- act with the required degree of skill, care and diligence which is expected from any In-House Counsel professional;
- liaise in an open and transparent manner with Clients, Employers and stakeholders and not intentionally mislead one's Client, Employer or any stakeholder;
- ensure that one is provided with an appropriate brief and that one makes objective and impartial decisions based on thorough research and an assessment of the facts and the context of the situation;
- exercise independent and professional judgement in all dealings with Clients, Employers and stakeholders;
- execute one's job functions with professionalism, good attitude and values, due care and diligence;
- adhere to acceptable practices and high quality standards when carrying out one's work;
- continuously improve one's skills and mentor and guide new entrants in one's field of expertise;
- act with intellectual Objectivity and Integrity, whatever the circumstances or influences to which the In-House Counsel may be subject, when acting;
- maintain and improve one's professional skills, expertise and competence on an ongoing basis through Continuous Professional Development, as prescribed by the relevant In-House Counsel Association or Institute;
- keep abreast of legal developments, applicable laws, regulations, legal theory and the common law, particularly those which apply to one's Client, Employer and/or the industry within which one operates;

- conduct oneself professionally and responsibly, recognising the interests of one's Client, Employer and stakeholders, which interests may not necessarily be the same, and encourage similar behaviour in others;
- comply with and observe both the spirit and the letter of the law, especially those relevant to the industry where one operates, including codes, principles, and standards of conduct;
- not misrepresent one's competence, including one's qualifications and credentials, capabilities, characteristics, and experience;
- observe and protect confidentiality where applicable and in particular, privacy of all and any information made available and received during the course of performing one's duties or in your wider professional, legal role outside your duties, as an officer of the court, unless a legal obligation to disclose the information exists or arises;
- not perform work or conduct oneself in any manner that will compromise the standards of the In-House Counsel profession or the Legal profession in general;
- generally act in a manner consistent with the good reputation of the Legal profession and the In-House Counsel profession and refrain from conduct which may harm the public, the Legal profession, the In-House Counsel profession or one's Client or Employer, or which may bring the In-House Counsel profession, the Legal profession or the Employer or Client into disrepute.

RELATIONSHIP TO ORGANISATION

Competence

“Competent In-House Counsel” means In-House Counsel who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of an Employer/Client and the nature and the terms of the engagement, including:

- (a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law on which the In-House Counsel holds themselves out as being able to advise;
- (b) investigating facts, identifying issues, ascertaining Employer or Client objectives, considering possible legal options and developing and advising the Employee/Client on appropriate courses of action;
- (c) implementing as each matter requires, the chosen course of action through the application of appropriate legal skills, including:
 - (i) legal research;
 - (ii) analysis;
 - (iii) application of the law to the relevant facts;
 - (iv) writing and drafting;
 - (v) negotiation;
 - (vi) alternative dispute resolution;
 - (vii) advocacy; and
 - (viii) problem solving;
- (d) in a timely and effective manner:
 - (i) communicating at all relevant stages of a matter
 - (ii) performing all functions conscientiously, diligently and in a cost effective manner;
- (e) applying intellectual capacity, judgment and deliberation to all functions;
- (f) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of the legal profession;
- (g) recognising limitations in one’s ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the employee/ organisation is appropriately served;
- (h) managing one’s office and legal department effectively;
- (i) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- (j) otherwise adapting to changing professional requirements, standards, techniques and practices.

In-House counsel must perform all legal services undertaken on an Employer/Client’s behalf to the standard of a competent In-House Counsel.

Commentary

[1] As a member of the legal profession, In-House Counsel must be knowledgeable, skilled and capable in the practice of law. Accordingly, the Employer/Client is entitled to assume that In-House Counsel has the ability and capacity to deal adequately with all legal matters to be undertaken on its behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practices and procedures by which such principles can be effectively applied. To accomplish this, In-House Counsel should keep abreast of developments in all areas of law in which he or she practices.

[3] In deciding whether In-House Counsel has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialised nature of the matter;

(b) In-House Counsel's general experience;

(c) In-House Counsel's training and experience in the field and the course of CPD undertaken by the In-House Counsel;

(d) the preparation and study which In-House Counsel is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, other professionals with established competence in the field in question.

[4] In some circumstances, specialised expertise in a particular field of law may be required.

[5] In-House Counsel should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the employer/client.

[6] In-House Counsel must recognise a task for which he or she lacks competence and the disservice that would be done to the Employer/Client by undertaking that task. It is not always the case that the In-House Counsel must refuse to act. If consulted about such a task, In-House Counsel should obtain the Employer/Client's instructions to retain, consult or collaborate with other professionals, including lawyers who are competent for the task in question. The In-House Counsel must take steps to become competent in that area of the law without undue delay, risk or expense to the employer/organisation.

[7] In-House Counsel should also recognise that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and, when it is appropriate, In-House Counsel should not hesitate to seek the Employer/Client's instructions to consult experts.

[8] When operating as an In-House Counsel in a multi-disciplinary practice, in addition to opinions on legal questions, In-House Counsel may be asked for, or may be expected to give, advice on non-legal matters such as the business, economic, policy or social complications relevant to the question or the course of action which the Employer/Client may wish to choose. In many instances the In-House Counsel will be called upon to be the Employer's/Client's business advisor, drawing on the In-House Counsel's experience and views on non-legal matters. Care must be taken to avoid giving advice and views that cannot be substantiated.

[9] The requirement of conscientious, diligent and efficient service means that In-House Counsel should make every effort to provide timely service to the Employer/Client. If In-House Counsel can reasonably foresee any undue delay in providing advice or services, the Employer/Client should be so informed.

[10] In-House Counsel should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the Employer/Client and should remain alert to any factor or circumstance that may have that effect.

[11] In-House Counsel who is incompetent does the Employer/Client a disservice, brings discredit to the Legal profession and may bring the administration of justice into disrepute. In addition to damaging In-House Counsel's own reputation, incompetence may also injure the Employer/Client organisation.

QUALITY OF SERVICE

In-House Counsel has a duty to provide courteous, thorough and prompt service to Employers/Clients. The quality of service required of In-House Counsel is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] In-House Counsel has a duty to communicate effectively with the Employer/Client. What is effective will vary depending on the nature of the services, the seriousness of the matter, the needs and sophistication of the Employer/Client and the need for the Employer/Client to make fully informed decisions and provide instructions.

[2] In-House Counsel should ensure that matters are attended to within a reasonable time frame. If In-House Counsel can reasonably foresee undue delay in providing advice or services, he or she has a duty to so inform the Employer/Client so that the Employer/Client can make an informed choice about its options.

[3] In order to maintain an acceptable quality of service to an Employer/Client, the In-House Counsel must undertake an appropriate level of Continuous Professional Development so as to be able to deliver advice to the competency standards required by an In-House Counsel.

[4] In-House Counsel should ensure that, where there are specific deadlines to be met, he has taken into account all relevant matters which must be considered on a risk based basis, before reaching his conclusions or providing his advice, even if this risk based assessment results in the deadlines being called into question. This approach will need to be flexible to allow for any unforeseen issues to be taken into account or where there is a reasonable explanation for altering the deadline. In any such need for flexibility, the In-House Counsel must strive to mitigate any potential for prejudice to the Employer/Client. Whether or not a specific deadline applies, In-House Counsel should be prompt in attending to the matter, responding to communications and reporting developments to the Employer/Client

Honesty and Candour

When advising an Employer/Client, In-House Counsel must be honest and candid and must inform the Employer/Client of all relevant information known to In-House Counsel that may affect the interests of the Employer/Client in the matter.

Commentary

[1] In-House Counsel should disclose any conflict of interest.

[2] In-House Counsel's duty to an Employer/Client who seeks legal advice is to give the Employer/Client a competent opinion, based on sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and his/her own experience and expertise. The advice must be open and undisguised and must clearly disclose what In-House Counsel thinks about the merits and probable results.

[3] Occasionally, In-House Counsel may need to present an opinion which is contrary to the Employer's/Client's own views. In communicating with the Employer/Client, In-House Counsel may disagree with the perspective taken by the Employer/Client, or may have concerns about the Employer/Client's position on a matter, or may give advice that will not be accepted by the Employer/Client. This may legitimately require clear and specific prior discussion with the Employer/Client and should include an assessment of the relevant risks and mitigations available.

Dishonesty, Fraud by Employer/organisation

When acting for an Employer/Client, In-House Counsel must never knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct, or instruct the Employer/Client organisation on how to violate the law or avoid punishment.

In-House Counsel who is employed to act in a matter in which he or she knows that an employee of the Employer/Client has acted, is acting or intends to act dishonestly, fraudulently, criminally, or illegally, must do the following:

- advise the chief legal officer, or CEO, or both the chief legal officer and the CEO, that the proposed conduct is, was or would be dishonest, fraudulent, criminal, or illegal and should be stopped;
- alternatively advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, fraudulent, criminal, or illegal and should be ceased; and
- if, despite such advice, the Employee/Employer/Client continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter. In such instances, the In-House Counsel may wish to consider what whistle blowing arrangements are in place to address such concerns within the organization.

Commentary

[1] This rule recognises that In-House Counsel, as the legal advisor to Employer/Client organizations, are in a central position to encourage organisations to comply with the law and to advise that it is in the organisation's and the public's interest that organisations do not violate the law. In-House Counsel acting for organisations are often in a position to advise the executive officers of the organisation, not only about the technicalities of the law, but also about the public relations and public policy concerns that may have motivated the government or regulator to enact the law. Moreover, In-House Counsel for Employer/Client organisations, may guide organisations to act in ways that are legal, ethical, reputable and consistent with the organisation's responsibilities to its constituents and to the public.

[2] In-House Counsel should be alert to and avoid unwittingly becoming involved with an Employer/Client engaged in criminal activities.

[3] If In-House Counsel has suspicions or doubts about whether he or she might be inadvertently assisting an Employer/Client organisation in dishonesty, fraud, crime or illegal conduct, he or she should make reasonable inquiries to obtain information about the subject matter and objectives of the matter without accidentally tipping off relevant parties.

[4] In-House Counsel should be on guard against becoming the tool or instrument of an unscrupulous Employer/Client, or of others, whether or not associated with the unscrupulous Employer/Client.

CONFIDENTIALITY

Confidential Information

In-House Counsel at all times must hold in strict confidence all information concerning the business and affairs of an Employer/Client organisation acquired in the course of the professional relationship and must not divulge any such information unless:

- (a) expressly or impliedly authorized by the Employer/Client organisation;
- (b) required by law or a court to do so;

Commentary

[1] In-House counsel rely heavily on an environment of trust and confidence in order to render effective professional service to an Employer/Client organisation. At the same time, the Employer/Client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the Employer/Client's part, matters disclosed to, or discussed with, In-House Counsel will be held in strict confidence.

[2] The ethical rule applies without regard to the nature or source of the information or the fact that others may share the knowledge. This rule must be distinguished from the narrower evidentiary rule of Attorney and client privilege, which may also be a constitutionally protected right, concerning oral or documentary communications passing between the organisation and the In-House Counsel.

[3] In-House Counsel owes a duty of confidentiality to every Employer/Client by whom it is employed. The duty may survive the professional relationship and can continue indefinitely after the In-House Counsel has ceased to act for the Employer/Client organisation, whether or not differences have arisen between them.

[4] In-House Counsel may also owe a duty of confidentiality to individuals such as an employee seeking advice or assistance on a matter invoking In-House Counsel's professional knowledge, although In-House Counsel may not render an account nor represent that person.

[5] In-House Counsel should avoid indiscreet conversations and other communications, including avoiding conversations with his or her spouse or family, about his or her Employer/Client organisation's affairs and should shun any gossip about such things, whether or not the Employer/Client is named or otherwise identified. Similarly, In-House Counsel should not repeat any gossip or information about the Employer/Client organisation's business or affairs that is overheard or recounted to him or her. Ethical considerations and questions of appropriate behavior will apply and indiscreet conversation among In-House Counsel may result in prejudice to the Employer/Client organisation if overheard by third parties who are able to identify the matter being discussed. Moreover, such behavior may adversely influence the respect of the listener for the In-House Counsel and for the Legal profession. This rule does not apply to facts that are public knowledge, but In-House Counsel should guard against participating in or commenting on speculation concerning his or her Employer/Client organisation's affairs or business.

Use of Confidential Information

In-House Counsel must not use or disclose an Employer/Client's or former Employer/Client's confidential information without the consent of the Employer/Client or former Employer/Client.

Commentary

[1] The fiduciary relationship between In-House Counsel and his or her Employer/Client organisation forbids the In-House Counsel or a third person from benefiting from the In-House Counsel's use of his or her Employer/Client's confidential information. If In-House Counsel engages in literary works, such as a memoir or autobiography, he or she is required to obtain the Employer/Client's or former Employer/Client's consent before disclosing confidential information.

CONFLICTS

Duty to Avoid Conflicts of Interest

In-House Counsel must not act or continue to act where there is a conflict of interest. The overall impact of a conflict of interest is that an In-House Counsel's judgement and objectivity may be impaired.

Commentary

[1] In-House Counsel has an ethical duty to avoid conflicts of interest

[2] The lawyer-client relationship is based on trust. In-House Counsel has a duty of loyalty to the Employer/Client organisation in which he or she works. To maintain public confidence in the integrity of the Legal profession and the administration of justice, in which lawyers and In-House Counsel play a key role, it is essential that In-House Counsel respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as the duty of confidentiality, the duty of candour and the duty to avoid conflicting interests.

[3] An Employer/Client must be assured of their In-House Counsel's undivided loyalty. The relationship may be irreparably damaged where In-House Counsel's representation of his/her Employer/Client organisation is directly adverse to a third party's immediate legal interests.

[4] In-House Counsel should be mindful that a conflict of interest may exist not only from the outset, but throughout the duration of a matter, as new circumstances or information may establish or reveal a conflict of interest. Factors to consider, when assessing whether a conflict of interest exists include:

- (a) the likelihood that the legal interests will be impacted immediately or within a reasonably short space of time;
 - (b) whether the legal interests of each party are completely opposed;
 - (c) whether the issue has practical importance or is procedural;
 - (d) whether the relationship between the matters is temporary or of a longer term nature;
 - (e) the significance of the issue to the immediate and long-term interests of the Employer/Client involved.
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Examples of areas where conflicts of interest may occur

Conflicts of interest can arise in many different circumstances. The following non exhaustive examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest:

- An In-House Counsel or a family member may have a personal financial interest in an Employer's/ Client's affairs or in a matter in which In-House Counsel is requested to act for an Employer/Client.
- In-House Counsel may have a sexual or close personal relationship with an employee of the Employer/ Client organisation.

In-House Counsel must at all times act in a manner that is free from Conflict of Interest, Financial Interest and self-interest and in discharge of this duty, should follow the below-mentioned standards of conduct:

- be, and appear to be, free of any undue influence or self-interest, whether direct or indirect, which may be regarded as being incompatible with one's Integrity or Objectivity;
- constantly assess each particular situation for possible Conflicts of Interest and/or Financial Interest and be alert to the possibility of any Conflict of Interest;
- consider the facts and circumstances before deciding whether or not one's Integrity and Objectivity could be impaired by accepting an engagement, consideration or offer;
- immediately declare any Conflict of Interest or Financial Interest in a matter and recuse oneself from the situation, especially where it involves any consideration, deliberation or decision and/or ensure that one at all times acts in an appropriate manner so as to eliminate the conflict;
- be aware of and discourage potential relationships which could give rise to the possibility of a Conflict of Interest situation and which could potentially or actually adversely influence, impair or threaten one's Integrity, judgement and/or impartiality;
- ensure that the correct balance between one's loyalty to one's Client or Employer and the required professional and legal standards are achieved and realised at all times, without them compromising or conflicting with each other;
- not accept any gift, benefit, consideration or compensation that may be perceived as compromising one's independence of judgement;
- not personally, or through any other person, improperly seek to obtain work by way of commission or otherwise, or make or offer to make payment for a client or prospective client for obtaining such work.

CONSENT

In-House Counsel at all times must hold in strict confidence all information concerning the business and affairs of an Employer/Client organisation acquired in the course of the professional relationship and must not divulge any such information unless:

- It has express consent, which must be fully informed and voluntary, and is given after disclosure, but before the In-house Counsel accepts the engagement or responds to the Client's instructions required by law or a court to do so;
- Consent may be inferred and need not be in writing, but at all times, the In-house Counsel should take steps to ensure that he is able to demonstrate transparency in each of his actions to resolve potential Conflicts of Interest.

Commentary

[1] Disclosure is an essential requirement to obtaining an Employer/Client's consent and arises from the duty of candour owed to the Employer/Client.

[2] Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. In-House Counsel therefore should inform the Employer/Client of the relevant circumstances and the reasonably foreseeable ways that the Conflict of Interest could adversely affect the Employer/Client organisation's interests. This would include any relations to the parties and any interest in or connection with the matter.

RELATIONSHIP WITH THE LEGAL PROFESSION

Courtesy and Good Faith

In-House Counsel must be courteous and civil and act in good faith with all persons with whom he or she has dealings.

Commentary

[1] In-House Counsel should guard against allowing ill feelings that may exist or be engendered between various organisations and individuals who are dealing with each other (particularly during litigation), to influence In-House Counsel, and their lawyers in their conduct and demeanour toward each other or to the parties. The presence of personal animosity between In-House Counsel and lawyers involved in a matter may cause the judgment of each party to be clouded by emotional factors, so hindering the proper resolution of the matter. In-House Counsel is expected to maintain professional behavior at all times, and this includes avoiding making remarks of a personal nature or using abusive tactics which might interfere with the orderly administration of justice.

[2] In-House Counsel should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of others.

[3] In-House Counsel should conduct legal proceedings in a responsible and professional manner, using a collaborative approach that will assist the court in addressing the matter in dispute without adversely impacting on the rights of each party.

Respectful Behaviour

In-House Counsel must at all times respect the objectives, values and mission of their colleagues and their respective Employers/Clients and seek to maintain good relations with them. In discharge of this duty, they should follow the below-mentioned standards of behaviour:

- at all times respect their colleagues and the Legal profession in general;
- treat all parties with respect and dignity;
- refrain from deprecating and/or maligning other persons, including those who make up the Legal profession;
- where the In-House Counsel believes a complaint may be merited, the In-House Counsel should refer the complaint to the professional body who represents and governs that person, making use of any formal disciplinary and/or complaints procedure;
- avoid unprofessional or unfair practices, avoid taking advantage of or acting without fair warning upon slips, irregularities or mistakes on the part of others. Care must be taken to avoid taking action which may have no merit or involves the sacrifice of an Employer/Client's rights;
- must not use any device to record a conversation between others, even if lawful, without first informing the other person of the intention to do so.

Communications

In-House Counsel must not, in the course of a professional practice, send correspondence or otherwise communicate with an organisation, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

In-House Counsel must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer and In-House Counsel must be punctual in fulfilling all commitments.

Inadvertent Communications

In-House Counsel who receive a document and know or reasonably should know that the document was inadvertently sent must promptly notify the sender.

Commentary

[1] Lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If In-House Counsel knows or reasonably should know that such a document was sent inadvertently, then this rule requires In-House Counsel to notify the sender promptly in order to permit that person to take protective measures.

[2] Whether In-House Counsel is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document has been lost.

[3] This rule does not address the legal duties of In-House Counsel who receives a document that he or she knows or reasonably should know may have been wrongfully obtained by the sending person.

[4] For the purpose of this rule, “document” includes email or other electronic or digital modes of transmission, subject to being read or put into readable form. Unless In-House Counsel is required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment.

