

**THE NATIONAL ASSOCIATION OF THE ROMANIAN BARS
CLUJ BAR ASSOCIATION
ATTORNEY AT LAW - HOREA CRIȘAN**

FBE 2008, Torquay 15th -18th October 2008

CORE DUTIES

1. 1.01. Justice and the rule of law

The lawyer profession in Romania and the acquirement of the right to register with a Table of a Romanian bar is accomplished according to the following three stages, under article 80⁸ par. (2) of Law no. 51/1995, and in compliance with the provisions of Law no. 200/2004.

Law No. 51/1995 regarding the organization of law offices and the practice of law in Romania.

Integrity

**Chapter III - Lawyer's rights and duties
Section 2 - Duties of lawyers**

Article 38 *A lawyer shall be bound to thoroughly study the cases entrusted to him/her, taken by him/her or received ex-officio, to appear before the court on each deadline set by the court, the criminal inquiry bodies or other institutions, based on the mandate entrusted to him/her, to show consciousness and professional integrity, to plead with dignity before the judges and the parties in the law suit, to submit written conclusions or notes whenever the nature or difficulty of the cause requires it or the court of law so orders. The lawyer's failure to meet such professional duties that may be imputable to him/her shall constitute a discipline departure." amended by Law no. 255/2004.*

Independence

Chapter 1 - General provision

Article 1 (1) *The lawyer's profession shall be free and independent, based on an autonomous organization and functioning, under the terms of the law and the by-law of the profession.*

Article 2 (1) *In the exercise of his/her profession, a lawyer shall be independent and only subject to the law, the by-law of the profession, and the code of conduct.*

Chapter III - Lawyer's rights and duties

Article 33 (1) In order to ensure professional secrecy, the professional documents and paperwork found on the lawyer or in his/her law office shall be inviolable. A search of a lawyer or of his/her residence or law office, or taking writs and goods in custody may only be made by a public prosecutor, based on a warrant issued under the terms of the law." amended by Law no. 255/2004,

(2) No one shall be allowed to listen to or to record, using any kind of technical means, a lawyer's telephone conversations, or to intercept and record his/her professional correspondence, except for the conditions and using the procedure stipulated by the law.

Article 34 The contact between a lawyer and his/her client may not be hindered or controlled, directly or indirectly, by any state body."(2) If a client is under arrest or placed in detention, the administration of the arrest or detention facility shall have the obligation to take all necessary steps for complying with the rights stipulated under paragraph (1).

Best Interests of clients

Chapter III - Lawyer's rights and duties

Section 2 - Duties of lawyers

Article 43 A lawyer shall be bound to return the documents entrusted to him/her to the person from whom he/she received them.

Article 44 (1) A lawyer may not assist or represent parties with conflicting interests in the same cause or in related causes, and may not plead against a party having previously consulted him/her about the actual disputed aspects of the cause.

(2) A lawyer may not be heard as a witness and may not provide information to any authority or person regarding a cause entrusted to him/her, unless he/she has the prior express and written consent of all his/her clients interested in the cause.

(3) The witness' capacity shall take precedence to that of lawyer as regards the actions and circumstances he/she became acquainted with before having become the defender or representative of any party involved in the cause.

(4) If heard as a witness, a lawyer may no longer carry out any professional activity in that cause.

(5) A lawyer may not act as an expert or translator in a cause in which he/she is hired as a defender.

Standard of services

Chapter III - Lawyer's rights and duties Section 2 - Duties of lawyers

Article 38 A lawyer shall be bound to thoroughly study the cases entrusted to him/her, taken by him/her or received ex-officio, to appear before the court on each deadline set by the court, the criminal inquiry bodies or other institutions, based on the mandate entrusted to him/her, to show consciousness and professional integrity, to plead with dignity before the judges and the parties in the law suit, to submit written conclusions or notes whenever the nature or difficulty of the cause requires it or the court of law so orders. The lawyer's failure to meet such professional duties that may be imputable to him/her shall constitute a discipline departure.

Article 39 A lawyer shall have the obligation to provide legal assistance for which he/she has been assigned ex-officio or free of charge by the bar.

Article 40 A lawyer shall have the obligation to make an insurance for professional liability, under the terms stipulated by the by-law of the profession.

Public confidence

Chapter III - Lawyer's rights and duties Section 2 - Duties of lawyers

Article 45 (1) A lawyer shall have the obligation to wear a robe before the courts of law.

(2) The characteristics of the robe shall be those set out in the by-law of the profession.

(3) Wearing the robe outside the precincts of the courts of law shall be prohibited, except when a lawyer is delegated by the bodies of the profession to represent the bar of the U.N.B.R. on an occasion that requires that attire." amended by Law no. 255/2004.*

Article 46 (1) A lawyer shall be prohibited from using, either directly or by means of intermediaries, procedures that are incompatible with professional dignity, for the purpose of attracting clients.

(2) A lawyer shall also be prohibited from using advertising or publicity means for the same purpose.

The by-law shall set out the instances when and the extent to which a lawyer may inform the public in connection with the practice of his/her profession.

2. **2.1. How many Core Duties are recognize by lawyers as part of the profession within your jurisdiction?**

*Law no. 200/2004 - The statute of Lawyers
Chapter I - Principles and fundamental rules for lawyers
Article 1*

1. **The legitimacy of the lawyer (the lawyer's professional competence)**
2. **The independence of the lawyer,**
3. **The freedom of the lawyer,**
4. **The principle of autonomy and decentralization,**
5. **The principle of professional secrecy.**

- 2.2 In this recognition is there a distinction between trial lawyers and others?**

*Chapter III - Lawyer's rights and duties
Section 1 -Lawyer's rights*

Article 37(1)

*The criminal inquiry against and prosecution of a lawyer for criminal actions perpetrated in the exercise of his/her profession or in relation to it may only take place based on the approval by the general public prosecutor of the public prosecutor's office attached to the appeal court in whose jurisdictional district the actions have been perpetrated."**

** Article 37 (5) and (6) was amended by Law no. 255/2004, and paragraph (7) of article 37 and article 371 were introduced by the same act.*

3. **How many Core Duties from any part of the training in your profession?**

3.1 Academic - ie university

There are no subjects at the Romanian law universities (*academic curricula*) in which the Core Duties applying to lawyers.

3.2 Academic - ie professional training school

The Core Duties are part of Romanian Lawyer training corresponding with the moment of acceptance in the profession and he will be enrolled in the Chart of Lawyers in the bar where he is going to practice his profession, by respecting the provisions of the Statute of Lawyers *Law no. 255/2004*.

3.3 Practical – ie Stage or Training Contract

According to Law no. 255/2005, Article 300 *Lawyers have to permanently update their professional training, by maintaining and diversifying their knowledge in the fields in which they are practicing their profession.*

(2) The continuous professional training involves their improving their knowledge and competencies in new fields of law, expanding their knowledge in the field of procedures and laws applied in the European Union, as well as acquiring the certifications of the continuous professional training, at standards compatible with the professional training of lawyers in the other states of the European Union.

4. If the Core Duties are recognize in #2 and not taught in #3 how are instructed in them?

As mentioned at the point above 3.3 the Core Duties are requested to be instructed according the Law no. 255/2005 in which there are presented the Core Duties, but no instruction of applying them with a direct effect it is submitted.

Chapter VI - Disciplinary liability

Article 70

(1) A lawyer shall be liable, as regards discipline, for failure to comply with the provisions of the present law or the by-law, for failure to comply with the mandatory decisions adopted by a bar or the Association's managing bodies, as well as for any actions perpetrated in connection with the profession or outside it, which are liable to cause prejudice to the honour and prestige of the profession or the institution.

(2) The lawyer who runs the judicial assistance service attached to each court of law shall have the obligation of notifying the Council of the bar, in writing, about the actions perpetrated by any lawyer under the terms of the provisions of paragraph (1).

(3) The courts of law and the public prosecutor's offices of the Department of the Public Prosecutor shall have the obligation to forward any complaint filed against a lawyer to his/her bar and notify it about any criminal inquiry or prosecution action started against a lawyer.

Article 71

(1) The competence for the investigation of the discipline departure and the undertaking of a disciplinary action shall belong to the Council of the bar. "(2) The competence for the investigation of the discipline departure and the undertaking of a disciplinary action concerning presidents of the bars and

*members in the Council of U.N.B.R. shall belong to the Council of U.N.B.R.. The person under investigation or being prosecuted shall not participate in the decision making."**

** Article 71 (2) was amended by Law no. 255/2004*
(3) The members of the Standing Committee who are under investigation may not participate in the debates aimed at making the decision for the implementation of a disciplinary action.
(4) In all cases, a disciplinary action may be taken no later than one year from the date on which the discipline departure was committed.

Article 72

- (1) Within each bar, a Disciplinary Committee shall be organised and shall function that will judge, as a first court comprised of 3 members, the discipline departures committed by lawyers belonging to that bar.*
(2) Within the U.N.B.R., the Central Disciplinary Committee shall be organised and shall function, judging:
a) as a first court, comprised of 3 members, the discipline departures committed by the Council of U.N.B.R. members and presidents of the bars;
b) legal contests, in a court comprised of 5 members, according to the provisions of the bylaw of the profession.
(3) The appeal filed against a disciplinary decision by the Central Disciplinary Committee, as a first court, shall be judged by the Council of U.N.B.R., constituted as a disciplinary court in its plenum, except for the person involved in the cause.

(4) The interested party may file an appeal against the decisions made according to paragraphs (2) and (3), with the Division of Contentious Civil Disputes of Bucharest Appeal Court, the decision of which shall be final and irrevocable.
*(5) The procedure of judging discipline departures shall be set out in the by-law of the profession and completed by the provisions of the Civil procedure code."**

** Article 72 (2) - (4) was amended by Law no. 255/2004, and paragraph (5) was introduced by the same act.*

5. Are the Core Duties respected by lawyers in practice?

In my own opinion I believe there are two categories which creates different effect on lawyers in practice.

The first category involves the Core Duties which have direct effect on lawyers - the ones which needs to be respected by the Authorities.

The second category involves the Core Duties which have indirect effect on lawyers - such as the ones which are related with the third parties. ie relation between lawyers, relation between lawyers and clients etc.

The second category in my humble opinion, it is not respected quite often, meaning that the principle as part as Core Duties can not be track by the competent authority, except the breach it is brought by the third party in front of such an authority.

6. How is recognition of the Core Duties enforced?

The recognition of the Core Duties is enforced by the Law no. 255/2005 representing *The statute of the profession* and Law No. 51/1995 regarding the organization of law offices and the practice of law in Romania

7. What are the sanctions for breach of any rules?

**Chapter VI - Disciplinary liability
Law no. 51/1995**

Article 73

*(1) Disciplinary sanctions shall consist of: a) a reprimand; b) a warning; "c) a fine of RON 50 to 500, which will become part of the bar budget. The fine shall be paid within 30 days from the date of the disciplinary decision becoming final. The failure to pay the fine within the set delay shall entail one's rightful suspension from the exercise of the profession until the amount is paid. The limits of disciplinary fines shall be updated on a regular basis by the Council of U.N.B.R., according to inflation rate."**

** Article 73 (1) c) was amended by Law no. 255/2004.*

d) an interdiction to practise the profession for a time period of one month to one year;

e) one's expulsion from the profession.

(2) During the interdiction period, a lawyer may not provide any legal assistance whatsoever, may not use his/her lawyer's capacity and may not participate in the activity of professional bodies.

(3) A disciplinary decision may be appealed by the interested person, the president of the bar, or the Association's president, within 15 days from notification.

Article 74

(1) If an obvious and serious discipline departure has been found, the disciplinary court may take the step of suspending the lawyer in question from the practice of the profession until the final judgement of the cause.

(2) An appeal may be filed against the measure taken in that decision, within 5 days from notification.

(3) The appeal shall suspend the execution and shall be solved on an urgent basis.

- 8. Would your Bar support a resolution requiring all (or some) of the Core Duties to be a prescribed part of the training and practice of the profession of lawyer?**

CLUJ BAR ASSOCIATION would definitely support such a resolution to be prescribed as part of the training and practice of the profession of lawyers.

ALTERNATIVE BUSINESS STRUCTURES (ABS)

Within this are included lawyer only firms, legal disciplinary partnerships (LDP) which provide legal services through Solicitors/Advocates and non-solicitors lawyers, ABS which provide legal services through lawyers and non-lawyers and allow involvement of non-lawyers in management of and profits in a firm.

A. 1. Does your jurisdiction permit sole practitioners?

The forms of practising the lawyer's profession shall be, optionally: individual law offices, associated law offices, professional civil companies, or limited-liability professional civil companies.

2. Does your jurisdiction permit partnerships?

Individual law offices may become associated for the purpose of jointly exercising the profession; the rights and obligations of lawyers who hold associated law offices shall remain personal and may not be transferred. Accordingly, individual law offices may also become associated with professional civil companies.

Individual law offices may form groups in order to create technical-economic facilities in view of exercising the lawyer's profession and shall preserve their individuality in their relationships with the clients.

A professional civil company shall be established by two or more permanent lawyers. Collaborating lawyers or paid lawyers may also practise their profession in a professional civil company. A professional civil company and the lawyers who practise within it may not provide legal assistance to persons having conflicting interests.

Law office groups, associated law offices, professional civil companies, and limited liability professional civil companies may also have a joint property.

3. Can either employ lawyers or non-lawyers to deliver services?

Only employ lawyers can deliver services according to Law no. 51/1995.

B. Is limited liability permitted?

Yes, it is permitted according to Law no. 51/1995.

A limited-liability professional civil company shall be constituted by partnership between at least 2 permanent lawyers and currently practising their profession; it shall be a legal entity, and shall have its own assets. The partners' contributions to the registered capital may be in industry, in cash or in kind, or represented by their professional activity, including the clientele they bring with them.

The registered capital of the company shall be represented by transmissible and negotiable shares, and shall be at least the equivalent of EUR 10 000. Share transfer may only be made to lawyers in the exercise of their profession.

The professional activity shall be carried out by partner lawyers, collaborator lawyers, and paid lawyers. Lawyers who practise their profession within a limited-liability professional civil company shall only assume professional liability within the limits of the registered capital subscribed and deposited.

A limited-liability professional civil company shall become a legal entity on the date of registration with the bar of the decision issued by the Council of the bar within the jurisdictional district of which its main head office is located.

Limited-liability professional civil companies shall be subject to profit tax.

C. Who regulates the permitted structures?

The permitted structures are regulated by the Law no. 51/1995 Art. 9.

Bars and the U.N.B.R. shall make sure the qualified exercise of the right to defence, the professional competence and discipline, and the protection of member lawyer's dignity and honour are being enforced.

Only one bar, member of the U.N.B.R., shall exist in each county, having its head office in the capital of that county.

Each bar shall organise and ensure the functioning of a judicial assistance service attached to each civil court. The Council of the bar shall be responsible for the organisation and functioning of that service.

Any lawyer, irrespective of the form of profession exercise, may conclude collaboration conventions with experts or other specialists, under the terms of the law. Professional civil companies and limited-liability professional civil companies may only conclude such conventions with the consent of all partners.

Article 7

(1) The forms of exercising the lawyer's profession and law office groups shall be individualised by name, as follow:

a) for individual law offices - name of the holder lawyer, followed by the phrase law office;

b) for associated law offices - names of all holders, followed by the phrase associated law offices;

c) for professional civil companies and limited-liability professional civil companies - name of at least one partner, followed by the phrase civil law firm or, as applicable, limited-liability civil law firm;

d) for law office groups - name of each law office holder, followed by the phrase group law offices

(2) The denomination of the profession exercise form, individualised according to paragraph (1), may also be kept after the death or departure of one of the associates/partners, with the latter's consent or, as applicable, with the consent of the heir of the deceased, expressed in an authentic form.

(3) The denominations stipulated under paragraph (1) shall appear on the signs of such law offices or companies, under the terms stipulated by the by-law of the profession.

(4) As far as all forms of profession exercise by foreign lawyers are concerned, one may use the denomination and the name of the profession exercise form in force in Romania or abroad, under the terms of the present article.

Article 8

(1) The conventions of law office group establishment or association, the constituting deeds of professional civil law companies and limited-liability professional civil law companies, as well as the conventions stipulated under article 6, shall be concluded in writing, observing the basic requirements stipulated by the law and the by-law of the profession.

(2) The Council of the bar having been notified shall check that the terms of the law are being met and, when this is the case, shall order convention registration within one month from application being filed.

(3) Any person who believes he/she is harmed as far as a legitimate right or interest of his/hers is concerned may file a complaint against the Council of the bar's decision with the professional jurisdiction bodies, under the terms of the present law and the by-law of the profession.

(4) Bars shall keep separate records of lawyers per each profession exercise form.

D. Is the constitution of the regulator created by statute (legislation) and is it subject to/capable of change by statute?

Yes, the constitution of the regulator is created by the statute and it is capable of change by statute.

E. Would your Bar support a resolution stipulating that it should be an essential requirement of any legal profession that the members should be subject to control of their Bar or other local or national regulator and that all non-lawyer members who participate in a permitted structure should be subject to the same control.

Yes, CLUJ BAR ASSOCIATION would support such a resolution.

As arguments please see the case ECHR Bota v. Romania (dec.), no. 24057/03, 12 October 2004.