

ST.MARY'S UNIVERSITY COLLEGE

FACULTY OF LAW

LL.B. THESIS

**ADVOCATE'S ETHICAL DUTY IN RELATION
TO CONFLICT OF INTEREST: THE LAW
AND PRACTICE**

BY: KIDIST TEDLA H/MARIAM

**ADDIS ABABA ETHIOPIA
JULY 2008**

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Submitted in Partial Fulfillment of the requirements for the Bachelors Degree of Law (LL.B) at the Faculty of Law, St. Mary's University College.

**ADDIS ABABA, ETHIOPIA
JULY 2008**

Statement of Declaration

I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name: Kidist Tedla

signed:-----

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INTRODUCTION

This paper is about advocate's ethical duty in relation to conflict of interest. The purpose of this essay is to show the reader that major concepts related to the exercise of the legal profession and suggestion on how advocates can provide a better service to clients. Conflict of interest problems have evolved from an advocate's duty of loyalty to his client. The client's affairs are always to be placed before the personal affairs and desires of the advocate or even those of another client. That is because rules are designed to protect the client's interest. Conflict of interest are among the most frequent and difficult problems that an advocate has to deal with. Sanctions for conflict of interest include disciplinary action, disqualification from representing a client, and malpractice liability.

The advocates are expected to perform their tasks giving their best attention and being zealous. Advocates must be loyal and zealous. Therefore; he shall be regulated and certain ethical standards shall be required for his admission to practice law.

In this paper an attempt has been made to discuss these regulations. This paper is divided into four chapters. The first chapter deals with regulating the legal profession. The advocate's role and his ethical responsibility, ethical and legal relationship of advocate client, accountability and scope of representation, competence and good character and regulatory mechanisms are concerned. Chapter two tries to consider the duties of an advocate to the public, the client, the profession and to the court. Chapter three attempts to discuss the conflict of interest in general. In chapter four is discussed conflict of interest, relating to an advocates own interest, between a former client and a new client, current clients and relating to non clients third parties. The discussion in this chapter is illustrated by cases. Finally, the writer of this essay tries to give some recommendations regarding what should be done to minimize conflict of interest.

CHAPTER ONE

Regulating The legal profession

1.1 Role of the Advocates and his ethical responsibility

Before describing the roles the writer will express about ethics what does it mean? Ethics, principles or standard of human conduct, sometimes called morals, and, by extension, the study of such principle, sometimes called moral philosophy. This article is concerned with ethics chiefly in the latter sense and is confined to that of western civilization, although every culture has developed an ethics of its own.¹

Ethics studies human conduct; it is concerned with questions such as " when is an act wrong?", and " what is the nature, or determining standard, of good and bad?" In asking these questions, ethical theorists have proposed differing accounts of the nature of ethical knowledge, the measure of it, the source of it, the means knowing it, and how it ought to be applied.² Ethics is the observances of the principles that regulate the conduct of the advocate are expected to follow.

Advocates have a key role in the administration of justice. They play a role in establishing, operating, and defending the legal system. Advocates preserve and protect the interest of their clients and ensure peace and justice for the citizens of the country.

The responsibility or role of the advocate is not only to represent the client, but also has responsibility to perform as a member of an assembly comprising counsel and judge.³

The advocate has many type of responsibilities. The advocate is responsible to his profession or association, to the public, to his client, and finally to the court. To the legal profession, the advocate's responsibility is to comply with the codes of ethics that govern the practice of law. To the client, the advocate maintains the traditional responsibility of competent legal representation. The advocate has a public responsibility to avoid assisting a

client in violating the law. Finally, to the courts, the advocate has the responsibility not to bring frivolous actions.

Any advocate shall have the responsibility to assist the organs of the administration of justice in the effort to promote respect for the law and attainment of justice. Any advocate shall, in particular discharge his professional duty to his client, other lawyers and opposing party, the court, his profession, and the society in general honestly, faithfully and truthfully.⁴

The lawyer's role and responsibility as attorney comes into being only when he is a member of a client and advocate, symbiotic team.⁵

One instance where some acts of lawyers entail responsibility is representation of two clients whose interest may conflict. If an attorney does so, he is not rendering proper service. He is rather making the profession like a commercial business that only seeks profit.

1.2 The ethical and legal relationship between advocates and client

The relationship between the professional who render professional services and their client is contractual. But before we deal with to liability of professionals under contract law, it is necessary to raise basic points of a contract in its general form.

A contract is a law made between contracting parties based on their agreement. The contract is accepted where parties consent to bind each other with out error, duress and fraud. The contract would then be legally enforceable.

First of all, clients submit their cases to their advocate and in due course, the advocate will ask the client for a certain amount of money to be paid in advance. Since the plan of the client is to win the case, and over come his problem, his case might fail or might not be handled properly unless he pays in advance.

It is the advocate who knows or is expected to know how to handle the case. Advancing payment can create negligence on part of the attorney advocate. This contract is not like buying and selling of certain goods. Therefore, the advance payment should not be excessive.

The advocate should adhere to the ethics of the profession in which they are engaged. They should also develop good moral culture and perform their professional duty in good faith.

The advocates are expected to perform their tasks giving their best attention and being zealous. They are entrusted by the public with the direct administration of justice and therefore they must demonstrate the highest ethical conduct.

Advocates are in a position to dominate their clients and dictate working conditions that are most favorable to them. Indeed, there is significant evidence to suggest that advocates easily dominate their relationships with individual clients.⁶

1.3 Scope of representation and accountability of the advocate and client

The scope of representation refers to the limit of authority and duties of the advocate and the client. The advocate is an agent. A lawyer is only enabled to act on behalf of a client when the client expressly or by implication consent to the representation.⁷ The lawyer is duty bound to abide by the decision of his client.⁸

The lawyer shall give in his professional capacity, the necessary advice to assist the client in the manner of representation, the nature of representation, the pros and cons of the case, the possible outcomes of the case, and alternative results. In addition the client has to provide necessary information to the advocate for the proper determination of the merits of the case. The lawyer has an obligation to assist the client by giving him

explanation based on the law as the possible result or alternative results and the scope of representation that is required by the desired result.⁹

There are different problems in the practical application of this principle. That means, some advocates disregard the rule and abuse their power of attorney, because they never discharge their obligation to consult and assist clients by giving explanations based on law and the alternative results.

1.4 Competence and good character of advocates

An advocate should represent a client competently. Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.¹⁰

The very first rule in the Model Rules of the American Bar Association requires lawyers to provide clients with "competent" representation, defined to require "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."¹¹

Canon 6 of the Model code states: "A lawyer should represent a client competently." DR6-101(A)(1) says that a lawyer shall not "handle a legal matter which he knows or should know that he is not competent to handle it. The balance of DR 6-101 forbids a lawyer, though competent, to handle a legal matter "with out preparation adequate in the circumstances," and to "neglect a legal matter entrusted to him." DR 6-101 (A) (2) and (3).¹²

Similarly, Rule 1-1 of the Model Rules ("competence") states: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

In competence can result from inexperience, defective training or in appropriate professional attitude towards standards of quality or towards clients. Therefore, an advocate is duty bound to employ his knowledge and work experience to protect the rights and interests of his clients. Moreover the advocate has an obligation to follow-up his client's case diligently and take all the necessary measures carefully and timely so as to obtain a quick and just decision. In Ethiopia also skill, knowledge and work experiences of advocates are fundamental requirements for admission to practice law as a private practitioner as provided under Art. 8, 9, and 10 of Proc.Nº.199/2000. In addition to this, an advocate is expected to act with reasonable care and effort and without delay in representing his clients.

The lawyer is required to take whatever lawful and ethical measures, which enables him to show or prove the truth of his clients cause. Another fundamental requirement is to be a competent advocate which is provided under Art.8(4),9(4) and 10(1)(d) of Proclamation Nº199/2000 is of good character and shall not be convicted for reasons of misconduct.

1.5The nature of the responsibility of the advocate towards the client

The advocate -client relationship forces us to view their case in light of contractual, extra contractual and penal responsibilities. Facts disclosed by the client to his advocate are protected by law by entailing responsibility on the advocate. That means, the law is setting a kind of guarantee to the client to be free in disclosing facts of his case to his advocate for the sake of best service of justice.

If the lawyer had received information that is ethically protected, he or she might be guilty of disciplinary violation of failure to protect a client's secret.¹³ In general, advocates being agents of their clients, are expected to solve their client's problem as because of the malpractice of their advocates, clients may lose their rights. Hence, the malpractice of advocates may entail liability.

Advocates are expected to be zealous advocates for the interests of their clients. Each of the roles generates distinct professional duties. As an advocate, he is expected to keep the client informed, safeguard the client's secrets, and provide competent and diligent services at a reasonable fee. Thus, an advocate who knowingly files a frivolous law suit without informing the clients of the weakness of the claim may be simultaneously violating both his duty to assist in the efficient administration of justice and his obligation to serve his client's interests competently.

1.6 Regulatory mechanisms

The service which professionals render is vital and desirable. Therefore, their professional behavior needs regulation and control.

Bar associations have a great role to play in controlling the behavior of advocates especially in the area of licensing. The control could be undertaken by courts.

The main objective of control is to detect and deter unethical conduct. To achieve such an objective it is indispensable to have some sort of system of control. The other objective of control is to make advocates play a great role in preventing their clients from engaging in socially undesirable conduct.

The control of advocates' conduct ensures that they live up to their professional obligations. It is aimed at achieving compliance with the code of ethics. This will enable the society to benefit from a competent legal profession.

One of the mechanisms by which it regulates lawyers and protects the profession is that the practice of law is a privilege limited to persons of good character and with duly certified special qualification.

In many countries admission to the practice and complaints of misconduct and sanction upon the professional are administered by bar associations, in some others by an external body and in a few others by both. It is worth considering how and why the professional conduct is administered by the bar taking the experience of a few countries.

In the USA, the American Bar Association has adopted the Canons of Professional Ethics and a committee to hear grievances was created in 1913 by virtue of the ABA constitution. Accordingly, this committee is authorized to hear, on its own motion or upon a complaint preferred, charges of professional misconduct against any member of the association. After the hearing, it may recommend to the executive committee the penalty upon the member found committing misconduct. All such recommendations shall be accompanied by a transcript of the evidence, and shall only be made after the accused member has been given notice of the complaint, and after reasonable opportunity has been accorded him/her to submit evidence and the measure shall become effective when approved by a majority of all of the members of the executive committee.

In Germany, discipline is exercised by the councils of the chambers of the advocates, which are the autonomous under the legal supervision of the state Ministry of justice. Appeal lies to a joint court of judges and lawyer and then to the federal supreme court. An advocate can be reprimanded by the council for minor offences, while more serious cases involve judicial proceedings.

The Ethiopia, the Ethiopian Bar Association (EBA) was initially formed in 1996 as a sort of welfare organization whose objective was to discuss the private problems of advocates in Addis Ababa. Later on it was transformed into a professional organization and the coverage of the association has shifted from the advocates in Addis Ababa to include all lawyers at the national level and took the name 'Ethiopian Bar Association'. At present, the EBA has members all over the country.

However, EBA has experienced such a very slow rate of development that it is really doubtful as to whether it deserves the name "Bar Association".

8.

A bar association is the controlling force of the legal profession of a country. It certifies and registers advocates, removes them where appropriate, codifies the canons of ethics, imposes penalties upon violation of the rules of ethics etc. registration of advocates, disciplinary measures such as suspension, removal and determination of the rules of ethics etc.

In Ethiopia, unlike the cases in most countries licenses are not given by a bar association. There is no strong and powerful bar association. The task and power of licensing, regulating, controlling and sanctioning practicing lawyers is given to the Ministry of justice under its department of lawyers' affairs. The control and licensing of advocates is done under: Proclamation No. 199/2000 and Regulation No. 57/1999.

CHAPTER ONE

End notes

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CHAPTER TWO

Specific Ethical Duties of Advocates

2.1 duties of an advocate to the public

The duties begin with the lawyer's personality. He should always and any where in any of his affairs is a model of integrity. Thus, Art.57 of the regulation provides that an advocate should always refrain from any repugnant behavior that would harm the honor of the profession. The lawyer who participates in activities subsidiary to his professional service like commercial, social, economical, political activities should take care to keep the loyalty, independence, competence and honor his profession deserves. It means that once a person is a law professional, even in situations where he is not practicing law, in should always be concerned about and be an officer of justice. Farness, impartiality, equality and fair dealing, are refund of him. A lawyer should reflect the honor of the legal profession in his extra legal activities and exercise in his affairs the expected attitudes inherent upon the law professional: honesty, truthfulness, faithfulness and fairness.

One main obligation of an advocate to the public is rendering free, probono, legal service to the pauper.¹ He has to refrain from unauthorized and incompetent practice and an advocate has the obligation to notify any unethical conduct of another that comes to his knowledge. Where an advocate violates the regulations by rendering legal service without having a license or in violation of the conditions attached to the license he will face penalties.

2.2. Duties of an advocate to the client

An advocate's duties do not begin and end with the faithful performance of what is instructed by the law. An advocate must serve the interests of justice besides asserting and defending the rights and liberties of his clients under the law. An advocate shall undertake the task of rendering the service with a sentiment of duty and advice and represent his client promptly and diligently.

Any advocate shall have the duty to give a receipt in respect of any consideration he receives from his client and have an insurance policy, for harm incurred by his client, due to his professional default.² Any advocate shall discharge his professional duty to his client honestly, faithfully, and truthfully.³

Any advocate's shall make a clear and written contractual agreement with his client .the contract include the names of the parties, address, type of service type and scope of representation, the amount of fee, and such other information necessary. An agreement restricting or totally avoiding the civil liability of the advocate due to the advocate's failure to render proper service to his client shall be of no effect.⁴

Any advocate shall have the obligation, after evaluating the facts and evidences of the case, to assist the client reach the proper decision as to the possible results of the matter and ask him whether he can engage in negotiations or in arbitration.

The advocate shall respect the decision of the client made on the basis of the advice given by the advocate as long as the decision does not violate the law and the regulations. He shall, in particular, respect the decision made by the client to solve the matter by settlement. When the assistance required or service requested by the client is in violation of the regulations or other law, the advocate shall explain the reason why he cannot render service and dismiss the client if the client fails to make corrections based on the advice given. The advocate shall provide the client with the relevant information and assist him reach at the appropriate decision when the client requests information seeking to give decision on the representation.⁵

An advocate should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. The lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself.⁶ He shall undertake personal responsibility for the discharge of the tasks given to him by the client, as far as the law permits. While the service is pending the lawyer shall keep his client informed as to progress of the matter entrusted to him and keep secrets of the client and keep himself away from other third parties having conflict of interests with the client. Also an advocate is not entitled to exercise his right to withdraw from a case in such circumstances that can be prejudicial to the client's case when the latter may be unable to find other legal assistance in time.

The advocate's duty of observing ethical conduct emanates as early as a new client approaches him seeking a legal service. The advocate should have the competence and determination to handle cases and once he or she enters into a service contract he has to protect the interests of the client with the diligence the profession requires up to the end. In cases where the advocate is unable to continue giving the service or when circumstances force withdrawal from the case, he should still watch that the interests of the client are not jeopardized due to his withdrawal.

The advocate needs to clearly hear about the facts of the case while receiving a client. After analyzing the facts and examining relevant document if any, the advocate's first duty is to identify that the claim of the client is supported by the law. If the claim has no legal ground the advocate is prohibited from handling the case.

If the claim has a legal ground, the advocate should explain to the client to provide results of the matter. After accepting the representation of his client, he has to follow the case with due consideration and follow it to the end.⁷ If an other advocate is going to replace him, he should replace the reasons and should ensure that no cost or inconvenience is caused to the client. The advocate has the duty to take the necessary steps and explain to the client if the case had been handled by another advocate. Especially he should make sure that the cost and the convenience caused to the client due to such circumstances would be minimal.⁸

The advocate should terminate the contract of service if the case of the client is not his area of expertise and he believes that he may not properly handle the case to the client's satisfaction. Unless there is sufficient and convincing reason to terminate the contract an advocate shall have the obligation to follow his client's case up to the end in accordance with his obligations in the contract. When the advocate is not able, as the contract obliges him, to follow his client's case up to the end, he shall explain the matter to his client and shall have the obligation to make the necessary effort to minimize the cost and in convenience that would be caused as a result of the termination and to get the matter successful covered by another advocate.⁹ Any advocate terminating contract of advocacy shall give reasonable notice to the client and reasonable time to allow the client to be represented by another advocate, give any information the client requests regarding the case in cooperation with the replacing advocate, protect the case against delay, interruption or unnecessary expenses.¹⁰

The advocate should not reveal information he receives from the client. The obligation of an advocate to preserve the confidences and secrets of his client continues after the termination of his employment. Thus an advocate should not attempt to sell a law practice as going a business because, among other reason, to do so would involve the disclosure of confidences and secrets.¹¹ The advocate should not refuse to return the documents of his client as a revenge for the revocation of his representation. The client-advocate relationship is not like other business relationships between two individuals where a right lien over the property of the other exists for non-performance of an obligation. The client-advocate relationship is that of trust and the advocate should not take advantage of this trust. The advocate also should during the contract and after the termination of the power of attorney not to lose the documents of the client. In addition to this the advocate should return property to the client and give information about the status of the case. The advocate should also have audited the accounts he received and return any money left. The out going advocate should cooperate with the incoming advocate to prevent interruption or unnecessary delay.

Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.¹²

The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supported by a good faith argument for an extension, modification, or repeal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.¹³

An advocate should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant consideration. The lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself.¹⁴

The duty of an advocate to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.¹⁵

The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal view point favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.¹⁶

2.3 Duties of advocate to the profession.

The profession of an advocate should not be regarded only as a means of subsistence but also as a noble field for deeds of high public service. The mission of the advocate consists not only in conducting lawsuits, but also in preventing them. For this reason no advocate worthy of esteem should be guided exclusively by mercantile consideration in his professional activities. A lawyer should never resort to immoral means to defend the interests of his client. By his act he must persuade the people who resort to his aid that they can expect from him no other methods of defense of their interests than moral and law full ones.

An advocate should be able to apply the professional skill, Knowledge, be ready, capable of protecting the rights and interests of the client through diligent performance. Any advocate is expected to show a high level of professional competence and skill in the advocacy service he renders. He shall have professional obligation within the limits of the law to employ his legal knowledge and work experience to protect the rights and interests of his client; to follow up his client's case diligently and take all the necessary measures carefully and timely so as to obtain a quick and just decision.¹⁷

The advocate should give the service under high level of skill and competence and be diligent to take every necessary step to obtain a quick and just decision. The advocate should always work with the sentiment that he is an officer of justice and that he should withdraw from anything that defeats this professional obligation.

An advocate should not take cases without renewing his license. Timely renewal is an advocate's ethical duty. An advocate shall respect the secrecy of all information that becomes known to him in the course of his professional activity. Any advocate shall have professional obligation to keep in secret the personal or organization information of his client or any other information he obtained in the course of his professional service. The

Obligation of professional confidentiality of an advocate may not cease because of termination of the contract with the client.¹⁸

An advocate should 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. Advocates are ethically expected to keep fees reasonable, neither too high nor too low. The profession, in principle, assumes the obligation to serve poor clients without fee.¹⁹ The general rule is that a fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable. He should at all times look for the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting settlement and a reference to alternative dispute resolution mechanisms.

An advocate shall not enter into an agreement with his client by virtue of whom the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter. Any advocate shall, in his life, refrain from any repugnant behavior which would harm his profession.²⁰ Any advocate shall have the duty to observe the proclamation and regulations and directives to be issued in accordance with the proclamation, orders and decisions given thereof.²¹ Any advocate with knowledge of an advocate who violates these regulations; where a person renders legal service without having advocacy license; where an advocate is found rendering advocacy service in violation of the conditions attached to the license shall have the obligation to notify to the body issuing the advocacy license or to the local justice administration authority the name of the advocate and the type of the violation.²²

When an advocate engages in subsidiary commercial or other social, economic, political activities while rendering professional legal service, he is required to take the necessary care so that such subsidiary activities may not affect the loyalty, independence, competence and honor of his profession. Any advocate shall have the responsibility to tell his client about the subsidiary activities he performs outside his profession and the extent of his participation. They are required to explain clearly to his clients that he is not acting in his professional capacity when he deals with them in his subsidiary non-professional activities. The advocate shall keep books of account, which

show separately the income he collects from activities outside his advocacy from that he collects from his professional legal service.²³

2.4 Duties of an advocate to the court

As an officer of the court must comply with the rules of conduct expected and applied before that court. The obvious duty of the lawyer to the court in his respect and humbleness to the court. Although the lawyer should defend the interests of his client honorably and fearlessly, equally he should still maintain due respect and courtesy towards the court.

The advocate should proceed with truthful allegation and faithful litigation. He shall never knowingly give false or misleading information to the court. Using abusive words when addressing the court would be disrespectful to the court and the advocate should give special attention starting from bringing a case to the court and in the court and in the course of litigation while the case is pending. Any advocate shall refrain from instituting a case or forward a litigation motivated by envy or bad faith encourage or allow a client to commit a repugnant or fraudulent act, attempt to influence a judge or other official by means not acceptable other than to convince according to the law or seek the act to be done by another person, intentionally make papers and statements which are exaggerated, mislead the court by falsifying the testimonies of witnesses or the contents of a document, produce to court as though relevant an evidence which is clearly irrelevant to the matter, counsel or induce a person who is required as a witness, not to appear before court and nag, traumatize or threaten a witness in methods that are in appropriate, in a proceeding.²⁴

The main duty imposed upon the advocate is as ensuring the truth fullness of the information given to the court. Accordingly, the advocate should make sure that the case is not instituted for harassing the other party, under envy or bad faith. Along with the pleading or in the course of litigation the advocate should not intentionally produce to the court papers, evidence or statements which are misleading, exaggerated and irrelevant nor should he allow the client to commit fraudulent acts.

With respect to the judge and the officials of the court the advocate is duty bound not to resort to unacceptable practices, such as, bribery, with an attempt to prevent the judge from giving a decision according to law. With respect to the witnesses, the advocate should not persuade any witness not to appear before the court to testify or to give false testimony; nor should in appropriately harass, disturb or threaten a witness while he is testifying.

CHAPTER TWO

End notes

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7. Ibid, Art. 34 and 35
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CHAPTER THREE

CONFLICT OF INTEREST

3.1 concept of conflict of interest

The idea of conflict of interest arises in the advocate-client relationship when an advocate represents the two adverse parties, whose interests conflict with each other. That is each party is striving to defeat the other. So, an advocate shall not enter into transactions with the opposite party himself or with relatives of him. This transaction can be in the form of loan agreement, investment relations, etc.

The prohibition states that the attorney is not permitted to concurrently represent two or more clients. If in order to further the interests of one, he must forego the conflicting interests of the other. That means, he can not be both for and against a client. No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. You can not serve God and Mammon.¹

To illustrate, an advocate may not ordinarily prepare an instrument representing both buyer and seller. He may not represent two or more defendants in a criminal prosecution if their respective defenses are inconsistent or possibly, even when the case against one is stronger than the case against the other. The other aspect is he can not subsequently accept employment from another for the purpose of undoing what he had earlier been retained to accomplish. He may not prepare negotiation a settlement for a client and later accept employment from another to defeat that settlement.

The main purpose of prohibiting advocates not to enter contractual relations with other parties whose interest affects the interest of the represented party is that, it influences the independence of the advocate.

The advocate may be inclined to support the adverse party and affect the interest of the representing party.

The concept of conflict of interest have been supported and enshrined in the regulations issued in Ethiopia.

The rules on conflicting interest have a significant importance in protecting the rights of the client. an advocate can not represent two adverse parties unless he has obtained consent of both parties.² loyalty is an essential element in the advocate-client relationship and this prohibits the lawyer from undertaking representation directly adverse to the client without the client's consent.³ the rules on conflict of interest extend to prohibit the lawyer from entering into a business transaction with an adverse party to a client represented by him.⁴

Loyalty is a key ingredient of the lawyer-client relationship. When a client hires an attorney, the client has an expectation that the attorney will safeguard his interests. The client believes that, above all else, the attorney will not let any other interests interfere with that client's interests. The law recognizes this dynamic, and labels the relationship shared by an attorney and client a "fiduciary relationship". This means that once the attorney is engaged by the client he assumes certain legal and ethical responsibilities to the client. These include the duty to maintain confidences, the duty not to take selfish advantage of the client, and the duty not to prejudice the client's interests. The fiduciary relationship shared by an attorney and client depends on client's ability to trust the attorney to preserve confidences. This obligation never leaves the attorney, even after the attorney-client relationship ends.

The potential variety of interests which might dilute a lawyer's loyalty to his clients includes the attorney's personal interests (e.g., financial security, prestige, and self-esteem) and the interests of third persons (family, friends, business associates, employer, the legal profession, and society as a whole).⁵

The representation of more than one party to a transaction often results in the dilution of loyalty to one or both: buyer and seller, borrower and lender, insurer and insured, consenting mother and adopting parents,

husband and wife, multiple personal injury plaintiffs, or multiple criminal defendants.⁶

Preserving a client's secret and confidences is often as important to the client as winning his lawsuit or avoiding embarrassment or undue expense. Whereas loyalty relates to zeal or diligence, confidentiality relates to information which the client has entrusted to her lawyer.⁷ this emphasis on preventing a client's confidences also extends beyond the particular attorney involved.⁸

3.2 conflicts resulting from advocate's personal interest

An advocate should not represent a client in a matter that is directly adverse to a person whom the advocate knows is represented by a family member. Conflicts may result because of the advocate's duties of loyalty and zealous representation of the client's interests; he can not assume any posture that might even appear to compromise his client's interests.

An advocate should not own property in which his client also has an interest, because this "may interfere with the exercise of free judgment on behalf of his client."⁹ also a lawyer is advised not to accept employment if there is a "reasonable probability that his personal interests will affect adversely the advice to be given or services to be rendered to the prospective client."¹⁰

There is a great temptation for the lawyer to temper his loyalty to his client where his own financial interest is involved. For this reason, all personal financial interests, particularly business dealings between advocate and client from which the advocate benefits, are very closely scrutinized for any unfairness on the attorney's part. When an advocate is called into question for entering into a transaction with his client, the advocate must by affirmative evidence defeat the presumption of overreaching, undue influence, or fraud arising out of the fiduciary relationship or the transaction will be set aside.¹¹

An advocate's personal financial interest in the outcome of the litigation may be removed when a third party finances the suit; but that arrangement often creates a conflict of interest regarding loyalty to the client and the third part.¹²

So far have been addressed a lawyers business arrangements with clients. But there are limits too on a lawyer's financial interests with others if there could compromise the lawyer's loyalty to clients. Rule 1.8 (a) forbids a lawyer to "knowingly acquire on ownership, possession, security or other pecuniary interest adverse to a client," unless certain conditions are satisfied.

3.3 conflicts resulting from representation of adverse interests of current clients

An advocate has a duty to be loyal to the clients more than any other persons. Thus fraud on the part of the advocate raises the question on the advocate's fitness to practice law. Instituting a case in court without the knowledge and consent of the client, misusing the power given by the client and collecting money and taking the benefit can be taken as fraud of an advocate against a client.

Maintaining the independence of professional judgment required of an advocate precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant or in conflict.¹³

Any advocate may not represent clients whose interests are directly adverse or where the representation of one might be materially limited by the representation or interests of another client, unless the affected clients consent after consultation and an advocate reasonably believes that the representation will not be adversely affected.¹⁴ In addition, by obtaining consent after "full disclosure," it must be "obvious that he can adequately represent the interests of each."¹⁵

The RPC focuses on the impact of conflicts and potential conflicts on the advocate's representation of his client. The prohibition ordinarily extends to acting as an advocate against a client the lawyer represents in some other matter, even if the matters are unrelated. However, if the interests of two clients are merely generally adverse, such as the economic interests between competitors, the lawyer may undertake representation of one client if he "reasonably believes the representation will not adversely affect the relationship with the other client."¹⁶

3.4 conflicts resulting from representation of interests adverse to a former client

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

After the professional relationship with a client has terminated, the lawyer's duty to avoid conflicts of interest is still applicable with respect to future clients. Under RPC 1.9, a lawyer who has represented a client in a matter may not thereafter represent a second client in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation and a full disclosure of the material facts. Nor may the attorney use confidential information relating to the

representation to the disadvantage of the former client, even in an unrelated representation.¹⁷

If an advocate has been directly involved in a matter or specific transaction, subsequent representation of clients whose positions are adverse to the former client is prohibited. On the other hand, if the advocate has formerly represented a client in one matter and a subsequent matter arises in which the advocate is representing a new client in a new matter, the position of which is adverse to the former client, but the transaction is not "substantially related" to the former representation, then the advocate's may represent the new client.¹⁸

An advocate's loyalty to a client may be adversely influenced by loyalty to a former client, whether the present representation is related or unrelated to the former representation.

If rules that partner advocate should not give legal service in relation to a matter together with any partner advocate knowing that the regulation prohibits him to involve in the legal service. The firm is prohibited where the matter is related to a formerly handled matter by the firm or in a matter one of the partners has information that can be evidence in the matter. This prohibition related to the rules of confidentiality and conflict of interest principles that are provided for the purposes of protecting the client's interests by imposing the duty upon the advocate always keep secrets of his client and not to represent another having a conflicting interest. This is because later representing a person with contrary interest probably violates these rules as the advocate would be tempted to use the information he get formerly from the other client. The leakage of the information can result adverse effect and damage upon the former client.

3.5 conflicts of interest created in the context of a court

An advocate has the professional duty to respect the court and his opponent. Nevertheless, he may not discuss on any point of the case with the judge outside the court.¹⁹ it is necessary to emphasis the duty to refrain from any act, gesture, or words that could affect the dignity of the court.

The judicial office should not be used for the advancement of the private interests of the judge. Judge should not allow family, social, or other relationships to influence judicial conduct or judgment. For example, a judge should not use the judge's judicial position to gain or give advantage in litigation involving a friend or a member of the judge's family.

A judge should also be sensitive to possible abuse of the prestige of office. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others express the impression that they are in a special position to influence the judge. A judge should not approach another judge or officer or a public official to derive benefit or advantage to him or to other person.

Where the judge or the judge's spouse, or a near relative in a party to the proceeding, or an officer director, or trustee of a party; or is acting as a lawyer in the proceeding are usual cases for disqualification. and also if the judge's spouse or near relative has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding are cases for disqualification.

Personal or family interest of the judge on the matter or if the litigation involves a friend or parties with whom the judge has existing social or other relationships are such notable cases that may influence the judicial conduct. A judge should not communicate to another professional colleague or officer asking a favor. Nor should testify voluntarily as a character witness if his official position would influence the matter.

Lawyer were told to judge conflict situations by their appearances, and to avoid those which might appear improper, even if in fact they were not.²⁰ some courts have used the appearance of impropriety as a strict disqualifier; any hint of impropriety disqualified the lawyer from the representation. Another approach has been to take the appearance of impropriety into account as one of many factors in deciding whether there has been an impermissible conflict of interest. The mixed approaches taken by courts and bar disciplinary commissions led to confused and contradictory standards, leaving lawyer and client alike unsure of how to proceed in some situations. Further, in determining the appearance of impropriety or lack there of, the tries of fact must speculate about what would appear improper and to whom, (example, the public, the bar, all reasonable people, etc.) Therefore, courts have increasingly refused to employ an appearance of impropriety analysis in conflicts situations.²¹ (Applicable in some countries like to USA but not really relevant for Ethiopia.)

CHAPTER THREE

End notes

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2. ABA Model Rules of Professional Conduct, ABA center for professional and responsibility 1995
3. ABA Compendium, professional responsibility, rules and standards 1995, ABA center for professional responsibility p.18
4. Ibid
5. Id, p.223
6. Ibid
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8. Ibid
9. ABA Model code of professional responsibility, Canon 5, EC 5-3
- 10.Ibid, EC 5-2
- 11.Id, p.228
- 12.Id, p.231
- 13.Canon 5, EC 5-14
- 14.Id, note n_o. 1, p.233(RPC 1.7)
- 15.Id, note n_o.9, DR 5-105

16.Ibid, note no.14

17.Id, note no.1, p.239

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21.Id, note no.1

CHAPTER FOUR

Demonstration of conflict of interest cases

4.1 Relating to an advocate's own interest

Sometimes, advocates who are guided only their interest, take every matter and bring it to the court; even if the case does not have a cause of actions or is a case that can be solved by settlement between the parties. Some advocates knowingly take claims which they know the court will not accept. As a consequence, their clients will shoulder the expenses of court fee and lawyer fee. This is done by an advocate whose motive is only to keep the continuous flow of income. It may also be that the advocate is cooperating with a client who starts the litigation in bad faith or who seeks injure the opposite party.

Some conflicts of interest are inherent in the lawyer client relationship, and are tolerated out of necessity. That is, the risk that the lawyer is charged with succumbing to the risk, for example, by charging an excessive fee, the burden of proof is on the lawyer, as a fiduciary, to justify the fairness of the fee.¹ A potential client considers rendering you. Because the fee that you consider necessary and appropriate is likely to be more than the client would prefer to pay, you immediately have a conflict of interest. Also, if he charges his client by the hour for conducting litigation, it will be less in his interest than his client's to settle the case at an early stage, because his hourly fee will end with the case.²

Other conflicts between the advocate's interests and the client's are restricted by ethical rules. For example, a lawyer is generally forbidden to enter into a business transaction with a client unless certain safeguards are observed.³ such business transactions include obtaining a security interest in, say, the client's residence or other property to ensure payment of the lawyer's fee.⁴

"Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests."⁵

The underlying principle is that, consistent with the lawyer's fiduciary duties to the client, the lawyer should not take advantage of the lawyer's special skill's, the clients trust in the lawyer, or the clients dependence upon the lawyer.⁶

For similar reasons, a lawyer should not arrange for a substantial gift from a client to the advocate.⁷ an advocate should not suggest to his client that a gift be made to himself or for his benefit. If an advocate accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his advocate, the advocate may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent competent person who is cognizant of all the circumstances.⁸ A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his advocate as such, care should be taken by the advocate to avoid even the appearance of impropriety.⁹

Let us see the practice of Ethiopian advocates in the following cases decided by the Advocate Disciplinary committee of the ministry of justice.

Ato 'A' (the applicant) vs. Ato 'B' (the respondent). In this case w/ro 'C' had signed a contract of lease with Ato 'F' for 5 years. Before the contract expired w/ro 'C' died. Ato 'M' (applicant's father), who is deceased requested to keep the restaurant. But Ato 'F' said that the house owner is the government. Ato 'B', as advocate, represented Ato 'M' in the litigation between Ato 'M' and Ato 'F'. In the contract Ato 'M' agreed to pay Birr 10,000 when the house is returned to him. But Ato 'M' died before the litigation was over. Then Ato 'A' (applicant) ratified his father contract to continue the case. After some time, the advocate

terminated the litigation and he agreed with Ato 'F' to take the restaurant himself. The advocate was not permitted to return the house to the applicant. The court gave an order to give the house to the applicant, but Ato 'B' didn't give the house because he was share holder with w/ro 'C' and after she died the deceased Ato 'A' sold him his share by birr 50,000 for his expression.

The advocate disciplinary committee has decided the license of Ato 'B' shall be suspended for 6 months and to pay penalties of birr 2000 because he followed his own interest and he has misused the power of representatio.¹⁰

In the case of w/ro 'U' (the applicant) vs. Ato 'V' (the respondent). In this case the applicant had given power of attorney to the lawyer Ato 'X' and the respondent to represent her in court. After the decision of the court she asked the respondent to return her original document, but he gave various reasons and took time. Finally, he said that she has borrowed birr 100,000 from and she didn't pay him. She responded to the committee that she didn't know about the loan agreement, and there was a fraud.

The committee decided as follows: The respondent's can't make a loan agreement with the client according to the regulation. So, he is guilty of professional misconduct. The license of Ato 'V' was suspended for 6 months and penalties of birr 1000 imposed.¹¹

4.2 Between a former client and a new client

An advocate should not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict of those clients.

An advocate who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.¹²

A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person, and about whom the lawyer had acquired information protected by rules 1.6 and 1.9(c) that is material to the matter unless the former client consents after consultation.¹³

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 thereafter use information relating to the representation to the disadvantage of the former client except as rule 1-6 or rule 3.3 would permit or require with respect to a client or when the information has become generally known.¹⁴

The rule expressly prohibits an advocate from representing a client where he has formerly represented a party whose interests were adverse. And the next rule extends this former clients prohibition to a lawyer who moves from one law firm to another.

The rule is to ensure the benefit of doubt of the moral strength of the advocate is taken to the benefit of the client. Under influence of mistaken justification he may act that adversely affects the result of the case and the interest of the client who at one time came seeking his assistance. In other words the rule is put to assure that the advocate assists the client diligently and without fraud, without any reasons which may impose

undue influence upon his service and strongly maintaining his duty of keeping the clients information in confidence. Art 12 and Art 13 of the regulation propound this restraining rule. It is explicitly set out that the lawyer should not represent and enter into a contract to render a professional service to a client with whom a conflict of interest exists.

A common conflict of interest is that between a lawyers' on going obligations to a former client and the lawyer's obligations to a new client who has interests adverse to the former client. The principal basis for this conflict is the lawyer's obligation of confidentiality, which extends indefinitely, beyond the ends of the lawyer-client relationship. In addition, a lawyer is forbidden to attack her own former work product, such as a contract or a will that the lawyer drafted.¹⁵ Thus, an advocate is forbidden to take on a new client, or to continue to represent a client, if there is reasonable possibility that an advocate learned confidences in the former representation that might be used to the former client's disadvantage in the new representation.¹⁶

The conflict of interest relates here to the possibility that the lawyer will fail to fulfill his ethical obligation either to the former client or to the new client. If the lawyer were to use a former client's confidences in the new matter, the lawyer would, of course, be violating her duty of confidentiality to the former client on the other hand, if he failed to use those confidences to benefit the new client he would be violating his duties of zeal competence, and communication to the new client.¹⁷

A lawyer formerly represented a national franchiser ice cream dealerships. That prior case involved an action for breach of contract against the franchiser by one of the franchise dealers. The litigation ended in a settlement a year ago, and the lawyer has had no contract with the franchiser since then. The lawyer is now approached by a different ice cream franchise deals who wants to sue her former client, the franchiser. However, the franchiser objects to the lawyer's accepting the new client.¹⁸

The lawyer should not take the case. There is a reasonable possibility that the lawyer learned confidences or secrets from the franchiser in the course of the earlier representation. These include the franchisers

policies and practices in carrying out (or not carrying out) its contracts with its franchise dealers. If the lawyer accepted the new client, therefore, her obligations to the new client of zeal, competence, and communication would require her to make use of her confidential knowledge about the former client's business practices. If she did that, however, she would be violating her obligation of confidentiality to the former client. In short, there is a significant risk that the lawyer would be disloyal to one client or the other.¹⁹

Therefore, the new client's litigation against the lawyer's former client is substantially related to the prior representation of the former client, and the lawyer is forbidden to take on the new matter.²⁰

The conflict of interest arises in the ice cream franchise case regardless of whether the lawyer would in fact misuse, or fail to use, information gained from the former client on behalf of the new one. If she did in fact misuse the former client's confidences, she would have violated her obligation of confidentiality, and if she did in fact fail to use her knowledge on behalf of the new client, she would have violated her obligations of competence and zeal.

Having in mind this foreign experience now let us see the practical problem in the application of the rules in conflict of interests by the following case discussion.

W/r Almaz Araya (applicant) vs. Ato Abebe wendmeneh (respondent). In this case Ato Abebe, as advocate, represented W/r Almaz since 1991 E.C. in the litigation between W/r Almaz and Ato Teferi Wesson. In this litigation the court decided against W/r Almaz ordering her to pay birr 45,000 to Ato Teferi. Due to this decision of the court Ato Abebe borrowed birr 45,000 with 10% interest on behalf of W/r Almaz and paid without the consent of his client while she was abroad.

He has also requested W/r Almaz to issue a cheque in the name of Ato Abebe Wendmeneh by the reason of the loan. Furthermore he forced her to sign a loan agreement with Ato Gezahegn G/kidan for birr 256,428 by preparing the agreement himself while W/r Almaz was ill seriously.

Finally, Ato Abebe has never returned the documents he has obtained in relation to advocacy agreement with W/r Almaz rather he has transferred them to Ato Gezahegn on the reason that a loan obligation owed by W/r Almaz. In addition, he has brought an action against W/r Almaz on behalf of Ato Gezahegn before a court of law.

The Advocates Disciplinary Committee decided by majority vote as follows. Ato Abebe has prepared the draft loan agreement, he has also signed there on by representing the other party (borrower). therefore, though he was an advocate of W/r Almaz in the previous case he is not guilty of misconduct because he is considered in the latter case as a party on behalf of the borrower.

On the other hand, the dissenting opinion stated that when the committee has raised a clear question in relation to the loan agreement to both parties, W/r Almaz has responded to the committee that her advocate even in the loan agreement was Ato Abebe. Ato Abebe also admitted that, W/r Almaz asked him to find her a loan and he fulfilled his obligation. Furthermore, he stated that he prepared the draft loan agreement. In addition the decision of the committee seems to ignore the misuse of necessary documents and information of delivery to the other party (borrower). Therefore Ato Abebe, not being sincere in this litigation violated the fundamental issue of rules of confidentiality.

4.3 Between current clients

The most obvious conflict between current clients is where the advocate is representing two or more clients whose interests are adverse to each other, a lawyer could not represent a client who is suing a defendant who happens to owe money to another client of the advocate, at least not where success in the law suit might jeopardize the ability of the advocate's other client to collect its debt from the defendant. Also, a lawyer could not represent two or more clients who are competing for the same asset.²¹

Another form of current client conflict can arise when an advocate is representing multiple clients, that is, two or more client's who or on the same side of a litigation. Assume, for example that the driver and the passenger in a car are injured when their car is rear-ended by an other car. It might appear that a lawyer could represent both of them in suing the driver of the other car. However, the passenger might also have a claim against the plaintiff driver under, say, an uninsured motorist provision in the driver's policy. Also two or more criminal defendants accused of jointly committing the same crime have conflicts of interest despite the advantages that they might have in maintaining a united front. One such conflict relates to the possibility that one defendant will be able to escape punishment by a plea bargain that includes agreeing to provide evidence against the other.²²

Atom ammo Ayele on behalf of W/R Messeret Mammo (applicant) Vs Ato Tadesse Girmu and Ato kebede Belayneh (respondent), the applicant stated in his statement of claim against Ato Tadesse Girmu (the first respondent)that Ato kebede Zewidie was a husband of W/r Messeret by marriage concluded in 1980 E.c and had a son. Both used to live in Germany. However, Ato kebede Zewdie has returned to Addis Ababa without his wife's consent and concluded a bigamy marriage with W/rt Almaz in 1983 E.c. Ato Tadesse has prevented him from being convicted of bigamy by allenging divorce in Nefass silk court .In his litigation,Ato Tadesse has defamed W/r Messeret .He has also appointed his brother as presiding family arbitrator. Furthermore, he has inserted the name of Ato Hailu Tefera and signed himself in the list of arbitrator while he was not member to the arbitration.

Atom ammo further stated in his statement of claim against the second respondent (Ato kebede Belayneh) that Ato kebede was an attorney for W/r Almaz a second wife of Ato kebede Zewdie; he was also an appointed arbitrator for W/r messeret Mammo, the first wife of Ato kebede Zewdie. Therefore, Ato kebede is guilty of professional misconduct. First, he represents an adverse party in his attorney capacity and as arbitrator, and second, he has passed a decision of divorce for the marriage between Ato kebede and W/r messeret with in a short period of time and was prejudicial to the interest of W/r Messeret.

The advocate disciplinary committee has concluded that, both are guilty of misconduct and has decided to suspend the license of Ato Tadesse for 6 months and license of Ato kebede for one year.

In the case of the first instant court file no. 191/93. In advocate Ato Abadi Kassaye has represented W/rt Tigist Eshete on one hand, Ato Abebe Tsige, and W/rt Sindu Eshete (the respondent) on the other hand who are litigating parties. This representation resulted in conflict of interest between the client of Abadi (Advocate) and the opposite party (defendants) because Ato Abadi Kassaye has represented the two opposing parties as follows: Tigist Eshete (Advocates, Ato Abadi Kassaye vs. Abebe Tsige and Sindu Eshete(advocate Abadi Kassaye)²³

ADC/534/90, the lawyer without asking the consent of his client signed a contract of service with the opposing party which was detrimental to the interest of the client. The disciplinary committee after investigating the case found the lawyer guilty of disciplinary misconduct. In its decision, the committee said that the lawyer abused the power of attorney given to him in confidence. He intentionally surrendered the rights of his client to the opposing party. As a result, the conduct he showed makes him inefficient and unsuitable for the proper administration of justice. Therefore, it was decided that his name be removed from the register and his license revoked.²⁴

4.4 conflicts relating to non-client third parties

The obligation of a lawyer to exercise professional judgment solely on Behalf of his client requires that he desires of others that might impair his free judgment.*The desires of third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressure upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired there by, the lawyer should take proper steps to withdraw from representation of his client.²⁵

A lawyer has a conflict between the client's interests and a non-client third party when someone other than the client is paying the lawyer's fee.²⁶

Lawyers may sometimes get paid by one person to represent another person. Liability insurance policies generally obligate the insurer to defend the insured if a claim that is made against the insured is wholly or partly within the policy's coverage or a company might provide counsel for its employees if alleged wrongdoing is within the scope of employment.²⁷

A common situation of this kind is when the lawyer has been retained by an insurer to represent its insured. Another is when the employee of an organization is represented by a lawyer who is being paid by the organization.²⁸

One of the most common instances of conflict of interest occurs when a lawyer is chosen and paid by an insurance company to represent its insured pursuant to an insurance policy. It is not necessarily improper for one party to pay the lawyer's fee for another. Whenever this occurs, however, the relationships must be carefully scrutinized to avoid conflicts of interest. On its face, the insurance situation does not present a conflict, because it is usually in the interest of both the insurer and the insured to minimize the liability. Some lawyers who have this kind of practice assume, therefore, that they represent both the insurer and the insured and that there is no problem.²⁹

In fact, however, a number of serious conflicts are present. Assume, for example that the policy amount is 500,000. The plaintiff is willing to settle for that amount, but nothing less, and the defendant insured wants to dispose of the case on that basis. However, the insurance company might reason that it has nothing to lose by litigating the case. That is, the jury might award substantially less than the face amount of the policy, in which case the company would come out ahead, and if the jury were to award substantially in excess of the policy amount, the company would lose nothing, because the insured would be responsible for the additional amount.³⁰

Except with the consent of his client after full disclosure, a lawyer shall not accept from other than his client, any thing of value related to his representation of his client.³¹ An advocate who receives a commission (whether delayed or not) from a title insurance company or guaranty fund for recommending or selling the insurance to his client, or for work done for the client or the company, without either fully disclosing to the client his financial interest in the transaction, or crediting the client's bill with the amount thus received is guilty of unethical conduct.³²

CHAPTER FOUR

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15. Ibid, note no.2, p.271

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23. Abadi kahsaye vs. abebe Tsige and Sindu eshete, First instant court, civil case no.191/93, (unpublished)

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25.Id, note no.8, EC 5-21

26.Id, note no.7

27.Id, note no.2, p. 249

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32.Ibid, ABA opinion 304(1962)

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Conclutions and Recomendations

Legal ethics are principles of conduct that members of the profession are expected to observe in the practice of law. They are an outgrowth of the development of the legal profession itself. The interest of client and society sometimes conflict, and the principles of legal ethics only do not always indicate how these conflicts should be resolved.

Advocates generate numerous complaints resulting in litigation because they knowingly or unknowingly undertake representation of conflicting interests. Most of these complaints can be avoided if attorneys consider and comprehend the various rationales behind the rules before commencing representation of a potential client, and withdraw if a conflict arises.

Conflict of interest rules are based on the following duties the advocate owes to the client that is the duty of loyalty to the client, the duty to protect client confidences and the duty to zealously represent client interests. Conflict of interest can arise because of different kinds of situations. A conflict of interest can arise when the attorney attempts to simultaneously represent opposing clients or interests. Conflict of interest may arise when the advocate engages in a prohibited transaction, such as accepting gifts from clients or making loans to clients. A conflict of interest arises when the advocate becomes involved in the successive representation of a former client and a new client.

I would like to say the following by way of recommendation:

1. Article 12 and Article 13 of Regulations No. 57/1999 should be amended. That is the concept of conflict of interest shall be clearly defined to show the meaning clearly.
2. In case of malpractice by advocate involving conflict of interest, the person who suffered loss due to the conduct of the advocate should be compensated in addition to the disciplinary measures taken upon the advocate.
3. It is recommended that directives be prepared to be distributed to advocates to help them understand the cases that involve conflict of interest.

