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Professional Responsibility

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Cambodian Legal Textbook Series

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Community Legal Education Center
University of San Francisco School of Law
Cambodian Law and Democracy Project

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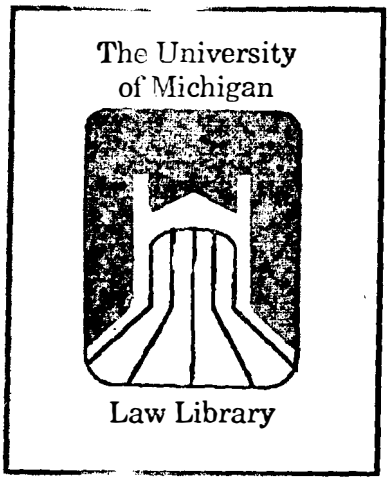

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PROFESSIONAL RESPONSIBILITY

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INTRODUCTION

The study of professional responsibility is, of course, critical to those who wish to practice as lawyers. Without a clear understanding of the expectations of the profession, no lawyer will function effectively. Beyond that simple practical need, however, new lawyers need to have a realistic perspective on the competence and the limitations of their profession.

But the study of legal ethics is a valuable undertaking even for those who have no intention of becoming lawyers. Many people see the legal system as a mysterious set of rituals which make little sense. (And that perspective is not completely unrealistic.) For anyone with an interest in understanding how the law works, it is important to understand how and why those who work within the law behave.

Hopefully this text will make some sense of that behavior for both audiences.

CHAPTER ONE

DEFINING A LAWYER

The Cambodian legal profession today finds itself in a position, perhaps, unique in the world. As Khmer society rebuilds its institutions, the legal system has the opportunity to draw on a wide variety of principles and practices. How the actors in that system – the lawyers – will train, discipline and regulate themselves is similarly a matter open to many choices. Making those choices intelligently demands that the organized bar reflect carefully on the questions of who lawyers are and what, exactly, is it that lawyers do.

Lawyers' role

What is a lawyer's job? We all know the answer; it is so obvious that it hardly requires stating the answer: a lawyer's job is to represent a client. But... we also know that nothing in the law – and nothing in lawyering – is simple. The task of representing a client actually breaks down into a series of complex sub-tasks:

1 analysis; sorting out legal issues and factual questions to find a way to allow a client to gain control of the client's life;

2 preparation;

3 avoiding assumptions

4 persuasion; calculating and producing an effect on particular audiences – clients, opponents, judges, the public;

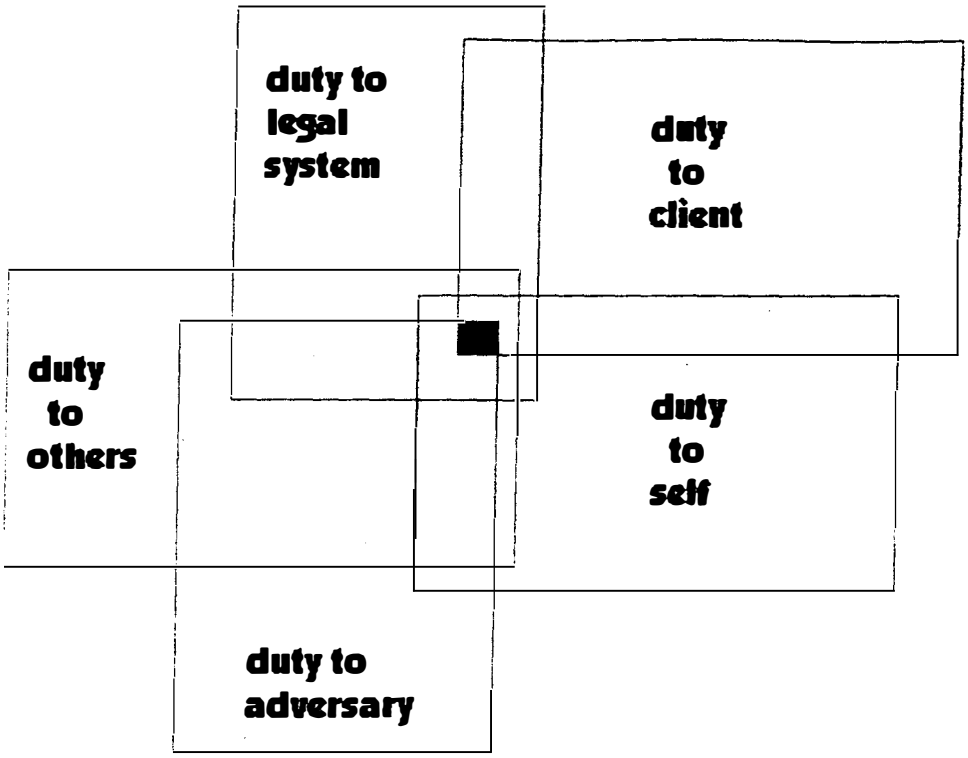
5 questioning effectively and listening with comprehension;

6 understanding the effects of culture, age, gender, social class and all the other human differences on the actors in each different situation

And in the midst of juggling that assortment of complex tasks, the lawyer must remain conscientiously aware of the client to whom the lawyer is accountable.

No responsible lawyer believes that we are answerable only to our clients. We also know that we live our professional lives in a complicated world in which we have multiple overlapping responsibilities. We have responsibilities to the courts or other agencies with whom we deal; responsibilities to third parties affected by our legal activities; responsibilities to ourselves; responsibilities to other lawyers; and even responsibilities to our adversary in a dispute.

While this multiple set of responsibilities may or may not come into play at any given moment in any given situation, it is always present as background to any lawyering task. It can help to think about this overlapping set of responsibilities with a simple diagram:



Those lawyering tasks which present the least complicated ethical questions are those which would appear in the upper right-hand corner of the diagram. But any lawyering task which has to be placed in the overlapping areas in the center will pose a dilemma which requires a careful judgment by the lawyer in deciding how to balance these several interests. (A legitimate criticism of the diagram which is likely to be offered by experienced lawyers would be that the "easy" area at the upper right is far too large while the "problematic" area at the center is far too small.)

In every nation with a formally organized legal profession, the profession has adopted a set of professional rules or an ethical code, which governs lawyers' professional responsibilities. And, even if we wanted to believe the simplistic answer, the apparent simplicity disappears the moment we look at the actual language of those codes of ethics. The legal profession has adopted, in different places, distinctly different formulations of the answer to the question of how a lawyer is to weigh these competing demands.

Cambodia

The basic Khmer formulation is found in Article 16 of the Code of Ethics adopted by the Bar Association of the Kingdom of Cambodia:

> If the lawyer accepts, [employment by a client] he or she must see the assignment through to its completion unless discharged by the client... To accomplish his or her assignment, the lawyer remains, while respecting the will of the client, in charge of his or her counsel, argumentation, and means of defense.[1]

The emphasis here, of course, is on the lawyer's own conscience and judgment. The presumption is that the lawyer's judgment will take precedence over the will of the client. (And, presumably will take precedence, as well, over all of the other interests which may be at play in a given situation – courts, other parties, etc.)

This is a formulation which one would expect from lawyers coming from civil law traditions like those found in continental Europe. The civil system, with its inquisitorial method, would tend to give the lawyer's professional judgment – heavily controlled by the legal system – more weight as against the demands of the client. After all, the civil law system requires of the lawyer much more passivity and responsiveness to the demands of officialdom.[2] By contrast, in the common law tradition with its adversary system, judges tend to be far more passive and the lawyers – each representing competing interests of individual clients – are the actors who carry the legal action forward.

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[1] Chapter IV, Article 16, Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia

[2] In socialist law systems, of course, lawyers are even more directly answerable to the demands of the legal system and the interests of any individual client are explicitly subordinated to those of the system.

Other Civil law systems: Japan

The major code of ethics, to which most lawyers in Japan are expected to adhere, offers the following:

> An attorney shall follow the dictates of his or her conscience and endeavor to realize his or her client's legitimate interest.[3]

This Japanese statement plainly is far closer to that adopted by the Cambodian Bar in giving pre-eminence to the judgment of the lawyer over the demands of the client. Note, the lawyer is required not only to follow the lawyer's own conscience, but also to make a judgment as to the "legitimacy" of the client's interests.

Other Civil law systems: France

Interestingly, in modern France, we would expect the emphasis to be fairly close to the Khmer and Japanese formulations. But instead, for members of the Parisian bar, the statement is:

> In legal matters, a lawyer intervenes within the limits of the mission for which he has been retained by his client. Within the context of this mission, and respecting absolutely the professional secrecy by which he is bound, he advises, assists, represents and drafts documents.[4]

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[3] Article 19, Code of Ethics for practicing Attorneys, Japanese Federal Bar Association

[4] Article 3.18, Laws of the Paris Bar

Common Law systems

The emphasis is distinctly different in the common law countries where the adversary system has historically dominated the legal landscape. A typical statement found in the United States is:

> A lawyer shall provide competent representation to a client. ... A lawyer shall abide by a client's decisions concerning the objectives of representation... and shall consult with the client as to the means by which they are to be pursued.[5]

Obviously, the focus here (as in the Parisian code) is much more directly on the client's wishes and much less so on the lawyer's own judgment.

Are these differences in the ethical code formulations simply nuances of language; or are they functional differences with some real significance to the behavior of lawyers? The latter is the better answer. The reason for that answer is rooted in the dynamics of the lawyer-client relationship.

Types of relationships between lawyers and clients

Any given relationship between a lawyer and a client can be described as falling into one of three types:

1) client-controlled
2) lawyer-controlled
3) collaborative

[5] Rules 1.1 and 1.2 of the American Bar Association Model Rules of Professional Conduct. Those model rules have been adopted – in some cases, with modifications – by approximately two-thirds of the Bar associations of the individual States in the United States.

Each of these different forms of relationship has important implications both for the behavior of individual lawyers and for the efficiency of the legal system as a whole.

Client-controlled relationships

In this model, the lawyer's role is simply that of receiving and acting on instructions from the client. At the extreme, this form of practice makes the lawyer a pure mercenary or "hired gun", exercising no judgment of the lawyer's own, merely following orders. From the perspective of the lawyer, this mode of operation is the simplest: it requires no independent decision-making, no agonizing over moral issues, no worrying about larger strategic issues such as weighing short-term interests against long-term interests. All it requires is a clear understanding of the client's instructions.

This mode of operation is also, however, the most alienating. It both permits and requires the lawyer to do things for the client (such as deceiving a negotiating counterpart) which the lawyer would not do for him/herself. And, having done things, or represented positions which the lawyer finds personally repugnant, the justification is, with a resigned shrug, "it's my job". This type of relationship exists ordinarily – but not always – when the lawyer represents (perhaps even exclusively) a very sophisticated client, often a business entity, which sees itself, not as obtaining legal advice and counsel, but as simply purchasing legal expertise in the same way it purchases electricity or raw materials.

Lawyer-controlled relationships

In this model, the roles are reversed. The client comes to the lawyer with a problem and gives it over to the lawyer. The lawyer reassures the client that the problem will be taken care of, tells the client to forget it, and sends the client home. The lawyer then plans a course of action and carries it out. The client's only involvement is as recipient of specific instructions: "appear on such-and-such day to testify"; "have your bookkeeper send me such-and-such data"; "here are some papers, sign them on the line above your name".

All judgments and decisions are in the hands of the lawyer. The relationship can be, in ways different than the first type, also a very comfortable one for the lawyer. While the lawyer has greater responsibilities, the lawyer also has the ego-gratification of being in the position of the acknowledged "expert" whose expertise is crucial enough to the well-being of the client that the client voluntarily cedes control of the client's affairs. The lawyer may ask the client, as a formality, if the client wishes to accept a settlement offer, but the client's response to the lawyer will be: "whatever you think best."

Collaborative relationships

The final alternative is a relationship in which the lawyer and client see themselves as working together on a joint project. Neither is in charge.[6] The client recognizes that the lawyer has training, experience and skills which the client lacks. But the lawyer also recognizes that the client has information, common sense and a set of needs which the lawyer cannot possibly put to appropriate use without the assistance of the client.

Advocates of collaborative lawyering argue several advantages for it, particularly over the old-fashioned lawyer-as-expert method of dealing with clients. First, it reduces mistakes; that is, when two people – both lawyer and client – are giving careful attention to a problem, it is less likely that things will be overlooked or misunderstood. Second, it gives the client an increased sense of dignity and control over the client's own affairs. Third, it reduces client anxiety because the client's active involvement means that the client knows what is happening, rather than wondering and worrying. Finally, it leads to a generally healthier relationship between the two people, rather than fostering a dependent-type of relationship akin to that of a parent and child.

[6] Frequently, commentators on legal ethics issues make a distinction between "means" and "objectives". The analysis then holds that the client decides on "objectives" while the lawyer has charge of the "means" to be employed in accomplishing those objectives. The more thoughtful commentary, however, concedes that any pretense that there is a clear dividing line cannot withstand close examination.

Even those who strongly favor the collaborative approach, however, concede that it is not always possible. Some lawyers have, for their entire career, represented poor and working class clients. Many times their lawyers have lawyer-client relationships in which clients are almost entirely dependent on the lawyer to decide how to resolve their legal problems. Many poorly educated people are forced to spend all their time and energy simply meeting the demands of day-to-day living and have no resources – emotional or material – with which to address the alien world of the law. As a consequence, the lawyer is forced to accept the responsibility for decision-making, even though reluctant to do so.

Conclusion

As we know, Cambodia finds itself struggling to re-establish a rule of law and to educate its citizenry in the basic functions of a democratic nation. That fact makes the question of how lawyers view their obligations to their clients a matter of broader civic concern that it might be elsewhere. Certainly Cambodia's lawyers are in a position to make a real contribution to the process of re-constituting civic consciousness on a daily basis, depending on how they choose to conduct their relations with their clients.

CHAPTER TWO

ADVOCACY

The law, as a profession, has features which make it resemble other professions. Like medicine or architecture, for example, it requires a specialized education and it requires the exercise of judgment. Most importantly, however, the practice of the legal profession necessarily implies, as we discussed in Chapter One, that the lawyer is acting on behalf of another. This is the feature of law as a profession which distinguishes it from all others. The lawyer represents another, literally, speaking in place of the client. In Cambodia, Article 2 of the Law on the Bar (adopted 15 June, 1995) establishes that role with the simple statement: "A lawyer may represent clients...". A person with legal training may choose to do other things; operate a business or work for the government, for example. But that person is not acting as a lawyer[7]

There are limits – in any legal system – on exactly what a lawyer is permitted to do on behalf of a client. That same Article in the Cambodian Law on the Bar sets some limits on how far a lawyer may go in the representation of a client accused of a crime. But such limits are not unusual.

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[7] Some lawyers who work for the government, such as those who work as prosecutors, are actually acting as lawyers because they are representing the government. Because they are in a special situation which has features different from most other lawyers, we will not attempt to discuss them in detail in this text. It is very important to recognize, however, that Cambodian law requires a rather strict separation of these roles. In Article 53 of the law on the Bar you will find a quite plain prohibition against those practicing as lawyers simultaneously serving in any government capacity or operating a business. This is a prohibition with an obvious purpose: it greatly reduces the risk that the lawyer will be subjected to conflicting loyalties. We will address it at more length in Chapter 11.

Lawyers in most inquisitorial legal systems work under similar limitations. All legal systems impose some limits; but those limits do not alter the unique character of a lawyer's work: the representation of another.

In this role, the lawyer has peculiar responsibilities which require him or her to behave differently than he or she would behave as a private person. Clients come to lawyers for representation (1) because they do not understand the legal problem which they need to address or (2) because they do not feel competent to speak for themselves or (3) for both reasons. The first (perhaps the most important – but certainly not the only) job of the lawyer is to stand in place of the client.

There is no need for the lawyer to agree with the client's cause. It is not unusual for a lawyer to say: "I can do that for you if that's what you want, but if it were my decision, I would do something else." What does this imply? It means that – at least in some cases – the lawyer is suspending his own moral or ethical judgment and substituting the client's judgment.

We could list a number of instances in which a lawyer may very well feel that "...if this were me, I would want to do something different than what the client requests." That, however, is exactly the point; the client is not the lawyer; the client is a different person with different interests and different values.

Sometimes the lawyer's distaste for the client's wishes may be very strong. A lawyer who had family members die of lung cancer and who was strongly opposed to smoking might be consulted by a client whose business involved selling cigarettes. A lawyer who was a strict vegetarian might be consulted by a client who sold meat. Should these lawyers attempt to persuade their clients to change their business because the lawyer finds it morally offensive? Should these lawyers ignore their personal feelings and do the client's work, telling themselves, "...it's just a job..."?

A perhaps less dramatic example of such a conflict between the lawyer's personal ethics and the client's expectations would be a simple problem of what information to offer, even if one is not asked. In negotiating to sell a home which gets flooded badly during the rainy season, should a lawyer tell a potential buyer about that problem? If the lawyer is negotiating for a client and the client has instructed the lawyer not to volunteer that information, the lawyer should follow the client's instructions.[8] Even if the lawyer would feel obligated to bring up the flooding problem if it were the lawyer's own property being sold, the lawyer must consider his or her client's wishes before the lawyer's own.

[8] This is a different problem if the client has instructed the lawyer to lie. But in our example, the lawyer's instructions do not require that the lawyer tell a lie, only that the lawyer is not to bring up the subject.

Consultation with a new client

Lawyer Norng is consulted by a new client, Meas Han. Meas explains to the lawyer that he wants to get a divorce. The lawyer agrees to accept Meas as a client and has him pay a small retainer fee, but does not get any detailed information from him, only asking for the name of Meas' wife and the date of their marriage. Lawyer Norng then informs Meas that he will have to do some investigation and some legal research into the complications which will be caused by the fact that the couple was married under the law in existence in 1972 and the law has changed since then. Meas is not happy with the lawyer's advice but agrees to stay together with his wife and try to get along for the several months which it will take for this work to be completed.

In reality, lawyer Norng has no intention of doing anything to assist Meas in obtaining a divorce. He has told Meas that there would be a delay in the hope that the couple will be reconciled in the next several months and decide not to get divorced. The reason he has done this is that Norng is a devout Catholic (a Christian religious sect which does not permit divorce and believes that people who get divorced commit a terrible sin). Norng therefore feels it is his duty to do whatever he can to discourage divorce.

Is there anything wrong with Norng's conduct? If you believe so, describe it.

This problem of how far, exactly, does a lawyer's duty of advocacy extend on behalf of a client is a complex question and we will examine it in detail later on. You will see, in fact, that different legal systems have established different answers. But for the moment it is important that you have a clear understanding that the lawyer's advocacy obligation is inherent in the very nature of the work of representing another.

Please stop here and identify at least one other thing which a client might ask a lawyer to do and which is both: (1) legal, but also, (2) something which, depending on the lawyer's own personal moral values, the lawyer might be unwilling to do for him or herself.

Does all of this mean that the lawyer is a totally amoral actor, incapable of exercising any moral judgement ? Absolutely not. But it does mean that the lawyer must be very careful to exercise that personal judgment at the earliest possible moment – ordinarily at the time of deciding whether or not to agree to represent a client. Once having agreed to represent a client, the lawyer cannot afford the luxury of making moral judgments about the client or the client's cause. Even after having agreed to represent a client, the lawyer may have some ability to avoid doing things which the lawyer finds repugnant. But withdrawing from representation is not an unlimited right, and there may be some circumstances in which it is not possible.[9]

A related problem, though, is what obligation does a lawyer have to accept every client who appears asking for representation? Some who write and speak on legal ethics believe that a lawyer who refuses a case because the lawyer believes the case is a bad one is a lawyer who is acting improperly

[9] Article 16 allows for withdrawal of a lawyer from a case, but the only on a condition: that the client's interests will be protected. Obviously, if a lawyer concludes that withdrawal is appropriate on the day before trial of a case is scheduled to start, it is unlikely that the client's interests will be protected. (And, in most courts, also unlikely that the presiding judge will look kindly on any last-minute request for a delay to allow the client to find a new lawyer.)

because he or she is substituting the lawyer's judgment for that of the court – and the client is entitled to have the case decided by the court. With one limitation, however, the Code of Ethics makes it clear that "...the lawyer is free to accept or refuse business."[10] We will address the exception ("Unless designated by the President...") in a moment. But first, we should recognize that this provision in the Cambodian Code is identical to a concept of freedom to accept or reject clients that is found in most other systems.

The wide acceptance of the proposition that a lawyer is, in most instances, free to accept or reject the business of any potential client is grounded, in part, in basic notions of freedom of contract. A lawyer-client relationship is, after all, a contractual relationship. It is also, of course, much more than a simple contractual relationship. It has serious elements of a fiduciary relationship in which the lawyer owes an independent obligation to look out for the interests of the client, just as a guardian has the obligation to look out for the interests of a child or an incompetent person. But those fiduciary aspects of the lawyer/client relationship do not arise, for the most part,[11] until after potential lawyer and potential client have agreed that they want to actually establish a relationship by entering into a retainer contract. Thus a client is free to seek out a lawyer of the client's choice. And the lawyer is free to accept clients whom the lawyer chooses.[12]

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[10] Article 16, Cambodian Code of Ethics.

[11] Once again, the confidentiality obligation which attaches to initial consultation, even before a lawyer has agreed to take on a client's cause, is the exception to this general proposition.

[12] This freedom is not absolute. It is qualified by the obligation of the Bar as a whole to ensure that representation is available to all. That problem will be discussed in detail in Chapter 11.

If a lawyer dislikes the idea of representing a person with certain political views, the lawyer can choose not to do so. If a client has a case which will require a lawyer to assert some claim or defense which the lawyer finds offensive, the lawyer can turn down the case.

This question of the lawyer's freedom to accept or reject business is related to the obligation of the lawyer to refuse to assert frivolous legal positions. That obligation is stated in Article 16 of the Cambodian code in rather vague terms:

> "The lawyer must refuse to carry out all processes or actions contrary to the rules of the profession and the imperatives of conscience."

The imprecision of that statement may become more clear if we examine its counterpart in other codes. In most jurisdictions in the United States, this rule is stated:

> "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law".[13]

[13] MRPC 3.1

This is the typical American statement of the lawyer's obligation to bring only cases which have merit. This statement, however, has two completely distinct ideas contained within this single clumsy sentence. And only the first of those two ideas corresponds to the command of Article 16 of the Cambodian Code:

> "The lawyer must refuse to carry out all processes or actions contrary to the rules of the profession and the imperatives of conscience."

That idea forbids taking any legal action without a basis in the law. This, of course, does not mean that the only lawsuits which may be filed are those guaranteed to win. Most legal problems, no matter how simple or how complex, contain some room for argument[14] about the proper resolution. But this requirement does prevent a lawsuit being filed with no more basis than a hope that "maybe we can find a good reason later on."

The second concept which appears in the American statement of this rule is a qualification of the rule which does not appear anywhere in the Khmer version. That qualification is a concept which can only be fully understood in the context of a common law system. In the inquisitorial system, the law is created and changed only by the legislative branch of

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[14] "Room for argument" is a concept familiar to, and comfortable for, most lawyers. It refers to the fact that any legal problem has some area which is unclear; conflicting evidence, a legal phrase subject to interpretation, etc. That area of unclearness allows lawyers with opposing positions to argue – in perfect good faith – that the ambiguity should be resolved in a way favoring their own clients' interests. A good example of such ambiguity is found in a legal provision likely to become important to some readers of this text. Article 32 of the Law on the Bar permits lawyers to be admitted to the Bar, under certain conditions, even if they have not undergone the Bar's formal training and examination process. One of those conditions includes two years of work in the "legal field". The phrase is a very broad one and permits several different interpretations of exactly what sort of work qualifies to fulfill that requirement.

government, not by the judiciary. In such a context, it is difficult to understand how a lawyer, acting honorably, could assert a legal position in a court which the lawyer knew was contrary to the existing law. The court has no power to change the law. However, in the common law system, because the courts are invested with a much broader power of interpretation to suit particular conditions, it is permissible for a lawyer to argue – before a court – for a change in the law, even knowing that the existing law would defeat the client's position. And occasionally, such arguments win.

Advocacy distinguished from advice

Thus far, we have been discussing the lawyer's role as advocate. There are two features of that role which distinguish it from other lawyering activities. First, it deals with past facts, not the future. The lawyer confronts a given problem and attempts to assist the client in coping with it. Second, it assumes that the lawyer is standing beside the client, confronting the outside world.

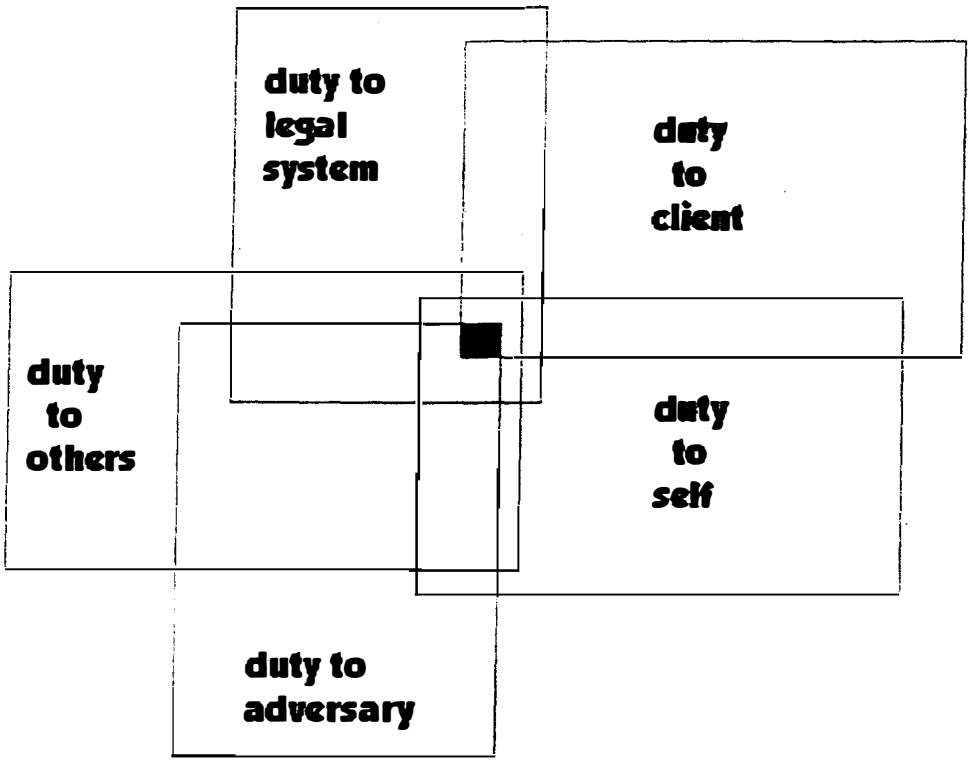
But those features are not always present. The lawyer frequently – and sometimes far more significantly – serves the client as advisor. In those circumstances, lawyer and client are planning for the future and they are communicating one to the other – not facing the rest of the world. The lawyer's approach to the role of advisor will be very different. It is frequently the lawyer's job to tell the client that he is acting like a fool and should stop. Most lawyer/client relationships require the lawyer to play both

roles, but some do not. Almost always, the lawyer-as-advocate will also need to advise the client also, even if only on how best to take advantage of the lawyer's advocacy skills. More often, though, the lawyer-as-advisor has only undertaken to advise, without any commitment to represent as well. There is nothing wrong with such limited representation, just as long as its limitations are clear to both parties at the outset.

CHAPTER THREE

LOYALTY

If we recall for a moment the conceptual diagram which we discussed in Chapter One, it shows us a number of different people and entities to whom a lawyer must give thought in carrying out the responsibilities of the profession:



However, here are two very important points, each of which must be kept in mind. Otherwise, our diagram will be deceptive:

(1) these interests frequently overlap in different and complicated ways, so that it is not always easy to see where one interest ends and another begins[15];

(2) it will always be necessary to remember, as we discuss each aspect of this problem, that situations change constantly. Thus, the fact that our diagram is static on the page, does not mean that the various interests involved in a real legal problem stay the same from day to day (or even from hour to hour)[16].

The lawyer's duty to be loyal to a client becomes defined at the point at which the lawyer and client agree on representation.[17] As with any agreement, it is important that it be clear and specific and that both parties understand it. The lawyer, however, being the expert, has a particular responsibility to ensure this.

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[15] For example, in some legal systems it is permissible for lawyers to represent clients on a contingent basis; that is, the lawyer agrees to pursue a claim for money on behalf of the client and to be paid some portion of whatever money is received in the claim. It would seem, in this instance, that the interests of the lawyer and client are identical: obtaining the maximum possible amount of money. On closer consideration, however, it is easy to see that, even in this situation, the interests of lawyer and client can diverge fairly easily. A simple example: the lawyer agrees to file a lawsuit to recover $1,000 and the fee will be 25% of whatever amount is recovered. With 2 hours of work, the lawyer succeeds in getting the other party to pay $900. If the client accepts, the lawyer will receive a fee of $225, more than $100 per hour of work. If the client rejects the offer, however, and insists that the case must be carried all the way through a trial, the lawyer is only able to earn a maximum of $25 additional, even if the trial will require 30 more hours of work. It is easy to see that the lawyer will be reluctant to do the additional work, for which the payment will amount to less than $1 per hour. The client, however, may have very good reasons for insisting on obtaining a court judgment for the full amount.

[16] Our simple contingent fee example also serves to illustrate this point. At the beginning, the interests of lawyer and client seemed to coincide perfectly, so that it did not matter where the borderline was between "duty to client" and "duty to self". However, the situation changed as soon as the other party made a settlement offer. Suddenly the self-interest of the lawyer became a much more important consideration.

[17] In fact, the lawyer may owe some duty to a person who consults the lawyer, even if they never agree that the lawyer will be retained. But this is a complication which we will take up in Chapter 5. For the moment, we will only consider a situation in which the lawyer has actually been hired to act on behalf of the client.

For example, let us assume that a client has been sued and has retained the lawyer to represent the client in the court case for a fee of $200.00. The agreement written by a careless lawyer could be: "I, the lawyer, agree to represent you, the client, in your court case for $200.00." Even in this very simple situation, the lawyer has allowed for a very serious misunderstanding. If the client loses his court case at the trial and wishes to appeal, has the lawyer agreed to represent the client in the appeal? Or has the lawyer completed the representation of the client? And which party should have been responsible for clarifying this point at the beginning?

Article 17 of the Code of Ethics adopted by the Bar Association of the Kingdom of Cambodia requires that:

> "In all matters, the lawyer must obtain from his or her client an assignment in writing."

That provision follows after the requirement of Article 16 which requires that:

> "If the lawyer accepts, he or she must see the assignment through to its completion unless discharged by the client."

These two requirements – in light of the fact that the lawyer is the expert being retained by the client specifically <u>because the lawyer knows more about the law than the client</u> – can only be read as a requirement that it must be the lawyer's responsibility to see that the terms of the retainer agreement are clear and specific.

Self-interest

But even before drafting a clear and understandable contract with a client, the lawyer must decide if the lawyer's own self-interest will interfere with the client's best interests. Unfortunately, some lawyer's codes of ethics, including the present Cambodian Code of Ethics, do not explicitly address this issue.[18] Perhaps this is due to an assumption that putting the client's interest first is implicit in the very nature of the relationship. Other Codes have, however, felt it necessary to confront the problem openly, not making any assumptions.

So we see this requirement in the United States:

Conflict of Interest: General Rule

> A lawyer shall not represent a client if the representation of that client may be materially limited ... by the lawyer's own interests unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and ...
>
> (3) the client consents after consultation.[19]

And this statement, addressing the same issue, with language which seems to be even more emphatic, in Australia:

[18] See, e.g. Japan Federation of Bar Associations, Code of Ethics for Practicing Attorneys.
[19] American Bar Association Model Rules of Professional Conduct, Rule 1.7(b)

Avoiding a conflict between a client's and a practitioner's own interest

A practitioner must not, in any dealings with a client -

allow the interests of the practitioner or an associate of the practitioner to conflict with those of the client;

exercise any undue influence intended to dispose the client to benefit the practitioner in excess of the practitioner's fair remuneration for the legal services provided to the client;

A practitioner must not accept instructions to act for a person in any proceedings or transaction affecting or related to any legal or equitable right or entitlement or interest in property, or continue to act for a person engaged in such proceedings or transaction when the practitioner is, or becomes, aware that the person's interest in the proceedings or transaction is, or would be, in conflict with the practitioner's own interest or the interest of an associate.[20]

Ordinarily, a lawyer can see fairly easily whether or not the interests of a client will be in conflict with the lawyer's own financial interests. If a client wishes to file a lawsuit against a business in which the lawyer has invested, it is pretty certain that the client's success will cost the lawyer money. The interests of the lawyer and client are, therefore, in conflict. Sometimes the financial conflict is not so obvious.

Tran is accused of a crime which receives a great deal of public attention. He needs a lawyer but has no money. Lawyer Norng agrees to defend Tran in his case and suggests that, rather than paying a fee, Tran sign an agreement which gives lawyer Norng the right to write a book about the case after it is over. Does lawyer Norng have a financial interest which is in conflict with the interests of his client Tran?

[20] Article 10.1 and 10.2, Solicitors' Rules, Law Society of New South Wales.

Besides conflicts of interests which involve the lawyer's financial interests, a client may have a legal problem which conflicts with the personal or political beliefs of the lawyer. If that conflict is strong enough, it could easily prevent the lawyer from giving the client the enthusiastic representation which the client has a right to expect.

Think of your own religious or ethical beliefs and consider what sort of problems would be so contrary to your own beliefs that you would not represent a client in them. As a woman, could you represent a man accused of rape? As a devout Buddhist, could you represent a business in a dispute with a wat over title to land? As a loyal subject of the King, could you defend a newspaper accused of slandering the King?

In Chapter 8 we will consider further the problems of conflicts between the interests of a lawyer and the lawyer's client.

Interests of other clients

A different (but not necessarily completely separate) problem is presented when a lawyer has – as most lawyers do – more than one client. Articles 19 and 20 of the Cambodian Code of Ethics do explicitly address the problem of conflicts of interests among a lawyer's clients. Several distinct problems are addressed and each of them presents different considerations:

(1) representing more than one client in the same matter;

(2) representing more than one client if there is a conflict of interest between them;

(3) representing a client whose interests are adverse to those of another client in the same or a related matter;

(4) acting adversely to a former client.

There are several different concepts here which are important to understand. The concept of "adverse interests" comes into play when two parties have objectives which are mutually exclusive. The simplest and most obvious example is when two parties are on opposite sides of a lawsuit. It should be easy to see why one lawyer cannot act for both sides of the case. Even if there is no actual dispute already pending, there are many situations in which the development of a dispute is so likely that it cannot be ignored. An example might be where several different people have hired a lawyer to file lawsuits because they are owed money by a business. The business goes broke, leaving only the building from which it operated. Each of the creditors has a claim for an amount greater than the value of the building. No one lawyer could continue to represent more than one of the creditors.

"Conflict of interest" includes, however, a broader idea than situations in which the interests of two potential clients are directly adverse to each other. In a conflict of interest situation, the two clients may not be directly confronting each other, but the lawyer's obligations to one client may restrict his or her freedom to act for another. (In fact, some of the most difficult problems can arise in situations in which it seems that two clients are on the same side.) Thus, consider, for example, that there are several different people, each of whom is the owner of a small piece of land. Together all of their plots of land add up to one hectare. These people have all been approached by a business which wants to buy the entire hectare. The business has offered a good price for the entire hectare, but only if it can buy all the land. The offer is a single amount, with the business saying: "you

decide how to divide it." This group of landowners has not agreed on how to divide up the sale price but they go to a lawyer and ask the lawyer to review the offer and the sale documents which the business has proposed. They also ask the lawyer to try to negotiate to obtain a better price. A lawyer should not represent all of them because, until they have an agreement on how much of the sale price each of them should receive, they have potentially adverse interests.

Clients on the "same side"

Lawyer Thea is consulted by Phy who wants to know what he can do about being cheated by a seller of used trucks. Phy has a small business transporting bricks and other building material and because his business was increasing he needed to buy 2 more trucks. He visited a seller of trucks and took with him a mechanic who did a thorough inspection and took notes. He bought two trucks which the mechanic felt were in good condition and the seller deliverd them the next day. But soon after the purchase, the trucks began having a lot of mechanical trouble. The mechanic discovered that, between the sale and the delivery, the seller had taken out the good engines and replaced them with very old, worn-out engines. The mechanic's notes from the original inspection would prove this, because the mechanic had made a record of the engine serial numbers and the serial numbers on the engines now in the trucks are different.

Lawyer Thea discusses this problem with Phy and advises that he has a lawsuit for fraud which he will probably – but not certainly – win. Thea also advises Phy about the cost of a lawsuit and the time and trouble which would be involved. Phy decides that he does not want to file a lawsuit because it would take too much time and attention away from his business and also because some of his customers know the truck-seller, so he is afraid he will lose customers.

A few months later, Lawyer Thea is consulted by another client, Pouv, who was defrauded by the same truckseller in the very same way. Pouv, however, has a larger business and lost much more money since it was eight trucks he was cheated on. Pouv is eager to file a lawsuit but his case is much weaker, because he does not have a record of the engine serial

numbers to help prove they were changed.

Lawyer Thea speaks to the first client, Phy, and asks if he may use the information from Phy's case to help Pouv win against the dishonest truck-seller. Phy says absolutely not; he does not want to have any more time and trouble wasted and will have nothing to do with it. May lawyer Thea agree to represent Pouv?

Consider another problem: a lawyer who was retained to help the Yao Company, a furniture manufacturing business negotiate its contracts for materials with important suppliers. That lawyer is later consulted by a new client who is a supplier of materials. and who wants the lawyer's help in negotiating contracts for sale of its materials to the lawyer's first client. It could easily be the case that the lawyer will have to decline to represent the potential new client because the lawyer would be in a position to take unfair advantage of the first client based on intimate knowledge of that client's business.[21]

[21] This example is typical of many conflict of interest problems involving more than one client in that it raises the possibility of the lawyer abusing confidential information obtained from a client. We will address the lawyer's duty of confidentiality in detail in Chapter 5, but it is important to recognize that the duties of confidentiality and loyalty are frequently not capable of being separated from each other.

Virtually all codes of ethics attempt to address these situations. The approach of the Cambodian code is not unusual. Compare, for example, the Japanese approach. The Code of Ethics for Practicing Attorneys adopted by the Japan Federation of Bar Associations may be the best example of the effort to make an exhaustive list. It will be helpful to look closely at that list. Lawyers are forbidden to accept a client:

(1) After having been consulted by the opposite party. (For example, if a couple were planning to divorce and the wife consulted – but did not hire -- a lawyer about her legal rights in case of a dispute over property division, the lawyer could not later agree to represent the husband.) (Article 26(1))

(2) Where a client's interest conflicts with that of another client in another matter which the lawyer is handling. (For example, if a client wishes to be represented by a lawyer in negotiating the sale of a piece of land, but the lawyer already represents the landowner in a dispute with tenants over unpaid rent, these are not two clients who are in a dispute with each other, but their different financial interests in the land sale probably could not both be satisfied by one lawyer representing both.) (Article 26(2))

(3) Where two clients are on opposite sides of a dispute. (This is the most obvious conflict: the same lawyer cannot argue to a court: "Client number one should win" and then reply to himself, "no, no, client number two should win.") (Article 26(3))

(4) Where a client wants to hire a lawyer who already represents the adversary. (For example, a lawyer cannot agree with someone insulted by a news report to file a lawsuit against the newspaper for slander when the lawyer already defends that newspaper in other lawsuits against it, even though the other lawsuits have nothing to do with the alleged slander.) (Article 26(4))

(5) Where a client wants to hire a lawyer who formerly represented the government in the same matter. (For example, a lawyer who filed lawsuits for the government to collect taxes from foreign businesses could not leave that work and then agree to represent those businesses in their tax disputes with the government.) (Article 26(5))

(6) Where a client wants to hire a lawyer to file a lawsuit against a relative of one of the lawyers in the same office. (Article 27)

There are both advantages and disadvantages to this idea of trying to make a "laundry list" of all the prohibited conflicts and describing them specifically. The advantage, of course, is clarity and certainty. The major disadvantage of this approach is that the "list" may not include all of the possible situations which should be avoided. Then, there is a problem when a lawyer encounters a situation in which interests of two clients conflict with each other. Even though the situation would likely leave the lawyer torn between two loyalties, the lawyer could easily become confused about his/her obligations because the situation was not specifically identified in the code. An inexperienced lawyer consulting the Japanese code, for example, could look over the list of prohibitions and not recognize (because it is not mentioned) that conflicts might arise from relationships with former clients. Then, when retained by a new client whose case is affected by private information[22] the lawyer received from a client whose case was concluded a year earlier, the lawyer might well conclude – relying on the presumed completeness of the "list" – the s/he need not worry about the interests of the former client.[23] That conclusion would be improper. In order to serve the new client as well as possible, the lawyer may need to make use of the private information which would damage the former client.

[22] Chapter 5 will address specifically the relationship of the duties of loyalty and confidentiality.

[23] That conclusion would be especially tempting, since the list did specifically address the interests of one particular type of former client (the government) but made no reference to former private clients.

The alternative to the "laundry-list" approach is to state a much more general prohibition, as in the Parisian code:

> 3.2.4 A lawyer must not be the adviser or representative or defender of more than one client in the same case if there is a conflict of interest between his clients or, unless the parties agree, if there is an earnest risk of such a conflict.
>
> 3.2.5 He must, unless the parties agree, refrain from handling the affairs of all clients concerned when a conflict of interest arises, when there is a risk that professional secrecy may be violated or when he is no longer likely to be fully independent.[24]

The Cambodian code, in Articles 19 and 20, seems to take an approach similar to that of the Japanese code. And while Article 20 specifically addresses the question of former clients, it does so in only a limited way – prohibiting lawyer involvement adverse to a former client. The example (Lawyer thea) we have just discussed above, however, does not require that the new client be "adverse" to the former client in order for the former client to be seriously prejudiced by the lawyer's activity on behalf of the new client.

Whichever approach is taken, it seems inevitable that the lawyer will be called upon to make a judgment about whether the interests of a client will be jeopardized by other interests for which the lawyer is responsible. The critical need, then, is that the lawyer makes that judgment at the earliest possible moment. Ordinarily, that means at the moment that the new client walks in the door. Why? If the decision is delayed and the lawyer begins work for the client but then has to say: "I have a conflict of interest, and must withdraw" then, at best, the time and work have been wasted.

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[24] Laws of the Paris Bar, Article III

At worst, the lawyer may have learned confidential facts from one client which would force withdrawal from both cases.

Lawyer Paet is consulted by a client, Thy, who describes a dispute over the ownership of a piece of land. Thy has a doubtful claim, but possibly could win if the case went to court. But the other person who claims ownership, Beth, might also win. Thy would rather settle than take the risk of a court trial. She would be willing to take title to the land or to accept a money settlement and then go buy a different piece of land. She asks lawyer Paet to handle the matter and pays a retainer. Lawyer Paet puts a lot of time and effort into researching the law and investigating, talking to witnesses and locating records.

In the course of this investigation, Paet realizes something she did not realize when she was first hired by Thy: that Thy's adversary, Beth, is one of the partners in a business, Sakhan, Ltd. The Sakhan company had hired Paet several months ago to defend it in a totally unconnected lawsuit. The business is being sued for a large amount of money on a claim that it sold defective goods. The partners (including Beth, of course) in Sakhan Ltd. are trying to raise enough cash right now to be able to settle the lawsuit, because they are almost certain to lose.

What should Paet do? Withdraw from representing Thy? Withdraw from representing Beth's company? Both? Neither? Tell one or both clients and ask them what they want her to do?

The need to be alert to conflicts of interests is the most acute at the point that the lawyer is first consulted. But it is not enough to examine the question once and then forget about it. Legal problems often take a period of time to be resolved and circumstances can change as the lawyer is working on the problem. The duty to avoid conflicts is a duty which continues to and beyond the conclusion of the representation of the client.

A proper discharge of the duty also requires taking account of the day-to-day circumstances in which the lawyer works. The final paragraph of Article 20 of the Cambodian code allows lawyers who have associated themselves together in practice[25] even though one of the associated lawyers may have a client whose interests conflict with those of a client of another lawyer in the office.[26]

What are the possible consequences of a rule which permits lawyers practicing together to represent clients whose interests conflict?

[25] See Articles 46 through 52 of the Law on the Bar

[26] Other codes do not permit such a situation. American codes, for example, require: "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by [the rules against conflicts of interest]." ABA Model Code, Rule 1.10(a).

Direct client relations

One additional problem of loyalty requires discussion. There are circumstances in which a lawyer is retained to represent a person by someone other than the person him or herself. Frequent instances of this are when a parent asks a lawyer to represent a child, for example, a child who has been arrested and jailed. Another common occurrence of this problem is when a person has purchased liability insurance and then has been sued due to some damage to another which is covered by the insurance. If the insurance company wishes to contest liability for the damage, it will retain a lawyer and the lawyer will appear and defend the lawsuit on behalf of the insured person. The lawyer is, however, ordinarily paid by the insurance company.

The Cambodian Code requires, in Article 18, that:

"Client relations must be direct and personal."

This is a requirement which might be difficult in either of the examples given above. But allowing some "outsider" to stand between the lawyer and the client creates an unacceptable risk that the lawyer will, in reality, be representing someone other than the client.

For each of the examples of a situation in which the lawyer has been hired by someone other than the client, what is the lawyer's proper conduct for ensuring that the lawyer actually represents the interests of the client and not those of the third party?

CHAPTER FOUR

COMPETENCE

The Law on the Bar, of course, establishes a set of criteria and procedures for determining who will be permitted to practice law in Cambodia. The formal process of admission to the Bar serves as a public certification that this person is qualified to be a lawyer. Anyone admitted to the Bar is legally authorized to appear on behalf of clients in the courts of Cambodia and to give legal advice and counsel to people who request it. The Cambodian Code of Ethics does not, however, contain any explicit provision requiring a lawyer to make a judgment about whether or not the lawyer is competent to represent a particular client in any particular matter.

A moment's pause will tell us, however, that simply because a lawyer has been accepted to engage in the legal profession does not guarantee that the lawyer actually knows how to handle every possible legal problem which a client may bring to that lawyer's office. A lawyer, for example, who has spent her entire career defending clients accused of crimes is not likely to be competent to advise a business client on what things should be written into a contract for, say, the import of computer equipment. And conversely, a business lawyer who knows all of the intricacies of tax and insurance and securities law which pertain to her clients' businesses, is probably not competent to defend a person charged with even a minor crime.

Other systems have seen a need to require lawyers to decline business for which they are unqualified. The Paris Bar Code is typical:

> 3.2.11 A lawyer should not take on a case for which he knows or should know that he does not have the necessary competence to deal with it, unless he co-operates with a lawyer having such competence.
>
> A lawyer may not accept a case if he is not able to provide the endeavours required to defend the interests for which his services have been retained.

A similar prohibition, perhaps even more emphatic, is found in Australia:

> 1.1 A practitioner must act ... with competence ... and act for a client, only when the practitioner can reasonably expect to serve the client in that manner.

What does competence mean? Competence does not necessarily mean that the lawyer has spent many years handling similar problems, although experience can often be useful. (We should remember, though, that a person who learns wrong answers and bad methods of handling a problem could easily spend years mishandling similar problems. In that case, of course, experience is not only useless, it may be actually damaging.)

Competence does mean that the lawyer has a command of the particular set of skills which are called into play (at least potentially) in every lawyering task. It does not matter if the task consists of answering a simple legal question or if it consists of conducting a long and complicated trial; the same set of skills are called for.[27]

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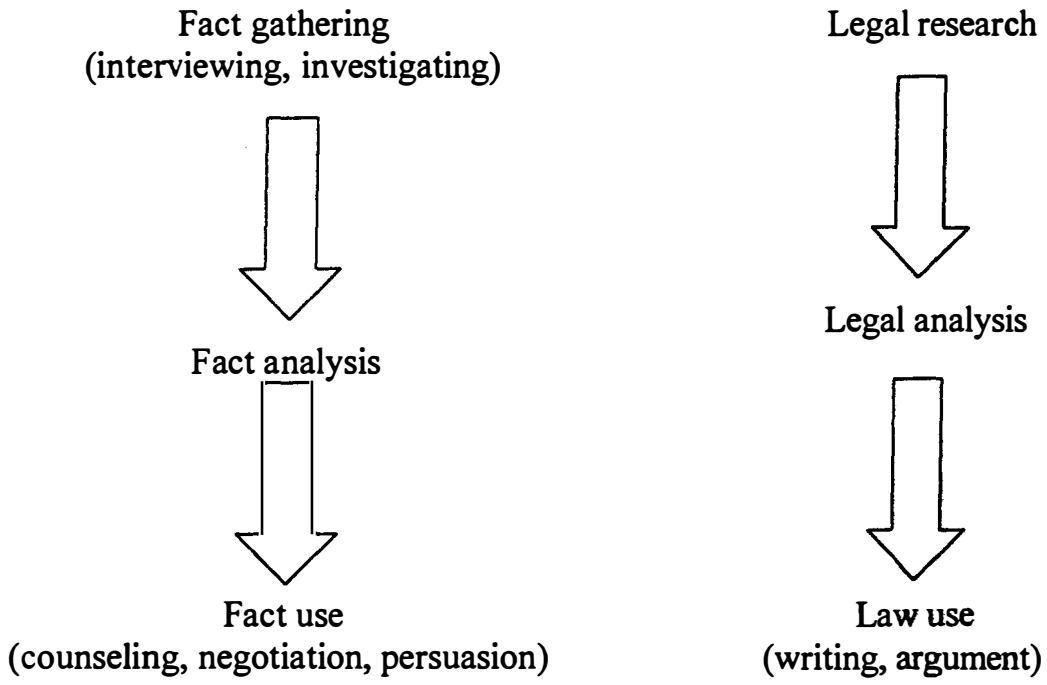
[27] People sometimes refer to some of these skills as "talents", as if some people were born with them. But that idea is mistaken; all of these things are skills which can be learned.

The following diagram offers a simple picture of those components of any lawyering task.



It is not enough to do some of these things brilliantly and ignore others. The lawyer must be capable of performing all of these tasks for every client. If a lawyer is not personally able to provide the necessary skills, the lawyer must be prepared to associate with another lawyer who has them.

Collection of a debt

Hang Sam shows lawyer Norng a promissory note for $2,000 which is overdue and says that the debt has not been paid and the Hang wants the money. Norng knows all the law and all the procedures for filing lawsuits to collect debts, so he quickly enters into a simple retainer contract, promising to collect the debt for a small fee, then files the lawsuit the next day.

Has Norng acted competently?

Certainly not all of the necessary skills can be learned in the classroom in the course of obtaining a law degree. The question then arises, how does a new lawyer become competent? The most obvious, and most common way for new lawyers to learn their profession is by working with experienced lawyers. That method is not always available and may not be adequate. But even without a supervisor, a decently educated lawyer should be capable of learning, by study and observation, how to handle new problems in a professionally acceptable way. This may mean that the new lawyer will require extra time (perhaps even a great deal of extra time) to handle legal problems which an experienced practitioner could handle quickly and easily.

It is important to recognize that, in the first instance, it is the responsibility of the lawyer to make the judgment about the lawyer's own competence. This is another instance in which, because the lawyer – not the client – is the expert, the client ordinarily has to rely on the lawyer to make this judgment. It is very difficult for clients to make informed decisions about relative expertise of lawyers. Recommendations from friends and

relatives are only of limited value. Recommendations from other lawyers are of more value, but lawyers will often be very reluctant to say anything negative about another lawyer, even if that other lawyer is someone generally reputed to be dishonest or incompetent.

Specialization

We live today in a complex world and the legal systems which govern it become more complicated every day. It is simply not possible for any one lawyer to know all of the law in every field of human activity. The result has been, in those societies with a highly developed economy and a sophisticated legal community, that many lawyers handle a very narrow range of legal problems. For example, in the U.S. and in Europe, some lawyers not only have narrowed their practice to the defense of people accused of crimes, but even within that specialty, some lawyers only defend people accused of certain kinds of crimes.

The trend toward specialization does not mean that every lawyer must choose some narrow field of practice and do only that kind of work for the rest of his or her life. But it does mean that all lawyers must ask themselves, as they are consulted by new clients: is this a legal problem which I am truly competent to handle? And if the honest answer is no, then the lawyer must send the potential client elsewhere, no matter how lucrative the client's legal business would have been.

CHAPTER FIVE

CONFIDENTIALITY

The "attorney-client privilege" is fundamental to the relationship of lawyer and client, both in the civil law (inquisitorial) system and in the common law (adversarial) system[28]. Other professions, most notably medical doctors, owe some duty of confidentiality to those whom they serve.[29] But the lawyer's duty of confidentiality is generally recognized as more extensive and more central to the relationship. The basic theory of the lawyer as keeper of secrets is that clients will not tell everything to their lawyers (and therefore will get incomplete or inappropriate help) unless they can be sure that the secrets will not be made public.[30]

Obviously, the keeping of secrets is something that may very well be destructive of the larger objective of truth-seeking which the legal system is intended to serve. One justification for confidentiality is the idea that, with the promise of secrecy encouraging client disclosures, the lawyer will have a

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[28] Socialist legal systems, on the other hand, assign to lawyers a role in which the lawyer's primary allegiance is to the State, never to the client. This means that, ordinarily a client has no expectation of confidentiality in what the client may disclose to a lawyer.

[29] It is interesting to note that in virtually every legal system, the scope of the privilege which attaches to professional confidences is the broadest when the privilege belongs to lawyers and narrower as it applies to other professions. Could this have anything to do with the fact that it is lawyers, by and large, who are responsible for drafting legal rules?

[30] A practical note must be addressed here: Clients frequently do not tell their lawyers all of the relevant information about a problem. Sometimes this is because the client does not understand what is relevant and the lawyer has done an inadequate job of interviewing and educating the client. At other times, the client deliberately withholds information from (or even tells direct lies to) a lawyer because it is embarrassing or because the client is afraid the lawyer will think badly of the client and not be willing to help. This can be a difficult and frustrating problem and the lawyer's assurances of professional confidentiality are sometimes not enough to solve the problem. But it is important for the lawyer to remember that it is a reality of the practice of law and the lawyer must be prepared to cope with it.

greater opportunity to advise the client in proper conduct. And conversely, if lawyers were expected to disclose client's secrets in the interests of truth, clients would soon stop disclosing damaging information to lawyers. Lawyers would then have the opportunity neither to disclose the truth nor to persuade the client to change to a lawful course of conduct. Thus, abandoning the attorney/client privilege in the interests of "truth" would actually be destructive of that objective.

Not every word a client says to a lawyer, of course, is intended to be kept confidential. But lawyers are expected to be particularly careful about preserving their client's confidences and generally take great care to err on the side of keeping silent if there is any chance of disclosing something which the client wants to be kept secret. And in fact, lawyers must be prepared to keep to themselves, not just confidences (things told to the lawyer by the client) but also secrets.

The concept of a "secret" is broader. It includes anything pertinent to a client's affairs which would be disadvantagous to the client if it were disclosed, even if the lawyer learned of it from some source other than the client. So, assume a lawyer has been retained by a client to represent her in a lawsuit against a newspaper because the newspaper had libelled her, by accusing her of selling illegal drugs. In the course of his investigation, the lawyer learns – from some other person – that the client is having an extramarital affair. This is clearly something the client would not want

publicly disclosed and the lawyer must keep the information to himself, even though the client did not tell it to him.

Information about a client's affairs which the lawyer obtained from sources other than directly from the client is sometimes referred to as "work-product." Usually, attorney "work-product" is given some deference but less than the deference shown to confidences received directly from clients. As a result, lawyers are sometimes ordered by a court to disclose "work-product" in circumstances where a client confidence would be honored.

Keeping a client's secret

Meas Han finally fires lawyer Norng and hires a lawyer who actually agrees to file the divorce case. Once the lawyer has the papers prepared and ready to be filed, he needs Meas to come to his office to sign them before they can be filed with the court. The lawyer calls Meas at his home to ask him to come sign the papers. Meas is not at home, so the lawyer leaves a message, telling him to call and make an appointment to come sign the legal papers.

Has the new lawyer violated his duty of confidentiality?

The Cambodian Code of Ethics imposes on lawyers a confidentiality requirement which is, perhaps, as broad as it can be:

> **ARTICLE 7: PROFESSIONAL CONFIDENTIALITY**
> The lawyer is absolutely bound by professional confidentiality. Confidentiality may not be waived by anyone, not even the client.

This absolute duty to maintain the secrets of a client is, when reflected upon, an extraordinary thing. No court, no government official, may order a lawyer to repeat confidential information from a client, no matter how important the public interest may be. No family member or friend of a client may persuade the lawyer to disclose secrets, no matter how important the need may seem.

This absolute protection is probably a good thing for a legal system which is in transition out of a socialist system. In a socialist legal system, the lawyer's first loyalty is always to the state and there would be no discretion to keep a client's secrets. The natural result, for a society like Cambodia, is that judges and other government officials will often believe that they are entitled to know whatever a lawyer has learned from a client. This provision, then, clear and unmistakable is important as a protection for both the lawyer and the client from unreasonable demands by officials.

The second paragraph of Article 27 is meant to reinforce this protection by making it clear that only the lawyer – not any judge or bureaucrat – may determine what is necessary to protect the secrets of the client.

The codes of ethics by which lawyers are bound in many other nations are much less absolute, creating exceptions in some circumstances. One of the state bar associations in the U.S., for example, allows these exceptions:

A lawyer may reveal:

> (1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;
>
> (2) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
>
> (3) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;
>
> (4) the intention of a client to commit a crime and the information necessary to prevent the crime...[31]

An even broader exception is found in Japan, leaving it to a lawyer's judgment to decide when disclosure is justified:

> An attorney shall not disclose or utilize, without any good reason, confidential information of a client which is obtained in the course of his or her practice. The same prohibition applies to confidential information of a client of other attorney practicing at the same office, which may be obtained in the course of his or her practice.[32]

This exception is unusual in its breadth. However, a provision permitting (or in some instances even requiring) disclosure of a client's intention to perform a criminal act is not unusual.[33] But the most common –

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[31] Michigan Rules of Professional Conduct, Rule 1.6(c)

[32] Article 20, Code of Ethics for Practicing Attorneys of the Federated Bar Associations of Japan

[33] See, for example, Article 2.1.3 of the Code New Sout Wales, one of the Australian states, which has such provision, but limited to serious crimes:

> ...the practitioner discloses information in circumstances in which the law would probably compel its disclosure, despite a client's claim of legal professional privilege, and for the sole purpose of avoiding the probable commission or concealment of a felony.

in fact, virtually universal – exception to the obligation of confidentiality is a provision which allows a lawyer to disclose information when the lawyer is in a dispute with a client, such as a claim of malpractice or a dispute about legal fees. Even the very strict Cambodian code contains such an exception.

Although confidentiality is expressed as an obligation on the part of the lawyer, it is critical that we understand that the attorney-client privilege is a privilege which "belongs" to the client, not the lawyer. It is the client's right to demand that the lawyer maintain secrecy. Even in those legal systems which permit a waiver of the privilege, it is the client, not the lawyer, who decides that the privilege will be waived and disclosure will be made.

Whether or not a client has authorized a disclosure can be a problem. Lawyers sometimes carelessly assume that they are authorized by a client to make disclosures when the lawyer believes it in the client's interest. For example, a client tells a lawyer that the client has money in a bank account which can be used to settle a dispute, if necessary. The lawyer responds that he will only disclose that fact if it will help in settlement negotiations and the client does not respond to the lawyer's statement. If the lawyer is careless, he may assume that the client has consented to the disclosure when, in fact, the client was silent only because the client was thinking.

This is a problem which does not (or should not) exist under the Cambodian code, given its provision in Article 7 that:

"Confidentiality may not be waived by anyone, not even the client." By contrast, an Australian lawyer must keep information from the client confidential "unless the client authorises disclosure".[34] Under this rule, the misunderstanding described above can occur and the lawyer can believe he has received an implied authorization to make the disclosure at his discretion.

The obligation of confidentiality is, clearly, a duty closely related to the lawyer's duty of loyalty. As we noted earlier, one of the things which might pose a conflict of interest for a lawyer would be the fact that a lawyer has confidential information about one client which would be to the advantage to another client, if disclosed. Thus the lawyer's obligation of secrecy pulls her one way for one client while the obligation of loyalty pulls her in the other direction for the other client. The importance attached to confidentiality then requires that the lawyer decline to act for the second of these clients. (Or perhaps, if she has received confidential information from both before recognizing the conflict, she may be required to decline to act for either).

The attorney-client privilege must not be confused with a distinct confidentiality requirement imposed on Cambodian lawyers. The requirement of Article 27 of the Cambodian code requires that communications between lawyers be treated as confidential. On its face, this seems to be a curious requirement. It is something which does not appear in many legal codes of ethics.

There does not seem to be a real need for keeping some matter secret when it has already been communicated to an adversary's lawyer. This provision is, however, probably an expansion of a concept which does appear in many legal systems. That concept is that statements made by the parties or their lawyers in settlement negotiations are not permitted to be introduced as evidence in court. The purpose of such a rule should be apparent: if their statements can be used against them at a later date, lawyers are less likely to speak candidly with each other in settlement negotiations. Thus, settlements would be discouraged. On the other hand, if assured that statements made in negotiations won't come back to hurt later on, settlement discussions can be more frank. (Lawyers can say to each other some version of: "I believe my client is right, but maybe you're client is right and my client is wrong. Nobody knows who will be believed and how the court will decide. In such a case, sensible people compromise.")

Article 27 of the Cambodian Code is one approach to controlling this problem with its guarantee of confidentiality:

> All written and verbal exchanges between lawyers are, by their nature, confidential. Correspondence between lawyers may not, in any case, be confiscated or presented to the court, or be used to violate confidentiality.
> The following are not confidential:
> A letter serving as a procedural document,
> A letter marked "official" which delivers an offer or non confidential documents,

[34] Law Society of New South Wales Professional Conduct and Practice Rules, Rule 2.1.1

> An exchange of letters marked "official" constituting an agreement, or the signature of an agreement between lawyers within the bounds of their assignments.
> These letters and documents may make no reference to exchanges or prior matters considered confidential.

Other codes address this same problem from a very different angle, using two different rules to handle it. First, is the idea that lawyers have an obligation to avoid a situation in which the lawyer could be both a witness and a lawyer on behalf of a party. Why? Because, as an advocate for one party, the lawyer could never be viewed by a court as a completely reliable witness. A typical rule would be this one, found in American codes:

> "A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness..."[35]

That rule is then combined with a rule of evidence which controls what testimony or documents can be received by the courts:

> "Evidence of conduct or statements made in compromise negotiations is... not admissible."[36]

The result is not necessarily the same under the two different approaches. While the approach under the Cambodian code is probably a more effective protection against testimony about settlement negotiations, the alternative approach probably forces the lawyer to think more broadly about possible difficulties created by becoming a witness, even if it is on a subject other than negotiations.

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[35] ABA Model Rules of Professional Conduct, Rule 3.7(a)

These two approaches have advantages and disadvantages. Which do you believe is preferable? Why? What effect does each approach have on encouraging or discouraging settlement? What effect does each approach have on the fairness of trials?

Finally, we must discuss the problem of the tension between a lawyer's duty of confidentiality and a lawyer's duty to avoid assisting a client in illegal acts. This problem is addressed in the Cambodian code, partly in Article 20 and partly in Article 6. But both of these articles are very general and offer little guidance in the most difficult of problems for a lawyer: finding the line which divides these two things:

(1) legitimate defense of a client accused of wrongful acts

(2) assisting a client in future unlawful conduct

Other codes appear to offer slightly better guidance. For example, one American code allows a lawyer to reveal client confidences which would show:

> "...the intention of a client to commit a crime and the information necessary to prevent a crime..."[37]

[36] Federal Rules of Evidence, Rule 408

[37] Minnesota Rules of Professional Conduct, Rule 1.6(b)(3)

In Australia, the lawyer would be permitted to make a disclosure about a client's planned crime only if it were a serious crime:

> "...for the sole purpose of avoiding the probable commission of a felony.[38]

Yet a different American code would permit disclosure of a client's planned crime only if it were the most serious of felonies, a crime of violence against a person:

> "...to prevent a client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm..."[39]

Making all of this even more complicated, we must remember that these various codes of ethics leave it, in both principle and in practice, to the judgment of the lawyer to decide when and if to make a disclosure. Thus the phrasing in the American codes, "... the lawyer may reveal..."

The dividing line seems to be a matter of time: if the client's crime is a completed act, the lawyer must defend without revealing confidential information; but if the client's criminal act has not yet occurred, the lawyer may not assist and must decide whether or not to disclose client confidences in order to prevent it. This seems an easy distinction when stated in the abstract. Looked at more closely in the practical world, it is more complicated.

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[38] Law Society of New South Wales Professional Conduct and Practice Rules, Rule 2.1.3
[39] ABA Model Rules of Professional Conduct, Rule 1.6(b)(1)

To tell, or not to tell

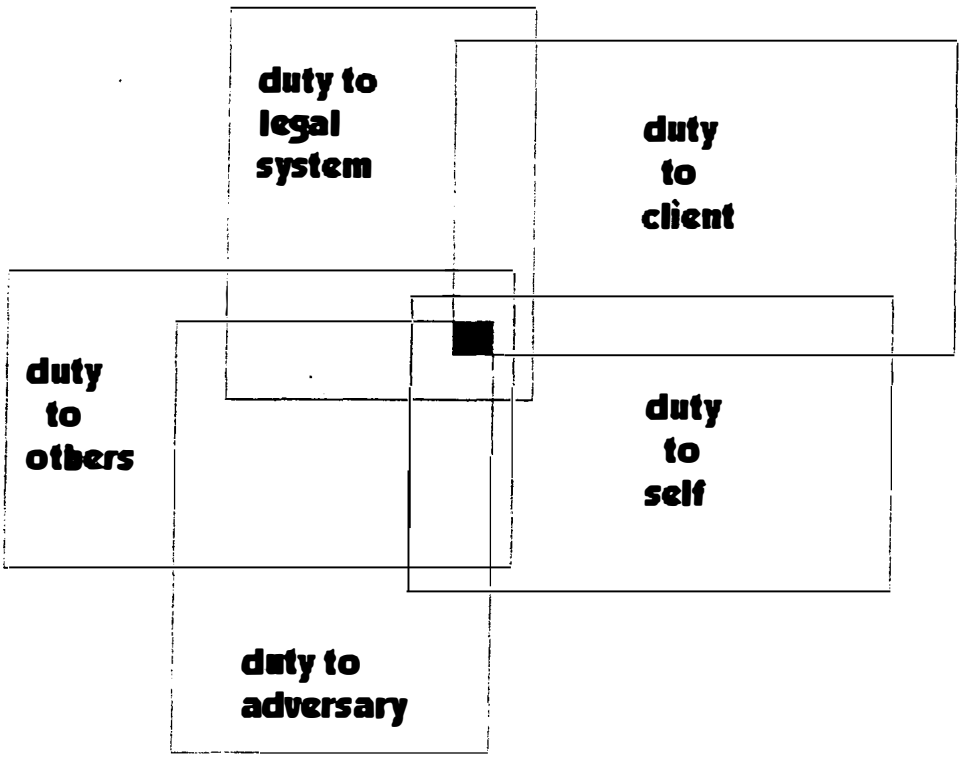
Lawyer Pouv has been representing a client, Rath, for nearly three years in Rath's business affairs. Rath operates an import/export business in which some transactions are complicated enough that he needs Pouv's help in negotiating the terms of the contract. During one of these consultations, Pouv suggests that the contract should have a provision in it about when the import taxes will be paid. Rath tells Pouv it will not be necessary with this customer, because Rath and the customer have always in the past made arrangements to pass the paperwork through a phony local company, so that it looks as if Rath is not buying from a foreign business. They have been able to save thousands of dollars in import taxes on prior shipments in this way.

Pouv advises Rath that this scheme is illegal and he should not be doing it. Rath thanks Pouv for the advice but insists on completing the new contract without any mention of import taxes and says he will take care of the import tax problem later.

May lawyer Pouv disclose this information to the authorities? Should lawyer Pouv disclose this information to the authorities? Exactly what information can be disclosed?

This simple example poses a very difficult problem for the practicing lawyer. But even the problem posed here does not show the full range of problems created by this tension between the lawyer's duty to keep a client's secrets and the lawyer's duty to avoid assisting a client in wrongful conduct.

Other questions exist and none of these questions is simple. If we remember our diagram of multiple duties, one question might even be: where does this problem appear; which duties are implicated?



What should the lawyer do if Rath's disclosure were made to the lawyer in the middle of a criminal prosecution in which Rath is accused of similar conduct, but with a different customer?

What if Rath insists on testifying in his case and, after swearing to tell the truth, then claims that he thought the phony company was the legitimate seller of the goods? May Pouv withdraw from the case? What must Pouv do if the judge does not permit withdrawal because it would delay the case? May Pouv keep silent but try to straighten out the tax problems by arranging for some tax payments to be made through it? Or would that then make Pouv a participant in the fraudulent scheme?

CHAPTER SIX

FAIR DEALING

Written contract

Students of the law study the law of contracts as one of the basic subjects in any legal education. And in their study of the subject of contracts, students learn that verbal contracts may be enforced in some circumstances. But students also inevitably, and correctly, conclude that putting a contract into writing is vastly preferable to relying on an oral agreement. The reasons are easy to list: clarity, certainty, ease of proof. The very same considerations apply to contracts between lawyers and clients.

Fortunately, the Cambodian Code of Ethics requires that a lawyer's retainer contract with a client be in writing:

> Article 17: Written Assignment
>
> In all matters, the lawyer must obtain from his or her client an assignment in writing.

This requirement is important to both the lawyer and the client for all of the reasons that make a written contract desirable in any other situation. Curiously, some other codes of ethics do not require that all lawyers' retainer contracts be in writing. For example, the code most commonly in force in the United States only suggests, but does not require a written agreement:

When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.[40]

Fees

Article 22 requires that the lawyer and client reach an agreement about fees before the lawyers begins the representation. This does not necessarily mean that there will be an advance agreement on an exact amount which the client will pay. Frequently it is difficult to predict exactly how much work will be required of the lawyer, thus making the task of deciding what would be fair payment an extremely difficult one. It does mean, however, that there must be some agreement as to how the fees will be calculated. There are three commonly used methods:

(1) Fixed in advance

(2) Hourly

(3) Contingent

Each of these methods of fee calculation has advantages and disadvantages for each of the parties.

With a fee fixed in advance, the client and lawyer agree in advance on what the professional task will be and what the client will pay. A lawyer consulted by a client charged with a crime, for example, may agree to defend the case for a fixed fee of $1,000. The client knows exactly how much the

[40] ABA Model Code, Rule 1.5(b)

particular legal work will cost. The lawyer, on the other hand, has committed to complete the client's work for the agreed fee. If it turns out that the situation is more complicated than anticipated, the lawyer may have to spend twice, or ten times, the amount of work expected and, as a result, be paid a small amount for a large amount of work.[41] On the other hand, if the problem is simpler than anticipated, the lawyer may receive a real windfall, doing little work in exchange for a large amount of money.

In an hourly fee contract, however, the lawyer and client agree only on an hourly rate which the lawyer will be paid for time spent on the client's case. Hourly fees seem, on their face, to be preferable, ensuring that the lawyer will be paid an adequate fee for whatever work is done, but neither party bears the risk of an inaccurate advance estimate of how difficult the legal problem will be. There is, however, a huge flaw in this analysis. The amount of time required to handle any given legal problem is a matter almost entirely in the control of the lawyer. If the lawyer chooses to spend 10 hours on legal research (and be paid for that 10 hours) it is very difficult for the client to say: one hour should have been enough. If the lawyer chooses to file hundreds of pages of papers with the court and make a case extremely long and complicated (and be paid for all of that time) it is very difficult for

[41] Or, the unscrupulous lawyer may choose to cut corners and do a very sloppy piece of work.

the client to say: few papers and a short and quick hearing would have been enough.

Finally, fees which are contingent on the outcome of the case are especially helpful for clients who could not otherwise afford to pay a lawyer. The typical agreement is that the lawyer is paid only for good results and otherwise is not paid. Although it could be used in other situations, this type of fee is ordinarily only applied in cases where there will be some money recovered if the case is successful. The biggest problem with this type of arrangement is that the lawyer has a personal interest in the outcome of the case. The effect can be that the lawyer's judgment is less objective and professional than it should be.

Many people (particularly insurance companies, which frequently have to pay judgments from lawsuits) also complain bitterly that the use of contingent fee contracts is a factor which encourages people to file lawsuits which would otherwise not be filed. This is almost certainly true. The weakness in this complaint is, of course, the assumption that the filing of lawsuits is a bad thing. Certainly it is a bad thing for those who have to pay a judgment because they have done some wrong. But for the person who obtains the payment, it is – equally certainly – a good thing.

Some legal systems have imposed some restrictions on contingent fees. One common restriction is to establish a limit to the percentage of a money recovery which can be taken by the lawyer as a fee. Other limits are:

> Fixing fees as being solely dependent on the legal result is forbidden. An agreement which provides, in addition to the remuneration of the services rendered, for an additional fee to be fixed depending on the result obtained or the service rendered, is legitimate.[42]

> A lawyer shall not enter into an arrangement for, charge or collect a contingent fee in a domestic relations matter or in a criminal matter.[43]

There is another aspect of lawyers' fee arangements which has close connections to the duties of loyalty and confidentiality. This is the question of who will pay the lawyer's fee. There are a number of circumstances in which one person or business might be willing to pay the attorney fees owed by someone else. A simple example is a situation in which a child needs representation and a parent pays the lawyer.

There are many other circumstances in which one person might pay lawyer's fees on behalf of another person. Stop here and think of at least two examples of such a situation, one in which you believe it would proper for the lawyer to accept payment from the non-client and another example in which you believe it would be improper for the lawyer to be paid by the non-client. What are the factors which make the difference between the two?

Unfortunately, the Cambodian code has no explicit provision covering this problem. Other codes do address this problem, precisely because it is such a common one. A typical provision is found in France:

> A lawyer may only receive fees from his client or from a third party acting on the orders and on behalf of the client.[44]

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[42] Article 3.5.3, Laws of the Paris Bar

[43] Michigan Rules of Professional Conduct, Rule 1.5 (d)

[44] Article 3.5.2, Laws of the Paris Bar.

A final aspect of lawyer's fees should be noted: in many places, lawyers' organizations have established standardized fee schedules which all lawyers are expected to use in setting their fees. The Cambodian Law on the Bar requires, in Article 68, that the Bar Association establish a fee schedule. Some other bar associations have established very detailed fee schedules describing exactly what lawyers are expected to charge their clients for each type of service. The Japan Federation of Bar Associations, for example, has nearly 30 pages of regulations describing to Japanese lawyers the proper fees to be charged. This practice, however, raises very serious questions of "price-fixing". That is, are clients being treated fairly if all lawyers charge the same fee and it is not possible to "shop around" for a lawyer who will do the work at a lower cost?

Limited Contracts

When a lawyer and a client agree to establish a professional relationship, there is more to discuss (and agree on) than simply the question of how much the lawyer will be paid. The other half of the contract which has to be settled is the matter of what services the client will receive for that fee.

In chapter 2, we discussed the difference between lawyer-as-advocate and lawyer-as-advisor and, in the course of that discussion, pointed out that lawyers sometimes only accept a limited role (frequently, just the giving of advice without any commitment to act further). Such limited contracts are

permissible, but only under certain conditions, the most important of which is that there be an agreement in advance about the limits of the lawyer's commitment which is clearly understood by the client.

Advertising

Article 57 of the Law on the Bar contains an absolute prohibition against advertising by individual lawyers. It also requires that any collective advertising undertaken by the Bar Association be only "dignified" and "proper". Articles 12, 13 and 15 of the Cambodian code of ethics are consistent with those restrictions.

Those restrictions are much stricter than those imposed, for example, in Japan, where the requirement is:

An attorney shall not advertise in a manner which would degrade his or her dignity as an attorney.[45]

In the United States, similar restrictions were imposed in many places upon lawyer advertising in the past. However, today, most of the restrictions on lawyers' advertising have disappeared. This is a result of rulings by American courts which have held that the U.S. Constitution's guarantee of freedom of speech does not allow such restrictions to be placed on what lawyers may say about themselves and about the services which they offer to the public.

Article 41 of the Constitution of the Kingdom of Cambodia says:

"Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security".

If you were a member of the Constitutional Council and a proper challenge were made by a lawyer who wished advertise, how would you decide: do the advertising restrictions of the Law on the Bar and the code of ethics violate the lawyer's freedom of speech under the Cambodian constitution?

Insurance

Article 16 of the Cambodian code contains, unlike many other codes, an interesting and progressive requirement that lawyers be insured. This requirement is intended to protect clients in the case of mistakes by the lawyer, ensuring that there will be money available to pay for whatever harm the client has suffered. Whether or not this requirement offers much protection in actual practice at the present time is doubtful.

[45] Article 10, Code of Ethics for Practicing Attorneys, Japan Federation of Bar Associations

Non-professional relationships with clients

Sometimes lawyers allow themselves to be drawn into some relationship with a client other than the professional one of lawyer and client. This might be, for example, a business relationship or a sexual relationship. Critics of legal practice would call this an exploitation of the client by the lawyer. Some lawyers would defend the "right" of the lawyer to create such relationships on the basis that the Bar has no right to invade the privacy of lawyers and restrain the freedom which should be enjoyed by lawyers in conducting their personal lives. The central weakness of that defense is that it assumes we are merely balancing the equal and competing interests of lawyers and clients. This is not the case. Rarely is a lawyer/client relationship a meeting of equals. In fact, the very concept of lawyers as professionals necessarily implies that legal services are a matter of providing judgment based on specialized knowledge and skills not held by the client.

Clients trust their lawyers. In a great many instances the client enters the relationship without any better basis for extending that trust than the fact that the lawyer has been admitted to practice by the Bar. Nevertheless, clients trust lawyers because they must. That trust is what makes the lawyer/client relationship, by definition, a fiduciary relationship: a reposing of faith, confidence and trust in the judgment and advice of another. All of this goes simply to say that, in the vast majority of lawyer/client

relationships, the lawyer is the dominant actor. And the lawyer who uses that relationship to personal advantage has betrayed the fiduciary relationship.

Lawyer Sophal agreed to represent Neam, a woman who came to him to get a divorce. It was a complicated case because there were many disputes about dividing the property which the woman and her husband owned. As the case progressed, Sophal and Neam came to like each other. One day they needed to meet and she suggested that he come to her home for dinner. He did so and, after they finished their business discussion, they had a pleasant evening of chatting and flirting over a bottle of wine with dinner. One thing led to another and they ended up sleeping together.

Has Sophal engaged in any unprofessional conduct?

CHAPTER SEVEN

COURTESY

The question of a lawyer's obligation to treat others with courtesy and respect is a matter which is frequently addressed by codes of legal ethics only in connection with the relationships between lawyers. Thus, we see the requirement of Article 25 of the Cambodian Code that:

> "All interactions among lawyers shall occur in a spirit of brotherhood, propriety and courtesy."

Similarly, Article 24 requires respectful behavior toward judges. But there is no corresponding requirement of courtesy owed to clients. The closest that the Cambodian code comes to a requirement of courtesy and respect for clients is the vague requirement of "conscience, humanity and tact" found in Article 6.

The concept of requiring courtesy among lawyers and judges derives from a realistic recognition that lawyers' dealings with each other – both inside and outside the courtroom – are frequently adversarial. Human beings (including lawyers) get frustrated, angry and upset in such situations and the legal system will suffer greatly if it does not impose strict limits on display of those emotions generated by disputes. In that light, perhaps it is understandable that no explicit requirement of courtesy is required of a lawyer in dealing with a client, since lawyer and client are on the same side of the dispute. (Although, in fact, any experienced lawyer can relate stories

of frustration and even anger with obtuse or obnoxious clients. And clients can, no doubt, relate similar stories about their lawyers.)

The real problem of courtesy toward clients, however, derives not from the risk of displays of anger but from a different sort of human failing: arrogance. Because the lawyer is ordinarily the "expert" and the client is the "dependent" in the relationship, it is very easy for the lawyer to fall into the trap of treating clients with condescension or disdain. As a result, we see simple discourtesy become a matter of routine behavior: failing to arrive on time for appointments or not returning phone calls. In fact, the complaint most frequently heard from clients about their treatment at the hands of their lawyers is that the lawyer did not return phone calls.

This issue, courtesy toward clients, is a matter which does not lend itself well to control by a process of adopting rules. But in some important respects it goes to the heart of the job of the lawyer: representation of another person. Unless a lawyer learns and uses those critical interpersonal skills of empathy and understanding, the lawyer will never exercise that minimum level of competence expected of a professional.

Perhaps the most disastrous of lawyer discourtesies is failing to listen. Why disastrous? Because when the lawyer is saving the lawyer's precious time by interrupting the client's story or reading documents while the client talks, the lawyer may be missing some crucial fact or some important insight into the client's interests. And when the lawyer's work then produces a result

less than that to which the client was entitled, it is no excuse for the lawyer to complain lamely that "the client never told me."

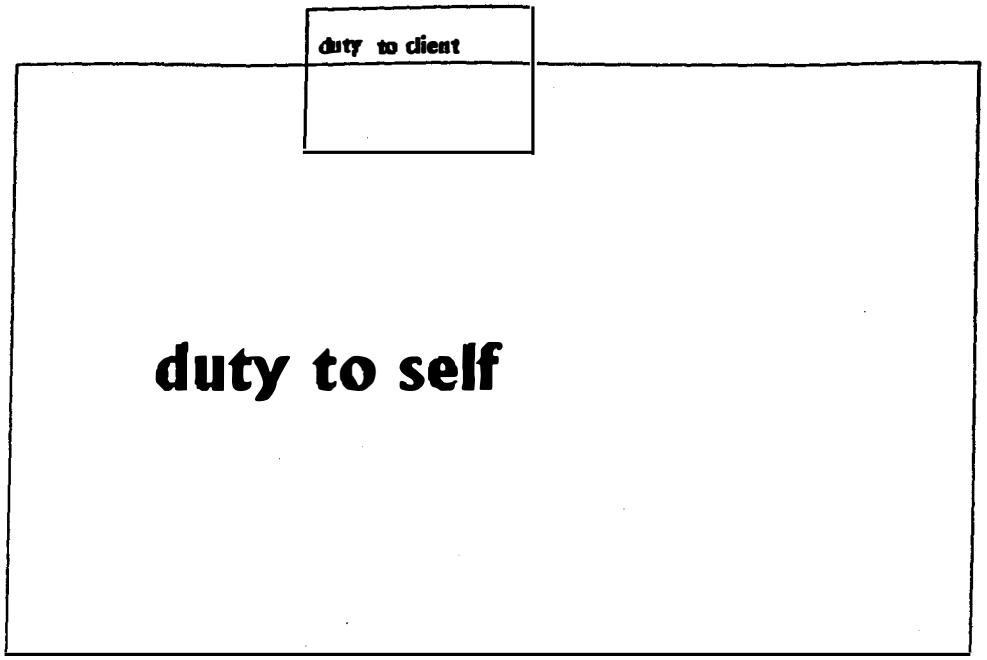
Besides the general requirement of courtesy found in the first section of Article 25, the Cambodian code contains a series of other, more specific requirements in the next four sections of Article 25. It may seem to the outsider that such basic things as adequate advance notice of appearances in court or mutually convenient meeting schedules should be a matter of common sense. Unfortunately, it has become a "fact of life" in the modern practice of law that some lawyers are prepared to use the crudest sort of discourtesies to gain even small advantages over an adversary. There are those who believe that shouting, verbal abuse, late notifications, etc. are acceptable tactics. Controlling such behavior presents a difficult problem. Perhaps the first step is a recognition by the lawyers who engage in such things that they are demeaning themselves in the eyes of others and, ultimately, damaging the quality of their own lives.

CHAPTER EIGHT

DUTIES TO SELF

Thoughtful people recognize that ordinary human beings tend to act in their own self-interest. As we mature, we learn those rules of civilized behavior which require us to sometimes compromise our self-interest in the interest of avoiding conflict with the people around us. There have been, throughout human history, a wide variety of rules proposed for finding the proper limits on our selfishness. For example, the completely amoral person makes all decisions on the basis only of personal satisfaction. And at the opposite end of the scale, it has been said that, in making difficult ethical decisions in our personal lives, it is most often possible to find the "right" decision by choosing that thing which one would least prefer to do. While either of these may be an acceptable rule for some people (and a nonsensical rule for others), neither has the principled basis we should expect from a rule for the professional conduct of one whose work is representing the interests of others.

If we refer back to the diagram in Chapter One which we used to depict the various duties of a lawyer, we assigned each to a box of roughly equivalent size. But if we were to be realistic in acknowledging the way we, as ordinarily selfish human beings, actually view the world, the relative sizes of the boxes for "client" and "self" should probably look something like this:



Given the reality of our tendency to act from our own self interest, what do we expect of a lawyer?

As we saw in chapter three, the Cambodian code addresses the conflict of interest problems which arise when the problem is conflicts between the interests of clients, Unfortunately, however, the Cambodian Code of Ethics, in its current version, has no explicit requirement on this current point: conflicts of interest involving the lawyer's own personal interests. Other codes do see this as a distinct necessity, however. The most prominent Australian code has a very strict and unmistakeable requirement:

> 10.1 A practitioner must not, in any dealings with a client -
>
> 10.1.1 allow the interests of the practitioner or an associate of the practitioner to conflict with those of the client;

> 10.2 A practitioner must not accept instructions to act for a person in any proceedings or transaction affecting or related to any legal or equitable right or entitlement or interest in property, or continue to act for a person engaged in such proceedings or transaction when the practitioner is, or becomes, aware that the person's interest in the proceedings or transaction is, or would be, in conflict with the practitioner's own interest or the interest of an associate.[46]

This rule demands, first, that the lawyer place the interests of a client before those of the lawyer. But the rule goes beyond that; it also requires the lawyer to recognize that, as ordinary, fallible human beings, lawyers just may not be able to make the right decision when the time comes and a choice must be made in favor of the client's over the lawyer's own interests. The Australian rule's method for coping with that problem is simple. It requires the lawyer to examine, in advance, whether or not the client has interests which conflict with those of the lawyer.

The American rule is, in some respects similar, but when it is read carefully, it plainly falls into the trap of no rule at all – it allows the lawyer to make judgments about a question in which the lawyer has a personal interest:

> A lawyer shall not represent a client if the representation of that client may be materially limited ... by the lawyer's own interests unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and
>
> (2) the client consents after consultation.[47]

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[46] The Law Society of New South Wales, Professional Conduct And Practice Rules, Article 10.

[47] Rule 1.7(b) of the American Bar Association Model Rules of Professional Conduct

Lawyer Van is consulted by a new client, Roth, about bringing a lawsuit against a business located next to Roth's home. The business fabricates fancy signs and metalwork, such as the scrollwork on fences. The business uses chemicals and paint which Roth believes are dangerous and are damaging the health of people who live near them. The business is operated by the lawyer's brother. Lawyer Van has had arguments in the past with his brother about how Van disapproves of him running an unsafe business.

Should Van accept Roth's case?

If, instead of having argued with his brother about the business, Van had loaned his brother money to set the business up, could he accept the case?

CHAPTER NINE

DUTIES TO OTHER LAWYERS

Lawyers, representing the differing interests of different clients, often find themselves in antagonistic positions. It does not make any great difference if the legal system in which they are working is one labeled as an "adversary" system or one labeled as an "inquisitorial" system. Conflict, dispute, disagreement; these are daily occurrences in professional encounters between lawyers. In light of that fact, it is not surprising that the profession finds it necessary to prescribe some minimum rules of conduct for those encounters.

For Cambodian lawyers, those rules are stated in very general terms in the oath required of all lawyers by the Law on the Bar and in the provisions of Article 6, and Article 25 of the Code of Ethics. (Articles 26, 27, 28, and 29 then prescribe some more specific requirements for particular circumstances.)

The general requirements imposed on Cambodian lawyers in their dealings with each other are: dignity, conscientiousness, honesty, humanity, independence of mind, tact, and compliance with the law. While these may seem rather straightforward, several of these requirements can pose some subtle problems and should be examined closely.

Candor

A requirement that a lawyer behave honestly with others seems easy, on its face. But, as we saw in Chapter Five how much truth to tell in any particular situation can be a tricky question. Most people can agree that, as between parties who are dealing with each other at arm's length, there ordinarily is no obligation to volunteer information.

One approach to handling these tricky truthfulness questions is found in American codes[48]:

> **Truthfulness in Statements to Others.**
> In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person...
>
> ***COMMENT:***
>
> ***Misrepresentation***
> *A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act.*
> ***Statements of Fact***
> *This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category...*

[48] ABA Model Rules of professional Conduct, Rule 4.1 and comment

Lawyer Pok is representing the plaintiff in a lawsuit. In discussing settlement with the lawyer representing the defendant, she tells Chou, the opposing lawyer that her client, the plaintiff has a very strong case, is certain to win in court, and is unwilling to settle for less than $2,000. Just before that conversation, however, she had a telephone conversation with her client in which they had agreed that they had a very weak case and, although she should try to get more, they should be prepared to accept as little as $500 to settle.

In the analysis quoted above from the American code of ethics, lawyer Pok's s statements were permissible. Do you consider her statements acceptable in light of your own personal ethical standards? Do you consider her statements acceptable in light of the Cambodian code's requirement of "honesty"?

It is important, in trying to answer questions like these, to keep in mind that there is sometimes tension between the various duties owed by lawyers. For example, what may Pok say if lawyer Chou were to respond: "My client has authorized me to offer $500; will your client accept it?" If Pok, follows her client's wishes and tries to bargain for more, she could say no or she could refuse to answer. If she refuses to answer, that refusal will tell Chou a great deal (and Pok will have inadvertently disclosed a confidential conversation from her client). How to reconcile the two obligations of confidentiality and honesty in this type of situation is a difficult problem for the lawyer. There is no simple answer; no rule which will produce a correct choice in all situations.

Courtesy

The ordinary rules of courtesy which apply in everyday life: listening, not interrupting, not shouting, avoiding name-calling, etc. are rules which must apply between lawyers. This is sometimes forgotten "in the heat of battle". Perhaps the most important thing for lawyers to remember in connection with this issue of everyday courtesy is that, while insults or late communications or other kinds of abusive behavior may produce some momentary advantage, that kind of behavior, in the long-term, has at least three negative effects on the person who employs it. First, it gives that lawyer a reputation as an unpleasant and untrustworthy person, which may ultimately mean that his or her career is damaged because people seek to avoid contact. Secondly, that sort of behavior diminishes the person who uses it and tends to carry over into the lawyer's personal life, damaging relationships with family and friends. Finally, that type of behavior is likely to provoke similar behavior in response, making the lawyer's work just that much more difficult.

Confidentiality

In Chapter Five we addressed at some length the question of confidentiality of communications between lawyers which is required by Article 27 of the Cambodian code. This assurance that a lawyer's statements will not be used later in court should encourage candor. Actual experience with this requirement does not seem to demonstrate that there is any

significant difference in the way lawyers deal with each other as between this set of rules and the alternative. As with most other human enterprises, lawyers tend to learn by experience which other lawyers can be relied on for discretion and integrity and which ones cannot.

Fees

Articles 28 and 29 of the Cambodian code attempt to address the problems which can arise when a client changes lawyers or when a lawyer finds it necessary to get assistance from another lawyer in handling a client's affairs. The basic principle which these provisions seek to enforce is that the client should not be "put in the middle" of any dispute or difficulty between the lawyers.

It is a simple fact of life in the practice of law that clients sometimes become unhappy with their lawyers and want to change. Often this is not welcome news to the lawyer who is being replaced. (Clients are, after all, a lawyer's source of income. The need to find and keep enough clients – paying clients – to produce a decent income is one of the practical problems on the business side of practicing law which requires constant attention.) It is also an unpleasant fact of life that some lawyers attempt to "steal" clients who are already represented by another lawyer. Sometimes a lawyer who learns that a client has retained a replacement lawyer will refuse to cooperate, even going so far as to try to hold a client's file hostage.

Read carefully Article 28 of the Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia. Does it appear to you that its principle concern is protection of:

(1) a client's right to choose a lawyer; or

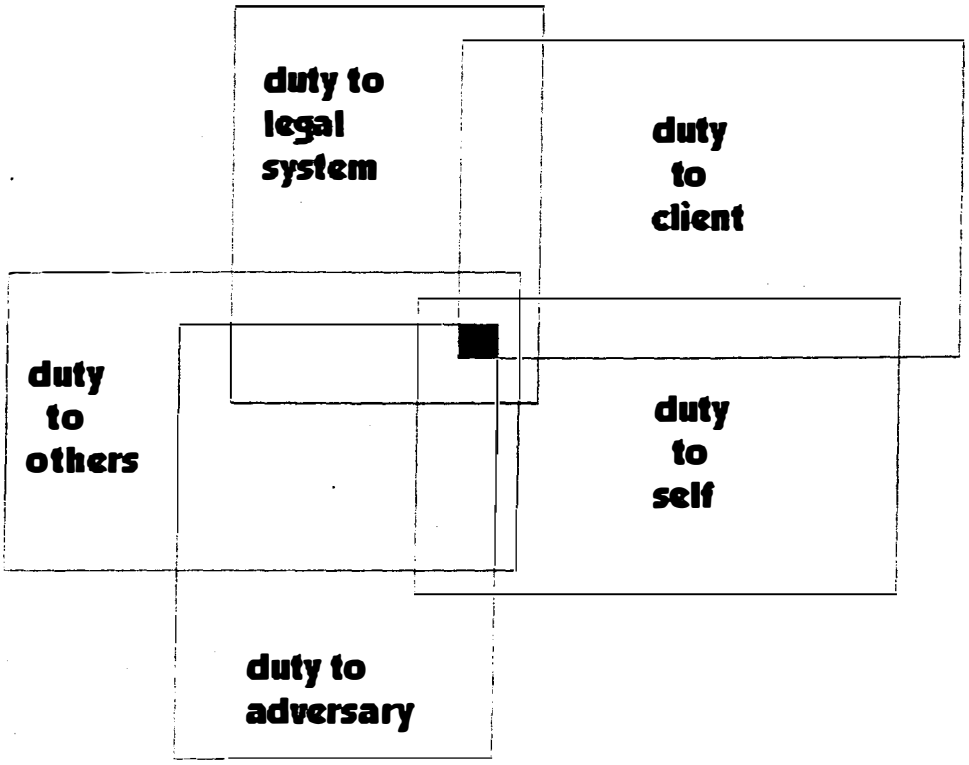
(2) a lawyer's right to be paid; or

(3) both; or

(4) some other interest?

Why did you select your choice?

Referring once again to our over-simplified diagram of the inter-related duties of lawyers:



We can see that the preceding discussion demonstrated one of those over-simplifications. In our diagram, should other lawyers fit into the box for adversaries? They are, after all, sometimes adversaries but sometimes not. Similarly, should the client of an opposing lawyer fit into the box for adversaries? Perhaps the box for adversaries should be sub-divided into several smaller boxes.

This is not to imply that there is any great importance to the question of which box we use; only to point out that the real world is actually much more complicated than our neat little diagram.

CHAPTER TEN

DUTIES TO THIRD PARTIES

In this chapter we will discuss a lawyer's duties to other non-lawyers. Sometimes those people will be the opposing party in a lawsuit; sometimes they will not. Since that status (opponent or not) can make some critical differences, we will have to consider those classes of people separately.

Opponents

The first thing a lawyer must consider in deciding how to deal with an opposing party is whether or not that person is represented by a lawyer. If the person is represented, the rule is quite plain: no contact is permitted except with the involvement of the person's lawyer.

> **ARTICLE 31: REPRESENTED ADVERSE PARTY**
>
> The lawyer may not establish relations with another person whom he or she knows to be represented by a fellow lawyer except in the presence of the latter or with his or her agreement.
>
> Unless otherwise agreed beforehand, no meetings may occur except in the presence of the interested patties and their counsel.

This is a rule which seems to have universal acceptance:

> **Rule 4.2 Communication with a Person Represented by Counsel.**
>
> In representing a client, a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.[49]

[49] ABA Model Rules

.....

3.13.2 He [an attorney] is not allowed to see the opposing party alone, outside of the presence of such party's lawyer.[50]

.....

Article 49

Unless warranted by special circumstances, an attorney shall not contact or negotiate directly with the opposite party who is represented by an attorney, without the consent of such attorney.[51]

.....

31.1 A practitioner who is acting on behalf of a party in any proceedings or transaction must not communicate directly with any other party for whom, to the practitioner's knowledge, another practitioner is currently acting, unless-

31.1.1 notice of the practitioner's intention to communicate with the other party, in default of a reply from the other practitioner, has been given to that practitioner, who has failed, after a reasonable time, to reply;

31.1.2 the communication is made for the sole purpose of informing the other party that the practitioner has been unable to obtain a reply from that party's practitioner, and requests that party to contact the practitioner; and

31.1.3 the practitioner, thereafter, notifies the other practitioner of the communication.[52]

The purpose of the principle should be self-evident. A lawyer's greater expertise in the law makes it relatively easy for the lawyer to take advantage of people who are not trained in the law. An unsuspecting party who discusses his or her case with the opposing lawyer is at risk of making a bad agreements or disclosing information or plans which that party's lawyer would much rather be kept private. (Remember, clients are

[50] Laws of the Paris Bar
[51] Japan Federated Bar Associations

always free to disclose their confidential communications with lawyers if they choose to do so; it is only lawyers who are bound by the confidentiality rule.)

When a lawyer is confronted with an unrepresented adverse party, the same risk exists. That is, it may be possible for the lawyer to take advantage of the adversary's relative lack of legal knowledge. But, it is not possible to simply prohibit contact with an unrepresented opponent; some people choose, for various reasons, not to retain lawyers. But the risk of those people being put at a disadvantage prompts the rather strict limits on how a lawyer may deal with them:

> **ARTICLE 30: UNREPRESENTED ADVERSE PARTY**
>
> Prior to any action, the lawyer may, wit the assent of his or her client, contact the adverse party to pursue an amicable solution.
>
> On such occasions, he or she must avoid all presentations that are excessive, disloyal, or contrary to tact and dignity. The lawyer must invite the adverse party to go through a lawyer selected by the party.
>
> In no case may the lawyer meet with the adverse party outside the presence of the party's lawyer. If the party intends not to be represented, the lawyer may receive the party with his or her own client or alone with the assent of the latter.
>
> Prior to any discussion, the lawyer reminds the adverse party of the possibility of being represented.

Again, this is a problem widely recognized all over the world and similar restrictions will be found in the lawyer's codes of ethics in most other places.

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[52] Australia

Witnesses

This is a class of "others" which presents a very serious dilemma to the lawyer practicing in Cambodia today. The current Cambodian code of ethics imposes very strict limits on the contact a lawyer may have with potential witnesses. Beyond a request for access to documents which the person may have, the lawyer is expected to avoid any contact.

> **ARTICLE 33: THIRD PARTIES AND WITNESSES**
>
> Within the framework of a legal proceeding, and in the case and conditions established by the rules of procedure, the lawyer may establish relations with a third party to invite him or her to voluntarily produce documents under his or her possession.
>
> In the absence of a favorable response, the lawyer directs the problem to the judge.
>
> The lawyer must abstain from meeting a potential witness and from influencing in any way his or her testimony.

This is a common prohibition in those places which use an inquisitorial system of adjudication. It is a also a prohibition, in that context, which makes perfectly good sense in. In that system, the investigating judge is the person charged with the responsibility of collecting the evidence necessary to decide the case. The role of the parties, or their lawyers, is confined to producing documents for the consideration of the court and, perhaps, suggesting the identities of witnesses who should be contacted.

By contrast, however, the Japanese judicial system was historically an inquisitorial system but in the second half of the twentieth century it adopted many features of an adversarial system. As a consequence, the corresponding

rule for Japanese lawyers is a prohibition, not against contact with witnesses, but merely against attempting to persuade witnesses to testify falsely:

> Article 54 (Enticement of Perjury)
>
> An attorney shall not entice a witness into committing perjury or making a false statement, nor shall he or she submit false evidence.[53]

That same prohibition against inducing perjury exists in the common law judicial systems like those of the U.S. or Great Britain. But there is no restriction whatever in an adversary system on a lawyer's right to contact and interview witnesses. In fact, for lawyers to do so is, for all practical purposes, a necessity. Remember, in an adversary system, it is the responsibility of the parties (usually through their lawyers) to collect and produce the evidence. There is no investigating judge who performs that function. In the adversary system it would be legal malpractice for a lawyer to fail to seek out witnesses and call those whose testimony is favorable to the trial to testify. If the lawyer fails to do so, his or her client does not receive a fair trial.

So, what is the dilemma for Cambodian lawyers? The reality of the modern practice of law in Cambodia is that the judicial system is slowly being modified into a mixed system, incorporating elements of both the inquisitorial and the adversary systems. Which rule then, should Cambodian lawyers be following? There is no clear answer to this question at the moment.

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[53] Japan Federation of Bar Associations, Code of Ethics for Practicing Attorneys

CHAPTER ELEVEN

DUTIES TO COURT/LEGAL SYSTEM

This subject is one on which there is considerable difference in approach between the inquisitorial systems and the common law systems. As we have previously seen, the differences in the roles of judges and lawyers in the two systems tend to impose different expectations. But even beyond that, within both systems, it is generally recognized that the duties of the lawyer differ, sometimes dramatically, depending on whether the client is confronting a criminal accusation or is merely involved in a private or "civil"[54] dispute.

The Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia, in Article 24, only addresses the question of lawyer/court relationship in the most general of terms. This is almost certainly because the code is largely an adaptation from the approach grounded in the traditional inquisitorial system of the French civil law, where the lawyer's role in court proceedings was very limited. However, several problems which arise frequently need to be addressed more specifically.

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[54] The inquisitorial systems are sometimes referred to as "civil law" systems (as distinguished from common law systems". But in this context we will be referring to "criminal law" as that set of rules and procedures controlling cases in which the government is attempting to impose a penalty – imprisonment or a fine – on an individual. By contrast, "civil law" is the law which governs all other legal disputes (usually, but not always, between private individuals or organizations).

Candor

We earlier addressed the problem of "how much truth must be told" in the context of a lawyer's dealings with private parties. The same problem arises in the context of courtroom proceedings. Close examination of the problem will disclose that it breaks down into two separate issues:

Disclosure of law

Disclosure of facts.

People not trained in the law might find it curious to suggest that a judge needs to be told the law. But in fact, even in well-organized code-based legal systems, determining exactly which legal rules apply in a particular situation can be a difficult task. In a legal system like Cambodia's, where the law is not only in a state of transition, but is also found in a number of very different sources, this is even more true. Judges handle a wide variety of problems and, from day to day – or even from minute to minute – may be called on to decide very different legal issues. Judges are trained in the law, but no one can know all of the law and research is often necessary. The lawyers representing the parties, having worked on a case before it appeared in the judge's court, should know the law better.

The question which arises, then, is perhaps best illustrated by the following example:

Lawyer Kim has appeared in court with his client, a business owner who is appealing a fine for selling packaged food which is too old. Kim has filed a motion asking to have the case dismissed based on the concept that the law passed by the National Assembly was too vague for anyone to know that it applied to the kind of packages in question. Since filing the motion, Kim discovered that a sub-decree had been issued clarifying the law. The sub-decree makes it clear that the law applies to the products sold by Kim" client. But apparently neither the prosecutor nor the judge knows about the sub-decree.

The legal principles raised in Kim's motion are correct, simply incomplete. Does Kim have a duty to tell the court about the sub-decree?

Why/why not?

For lawyers in most places in the United States, the guidance offered by the code of ethics is much more specific than that found in the Cambodian code:

Rule 3.3 Candor Toward the Tribunal.
(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal;
(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
(3) fail to disclose to a tribunal controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(4) offer evidence that the lawyer knows to be false.[55]

[55] ABA

Civility

Article 24 of the Cambodian code is not surprising in its demand that lawyers treat judges with respect and avoid disruptive behavior in the court. What is surprising is an element which is missing: a prohibition against private (*ex parte*; that is, without the opposing party present) contact with a judge about a case. For example:

> **Rule 3.5 Impartiality and Decorum of the Tribunal.**
> A lawyer shall not:
> (a) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;
> (b) communicate *ex parte* with such a person concerning a pending matter...[56]

One factor which argues very strongly for the need for such a rule in Cambodia is the fact that there is presently no code of conduct for judges. As a consequence, it is common practice for lawyers to have private discussions about cases with judges. This is a practice which is extremely destructive of the impartiality of the court. The quality of judicial practice in Cambodia will not improve unless very firm measures are taken to stop it.[57]

News media

Events in the world of the law are very often newsworthy. It would be unusual to pick up a newspaper today which does not have at least one story about some arrest or trial or threat to sue or some other event involving the

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[56] ABA Model Rules

[57] A proposed Code of Judicial Conduct (Appendix 3) has been suggested for adoption by the Ministry of Justice. Its requirements are typical of those imposed on judges in most other judicial systems.

work of lawyers. It is often tempting to lawyers to try to use the news media's interest to accomplish either or both of two different objectives.

First, the nature of the reporting can have a significant effect on the outcome of court cases; after all, judges and other court personnel are just as susceptible to the pressure of bad publicity as anyone else. Thus, the outcome of a case may depend on the outcome in the "court of public opinion", a result not always guaranteed to be fair. Beyond any actual effect on outcome, legal proceedings, especially criminal cases, can produce very bad publicity for the people involved in them. That publicity, in turn, frequently results in damage to a person's reputation from which the person never recovers.

Second, the publicity generated by high-profile legal events can be personally useful to the lawyers involved. Publicity frequently serves as "free advertising"; making the lawyer's name well-known enough that when people think of hiring a lawyer, they think of that name. The difficulty with this effect, of course, is that it gives a lawyer a strong motivation to seek out publicity, no matter what effect it may have on the legal proceedings.

The Cambodian code attempts to control both of these problems with Article 15:

Article 15: media activities by lawyers
All public or media activities by the lawyer in his or her capacity [as a lawyer] are prohibited unless in strict conformity with professional obligations. Such activities require the greatest prudence.
The President must be informed and, unless impossible, consulted prior to the activities.

This restriction, obviously leaves a great deal to the individual judgment of the lawyer about the demands of the "professional obligations".

An alternative approach is the adoption of a series of very detailed List of exactly what may not be said publicly. This excerpt from such an American rule (referring only to criminal cases) is an example:

> (1) the character, credibility, reputation or criminal record of a party, of a suspect in a criminal investigation or of a witness, or the identity of a witness, or the expected testimony of a party or witness;
> (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;
> (3) the performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
> (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
> (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
> (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.[58]

[58] Former ABA Model Rule of Professional Conduct 3.6; modified as a result of freedom of speech concerns

There is one tremendous difficulty with this effort to impose limits on public statements. That difficulty is very similar to the problem we discussed in Chapter Six relative to advertising:

Article 41 of the Constitution of the Kingdom of Cambodia says:

"Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security."

Lawyer Chouen wished to call a press conference to discuss a very controversial case in which Chouen's client was getting bad publicity. The President of the Bar Association, however, ordered Chouen not to do it because it would be unprofessional and would result in Chouen being brought up before the Bar Council for discipline. If you were a member of the Constitutional Council and a proper challenge were made by Chouen, how would you decide: does the threat of discipline violate the lawyer's freedom of speech under the Cambodian constitution?

DUTY TO MAKE REPRESENTATION AVAILABLE

Almost all legal systems assume that lawyers have some responsibility to the society in which they work to make representation available to those who cannot afford to pay. The pertinent portions of the Cambodian code are found in Article 16:

> Unless designated by the President, the lawyer is free to accept or refuse business.

and in Articles 35 and 36:

> The lawyer must fulfill with diligence and punctuality the assignments and joint services conferred on him or her by the Association.
>
> ***
>
> The lawyer is required to respond without delay to the inquiries or injunctions of the President or his or her delegates.

In their literal terms, these provisions allow the President of the Bar to assign work (presumably work for clients who cannot pay for representation) to lawyers at the total discretion of the President. In practical terms, this power has to be exercised sparingly. If the President assigned too much unpaid work to any one lawyer, that could make it impossible for the lawyer to earn a living.

This problem is a consistent one throughout the world of the law. Lawyers earn their living by being paid for their work by clients. But there are many people with serious legal problems who simply have no money to pay for legal representation. In theory, lawyers (in Cambodia and elsewhere) are expected to give some of their time to representing such poor people.

This problem is further complicated in Cambodia by the fact that there are, at the present time, very few lawyers. The Bar Association has a responsibility, imposed by the Law on the Bar (Articles 31 through 39) to make it possible for new lawyers to be admitted to membership. Unfortunately, the Bar Association has failed, for the most part, to carry out that responsibility. That failure is understandable, given the serious lack of resources. But it may also have had a serious impact on the operation of the Cambodian legal system.

Within the past several years, several hundred persons have completed the first requirement for admission to practice as a lawyer by receiving a degree in law. Assume that the training program had been available as called for by the Law on the Bar and those persons had been admitted to practice as lawyers. What effects do you believe that would have on the widespread problem of corruption in the courts?

CHAPTER TWELVE

CONTROL OF LAWYER MISCONDUCT

Any discussion of a system for controlling lawyer misconduct must begin with a recognition of the importance of doing so. Ordinarily, if we hire a person to provide some product or service, we don't expect any sort of assistance or protection from other people in the same business. For example, if a carpenter agrees to put a new roof on a house and does a bad job, the owner of the house does not expect to get corrective action from other carpenters simply because they also happen to practice the trade of carpentry.

The law, however, is very different. The law touches every person's life every day. As a society, we consider it a matter of public concern that people get fair treatment by the legal system. The competence and honesty of the lawyers in that system will determine how well it works. As in many other systems, Cambodia has chosen to make the legal profession independent and autonomous; that is, not controlled by the government.[59] In exchange for that independence, however, Cambodia, also like many other legal systems, has imposed on the legal profession the duty to regulate its members and ensure that the public is protected from lawyer misconduct.[60]

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[59] Article 1, Law on the Bar

[60] Articles 53 through 58, Law on the Bar

Allowing lawyers, as a profession, to regulate themselves is an important public policy decision. There are other ways to regulate the legal profession. The most obvious would be to make lawyers answerable to a court or some other government agency for their professional misconduct.

Make a list of the advantages offered by a system of self-regulation. Then make a second list of the disadvantages. Does it appear to you that the advantages out-weigh the disadvantages?

The Bar Association of the Kingdom of Cambodia, through its elected Bar Council, receives complaints, investigates, and imposes penalties on lawyers whom it finds guilty of misconduct. The Bar Council can impose penalties up to and including removing someone from the profession.[61] This is the formal, systematic method of protecting the public from bad lawyers.

This system has an important strength: judgments about unprofessional behavior are made by those who are (presumably) expert on questions of good legal practice. This system also has an important weakness: with a very small bar, most lawyers know each other and there is a risk of judgments being made based on personal reasons.

In addition to the formal system of discipline administered by the Bar Association, there are several other types of control which operate to ensure that lawyers fulfill their professional obligations. (Or, which serve to correct misconduct in one way or another.) They are:

1. malpractice/civil liability
2. criminal liability
3. forum constraints
4. personal ethics
5. peer pressure

[61] Articles 59 through 67, Law on the Bar

We will discuss each of these forms of control briefly but we must realize that not all of them will apply to every situation.

malpractice/civil liability

A lawyer who agrees to do something for a client and then fails to do it can be held liable for a breach of contract, just as any other party to a contract. In addition, a lawyer's responsibility to a client is to use the reasonable care and skill that other lawyers would use in carrying out the work. So, sloppy work, such as filing a lawsuit against the wrong party or drafting a contract but leaving out an important clause, will result in the lawyer being held liable for the damage that carelessness caused to the client.

This remedy has limitations, though. It can be slow and expensive. In addition, having been sued by one client for carelessness will not necessarily stop the lawyer from mis-handling the affairs of other clients in the future.

Criminal liability

There are occasions on which the misconduct of a lawyer might also be a violation of the criminal law. A common example of this is a matter in which the lawyer has been entrusted with money belonging to the client and uses the money for the lawyer's own benefit.

This remedy also has limitations. Perhaps the most important is the simple fact that there are many forms of poor legal practice which do not rise to the level of a crime.

Forum constraints

This is a concept which refers to the fact that lawyers frequently are called upon to represent clients in a court or in some other forum (such as a governmental agency or an arbitration agency). When doing so, the forum (let us say, a judge in a court) has some ability to control the conduct of the lawyer.

That ability differs greatly, however, depending on the nature of the forum and upon the rules of the legal system which applies. In the common law legal systems, courts have what is referred to as the "contempt power". This means that the court can make a formal finding that a lawyer (or a party or witness) has done something which constitutes a "contempt of court". Having made such a finding, the court then has the authority to impose a penalty; a fine or even, in extreme cases, imprisonment.[62] Standing up in court and calling a judge insulting names would certainly qualify as contemptuous. However, there may be actions which might lead to punishment but which are not necessarily things which we might think of as "contemptuous" in the everyday meaning of the word. Examples would be filing a frivolous case with no legal basis or failing to appear for a hearing

[62] The contempt power of common law courts is a power closely connected to the fact that common law courts historically have also had an authority sometimes referred to as equitable authority; that is, the authority to order parties to take – or stop – some action. This is generally a much broader authority than that held by their counterparts in inquisitorial systems, where remedies are ordinarily thought of as being only monetary. Finally, it must be remembered that these are very broad generalizations and the legal systems – adversary or inquisitorial – vary a great deal from state to state.

when ordered to do so. These things might also, depending on the circumstances, be actions justifying imposition of punishment.

Even if a particular forum does not have contempt authority, there remain other, powerful tools for controlling the behavior of lawyers. Perhaps the most obvious tool is the ability to exclude the lawyer from appearing in the forum. Another possibility is to make a report to the Bar Association which has the authority to impose discipline. The drawback in that alternative is, of course, the likelihood that the disciplinary process will be too slow to produce any change in the behavior in time to do any good in the case.

Lawyer Chan has been representing a client in a complicated and important case before a court which does not have any power to discipline the lawyer other than reporting him to the Bar Association. Lawyer Chan has repeatedly engaged in disruptive behavior: failing to appear for hearings, making frivolous objections, concealing documents, etc. A complaint to the Bar Association has produced no result. The judge thinks that lawyer Chan's client probably is entitled to win but has decided that the only effective way to deal with Chan's behavior is to issue a decision against his client.

Is that a proper method of handling lawyer misconduct?

Personal ethics

Lawyers, like people in any other occupation, have a personal moral code. Frequently that personal moral code is the factor on which a decision is based. Most lawyers don't steal their clients' money, not because of any rule in the code of ethics nor even because of the possibility of being convicted of a crime. Most lawyers don't steal from clients simply because they consider theft to be immoral.

For simple problems like theft, this may be a perfectly adequate control for the behavior of a lawyer. But as we saw in Chapter Two, and Chapter Five, situations can easily arise in which a lawyer's personal moral code can create questions or problems which are not easy to resolve.

peer pressure

Perhaps the least formal, but certainly not the least effective, restraint imposed on lawyers' professional conduct is that imposed by the expectations of other lawyers. Often, for young lawyers, this means the explicit demands of a senior lawyer by whom the junior is employed. But even for experienced lawyers who practice alone, the respect of their peers is an important thing. Sometimes, that importance is very immediate and practical: it is very common for a lawyer to refer a client to another lawyer. This happens for any number of reasons; conflicts of interest, lack of time, unfamiliarity with a legal specialty, and so on. But lawyers do not refer clients to other lawyers who carry bad reputations within the profession.

APPENDIX ONE

THE NATIONAL ASSEMBLY

KINGDOM OF CAMBODIA

LAW ON THE BAR

This Law has been adopted by the National Assembly of the Kingdom of Cambodia on Thursday, 15 June 1995, during the 4th Plenary Session of the 1st Legislature.

CHAPTER ONE: GENERAL PROVISIONS

ARTICLE 1:
The legal profession is an independent and autonomous profession involved in serving justice and may only be pursued from within the framework of the Bar Association.

ARTICLE 2:
The lawyer may represent clients with agreement from the clients or defend clients in adjudicatory bodies and in all stages of judicial proceedings, unless otherwise provided by law, especially in Civil, Commercial, Administrative, Labor, and Social Action cases. In criminal cases, the lawyer can defend the accused but cannot represent (stand in for) the accused in court, other than by special provision of the law. The lawyer may represent defendants or plaintiffs in civil actions.

The lawyer may also defend clients before the Disciplinary Council.

ARTICLE 3:
The lawyer may advise and prepare documents in the judicial field. The lawyer may be assigned by the parties or the judge to fulfill the function of conciliator or mediator. The lawyer may be assigned as an arbitrator only where permitted by the law.

ARTICLE 4:
Apart from those lawyers who are members of the Bar Association, no one may perform this profession or provide legal consultation or prepare judicial documents for compensation, except when such legal consultation or preparation of documents is a ancillary job to their profession or is a function permitted by the law.

ARTICLE 5:
Foreign lawyers whose names have been registered by the Bar of a foreign country or who have been recognized and authorized by the countries of their origin to practice the legal profession have the right to practice the profession with a Khmer lawyer and accompany/assist Khmer lawyers before the courts or other institutions of the Kingdom of Cambodia. Foreign lawyers may not represent (stand in for) clients.

ARTICLE 6:
Foreign lawyers may only practice their profession in the territory of the Kingdom of Cambodia with authorization from the Khmer Bar Council; this authorization will depend on the sufficiency of qualifications of the foreign lawyer and will only be granted when the country of origin of the foreign lawyer provides this same possibility to Cambodian lawyers. This authorization may be withdrawn if there is malpractice during the practice of the legal profession in the territory of the Kingdom of Cambodia.
A Decision by the Bar Council not to authorize practice of the legal profession or to remove
authorization shall be communicated within 15 days to the General Prosecutor of the Appeal Court and to the concerned person. Appeal may be made against this Decision within a period of 2 months from the date this information is received.

ARTICLE 7:
Those foreign lawyers who have been authorized to practice this profession may not perform any activity to attract clients or do any commercial advertising.

CHAPTER TWO: ORGANIZATION OF THE LAWYERS' PROFESSION

SECTION 1: BAR ASSOCIATION

ARTICLE 8:
The Bar Association of the Kingdom of Cambodia is an organization bringing together all lawyers who establish offices in the Kingdom of Cambodia. Each individual lawyer, upon having registered his or her name in the Bar List, shall become a full member of the Bar Association.

ARTICLE 9:
The Bar Association shall be headed by one President and governed by a Bar Council. The President of the Bar Association shall be elected for a term of 2 years. This term may be renewed for only one additional term, by election.

ARTICLE 10:
Membership of the Bar Council shall consist of:
- 5 members when there are not more than 30 members in the Bar;
- 9 members when there are from 31 to 50 members in the Bar;
- 13 members, when there are from 51 to 200 members in the Bar;
- 19 members, when there are from 201 to S00 members in the Bar;
- 27 members, when there are from S01 to 1,000 members in the Bar;
- 33 members, when there are more than 1,001 members in the Bar.

ARTICLE 11:
Members of the Bar Council shall be elected for a term of 3 years. A member may serve two terms, but not consecutively. Former members of the Bar Council may only stand for re-selection 3 years after the termination of their previous term. The President of the Bar Association may be elected as a member of the Bar Council immediately following the termination of his or her mandate, and shall not need to wait for 3 years after his or her previous mandate is terminated.

ARTICLE 12:
If the President of the Bar Association or any Member or the Bar Council dies or ceases his or her function during the course of his or her mandate, a vote shall be organized in order to elect a substitute to complete the remaining period of such mandate.

ARTICLE 13:
The Bar Association shall not be subordinate to any political party, any religious organization, or any other organization. All ideological, religious, or political expressions shall be prohibited.

The Bar Association is a self-financing organization, but it may not conduct any activity resulting in profits.

SECTION 2: ELECTION

ARTICLE 14:
The President of the Bar Association and the Members of the Bar Council shall be elected separately in the General Assembly of the Bar Association. The persons who shall be entitled to vote are all those lawyers who have been registered in the Bar List and whose right to vote has not been lost due to any disciplinary sanction.

ARTICLE 15:
The persons entitled to stand for election as President of the Bar Association are those lawyers who have registered their names in the Bar List for at least 3 years, and whose rights to vote have not been lost because of any disciplinary sanction.

The persons entitled to stand for election as members of the Bar Council are those lawyers who have registered their names in the Bar List for at least 2 years and who have not lost the right to vote.

ARTICLE 16:
A vote shall be organized by the General Assembly of the Bar Association once every 2 years to elect the President of the Bar, and once every 3 years to elect the members of the Bar Council.

Such elections shall be conducted by secret ballot, and shall be uninominal (one ballot per member). Voting may be done twice. The first vote shall be based on the absolute majority of all the members of the Bar Association, and the second vote shall be based on a simple majority of those members who are present. In the event of equal votes in the election, the oldest lawyer shall then be elected.

ARTICLE 17:
Procedures for voting, convening a meeting, and establishing a quorum shall be specified by Internal Rules. The General Prosecutor to the Appeal Court and lawyers who have the right to vote may file an appeal to the Appeal Court against the above vote.

Such appeal shall be made by the lawyer within 15 days of the date of the vote, or by the General Prosecutor to the Appeal Court within 15 days of the date of receipt of the information on the result of such vote.

SECTION 3: GENERAL ASSEMBLY

ARTICLE 18:
The ordinary session of the General Assembly of the Bar Association shall be held once a year, to be initiated by the President of the Bar Association in conformity with an agenda determined by the Bar Council.

The General Assembly may direct requests or petitions to the Bar Council, which shall be resolved within a period of 3 months.

Extra-ordinary sessions may be held upon the request, attached to the agenda, by 30% of the registered lawyers at least 15 days before the date the meeting shall take place.

Organization and functioning of the General Assembly shall be specified in the Internal Rules of the Bar Association.

SECTION 4: BAR COUNCIL

ARTICLE 19:
The Bar Council shall examine and resolve all problems concerning the conduct of the legal profession. The Bar Council shall assure the fulfillment of duty and protection of the rights of lawyers. The Bar Council shall have as functions, inter alia:

- to establish Internal Rules and a Code of Ethics;
- to decide on the inclusion of names for the Training and registration in the Bar List;
- to decide on requests for authorization submitted by lawyers;
- to examine agreements and other documents which lawyers are obligated to submit for examination, and to issue guiding opinions on such agreements and documents;
- to check the accuracy of bookkeeping by lawyers;
- to assure the overall organization and management of the Bar Association;
- to assure observance of discipline and the imposition of disciplinary sanctions;
- to administer/manage the property and budget of the Bar and to specify the amount of dues to be paid by each individual lawyer and payments into the common insurance premium for the legal profession;
- to administer the funds of the Bar's Fund; and
- to express opinions on various problems related to the field of justice and rights of lawyers in the field of defense, primarily when there is an invitation from the public authority.

ARTICLE 20:
The Bar Council may not hold meetings unless attended by more than one-half of its members. The Bar Council shall make its decisions by a majority vote.

ARTICLE 21:
Decisions of the Bar Council which have the character of rules shall be communicated to the General Prosecutor to the Appeal Court through registered mail or by direct hand delivery, with acknowledgment of receipt. Decisions imposing disciplinary sanctions or on whether to include or exclude names in or from the Bar List shall also be processed as described above. The above decisions shall be communicated to all members of the Bar Association by appropriate means.

ARTICLE 22:
Every decision of the Bar Council affecting any lawyer shall be communicated to such concerned lawyer by registered mail or hand delivery with acknowledgment of receipt.

ARTICLE 23:
Decisions made by the Bar Council on matters outside its jurisdiction or contrary to the provisions of laws or regulations in force may be rejected by the Appeal Court following a complaint from the General Prosecutor to the Appeal Court.

ARTICLE 24:
A lawyer may file a complaint against any decision of the Bar Council which causes the loss of the benefits of the profession. If the decision has not been communicated to the lawyer, that lawyer shall request the Bar Council to review the matter again before he or she makes an appeal complaint against it. The Bar Council must make its decision on such request within two months after summoning the concerned lawyer to express his or her opinion. This new decision shall be communicated to the concerned person. If no new decision is made within the above stated period, the previous decision shall be considered null and void.

ARTICLE 25:
Every denied complaint against a decision of the Bar Council shall be submitted to the Appeal Court. This complaint may be submitted directly to the Clerk's office of the Appeal Court or through registered mail with the acknowledgment of receipt. The time limit of the appeal shall be two months from the date of receipt of this information.

ARTICLE 26:
The Bar Council shall submit a detailed report of the operational activities of the Bar annually to the Minister of Justice for review and shall also publicize this report. The Bar Council shall provide statements on its financial situation and other information to the Minister of Justice if there is a request from the Ministry.

SECTION 5: PRESIDENT OF THE BAR ASSOCIATION

ARTICLE 27:
The President of the Bar Council has the following duties and responsibilities:

- Leader of the Bar;
- Presiding Officer of the General Assembly of the Bar and the Bar Council;
- Guarantor of the interests of the profession and of all members;
- Conciliator or, if necessary and upon request from the parties, Arbitrator in disputes between an individual lawyer and another lawyer or between a lawyer and a client;
- Representative of the legal profession before third persons or public authorities; and
- Representative of the Bar in lawsuits relating to the Bar, with approval of the Bar Council.

In any vote of the Bar Council, the vote of the President shall not carry special weight.

ARTICLE 28:
The President or the Bar Association may delegate any or all the powers to one or several members of the Bar Council for a specified period.

In case of unavailability, the President of the Bar Association shall be replaced by that member of the Bar Council who is the most senior in terms of age.

SECTION 6: FUND OF THE BAR ASSOCIATION

ARTICLE 29:
The Bar Fund is derived from dues paid by all members and other contributions. A special account shall be established in this Fund for providing income to lawyers who defend poor people.

This special account may receive donations or aid from private or international organizations or foreign governments provided for the defense of poor people.

All lawyers are obligated to defend poor people according to the same procedures and internal rules and in the same manner as the defense of their own clients.

ARTICLE 30:
"Poor people" are defined as those people who have no property, no income, or who receive insufficient income to support their living.

The determination of "poverty" shall be accomplished by the Chief Judge of the Courts and the Chiefs of the Court Clerks following an on-site investigation.

CHAPTER THREE: ACCEPTANCE TO ENGAGE IN THE LAWYERS' PROFESSION-BAR LIST

SECTION 1: CONDITIONS

ARTICLE 31:
A person may engage in the profession as a lawyer, provided that he or she has fulfilled the conditions hereunder:

1. Shall have Khmer nationality.
2. Shall have a Bachelor of Law degree (Licence en Droit) or a law degree declared equivalent.
3. Shall have a Certificate of Lawyer's Professional Skill. This Certificate of Lawyer's Professional Skill shall be issued by a Center for Training of the Legal Profession. The organization and the functioning of this Center shall be determined by sub-decree.
4. Shall never have been convicted of any misdemeanor or felony, nor received any disciplinary sanction or administrative penalty, such as removal from any function, or dismissal for any act contrary to honor or any act of moral turpitude. Shall not have been declared personally bankrupt by a court.

ARTICLE 32:
Neither the Certificate of Lawyer's Professional Skill nor the Bachelor of Law degree (Licence en Droit) shall be required for:

- judges who have served their profession for over 5 years and former judges who have a Secondary Certificate in Law (Certificate de la Capacité' en Droit) and have served their profession for over 2 years.

The Certificate of Lawyer's Professional Skill shall not be required for:

- those who have received a Bachelor of Law Degree (License en Droit) and who have been working in the legal or judiciary field for more than 2 years.
- those lawyers who originally had Khmer nationality and who have been registered in the Bar of a foreign country.
- those who have received a Doctorate of Law Degree.

SECTION 2: ACCEPTANCE INTO THE LEGAL PROFESSION

ARTICLE 33:
A decision by the Bar Council to accept an application to engage in the legal profession shall occur following a determination that all the conditions have been fulfilled in conformity with the specifications of this law and in view of the opinion of the General Prosecutor to the Appeal Court.

Such decision shall be communicated to the concerned person and the General Prosecutor to the Appeal Court.

The Bar Council may not decide to disapprove without first having summoned the concerned person at least 10 days in advance to be present before it to state his or her opinion. This summons shall be done through registered mail or delivered directly by hand with the acknowledgment of receipt.

Such decision of the Bar Council may be appealed in accordance with the conditions as provided for in Article 25 above.

ARTICLE 34:
Lawyers who have been accepted to engage in the legal profession shall first take a sworn oath at the Appeal Court, in the presence of the President of the Bar Association. This oath shall state as follows:

"I swear that I shall implement my profession with dignity, conscientiousness, honesty, humanity, and with an independent mind, and in observance of the Constitution and Laws of the Kingdom of Cambodia".

SECTION 3: TRAINING

ARTICLE 35:
Those lawyers whose names have just been registered in the Training List shall attend a one year training course in accordance with the procedures set forth in the Internal Rules of the Bar;
Association, except for any lawyer who has received authorization to be exempted from attending the training. The procedure for the training shall primarily consist of:

- additional training organized by the Bar Association;
- engagement in work as a real associate in a Lawyer's Office.

ARTICLE 36:
The training shall be carried out under supervision of a Lawyer assigned by the Bar Association to be the chief responsible for such training course.

ARTICLE 37:
Upon the termination of the training, the Bar Council shall make a decision to register in the Bar list based on a report of the chief responsible for the training. The Bar Council may decide to order continuing training, not to exceed one year, for a trainee who does not have sufficient competence A decision not to register the name on the Bar List shall be considered a rejection of such lawyer. A decision to refuse registration into the Bar List or onto the Continuing Training List cannot take effect without convening the concerned person in order to state his or her opinion in accordance with the conditions as set forth in the Article 33. An appeal may be made against this decision, according to the conditions stated in Articles 24 and 25.

ARTICLE 38:
Every year the Bar Council shall draw up the Bar List and the Training List and send them to the General Prosecutor and all adjudicate courts. These lists shall include:
- The names of lawyers who have been registered in the Bar List with their addresses;
- The names and the addresses of lawyers under training.

ARTICLE 39:
The order of registration of lawyers in the Bar List shall be determined according to the date when the lawyers took their oaths and the decision by the Bar Council to authorize the registration.

SECTION 4: PLACEMENT OUTSIDE OF THE LIST

ARTICLE 40:
With legitimate reason, a lawyer may request to be put outside of the Bar List for a period of 2 years maximum at a time.

ARTICLE 41:
The Bar Council shall decide to put any lawyer outside of the List if such lawyer is in a situation of incompatibility or if such lawyer is unable to practice his or her profession.

Complaints against such decisions shall be conducted in accordance with the procedures established in Article 33.

ARTICLE 42:
Any lawyer who placed outside of the List may not perform his or her profession and may not use his or her title as a lawyer and moreover he or she shall be excused from all obligations related to the profession; but still he or she shall remain under the administration of the Bar Association. The placement outside of the Bar List shall not prevent any proceedings concerning disciplinary actions.

SECTION 5: TITLE OF HONORARY LAWYER

ARTICLE 43:
The Bar Council may give the title of Honorary Lawyer to any lawyer who has ceased to practice the legal profession, after he or she has performed in this profession for at least 15 years.

ARTICLE 44:
The Honorary Lawyer remains a member of the Bar Association and may still participate in the General Assembly of Lawyers; he or she has the right to give views and attend various events.

In special cases, the Honorary Lawyer may advise clients and be assigned as a conciliator, mediator or arbitrator.

ARTICLE 45:
The Bar Council may remove the title of Honorary Lawyer when that lawyer does anything to abuse his or her honor or dignity. In this event, the procedure in the Article 33 must be complied with.

CHAPTER FOUR: PROCEDURES FOR PROFESSIONAL PRACTICE

SECTION 1: THE PRACTICE OF LAW INDIVIDUALLY OR COLLECTIVELY

ARTICLE 46:
Lawyers may practice their profession individually or within the context of a group or a Law Firm which is lawfully established.

This Firm must have a character of a civil company in which all of its members are lawyers. An Honorary Lawyer may remain as a member of his or her original Firm.

A beneficiary is a person who is entitled to receive a legacy from a lawyer who is deceased; he or she may hold a share of the business for 3 more years maximum. At the end of this 3 year period, such share of the business shall be sold to any lawyer or to the Firm.

ARTICLE 47:
Groups or Law Firms shall be governed by the Law Governing Groups and Companies; but the provisions of those regulations shall not effect the principles for the administration of the legal profession.

ARTICLE 48:
Lawyers shall be allowed to sign agreements with members of other independent (libérales)
professions in order to combine their abilities. However, such agreement should not affect the rules of the legal profession, especially the observance of confidentiality.

ARTICLE 49:
All the agreements made between a Khmer lawyer and any other Khmer lawyer, or any foreign Lawyer, or a member of any liberal profession, shall be submitted to the Bar Council for examination and approval and communicated to the General Prosecutor to the Appeal Court. In such case, the procedures specified in Article 33 apply.

SECTION 2: PROFESSIONAL AFFILIATIONS

ARTICLE 50:
A lawyer may practice the legal profession in affiliation with another lawyer.

ARTICLE 51:
A lawyer working an affiliate shall fulfill works in the name of and under the responsibility of his or her affiliates. He or she may not perform his or her works without the agreement of his or her affiliates, but he or she has full right to choose the means for his or her works. He or she may refuse any mission which he or she believes to be contrary to his or her own conscience.

ARTICLE 52:
In any case, the affiliation may not prevent a affiliate from establishing his or her personal office, or prevent him or her from respecting the obligations of the profession and the rules of the legal profession. He or she works on his or her own behalf when defending his or her clients.

Contracts of affiliation shall be prepared and sent to the Bar Council.

CHAPTER FIVE: REGULATION OF THE PROFESSION - DISCIPLINE

SECTION 1: INCOMPATIBILITY

ARTICLE 53:
The legal profession shall be incompatible with the performance of public functions and commercial businesses, whether directly or indirectly.

ARTICLE 54:
Lawyers given functions in the Royal Government, or given mandates as deputies in the National Assembly, may remain as members of the Bar Association, but shall cease to perform the legal profession until the termination of such function or mandate.

ARTICLE 55:
A lawyer who is a former government official may not intervene in defending clients against the ministry and service of the administration to which he or she was previously subordinated until five years after the date he or she resigned from this previous function.

SECTION 2: DISCIPLINE

ARTICLE 56:
The Rules of the lawyers' profession shall be specified by the Internal Rules of the Bar Association. These rules will ensure the observance by the lawyers of the principles of the oath they have taken.

ARTICLE 57:
All the activities for attracting clients, individual advertisements, or persistent unsolicited offers to clients for legal defense are prohibited.

Only advertisements made collectively are authorized. These advertisements shall be proper and shall not adversely effect the dignity of lawyers.

ARTICLE 58:
Lawyers shall maintain absolute confidentiality. Lawyers shall determine by their own conscience and with the consent of the client what issues to raise in order to defend the interests of the client.

Lawyers may not abuse the confidentiality of the profession and may not be forced to abuse the confidentiality of their professions, even before the court.

The following shall be considered as confidential: consultation, advice, and non-official documents prepared by the lawyer for his or her client, and correspondence sent between the lawyer and his or her client.

SECTION 3: DISCIPLINARY SANCTIONS

ARTICLE 59:
Any lawyer who abuses the rules of the profession or commits any act affecting the ethics or honor of lawyers shall be subject to disciplinary sanction, even if such act was committed outside the performance of his or her profession.

ARTICLE 60:
A charge shall be made either directly by the Bar Council or upon complaint from a third person or from the General Prosecutor to the Appeal Court. The Bar Council shall assign a lawyer to serve as rapporteur. The complaint shall be communicated in advance to the concerned person, who shall have access to the file of the complaint and enabled to give statements to defend himself or herself. If there is an investigation, such information shall also be communicated to the concerned person. The report shall be sent to the concerned person together with a letter of summons, and the file shall also be given to such person for examination. The letter of summons shall be sent either by registered mail with the acknowledgment of receipt, or by written notification delivered at least 15 days before the meeting takes place. The concerned person may choose a lawyer to defend him or her, but the concerned person may not be personally absent with just a delegate to represent him or her without special consideration and approval in advance based on a valid motive.

Within 2 months, if no response is made to the complaint of the General Prosecutor or of the third person, the Bar Council's failure to respond shall be considered as a rejection of

such complaint. An appeal may be made against such rejection within 2 months after the expiration of the 2 month period previously stated.

ARTICLE 61:
A decision of the Bar Council, with statement of precise reasons, shall be communicated to the concerned person and to the General Prosecutor within 15 days from the date of issuance of such decision either by registered mail or by hand delivery, with acknowledgment of receipt.

ARTICLE 62:
An appeal complaint may be filed to the Appeal Court, either by the concerned person or by the General Prosecutor within the period and procedure as set forth in Article 25. The hearing on this case of appeal complaint shall proceed in-camera, except when a contrary decision of the Appeal

Court is made following a precise request from the accused lawyer. The Bar Association is not a party in this lawsuit, but the President of the Bar shall comment and the General Prosecutor shall deliver his or her conclusions at that time.

ARTICLE 63:
Penalties for disciplinary sanctions are as follows:
- Warning;
- Blame;
- Ban from practicing the profession for a period not to exceed 2 years;
- Elimination from the Bar List or from the Lawyer's Training List or removal of the title Honorable Lawyer.

ARTICLE 64:
The penalty of banishment from the practice of law for a period of time may be suspended; but for 5 years following the declaration of suspension of this penalty, if the concerned lawyer is subject to any other disciplinary sanction, he or she shall be banned from practicing law for a period calculated by adding the previous penalty which was previously suspended to the new penalty.

ARTICLE 65:
Every penalty imposed may be supplemented with an additional penalty of banning from serving as President of the Bar Association or as a member of the Bar Council for a period not to exceed 5 years. The decision to impose a penalty shall also mention any public announcement of such penalty.

ARTICLE 66:
The Bar Council may issue orders to cease temporarily the activities of any lawyer who is charged with a criminal offense or any disciplinary sanction automatically or by complaint of the General Prosecutor to the Appeal Court. If no decision is made by the Bar Council in response to the complaint of the General Prosecutor to the Appeal Court within a period of 20 days, such complaint shall be considered to have been rejected.

ARTICLE 67:
A decision to order the temporary cessation of practice may not be made if there was a failure to summon the concerned lawyer to state his or her opinion beforehand. The

summons shall be sent through registered mail or by hand delivery, with the acknowledgment of receipt, and shall be delivered at least S days prior to the date of the meeting. An appeal may be made in accordance with the conditions as set forth in Article 62 against such temporary cessation, but such appeal may not cease/suspend the implementation of the above decision.

The General Prosecutor to the Appeal Court shall assure and monitor the application of disciplinary sanctions and temporary ceasing from function.

SECTION 4: COMPENSATION

ARTICLE 68:
Lawyers shall receive compensation according to the terms agreed upon between them and their clients and depending on the volume of work, the extent of their ability as demonstrated in the course of the work, the difficulty of the task, the result obtained, or according to an hourly rate of fees as specified in the Chart list which is to be established by the Bar Association every year. The Lawyer shall issue a receipt to the client upon receiving the compensation.

ARTICLE 69:
Any complaint about compensation outside the context of the rules of Civil Procedure may be submitted to the President of the Bar Association, who will be the arbitrator to decide thereon with the agreement of the complaining party. This decision shall be communicated to the concerned person through registered mail or a hand delivered letter with the acknowledgment of receipt. An appeal shall be made within 2 months from the date of receipt of this complaint. The appeal shall be filed with the Clerk of the Court of Appeal or sent through registered mail or by hand delivered letter with the acknowledgment of receipt. This appeal complaint shall be heard by the Chief Judge of the Appeal Court or by a person authorized by the Chief Judge of the Appeal Court.

CHAPTER SIX: ACCOUNTING - USE OF FUND - GUARANTY - INSURANCE

ARTICLE 70:
Lawyers whose names are registered in the Bar List may not use the Client's Fund, or escrow accounts kept for clients, when they are accomplishing missions for their clients. This Fund is obtained from guaranties and damages gained from winning cases. Lawyers shall keep that Client's Fund in a special account which is opened by the Bar Association, called an "Account for Settling Payments of the Bar Association."

Lawyers may not retain funds in this account for more than the necessary period for achieving works assigned by the clients. Lawyers may not deduct their due income for their works from this above fund except with the written agreement of clients.

Lawyers may take from a fund established by the client to pay for court costs and for compensating judicial assistants on behalf of the clients.

ARTICLE 71:
Lawyers may be appointed as keepers of the deposit following an agreement by the parties or by the judge. The agreement or decision on maintaining the deposit shall specify the procedures, especially for charging interest and for terminating such deposit. Funds or objects shall be retained in an account for settling payments of the Bar Association.

ARTICLE 72:
Lawyers shall have a separate accounting for their profession which is in conformity with the law and Internal Rules. Any settlement of payment using a fund or deposited object shall be processed through a separate account.

Lawyers shall present their professional books of accounts and their individual books of accounts, if any, to a Controller appointed by the Bar Council.

ARTICLE 73:
A lawyers shall demonstrate that he or she has paid his or her premium of insurance/bond through the Bar Association, to insure his or her responsibility in his or her profession and insurance for a fund and for valuables for which the lawyer has kept the deposit. Such premium of insurance/bond shall be included in the amount of contribution due to be paid by lawyers as determined by the Bar Association.

CHAPTER SEVEN: REPLACEMENT- ADMINISTRATIVE WORKS

ARTICLE 74:
Any lawyer who shall be temporarily unable to perform his or her profession may assign a replacement after receiving approval from the President of the Bar Association. In case there is no such assignment of a replacement, the President of the Bar Council shall automatically assign a replacement.

ARTICLE 75 :
A Decision prohibiting the practice of profession for a period of time or suspending the practice of the profession temporarily, or placing a lawyer outside of the Bar List shall also indicate the assignment of a lawyer for replacing and managing the lawyer' s office. If the lawyer who manages the office is occupied, the President of the Bar Association shall issue a decision assigning a replacement.

ARTICLE 76:
When a lawyer dies or ceases practicing his or her profession, the President of the Bar Association shall assign a lawyer to be in charge of proceeding with the remaining case files, to audit the books of accounts, and then to close down the office.

CHAPTER EIGHT: PENALTIES

ARTICLE 77:
Any person who violates Articles 1, 2, 3 4, 5, 6, 7, 13, 57 of this law shall be subject to a fine of 1,000,000 to 5,000,000 Riels. If such offense was committed by a foreigner, in addition to the fine such person may be also expelled from the territory of the Kingdom of Cambodia.

In case of repeated offenses, the violator shall be subject to pay double the original amount or the above fine, and in addition may also be sentenced to imprisonment from 3 to 6 months. In the above offenses, the Bar Council may act as the plaintiff in the civil action.

ARTICLE 78:
Any person who abuses Article 58 shall be subjected to punishment according to the provisions of the Criminal Law.

CHAPTER NINE: TRANSITIONAL PROVISIONS

ARTICLE 79:
The role of defending clients as lawyers in criminal cases may be fulfilled by Defenders who are not lawyers according to the Criminal Procedure in force.

ARTICLE 80:
Those who may be selected to take the examination to attend the Lawyer's Training Course are:

- those defenders who have capability to fulfill this function and who have already in fact fulfilled this function continuously for two years in connection with the provincial and municipal courts. These Defenders shall have at least two years of university studies;
- those civil servants who have been working in government service for at least 2 years and who are holders of the Certificate in Law (Certificat de la Capacité' en Droit).

Those who have a Bachelor Degree of Law (Licence en Droit) or a law degree of equivalent value shall not need to take the examination.

ARTICLE 81:
Only those who have never been condemned to imprisonment for any crime may be admitted to be registered in the list of candidates selected for attending the Lawyer's Training Course in accordance with above article.

ARTICLE 82:
The Training Course shall have a period of at least 8 months. The program and procedures of this training, as well as the program and procedures for the examination for testing the results of this training, in the event that the Bar Council has yet not been established, shall be determined by a Prakas (decision) of the Minister of Justice. Those who pass the above examination shall receive a Skill Certificate for practicing the Lawyer's Profession.

ARTICLE 83:
Those for whom a Skill Certificate for practicing the Lawyer's Profession shall not be required and who shall not need to attend the training course are:

- those who have Bachelor Degree of Law (Licence en Droit), or who have Law Certificate which is declared as the equivalent, and who have been serving in the field of Law or Judiciary so far for at least 2 years;
- those who have Doctorate of Law; and
- those judges or former judges who have been serving in the profession for at least 2 years.

ARTICLE 84:
Before establishing the Bar Association, the General Prosecutor to the Appeal Court shall have the duty to receive and examine applications for practicing the legal profession and shall convene those who have fulfilled all the conditions to take an oath in front of the Appeal Court to become lawyers with full rights and to participate in the General Assembly to create the Bar Association.

ARTICLE 85:
The General Assembly shall organize a vote under the responsibility of the lawyer who is the most senior in terms of age in order to select the President of the Bar Association and the (members of) the Bar Council.

ARTICLE 86:
One year later, a vote shall be organized to elect a new President of the Bar Association and (members of) the new Bar Council. This vote shall be cast by all the lawyers who are in the Bar List.

ARTICLE 87:
If necessary, the mandates of the initial Bar Council and that of the elected President of the Bar Association may be extended until the result of the vote for electing a new President of the Bar Association and (members of the) new Bar Council is proclaimed.

ARTICLE 88:
Without prejudice to Articles 14 and 15, those who are entitled to vote and to stand for the election as mentioned in Article 84 are those lawyers registered in the Bar List and in the Lawyer's Training list, regardless of seniority.

ARTICLE 89:
These Transitional Provisions shall be effective until 31 December 1997.

CHAPTER TEN: FINAL PROVISIONS

ARTICLE 90:
All other provisions contrary to this law shall be considered null and void.

This Law has been adopted by the National Assembly of the Kingdom of Cambodia on Thursday, 15 June 1995, during the 4th Plenary Session of the 1st Legislature.

Phnom Penh 23 June 1995.

Chairman of the National Assembly

Signature and Seal
CHEA SIM

APPENDIX TWO

CODE OF ETHICS FOR LAWYERS LICENSED WITH THE BAR ASSOCIATION OF THE KINGDOM OF CAMBODIA

The Bar Association of the Kingdom of Cambodia

CHAPTER I: PROFESSIONAL DOMICILE - SITES OF CONSULTATIONS

Article 1: Professional Domicile - Secondary Offices

The lawyer of the Bar Association of the Kingdom of Cambodia establishes his or her principal professional domicile in Cambodia.

The lawyer may establish other secondary offices in conformity with Article 2 of the law: the Article concerns establishments distinct from the principal professional domicile where the lawyer may receive clients.

Professional installations must assure the respect for the principles of dignity and independence and guaranty professional confidentiality.

The Bar Council may, at any time, verify conformity with professional regulations.

Article 2: Secondary Offices of Cambodian Lawyers

The Cambodian lawyer wishing to open a secondary office in the Kingdom of Cambodia must first obtain the authorization of the Bar Council by furnishing all details regarding the site and the anticipated modalities of practice at the secondary office.

The Cambodian lawyer wishing to open a secondary office abroad shall inform the Bar Council and request authorization to open from the host Bar.

The lawyer shall inform the Council of the Bar of the closing of a secondary office.

Article 3:Secondary Offices of Lawyers Licensed Abroad

The opening of a secondary office in Cambodia by lawyers in fulfilling the conditions of Article 6 of the law must be submitted for the authorization of the Bar Council.

The lawyer provides to the Association, in the name of that secondary office, a fee set annually by the Bar Council.

The lawyer is responsible for informing the Council of the Bar Association of the Kingdom of Cambodia of all acts of negligence or disciplinary sanctions to which he or she may be subject by his or her Bar of origin.

The list of secondary offices shall be annexed at the roster of the Association.

Article 4: Site of Reception of Clients

The lawyer shall receive his or her clients at his or her principal professional domicile or at his or her secondary office(s).

The lawyer may go to the client domicile or to any other private location.
The lawyer may not consult with the client in a public place.

Article 5: Consultation Services Outside the Office

All consultation services provided outside the office or secondary office of the lawyer must have prior authorization from the Bar Council.

CHAPTER II:
GENERAL AND MISCELLANEOUS REGULATIONS

Article 6:fundamental principles

In all circumstances, the lawyer must respect the obligations of his or her oath and the principles of conscience, humanity, and tact.
Any participation in an act contrary to the law and regulations, professional rules of conduct, and the imperatives of conscience are prohibited.

Article 7: professional confidentiality

The lawyer is absolutely bound by professional confidentiality. Confidentiality may not be waived by anyone, not even the client.
The lawyer determines, according to his or her conscience, the elements necessary to the needs of the defense.
There is no obligation of confidentiality when the lawyer have to respond to a [legal] action by his or her client, within the strict limits necessary for his or her defense.

Article 8: difficulties in the drafting of legal documents by a lawyer

The lawyer as sole drafter [of a legal document] may act on or defend its execution, except against one of the patties to the document where the lawyer's personal responsibility is at issue.
The lawyer who has agreed to draft a legal document as counsel to one of the parties may act on or defend its execution against other parties.
The lawyer as drafter or co-drafter of a legal document alone or with others may not act on or defend the authenticity or interpretation of the document when his or her intervention leads him or her to hold himself or herself out as a witness or to compromise professional confidentiality. The lawyer is also prohibited if his or her professional responsibility is at Issue.

Article 9: documents drafted by multiple lawyers

It is required of each lawyer to bring together the proper elements for his or her clients. [Each lawyer] must verify the accuracy and authenticity of the identity of persons and all references and exhibits which he or she includes and the signatures which he or she attaches.
Unless otherwise agreed, the lawyer who materially assures the creation of a legal document shall undertake the diligence and formalities necessary for its authenticity and effectiveness. He or she then directs a copy to his or her fellow lawyers to deliver to their clients.

Each lawyer is responsible to his or her fellow lawyers for the diligence and formalities for which he or she is charged for the common interest, provided that he or she has received the necessary finds.

Article 10: professional card

The lawyer proves his or her qualifications through a card delivered to him or her by the Association- 'be card must be deposited at the Association in case of resignation, omission, temporary interdiction, or provisional suspension.

Article 11: wearing of the robe

The lawyer must present him or herself in robe before judges and all kinds of legal jurisdictions, subject to contrary usage. He or she must also wear the robe at ceremonies and events of the Association.

CHAPTER III: PUBLICITY AND COMMUNICATION

Article 12: professional communication

The Association assures the functional publicity and communications of the Bar.

Article 13: prohibited canvassing and solicitations

All acts of canvassing or solicitation are prohibited to the lawyer.

Article 14:Letterhead - professional cards

The letterhead must include the following guidelines:

Family name and given name of the lawyer, or the official name of the law firm.

The notation: "Lawyer" or "Lawyer at the Bar Association of the Kingdom of Cambodia."

The professional domicile, if relevant the address of secondary offices that are regularly open, and any information necessary to remove confusion with the personal domicile.

The postal address, telephone number, and other means of communication.

Academic tides, graduate degrees, and personal honors, provided they have been proven to the Association.

The list of lawyers who are partners in a firm, associates, or collaborating lawyers.

The use of a logo is permitted.

Lawyers who practice jointly without being formally associated are authorized to use a common letterhead, so long as they do not create any confusion with a professional framework.

Article 15: media activities by lawyers

All public or media activities by the lawyer in his or her capacity [as a lawyer] are prohibited unless in strict conformity with professional obligations. Such activities require the greatest prudence.

The President must be informed and, unless impossible, consulted prior to the activities.

CHAPTER IV:
CLIENT RELATIONS

Article 16: acceptance - refusal - abandonment of assignment - independence

Unless designated by the President, the lawyer is free to accept or refuse business.

If the lawyer accepts, he or she must see the assignment through to its completion unless discharged by the client.

However, the lawyer may, for reasons relating to personal conviction, decide to terminate the assignment provided that he or she has informed the client in time to permit the client to provide for his or her interests.

To accomplish his or her assignment, the lawyer remains, while respecting the will of the client, in charge of his or her counsel, argumentation, and means of defense.

The lawyer must refuse to carry out all processes or actions contrary to rules of the profession and the imperatives of conscience.

The lawyer assures that the process remains within the framework of guaranteed assurances

Article 17: written assignment

In all matters, the lawyer must obtain from his or her client an assignment in writing.

Article 18: direct client relations

Client relations must be direct and personal. The lawyer may not accept a case from a third patty if he or she is not personally at liberty to enter into relations with the client whose interests are at issue.

Derogation from this rule is permitted when the lawyer intervenes as correspondent for another lawyer.

Article 19: multiple clients

If the lawyer is retained by multiple clients for the same case or process, the lawyer is prohibited from favoring the interests of any one of them. The lawyer informs the parties of the situation.

The lawyer may not advise, assist, represent, or defend multiple parties if a conflict of interest arises between them.

If such a conflict arises while the lawyer is or was counsel to multiple parties, the lawyer may not represent the interests of one of the parties until after he or she has advised the others while remaining under the strict obligation to compromise neither tact nor professional confidences.

Article 20: former clients

In legal matters, the lawyer who has counseled, assisted, or represented a party may not, in the same matter or a connected matter, intervene on behalf of an adverse patty.

In all cases, the lawyer may not intervene against a party for whom he or she was previously counsel, except under the strict measures imposed by obligations of professional confidentiality, independence, and tact.
These provisions apply to all lawyers practicing within the same professional framework as well as their collaborators and employees.
Lawyers who are parties to an agreement to pool resources may, with the agreement of their respective clients, and subject to the obligations of professional confidentiality, counsel, assist, or represent panics having conflicting interests.

Article 21: detained clients

The lawyer must scrupulously guard against providing his or her client with any means to escape the normal path of justice or to falsify the conduct of the preliminary investigation.
The lawyer is prohibited from passing to his or her client, or from delivering to the outside of the prison, objects, exhibits, letters, or verbal communications unless authorized by the investigating judge (in the case of provisional detention) or the penitentiary authority (if the client is serving a specific sentence).

Article 22: remuneration - fees

A prior agreement may be concluded determining either a fee schedule or the method of establishing remuneration.
In case of disagreement, the President may be designated as arbiter by the parties. In this case, the President shall establish the rules of arbitration specifying the necessary dates of the proceedings. The President shall issue his or her award within six months following his or her appointment.

Article 23: end of assignment

The lawyer returns to the client, upon request, a statement of outlays, expenses, and fees.
If the assignment consisted of the drafting of a legal document, the lawyer remits to each original signatory party respectively the entire assignment, returning as well all documents verifying the completion of the legal and regulatory formalities.
The lawyer returns, without delay, the materials for which he or she was responsible, with no ability to exercise the right to retention. The lawyer thereby discharges himself or herself.

CHAPTER FIVE:
RELATIONSHIP WITH JUDGES

Article 24: relations with judges

The lawyer who appears for the first time before a judge presents himself or herself to the judge.
The lawyer preserves for the judges, in independence and dignity, the respect due to their position.
The lawyer observes the procedural rules and practices of the jurisdiction. He or she is strictly prohibited from engaging in disloyal and disruptive conduct,

especially with regard to objections. The lawyer has the right to express all that which he or she deems useful to the interests of his or her client.
In case of conflict with a judge, the lawyer may seek the intervention of the President.
Problems arising among lawyers, outside the context of procedural regulations, give rise to the mediation of the President.

CHAPTER VI:
RELATIONS WITH OTHER LAWYERS AND MEMBERS OF RELATED PROFESSIONS

Article 25: general and miscellaneous regulations
All interactions among lawyers shall occur in a spirit of brotherhood, propriety, and courtesy.
Subject to the interests of his or her client, the lawyer must abstain from all acts which may be prejudicial to other lawyers.
In particular, the lawyer shall notify the opposing lawyer in advance of all requests for dismissal, as well as the initiation of a new proceeding, subject to contrary requirements imposed by the interests of the client. The lawyer advises the opposing lawyer of the measures which he or she has determined.
The lawyer must avoid late notifications and communications and return without delay exhibits delivered in the original. In all cases, he or she may not return them to the client.
Meetings and encounters are arranged by mutual agreement according to the convenience of each party. In principle, they take place at the office of the older lawyer.
The ranking among fellow lawyers is one of equality except for the President who has priority.
All conflicts between fellow lawyers are submitted to the President.
Article 26: legal action
The President shall receive prior notice of all legal actions undertaken by a lawyer against another lawyer, a judge, or another member of the legal profession or legal field.
Article 27: correspondence among lawyers
All written and verbal exchanges between lawyers are, by their nature, confidential. Correspondence between lawyers may not, in any case, be confiscated or presented to the court, or be used to violate confidentiality.
The following &e not confidential:
A letter serving as a procedural document,
A letter marked "official" which delivers an offer or non confidential documents,
An exchange of letters marked "official" constituting an agreement, or the signature of an agreement between lawyers within the bounds of their assignments.

These letters and documents may make no reference to exchanges or prior matters considered confidential.

In case of violation of the regulations defined above, the President guarantees the essential principles of the profession and assures respect for the code of ethics.

In his or her relations with foreign lawyers, the lawyer must, before exchanging confidential information, assure himself or herself of the existence, in the country in which the foreign lawyer practices, of rules that permit the assurance of the confidentiality of correspondence and, in the negative, ask his or her client whether the client accepts the risk of exchanging non confidential information.

Article 28: substitution of a lawyer

The lawyer who receives the offer of a client or a case must verify that no other lawyer has been previously engaged.

The lawyer who agrees to replace a fellow lawyer or to intervene alongside the fellow lawyer must, in all diligence, alert the fellow lawyer in writing and inquire as to the expenses and fees due to him or her. The lawyer shall strive to obtain them for him or her.

The abdicating lawyer must respond, without delay, and send the particulars of the case which he or she does not have the right to retain.

The succeeding lawyer may take effective control of the case only after payment of the other lawyer, subject to the agreement of the latter or authorization from the President. In the event of a dispute over reclaimed fees, the President is informed and may request consignment.

The succeeding lawyer announces his or her intervention to the counsel of the other parties and, if necessary, the competent judicial authority.

When the lawyer so notified intends to reserve his or her response, the lawyer informs the lawyer requesting the delivery of the file. The notified lawyer is responsible for announcing his or her position within one month. In default, he or she is considered to have renounced the case.

Until notification of acceptance, the lawyer previously chosen, designated or committed is not released. The notified lawyer is prohibited from all involvement beyond the examination of the file and the reception or visit of the client. The performance of one or more other professional acts constitutes acceptance.

Any divergence from these rules may justify, upon the decision of the President, the personal responsibility of the succeeding lawyer for the payment of the other lawyer.

Article 29: correspondent lawyer - ministerial authorities

The lawyer intervening as a correspondent for a fellow lawyer is personally responsible and responsible to the client for the accomplishment of his or her assignment, if he or she has received all the necessary elements.

Except in case of necessity, the lawyer may not contact the client directly except with the approval of the lawyer responsible for the case.

The lawyer presents his or her requests for provisions and remuneration through the intermediation of his or her fellow lawyer and submits the requests for approval.

The lawyer who confers an assignment on a fellow lawyer is personally responsible for the payment of expenses, salary, and fees, provided that they have been requested within an appropriate time.

Article 30: unrepresented adverse party

Prior to any action, the lawyer may, wit the assent of his or her client, contact the adverse party to pursue an amicable solution.

On such occasions, he or she must avoid all presentations that are excessive, disloyal, or contrary to tact and dignity. The lawyer must invite the adverse party to go through a lawyer selected by the party.

In no case may the lawyer meet with the adverse party outside the presence of the party's lawyer. If the party intends not to be represented, the lawyer may receive the party with his or her own client or alone with the assent of the latter.

Prior to any discussion, the lawyer reminds the adverse party of the possibility of being represented.

Article 31: represented adverse party

The lawyer may not establish relations with another person whom he or she knows to be represented by a fellow lawyer except in the presence of the latter or with his or her agreement.

Unless otherwise agreed beforehand, no meetings may occur except in the presence of the interested patties and their counsel.

Article 32: meetings - assemblies

The lawyer who anticipates holding a meeting, either contentious or not, must inform the other participants in advance, either directly or through his or her client.

Article 33: third parties and witnesses

Within the framework of a legal proceeding, and in the case and conditions established by the rules of procedure, the lawyer may establish relations with a third party to invite him or her to voluntarily produce documents under his or her possession.

In the absence of a favorable response, the lawyer directs the problem to the judge.

The lawyer must abstain from meeting a potential witness and from influencing in any way his or her testimony.

CHAPTER VII:
RELATIONS BETWEEN THE LAWYER AND THE ASSOCIATION

Article 34: general provisions

The lawyer of the Bar of the Kingdom of Cambodia is a member of the Association.

The Association places its services at the lawyer's disposition and furnishes him or her its support and assures his or her protection.

The Association represents lawyers, manages the collective duties of the Bar, in particular defense counsel and access to justice.

Through his or her conduct, every lawyer is responsible for the image of the Bar, the authority of the President and the efficiency of the Bar Council.

Article 35: assignment conferred by the association

The lawyer must fulfill with diligence and punctuality the assignments and joint services conferred on him or her by the Association.

Article 36: requirement to respond to the president

The lawyer is required to respond without delay to the inquiries or injunctions of the President or his or her delegates.

Article 37: actions taken against the lawyer

The lawyer who is the object of a legal action for liability or penal sanctions relating to his or her professional practice or susceptible to compromising that practice must immediately inform the President.

Article 38: dues

Thee dues to the Association are due before the end of the first trimester of the civil year. The dues must be paid within the fixed time period.

APPENDIX THREE

Cambodian Code of Judicial Conduct

Proposed

The following rules apply to all judges and any other persons holding positions of any type in any court.

1. A first violation of any rule shall result in a suspension without pay for a period of time determined by the Supreme Council of the Magistracy, dependent on the severity of the offense.

2. A second violation shall result in permanent disqualification from all judicial office or other employment in the Supreme Council of the Magistracy.

3. In addition, any person who receives any money or other thing of value in violation of these rules shall pay a fine to the Ministry of Justice equal to three times the amount received.

4. A judge or other court staff who knows of any violation of these rules by any person must report that violation immediately. Failure to do so shall be treated as a knowing and willful participation in the violation.

5. A judge or other court staff must respect and observe the law at all times. The conduct and manner of a judge or other court staff must promote public confidence in the integrity and impartiality of the judiciary.

6. A judge or other court staff may not accept any money, gift, bequest, favor, loan or thing of value from anyone, apart from his/her salary. A judge or other court staff may not permit any family member to accept any money, gift, bequest, favor, loan or thing of value from anyone, apart from his/her salary. Any such offer must be reported immediately and in full detail to the Supreme Council of the Magistracy.

7. A judge or other court staff must disqualify him/herself from any matter in which a party or lawyer appears who has at any time had a business or personal association with the judge or other court staff.

8. A judge or other court staff shall not initiate, permit, or consider private communications made to the judge or other court staff outside the presence of all of the parties concerning a pending proceeding. Any such contact must be reported immediately to the Supreme Council of the Magistracy.

9. A judge or other court staff must not use the office to advance personal business interests or those of others.

10. A judge or other court staff must not allow activity as a member of an organization to cast doubt on the judge or other court staff's ability to perform impartially.

11. A judge or other court staff must avoid financial and business dealings that interfere with the proper performance of judicial duties, or exploit the position of the judge or other court staff.

12. A judge or other court staff must disqualify him/herself from any matter about which the judge or other court staff has received any information whatsoever from any party or lawyer before its filing. Any such contact must be reported immediately to the Supreme Council of the Magistracy.

13. A judge or other court staff may not participate in any political party.

14. A judge or other court staff must not practice law for compensation.

15. A judge or other court staff must dispose promptly of the business of the court.

16. A judge or other court staff must abstain from public comment about a pending or impending proceeding in any court.

17. A judge or other court staff must take or initiate appropriate disciplinary measures against a judge or other court staff or lawyer for unprofessional conduct of which the judge or other court staff may become aware.

18. A judge or other court staff must report the date, place, source and nature of any and all income received by the judge or other court staff and amount received. The judge or other court staff's report shall be made at least annually and shall be filed as a public document with the Supreme Council of the Magistracy.