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Wonji Kerper

Changmin Lee

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KOREAN CODE OF ETHICS FOR ATTORNEYS

Wonji Kerper[†] & Changmin Lee^{††}

Abstract: In 2009, Korea implemented a law school educational system, which not only changed the legal education system, but the legal landscape as a whole. This has led to rapid growth in the number of attorneys. Although the increased number of attorneys has resulted in lower barriers to accessing justice, it has also brought the unintended consequence of cut-throat competition. With the number of disciplinary actions rising by four-fold in the last three years, the current version of the Korean Code of Ethics for Attorneys is certainly a step in the right direction but may not be enough to strengthen attorneys' legal ethics in such an unprecedented time in Korean legal history. In light of the heated discussion in Korea regarding legal ethics, this comment, following the accompanying translation of the Korean Bar Association's Code of Ethos for Attorneys, first, analyzes how the Korean legal education system and legal ethics education has changed over time. Second, to provide context on how the current Code of Ethics reached its current form, this comment reviews the history of and recent amendments to the Code of Ethics. Lastly, it considers next steps for the Code of Ethics and how attorneys can have a better sense of legal ethics in the long term. This comment is for those interested in comparative legal ethics, Korean legal ethics, and the Korean legal system.

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I. INTRODUCTION

The Korean legal market is undergoing a drastic change. With the implementation of a three-year law school system (similar to that of the

[†] 2020 J.D. candidate at the University of Washington School of Law. I would like to thank my co-author Changmin Lee for his help and support by providing immense expertise in the Korean legal system. I would also like to thank the *Washington International Law Journal* Editorial Board for their continuous support and invaluable edits.

^{††} 2020 LL.M. candidate at the University of Washington School of Law, candidate for Ph. D. degree at Seoul National University Graduate School Department of Law, and an attorney at law in Daeryook&Aju LLC., South Korea. I would like to thank my co-author Wonji Kerper for her enthusiasm and efforts for this project. I would also like to thank the *Washington International Law Journal* Editorial Board for encouraging me to participate in this meaningful project.

United States) in 2009,¹ the number of attorneys increased from 12,607 in 2011 to over 30,000 in 2019.² The recent increase in the number of attorneys is unprecedented, considering that it took one hundred years to reach 10,000 lawyers.³ Although having more attorneys results in easier access to justice for clients at a cheaper cost, there are negative consequences as well.⁴ For instance, due to the increase in attorneys, the number of cases that an average attorney retains has decreased from 2.73 cases per lawyer in 2008 to 1.2 cases in 2018,⁵ which has led to cut-throat competition.⁶ In anticipation of an increase of attorneys, since 2007, the Korean Bar Association (“KBA”) started focusing more on modernizing the attorneys’ code of ethics and professional responsibility.⁷

Legal ethics and professional responsibility are debated now more than ever in the Korean legal community. Thus, in hopes of providing more context to English speakers interested in this topic, this comment, in addition to the above translation of the KBA Code of Ethics provides relevant context to the Korean legal ethics landscape. This comment first explores changes in the Korean legal education system and how Korean attorneys are regulated,

¹ *Law School Doip 10nyeon, Jonjae Yiyoo-wa Mokjuck Dwe-sae-gyeo-ya* [Ten Years After Implementation of Law Schools – Must Remember the Purpose of Law Schools], THE LAW JOURNAL (May 11, 2018), <http://www.lec.co.kr/news/articleView.html?idxno=47554>.

² See Sangyeon Lee, *Byeonhosa Deungrok 3manmyeong Dolpa . . . 5 nyeonsae 1 manmeong Neul-eo* [Total Number of Registered Lawyers Surpasses 30,000 . . . 10,000 Increase in 5 Years], THE LAW JOURNAL (Dec. 18, 2019), <http://www.lec.co.kr/news/articleView.html?idxno=715432>; Jangho Lee, *Daehanbyeonhyup “Yeon-gan Byeonhosasu 1000 myeong-euro Gamchukhaeya”* [Korean Bar Association States “Must Reduce the Number of Attorneys to 1000 per Year”], LAWTIMES (Mar. 26, 2018), <https://m.lawtimes.co.kr/Content/Article?serial=141534>.

³ Kisuck Bae, *Byeonhosa Gan-ui Beobjo-yunri-ae Gwanhan Bigyo-beobjeok Yeongu* [The Comparative Legal Study on the Legal Ethics Between Lawyers], 55 L. REV. INST. L. STUD. BUSAN NAT’L U., no. 4 2014, at 339, 340 (S. Kor.).

⁴ See Shinyoung Lee, *Byeonhosa 2manmyeong Sidae . . . MuhanGyeongjaengsok Yanggeukhwa Dduryeot*, [20,000 Lawyers . . . Fierce Competition Results in Polarization], YONHAP NEWS (Sept. 24, 2014), <https://www.yna.co.kr/view/AKR20140924163400004>.

⁵ Jinjoo Kim, *Byeonhosa Wigisidae, ‘Han-umool-ro Geukbokhaneun Jeonmoon Byeonhosadeul* [Lawyers Try to Overcome Saturated Market by Becoming Specialized], HANKOOKILBO (Sept. 13, 2019), <https://www.hankookilbo.com/News/Read/201909101872377731>.

⁶ See Baeksang Kim, *Busan Byeonhosa Jeung-ga-yul Jeonguk Yilwi, Saengjon Gyeongjaeng Nae-molrin Geudeul, ‘Beob’jeongshin boda ‘Yeong-up’ae Moksum Geonda* [Busan’s Attorney Increase Rate is Number One in the Country, Thrown to Competition, Prioritizing ‘Business’ Over ‘Legal Ethics’], BUSAN TIMES (Jan. 11, 2018), <http://www.busan.com/view/busan/view.php?code=20180111000388>.

⁷ Geunjik Chae, *Byeonhosa-ui Yunri* [Ethics of Attorneys], 374 IN-GWON-GWA JEONG-UI, [HUMAN RIGHTS AND JUSTICE], 50, 83 (2007) (S. Kor.), <https://www.koreanbar.or.kr/pages/data/view.asp?teamcode=374&category=&page=1&seq=6134&types=11&searchtype=&searchstr=>

and then reviews the Code of Ethics for Attorneys in more detail with explanations of the recent amendments.

II. BACKGROUND AND CONTEXT

A. *The Change in the Legal Education System*

This section explores how the Korean legal education system changed, what effect the change has had on the legal market, and, consequently, how it changed the discourse of legal ethics.

Prior to the implementation of the law school system, anyone who wanted to be a lawyer in Korea first had to pass the highly competitive National Judicial Examination (“NJE”), which occurred once every year. Regardless of whether the candidate had graduated from an LL.B (an undergraduate law degree), anyone who had taken certain amount of law-related classes could sit for the NJE.⁸ Upon passing the examination, a candidate could become a lawyer only after graduating from a rigorous two-year Judicial Research and Training Institute (“JRTI”) established by the Supreme Court.⁹ In the 1960s, only thirty people passed the NJE per year.¹⁰ In the 1970s, only eighty people passed the NJE per year.¹¹ In the 1980s, it increased to three hundred per year.¹² Depending on a candidate’s final total score (similar to a GPA) at the JRTI, a majority (almost two-thirds of the class pool) become judges or prosecutors, and only about a hundred started their first legal careers in practicing law in the private sector.¹³ By 2007, the number of practicing lawyers was 8,174, leaving only one lawyer for every 6,000 citizens.¹⁴ This left the citizens with little access to justice.¹⁵

⁸ See Sabeobsihumbeob [Act on National Judicial Examination], Act No. 6436, Mar. 28, 2001, art. 5(1), *repealed by* Act No. 9747, Dec. 31, 2017 (S. Kor.); Sabeobsihumbeob sihaengryung [Enforcement Decree of the Act on National Judicial Examination], Presidential Decree No. 17181, Mar. 31, 2001, art. 3, *repealed by* Presidential Decree No. 28920, May 29, 2018 (S. Kor.).

⁹ Dohyun Kim, *Recent Reforms in the Legal Profession and Legal Education*, in LAW AND SOCIETY IN KOREA 150, 152 (Hyunah Yang ed., 2013).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 153.

¹⁵ *Id.*

In 2007, Korea commenced a major reform in legal education by establishing law schools, similar to those in the United States, through the Act on the Establishment and Management of Professional Law Schools (“Law Schools Act”).¹⁶ The ultimate purpose of the Law Schools Act was to increase access to higher quality legal services.¹⁷ Law schools approved by the Ministry of Education first opened in March 2009.¹⁸ In 2012, the first National Bar Examination (“NBE”) took place. Only applicants who graduated from an approved law school could sit for the NBE.¹⁹ 1,451 people passed the first NBE. Since then, the number of attorneys has increased, with 1,600 lawyers passing the NBE in 2017 alone.²⁰ By 2014, the increase in licensed attorneys had resulted in there being one lawyer for every 2,769 citizens.²¹

Although citizens now have lower barriers to accessing justice, the increased number of attorneys has created fierce competition among lawyers. Through ten years of the law school system, 10,884 additional attorneys have been licensed.²² In December 2019, 30,000 attorneys registered with the KBA.²³ With this unprecedented increase, there have been corresponding changes in the legal ethics education as described in detail below.

¹⁶ Beobhakjeonmoondaehakwon seolchi.yoonyeong-ae gwanhan beobyul [Act on the Establishment and Management of Professional Law Schools], Act No. 8544, Jul. 27, 2007, amended by Act No. 11212, Jan. 26, 2012, (S. Kor.), *translated in* KOREA LEGISLATION RESEARCH INSTITUTE ONLINE DATABASE, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38870&lang=ENG.

¹⁷ *Id.* art. 2.

¹⁸ *Id.* art. 5(2).

¹⁹ See generally Jootaek Lee, *The Crisis and Future of Korean Legal Education: Compared With the American Legal Education System*, 21 KOREA U. L. REV., Mar. 2017, at 41, 48 (detailing the Korean law school system and the NBE in comparison to the U.S. system and its bar examinations).

²⁰ Sungjin Lee, *Je 6 hwe Byeonhosa siheom, 1600 myung Hapgyeok-ui jeonmaleun* [Sixth National Bar Examination, Full Story Behind 1,600 Passing Number], THE LAW JOURNAL (Apr. 14, 2017), <http://www.lec.co.kr/news/articleView.html?idxno=44083>.

²¹ Haesoo Cho, *4wolmada Doe-pulyi Dweneun Byeonhosa soo Nonjaeng* [Controversy on Number of Attorneys Repeat Every April], SISA JOURNAL (Apr. 17, 2018), <https://www.sisajournal.com/news/articleView.html?idxno=174871>.

²² JoongTak Sung, *Comprehensive Evaluation and Improvement of Attorney Qualification Examination System*, 63 KYUNGPOOK NAT’L U. L.J. 21, 22 (2018) (S. Kor.).

²³ *3manbeonjjae Deungrok Byeonhosa Ginyeomsik jinhaeng* [Ceremony for the 30,000th Registered Attorney], KOREAN BAR ASSOCIATION NEWSLETTER (Dec. 18, 2019, 10:51 AM), <https://koreanbar.or.kr/pages/news/view.asp?teamcode=&page=7&seq=10083&types=3&category=&searchtype=&searchstr=>.

B. *Legal Ethics Education at the JRTI and in Law Schools*

Legal ethics education in Korea is developing alongside the law school system. At the JRTI, legal ethics were taught starting in 1981.²⁴ In 1988, Seoul National University (“SNU”) had its first law and ethics class, but it was not a class created specifically for those taking the NJE, but an elective open to all SNU undergraduate students.²⁵ SNU started teaching a course on professional responsibility specifically for LL.B students in 1999.²⁶ However, legal ethics education was not effective in promoting serious attention to ethics because the primary focus for LL.B students was simply to pass the NJE, which did not have a portion on legal ethics.²⁷

In 2009, legal ethics classes in the new law schools became mandatory.²⁸ At this point, some professors stated that there were not yet adequate textbooks to teach legal ethics for a mandatory class.²⁹ The first legal ethics exam, which is a part of the NBE, was conducted in 2010.³⁰ Some criticized the mandatory legal ethics classroom curriculum as merely focusing on memorizing rules to pass the legal ethics exam rather than reviewing real-world disciplinary cases and possible scenarios that may arise

²⁴ Pyung Shin, *Beobjo Yoonri Eo-tteokgae Gareu-chilkka* [A Speculation on How to Teach the Professional Responsibility in South Korean Law School], 28 KYUNGPOOK NAT’L U. L.J. 1, 4 (2008) (S. Kor.).

²⁵ *Id.* at.4–5.

²⁶ Seoul Beobdae, *Beobjo-in yoonri kyoyuk gwamok shinsul* [Seoul National University, College of Law Department of Law, New Class on Attorney Ethics Education], CHOSUN ILBO (Jan. 29, 1999), <https://m.chosun.com/svc/article.html?sname=news&contid=1999012970347>.

²⁷ See Symposium, *Beobcheolhak Gyoyukgwa Beobjo Yoori* [Education on Legal Philosophy and Legal Ethics], LAWTIMES (July 4, 2001), <https://m.lawtimes.co.kr/Content/Opinion?serial=5336>; In-dahl Han, *Beobhakjeonmoondaehakwon ae-seo-ui Beobjoyoonri Gyoyukbangbeob* [Research on the Way of Education for Professional Responsibility in the Law School], 35 KOREAN J. L. & SOC’Y 201, 202 (2008) (S. Kor.).

²⁸ *Beobhakjeonmoondaehakwon seolchi. Woonyeong-ae gwanhan beobyul sihaengryung* [Enforcement Decree on the Establishment and Management of Professional Law Schools], Presidential Decree No. 20302, Sept. 28, 2007, amended by Presidential Decree No. 29813, June 11, 2019, art. 13(1) (S. Kor.).

²⁹ Sangsoo Lee, *Beobjoyoonri Gyoyuk-ui Naeyonggwa Bangbeob* [Teaching Legal Ethics in Law School], 10 SOGANG BEOBHAK [SOGANG L. REV.] 87, 88, n.2 (2008) (S. Kor.); see Sanghee Han, *Beobjoyoonri, Mu-eot-eul Eo-ttukgae Gareuchilgeot-in-ga* [Legal Ethics as a Subject of Law School Education: What and How to Teach?], 35 KOREAN J. L. & SOC’Y 73, 84 (2008) (S. Kor.).

³⁰ Sangyeon Lee, *2010nyeondo Beobjoyoonrisiheom 10. 9il sihaeng* [Legal Ethics Exam to Be Conducted on Oct. 9, 2010], THE LAW JOURNAL (Dec. 31, 2009), <http://www.lec.co.kr/news/articleView.html?idxno=17024>.

in practice.³¹ Further evidence of the lack of rigor in this system was evidenced by the fact that the legal ethics exam is not difficult to pass in Korea. Ninety-six percent of the test takers passed in 2015, ninety-eight percent passed in 2016, and in 2018 and 2019 ninety-five percent of test takers passed.³² The Ministry of Justice has been criticized in the past for making the exam too easy, thus, making it a mere formality to pass the bar.³³

With the continuous change in the legal market, such as the increase in the number of attorneys, law schools are trying to strengthen education on legal ethics. For instance, in 2007, the KBA formed a committee to reform legal ethics in anticipation of the establishment of the law school system.³⁴ In addition, the Association of Korean Law Schools, comprised of twenty-five law schools in Korea, executed an agreement with the Legal Ethics and Professional Conduct Council (“LEPCC”), an organization established under the Attorney-at-Law Act in 2007, to advise on and monitor legal ethics of lawyers,³⁵ with the goal of strengthening legal ethics education through mutual cooperation.³⁶

III. OTHER CODES REGULATING LEGAL ETHICS

Although attorneys typically include prosecutors and judges,³⁷ there are specific canons that apply to prosecutors and judges due to the different roles they play in the judiciary system. Because the focus of this comment is

³¹ Sungmin Wang, *Yoonjinsoo Shinim Beobjoyoonrihyup-wiwonjang “Jeongwanyaeuwu.Beobjo Broker Gamsi Joongjeom”* [*Yoonjinsoo, the New Chair of Legal Ethics and Professional Conduct Council States “Will Focus Monitoring on Privilege of the Post and Legal Brokers”*], LAWTIMES (Sept. 2, 2019), <https://m.lawtimes.co.kr/Content/Article?serial=155424>.

³² Yeungsang Suh, *Olhae Beobjoyoonrisiheim Hapgyeokryul 95.05% . . . Jaknyeongwa Biseut* [*This Year 95.05% Passed the Legal Ethics Exam . . . Similar to Last Year*], LAWTIMES (Sept. 18, 2019), <https://m.lawtimes.co.kr/Content/Article?serial=155840>.

³³ Cf. Sungjin Lee, *Ol Beobjoyoonrisiheim Hapgyeokryul 59.4% . . . Lawschool ‘chung-gyeuk’* [*Legal Ethics Exam at a Passage Rate of 59.4% . . . Shocks Law Schools*], THE LAW JOURNAL (Sept. 20, 2017), <http://www.lec.co.kr/news/articleView.html?idxno=45535> (stating that reflecting criticism from the legal industry, the Ministry of Justice made the eighth Legal Ethics exam harder than usual).

³⁴ See *infra* Section V.B.ii.

³⁵ See Byeonhosabeob [Attorney-at-Law Act], Act No. 63, Nov. 7 1949, amended by Act No. 15974, Dec. 18, 2018, art. 88 (S. Kor.), translated in KOREA LAW TRANSLATION CENTER, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=49340&lang=ENG [hereinafter Attorney-at-Law Act]; Sungjin Lee, *Law School “Beobjo yoonri gyoyuk Ganghwa”* [*Law School to Strengthen Legal Ethics Education*], THE LAW JOURNAL (Dec. 9, 2013), <http://www.lec.co.kr/news/articleView.html?idxno=31178>.

³⁶ Sungjin Lee, *supra* note 35.

³⁷ Pyung Shin, *supra* note 24,24 at 3.

on the Code of Ethics for attorneys, the following sections will only briefly describe the other canons.

In addition to different codes and canons that regulate attorneys, prosecutors, and judges, the LEPCC is currently working on an Ethics Charter that would apply to all attorneys, prosecutors, and judges.³⁸ The first draft of the Ethics Charter that was released to gather public opinion had six clauses, including, for example, requirements that “[l]awyers shall follow their conscience and spirit of the law and do not comprise to unjust power[.]”³⁹

A. *Canon of Ethics for Prosecutors*

The Ministry of Justice first enacted the Canon of Ethics for Prosecutors in 1999.⁴⁰ In 2007, major amendments increased the Canon’s number of articles from seventeen to a total of twenty-three.⁴¹ Along with the amendment, the Ministry of Justice published a Guideline on the Canon of Ethics for Prosecutors to ease interpretation of the Canon.⁴² The Canon of Ethics for Prosecutors outlines values such as confidentiality, prohibition on having another for-profit job, and more.⁴³ Additionally, the duties of prosecutors, such as representing the public interest and maintaining

³⁸ Jiyeon Park, *Guknae Cheo-um ‘Beobjoyoonri hunjang’ Mandeunda*, [Drafting the First ‘Legal Ethics Charter’], LAWTIMES (Mar. 10, 2014), <https://m.lawtimes.co.kr/Content/Article?serial=83023>.

³⁹ Soonhyun Lim, *Beobjoyoonri Hunjang Choan Gonggae . . . Jeongwanyaewu pyohyeon ‘gyeonhae cha’* [Legal Ethics Charter Draft Released Public . . . Different Opinions Regarding Privilege of the Post], LAW TIMES (Feb. 5, 2015), <https://m.lawtimes.co.kr/Content/Article?serial=90800>.

⁴⁰ See *Geomsayoonrigangryung Jeonmyeon Gaejeong* [Canon of Ethics for Prosecutors Revised], JEONGCHAEK BRIEFING [POLICY BRIEFING] (Mar. 2, 2007), <http://www.korea.kr/news/pressReleaseView.do?newsId=155180470>.

⁴¹ *Id.*

⁴² See *Geomsayoonrigangryung Wunyeongjichim* [Guideline on the Management of Canon of Ethics for Prosecutors], *Beobmuboo yegyu* [Ministry of Justice Regulation] No. 768, Mar. 2, 2007 (S. Kor.).

⁴³ See *Geomsayoonrigangryung* [Canon of Ethics for Prosecutors], *Beobmuboo hoonryung* [Ministry of Justice Regulation] No.404, Dec. 29, 1998, amended by Ministry of Justice Regulation No. 581, Mar. 2, 2007 (S. Kor.); Joon Park, *Beobgwan. Geomsa Jinggyesarae-ae Gwanhan Yeongu* [A Study on Disciplinary Cases of Judges and Prosecutors], 55 SEoul L. J., No. 2, 2014, at 613–94 (S. Kor.) (for more information on the legal ethics of prosecutors).

political neutrality, are outlined in the Prosecutors' Office Act.⁴⁴ Prosecutors are also regulated under the Act on Discipline of Prosecutor.⁴⁵

B. *Canon of Ethics for Judges*

Korean judges must abide by Canon of Ethics for Judges, which was enacted in 1995.⁴⁶ There are in total seven articles, which focus on the independence of the judiciary, the dignity of a judge, impartiality, political neutrality, and more.⁴⁷ Judges are also regulated under the Act on Discipline of Judges.⁴⁸

IV. ATTORNEYS' LEGAL ETHICS

This section focuses specifically on attorneys' legal ethics with an explanation on what entity regulates attorneys' ethics, followed by a description on how the Code of Ethics has changed from its inception until its latest amendment in 2017.

A. *Who Regulates?*

Disciplinary actions for attorneys are regulated under the Attorney-at-Law Act.⁴⁹ A disciplinary action can be initiated through several different routes. The chief prosecutor of a district prosecutors' office or the president of any local bar association may file an application for the commencement of a disciplinary proceeding with the president of the KBA.⁵⁰ Any client or

⁴⁴ Geomchalcheongbeob [Prosecutors' Office Act], Act No. 81, Dec. 20, 1949, *amended by* Act No. 15522, Mar. 20, 2018, art. 4 (S. Kor.).

⁴⁵ *See* Geomsajinggyebeob [Act on Discipline of Prosecutor], Act No. 438, Feb. 15, 1957, *amended by* Act No. 16312, Apr. 16, 2019 (S. Kor.).

⁴⁶ *See* Beobgwanyoonrigangryung [Canon of Ethics for Judges], Supreme Court Decree No. 1374, Jun. 23, 1995, *amended by* Supreme Court Decree No. 2021, May 25, 2006.

⁴⁷ *Id.*; *see also* Hyunjung Song, *Miguk-ui Beobgwanyoonrigyubeom-ae Gwanhan Yeongu* [Judicial Ethics and the Importance of Appearance in the United States], 123–31, JUDICIAL POLICY RESEARCH INSTITUTE (2018) (drawing comparisons to the Korean Canon of Ethics for Judges).

⁴⁸ *See* Beobgwanjinggyebeob [Act on Discipline of Judge], Act No. 381, Jan. 20, 1956, *amended by* Act No. 15250, Dec. 19, 2017 (S. Kor.). <http://www.law.go.kr/LSW/lSc.do?tabMenuId=tab18§ion=&eventGubun=060101&query=%EB%B2%95%EA%B4%80%EC%A7%95%EA%B3%84%EB%B2%95#undefined>.

⁴⁹ Attorney-at-Law Act art. 90. The Attorney-at-law Act was first enacted in 1962 and has been continuously amended as a source of law that regulates qualification, registration, and disciplinary actions of an attorney, as well as the establishment of law offices, local bar associations, the Korean Bar Association, and the Legal Ethics and Professional Conduct Council.

⁵⁰ *Id.* art. 97-2(1)–(2).

other legal representatives may also petition for commencement of a proceeding to the president of the local bar association.⁵¹ If the president of the local bar association declines the request or does not take an action in three months, the petitioner may re-petition the request to the president of the KBA.⁵² To initiate a disciplinary proceeding, the president of the KBA must request that the Attorney Disciplinary Committee of the KBA commence a disciplinary action.⁵³ Both the KBA and the Ministry of Justice have disciplinary committees. The Attorney Disciplinary Committee of the KBA reviews the initial complaint and makes a decision on a disciplinary action in accordance with the rules laid out in the Rules on Attorneys Disciplinary Action.⁵⁴ If dissatisfied with the decision by the Attorney Disciplinary Committee of the KBA, the subject of a disciplinary action may appeal to the Attorney Disciplinary Committee of the Ministry of Justice.⁵⁵ If dissatisfied with the decision by the Ministry of Justice disciplinary committee, the subject of a disciplinary action may file a lawsuit with the Administrative Court as prescribed by the Administrative Litigation Act within ninety days from the date on which he or she is notified of the decision.⁵⁶

There are five types of disciplinary actions: (1) permanent disqualification; (2) disqualification; (3) suspension for three years or less; (4) penalty of KRW 30 million or under; and (4) reprehension.⁵⁷ There are several grounds for disciplinary actions, such as conduct in violation of the Attorney-at-Law Act, conduct in violation of the KBA or local bar association rules, and damaging one's dignity as a lawyer (regardless whether such conduct is committed on or off duty).⁵⁸ Permanent

⁵¹ *Id.* art. 97-3(1).

⁵² *Id.* art. 97-3(3).

⁵³ *Id.* art. 97.

⁵⁴ *Id.* art. 95; see *Byeonhosa Jingga Gyuchik* [Rules on Attorneys Disciplinary Action], KOREAN BAR ASSOCIATION, http://www.koreanbar.or.kr/pages/board/law_view.asp?teamcode=&category=3&page=2&seq=8480&types=6&searchtype=&searchstr= (for a full text of the rules).

⁵⁵ Attorney-at-Law Act art. 96, 100(1).

⁵⁶ *Id.* art. 100(4).

⁵⁷ *Id.* art. 90.

⁵⁸ *Id.* art. 91(2).

disqualification is a rare measure and was administered for the first time in 2018.⁵⁹

Some scholars and practitioners state that the KBA's Code of Ethics is theoretically just a "code" and not a rule that can be a definite source for disciplinary action under Article 91(2) of the Attorney-at-Law Act.⁶⁰ However, given that there is no other binding rule that regulates the legal ethics of attorneys, the KBA's Code of Ethics for Attorneys has a practical effect and is indeed used as a legal source to bring discipline actions against attorneys.⁶¹ In relation to disciplinary actions, there have also been recent developments and discussions about how to make disciplinary actions more effective for lawyers and the legal community.⁶² The details of this debate are beyond the scope of this comment.

B. Korean Bar Association Code of Ethics for Attorneys

i) Pre-2014

The KBA Code of Ethics for Attorneys was promulgated on June 30, 1962.⁶³ The 1962 version, which had been worked on since September 1958, contained a preamble, five canons, and six chapters with fifty-two articles.⁶⁴ Unfortunately, the main portion of the 1962 version (the fifty-two articles) is

⁵⁹ Sooyeon Park, *Byeonhyeop Jinggye-wi, Bujangpansa Chulshin Byeonhosa 'Yeung-gu jaemyeong' [KBA Attorney Disciplinary Committee 'Permanently Disqualifies' an Attorney in Busan]*, LAWTIMES (Oct. 1, 2018), <https://m.lawtimes.co.kr/Content/Article?serial=146930>.

⁶⁰ Kisuck Bae, *supra* note 3 at 342 - 343; Injin Chung, *Byeonhosa Yoonrijangjeon ae Gwanhan Gwan-gyeon [Opinion on the Code of Ethics for Attorneys]*, LAWTIMES (Jan. 12, 2009), <https://m.lawtimes.co.kr/Content/Opinion?serial=44782>.

⁶¹ Kisuck Bae, *supra* note 3, at 343-44.

⁶² See Jangho Lee, *Byeonhosa Jinggylae Suwi Orakgarak . . . Guchaejeok Jeokyongkijun Seewoeya, [Attorney Disciplinary Standard Unclear . . . Disciplinary Standard on Attorneys Must Be More Robust]*, LAWTIMES (Apr. 15, 2019), <https://m.lawtimes.co.kr/Content/Article?serial=152159>; Son Changwan, *Jinggylae Yoohyeong-eul Joongshim-euro-han Miguk-ui Byeonhosa Jinggylaejaedo-ae Gwanhan Yeongu [Lawyer Disciplinary System in the U.S. Focusing on Legal Sanctions: Implications and Improvement Proposals on Lawyer Disciplinary System in Korea]*, 68 KOREAN LAWYERS ASS'N. J., No. 4, 2019, at 529-64. (S. Kor.)

⁶³ *History*, KOREAN BAR ASSOCIATION, <http://koreanbar.or.kr/eng/pages/about/history.asp> (last visited Apr. 12).

⁶⁴ Hyeongyeon Park, *Byeonhosa Yoonri Jangjeone-ui Uhjaewa Ohneul-I [Yesterday and Today of Attorneys Code of Ethics-I]*, KOREAN BAR NEWS (May 4, 2014), <http://news.koreanbar.or.kr/news/articleView.html?idxno=10794>.

lost and has not be found because the KBA Hall moved several times.⁶⁵ The five canons in the 1962 version were:⁶⁶

1. Attorneys shall realize justice and care for freedom.
2. Attorneys shall seek truth and respect ethics.
3. Attorneys shall respect the Constitution and the laws and shall not tolerate any conduct that goes against the Constitution and the laws.
4. Attorneys shall not fawn on power and shall not lust for wealth.
5. Attorneys shall endeavor to train themselves, learn the spirit of cooperation, and contribute to the country.

In 1973, there was a minor amendment that increased the number of canons from five to seven, the current number.⁶⁷

After 1973, there were no amendments for the next twenty years. A 1993 amendment, after twenty years, made limited changes in the organization and wording of the articles but did not alter their substance.⁶⁸ Through the reorganization, the articles increased in number from thirty to forty-eight and were separated into five chapters.⁶⁹

In 2000, a new amendment was implemented to conform the Code of Ethics to the amended version of the Attorney-at-Law Act.⁷⁰ This required significant changes in the substance of the text. For instance, the 2000 amended Code urged attorneys not to cooperate with a client in any illicit conduct (and if during the course of representation the attorney determines that the client's conduct amounts to an illegal conduct, the attorney should immediately stop aiding the client) and to provide a number of hours of

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Hyeongyeon Park, *Byeonhosa Yoonri Jangjeone-ui Uhjaewa Ohneul-2* [Yesterday and Today of Attorneys Code of Ethics-2], KOREAN BAR NEWS (May 12, 2014), <http://news.koreanbar.or.kr/news/articlePrint.html?idxno=10828>.

⁶⁹ *Id.*

⁷⁰ *Id.*

work pro bono.⁷¹ Other changes, such as recommending that attorneys decline work if the opposing counsel is a family member (unless the client consents) or if a new matter involves an adverse party from a previous matter or of substantial similarity, were added.⁷² In addition, an amendment was added requiring that, if a law firm is composed of more than one partner, different partners may not represent clients directly adverse to each other without the parties' consent.⁷³

ii) Post-2014

On May 23, 2007, the KBA formed a Special Committee on the Amendment of Code of Ethics for a major reform of the Code of Ethics for Attorneys.⁷⁴ After seven years of discussion, the KBA released the amended Code of Ethics on February 24, 2014.⁷⁵ They stated that due to significant changes in society and the economy in general, as well as the drastic changes of the legal environment with the implementation of the law school system, the increase in the number of attorneys, and the increase in size and internationalization of law firms due to expanding legal market, circumstances warranted a major amendment to the Code of Ethics.⁷⁶ The KBA reported that it hopes that the amended Code of Ethics, which is more in line with the changes in the legal system, will foster attorneys who advocate for basic human rights and internalize the realization of social justice as a personal mission.⁷⁷

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*; see also *Gaejeong Byeonhosabeob Sihaeng-ae Jeu-eumha-yeo* [Around the Time of Amending Attorney-at-Law Act], LAWTIMES (July 1, 2000), <https://m.lawtimes.co.kr/Content/Case-Curation?serial=2329>

⁷⁴ *Byeonhosa Yoonrijangjeon Gaejeong Teukbyulwiwonhoe Gyujeong* [Rules on Special Committee on the Amendment of Code of Ethics], KOREAN BAR ASSOCIATION (Apr. 16, 2007), https://www.koreanbar.or.kr/pages/board/law_view.asp?teamcode=&page=16&seq=2137&types=6&category=3&searchtype=&searchstr=

⁷⁵ Daehanbyeonhyup, "*Byeonhosa Yoonrijangjeon Gaejeong*" [KBA "the Korean Attorneys Amendment of Code of Ethics"], News Press, KOREAN BAR ASSOCIATION (Feb. 25, 2014), <https://www.koreanbar.or.kr/pages/news/view.asp?teamcode=&page=21&seq=1606&types=3&category=&searchtype=&searchstr=>

⁷⁶ *Id.*

⁷⁷ *Id.*

Several significant changes in the 2014 version of the Code of Ethics are worth noting.⁷⁸ First, the language changed from “should” to “shall,” requiring a more active obligation from attorneys.⁷⁹ Second, “*Gyuchik*” (which can be translated as a rule or regulation) sections within the Code of Ethics changed to “*Gyuyack*” (which can be translated as rule, regulation, agreement, or normative prose).⁸⁰ Although it is difficult to catch the difference of the meaning in English, the KBA has stated that the new language implies that KBA members voluntarily abide by the code of ethics as an agreement.⁸¹ Third, the Code of Ethics was reorganized into five chapters, with new and old articles alike reshuffled to fit under relevant chapters.⁸² Fourth, the KBA modernized the language and grammar and further aligned articles with the language of the Attorney-at-Law Act.⁸³ Fifth, KBA added an article regarding protection of personally identifiable information, responding to the enactment of the Personal Information Protection Act in 2011.⁸⁴

Sixth, new articles prohibiting the exertion of power on the court and investigative institutions were added.⁸⁵ Their language was added to eradicate “privilege of the post,” which has been a continuous ethical problem in the Korean legal system.⁸⁶ “Privilege of the post” refers to preferential treatment given to those who retired as prosecutors or judges and started their second career as a lawyer by returning to practice.⁸⁷ It has

⁷⁸ 2014NYUNDO JEONG-GI CHONGHOE GYUCHIK GAEJUNG NAEYONG [REPORT ON THE AMENDMENT OF THE KBA RULES THROUGH THE FEBRUARY 24, 2014 REGULAR GENERAL MEETING], KOREAN BAR ASS'N (Feb. 25, 2014), available at <https://www.koreanbar.or.kr/pages/board/view.asp?teamcode=&category=&page=3&seq=5299&types=10&searchtype=&searchstr=> [hereinafter General Meeting Report].

⁷⁹ *Id.* at 3.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 4.

⁸³ *Id.*

⁸⁴ *Id.*; See Attorneys Code of Ethics, art. 12.

⁸⁵ GENERAL MEETING REPORT, *supra* note 78, at 4, 28–29 (KBA states that this article is based on the American Bar Association Model Rules of Professional Conduct Articles 3.2 and 3.3).

⁸⁶ GENERAL MEETING REPORT, *supra* note 78, at 4, 29. See generally Taein Park, “*Jeon-gwan Chulshin Byeonhosa Sanghan-ga . . . Dasi Keojin ‘Jeongwanyaewu’ wae*” [Attorneys who were former judges in demand . . . reigniting ‘privilege of the post’], JOONANGILBO (Sept. 13, 2018), <https://news.joins.com/article/22967675>.

⁸⁷ Jonghwan Eun & Kwangho Jung, *Beobjogye Jeongwanyaewu-ae Daehan Insikyohyeong-ui Tamsaek: Q-Methodology-reul Jungshim-eu-ro* [Exploring Various Deep Underlying Perceptions of

been reported that clients believed that the prosecutor or the judge would often accommodate the retired prosecutor or the retired judge by ruling in favor of them as a courtesy, making them more desirable to clients, despite the expensive legal fees.⁸⁸ This is a controversial issue in Korea that requires constant monitoring by the legal community.⁸⁹

Seventh, a new section about ethics on government agencies was added to ensure that an attorney does not use confidential information learned while working on government affairs. Also, an attorney should not accept a case in which a party is a government agency that an attorney is concurrently involved with, if it will hinder impartiality.⁹⁰ Eighth, a section that applies to law offices was added to address problems of legal ethics that may arise in a law firm context.⁹¹

Ninth, a section on in-house counsels was added.⁹² Initially, the KBA wanted to include an article requiring in-house counsel who learns of illegal conduct within the organization to take appropriate actions by reporting the conduct to the leader or executives of an organization.⁹³ However, the Korea In-house Counsel Association (“KICA”) released a statement opposing the new language.⁹⁴ KICA opposed the suggested language because it could insinuate that all companies are corrupt.⁹⁵ KICA pointed out that having

Preferential Legal Treatment of Former Judicial Officials: A Focus on the Q-Methodology], 53 KOREAN J. PUB. ADMIN., no. 2, 2015, at 237, 241 (2015) (S. Kor.).

⁸⁸ Taein Park, *supra* note 86.

⁸⁹ See, e.g., Sungan Cha, *Haewae-ui Jeongwanyaewu Gyujaesaryewa Guknae Gyujaebang-an Mosaek (1) – Twaejikbeobgwan-ui Byeonhosa Gae-up-ae Daehan Haewae Gyujaesarye* [Comparative Study on Former Judges Returning to Practice and the Implications for Korea (1) – Examples of Overseas Regulations], JUDICIAL POLICY RESEARCH INSTITUTE, (2019) and Sungan Cha, *Haewae-ui Jeongwanyaewu Gyujaesaryewa Guknae Gyujaebang-an Mosaek (2)- Hawae Gyujaesarye-reul Todaerohan Twaejikbeobgwan-ui Beyonhosa Gaeup Gyujaebang-an* [Comparative Study on Former Judges Returning to Practice and the Implications for Korea- (2) How to Regulate Former Judges Returning to Practice in Korea], JUDICIAL POLICY RESEARCH INSTITUTE (2019) for more discussion on the issue of Jeongwanyaewu.

⁹⁰ GENERAL MEETING REPORT, *supra* note 78, at 4, 30; see Attorneys Code of Ethics art. 41–42.

⁹¹ GENERAL MEETING REPORT, *supra* note 78, at 5, 31–34; see Attorneys Code of Ethics art. 46–50.

⁹² GENERAL MEETING REPORT, *supra* note 78, at 5, 34–35; see Attorneys Code of Ethics art. 51–52.

⁹³ Byungil Kim, *Gieopbiri Gobal Uimu Jinachyeu . . . Sanae Byeonhosa Banbal* [Obligation to Report Company Corruption is Too Extreme . . . In-House Counsels Oppose], KOREA ECONOMIC DAILY (Feb. 24, 2014), hankyung.com/society/article/2014022335761.

⁹⁴ *Id.*

⁹⁵ Byunghoon Yang, *Sanae Byeonhosa Gieopbiri Gobal Uimu, Beobjogye Ilbu Banbalro Gyeolguk Sackjae* [Obligation on In-house Counsels to Report Company Corruption, Deleted as a Result of

such language without adequate protection for whistleblowers was irresponsible.⁹⁶ Ultimately, the amendment was adopted without the suggested language.⁹⁷

Lastly, the 2014 version now allows attorneys to receive contingency fees in advance of the result of the case by deleting an article that used to prohibit advanced contingency fees.⁹⁸ Before the deletion of this article, some clients had refused to pay contingency fees after winning a case because they no longer had the incentive to pay their attorney.⁹⁹ To eliminate this problem, the KBA now allows attorneys to collect contingency fees in advance of the litigation.

The 2014 amendments, despite taking seven years to complete, were criticized for not having adequate forums for public comments.¹⁰⁰ Since the 2014 amendments, there have been only minor changes to the Code of Ethics in 2016 and 2017.

V. NEXT STEPS AND CONCLUSION

The KBA will likely continue to amend the Attorneys Code of Ethics as the legal market continues to expand. The 2014 version is already outdated because the Special Committee started working on the amendment in 2007, just as the Law Schools Act was enacted. In addition, with the increase in the number of attorneys and industry competition, disciplinary actions are on the rise. From 2011 to 2014 there were a total of 190

Opposition], KOREA ECONOMIC DAILY (Feb. 25, 2014), <https://www.hankyung.com/society/article/2014022469001>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ GENERAL MEETING REPORT, *supra* note 78, at 26; Hyejin Jang, *Byeonhosa Seonggongbosu Naenyunbuteo Seonsu-ryeong Heoyong* [Advanced Collection of Contingency Fees Are Allowed from Next Year], LAWTIMES (Sept. 13, 2013), <https://www.lawtimes.co.kr/Legal-News/Legal-News-View?serial=78303>. Contingency fee arrangements are only allowed for civil matters. *See* Supreme Court [S. Ct.], 2015Da200111, July 23, 2015 (en banc) (S. Kor.).

⁹⁹ GENERAL MEETING REPORT, *supra* note 78; Hyejin Jang, *supra* note 98.

¹⁰⁰ *See* Jiyeon Park, *Jeongwanbyeonhosa Gyujae Ganghwa Jomun Shinseul* [New Articles on Strengthening Prohibition on Privilege of the Post], LAWTIMES (Feb. 6, 2014), <https://www.lawtimes.co.kr/Legal-News/Legal-News-View?serial=82725>.

disciplinary actions.¹⁰¹ In contrast, from 2015 to 2018 the total reached 690.¹⁰²

The KBA and the legal community will have to respond to the continuing increase in the number of attorneys by thinking of various ways to reinforce legal ethics. For instance, the KBA could develop “comments” to the ethics codes similar to the American Bar Association Model Rules on Professional Responsibility to better guide attorneys in the right direction when gray areas arise in practice.¹⁰³ For now, several available guidelines for attorneys include the disciplinary case booklet compiled by the KBA every four years, which lists all disciplinary actions; the “Research on the Code of Ethics for Attorney,” written by the legal research center of the Seoul Bar association;¹⁰⁴ and a few law school textbooks on legal ethics. Another much needed change would be a restructuring of the legal ethics exam to make it more scenario- and case-focused.¹⁰⁵ In connection with such a case-focused exam, law schools should develop a more rigorous curriculum to better educate future lawyers, with classes focusing on case discussion.¹⁰⁶ Lastly, the KBA, which currently requires attorneys under the age of 65 to take a mandatory two hour legal ethics education course every two years¹⁰⁷, should consistently and frequently update the content of legal ethics education to track the rapidly changing Korean legal market.

¹⁰¹ *Jinggyesaraejip Je 6 Jip (2011-2014 Jinggye-gyeoljungsarye Jungshim)* [Compilation of Disciplinary Actions, Vol.6 (Focusing on disciplinary actions from 2011 to 2014)], KOREAN BAR ASSOCIATION (Dec. 2015) at 2.

¹⁰² *Jinggyesaraejip Je 7 Jip (2015-2018 Jinggye-gyeoljungsarye Jungshim)* [Compilation of Disciplinary Actions, Vol.7 (Focusing on disciplinary actions from 2015 to 2018)], KOREAN BAR ASSOCIATION (Dec. 2019) at 2.

¹⁰³ See, e.g., *Rule 3.3. Candor Toward The Tribunal – Comment*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_3_candor_toward_the_tribunal/comment_on_rule_3_3/ (last visited Apr. 13, 2020).

¹⁰⁴ Hyeonsoo Son, *Seoulbyeonhwoe Beobjeonguwon Yeonguchongseo 4gwon it-ta-ra balgan* [Seoul Bar Association Legal Research Center Publishes Four Research Books], LAWTIMES (Jan. 16, 2017), <https://m.lawtimes.co.kr/Content/Article?serial=107326>.

¹⁰⁵ Cf. Hyeoseong Ahn, *2020nyeon Je 11hwoe Beobjeoyoonrisiheom 8wol 1il Shilsi* [11th Legal Ethic Exam to be held on Aug. 11, 2020], THE LAW JOURNAL (Feb. 5, 2020), http://www.lec.co.kr/news/article_View.html?idxno=716535 (stating that law students thought the 10th legal ethics exam was difficult because it included more scenario-type questions that they were not used to studying).

¹⁰⁶ Sungmin Wang, *supra* note 31.

¹⁰⁷ *Byeonhosa Uimu Yeonsoo Guide* [Attorneys Mandatory Training Guideline], KOREAN BAR ASSOCIATION (Oct. 20, 2016, 11:36 AM), <https://www.koreanbar.or.kr/pages/news/view.asp?page=1&seq=7363&types=1>.

This comment serves as an additional resource to those who research comparative legal ethics, Korean legal ethics, and the Korean legal system by providing a starting point for analysis. In addition to the recent developments in this field, scholars should pay close attention to future actions taken by the KBA to further develop and enforce the Code of Ethics. Likewise, other jurisdictions that face changes in their legal education system can learn from Korea's experience modernizing its legal ethics to correspond to the societal changes.

