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ETHICAL CODE FOR ITALIAN LAWYERS

PREAMBLE

A lawyer enjoys complete liberty, autonomy and independence in the exercise of his profession in order to safeguard the rights and interests of the individual, ensuring the knowledge of the laws and contributing to the implementation of a legal system designed to achieve the ends of justice.

In the exercise of his profession a lawyer shall take care that the laws conform to the principles of the Constitution and the Convention for the protection of human rights and the laws and regulations of the European Community, shall guarantee the right of liberty and safety as well as the inviolability of the right to representation (1), and ensure that trials and hearings conform to proper procedures.

Ethical rules are essential for the realization and the protection of these values.

Title I - GENERAL PRINCIPLES

ART. 1. (Applicability). - The ethical rules shall be applied to all lawyers and trainees [praticanti] (2) with regard to their

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In lieu of the term « deontological rules », I have used the more common American term « ethical rules ». I have also used the masculine pronoun throughout since that is the more literal translation of the Italian practice.

(1) I have translated the terms *difesa* and *difensore* to refer to legal representation of a private party generally, and not just to representation of the accused in a criminal proceeding (where American lawyers would use the term « defense counsel ») or to representation of a defendant in a civil proceeding (where we would use the term « defendant's counsel »). In other words, I have assumed the terms refer to counsel for either plaintiffs or defendants, in either civil or criminal matters., '

In the preamble, I have translated this phrase to refer to the right to counsel or the right to be represented in the legal system, and not just to the right to what we would call a « defense lawyer ».

(2) At several points, I have left in Italian phrases, rather than try to translate a peculiarly Italian concept into English. Here, the term refers to those recent law school graduates who must train in a lawyer's office for some time before they can take the bar exam.

professional activity, their relationships with other members of the legal profession, and their relationships with third parties.

ART. 2. (*Disciplinary power*). - The disciplinary organs of the legal profession have the power to impose adequate sanctions that are proportionate to the violation of ethical rules. Sanctions must be adequate to the seriousness of the events involved and must take into consideration any repeated misconduct as well as the specific circumstances which have contributed to the violation.

ART. 3. (*Voluntariness of an action*). - A disciplinary violation results from the voluntary failure of the lawyer to comply with his duties, even if that failure results from omission or default.

The disciplinary organs shall evaluate the entirety of the accused person's conduct.

If several accusations are raised in the course of the same proceeding, only one sanction shall be imposed.

ART. 4. (*Professional activity abroad and foreign lawyers' activity in Italy*). - If a lawyer is allowed by the legal provisions in force to exercise his profession abroad, he shall respect the ethical rules of the country where he is carrying out his activity.

Likewise, if a foreign lawyer is allowed to exercise his profession in Italy, he shall respect the Italian ethical rules.

ART. 5. (*Duties of integrity, dignity and decorum*). - The lawyer shall base his conduct on respect for the duties of integrity, dignity and decorum.

I. The lawyer shall be subjected to disciplinary proceedings if he is chargeable with intentional conduct [*comportamento non colposo*] that violates criminal law; however, the disciplinary organ is entitled to evaluate the violation committed independently from the results of any criminal proceeding.

II. A lawyer may also be subjected to disciplinary proceedings for actions that do not concern his activity as a lawyer if those actions affect his professional reputation or if they compromise the image of the legal profession.

III. A lawyer investigated or accused in criminal proceedings may not accept or continue the defense of another party in the same proceedings.

ART. 6. (*Duties of honesty and integrity*). - The lawyer must carry out his professional activity with honesty [*lealtà*] and integrity [*correttezza*] (3).

I. A lawyer may not initiate a legal action or take actions in a judicial proceeding in bad faith or due to gross negligence.

ART. 7. (*Duty of loyalty*). - The lawyer has the duty to carry out his professional activity with loyalty [*fedeltà*] to, his client.

I. Any action of a lawyer who knowingly behaves contrary to his client's interests is a violation of disciplinary rules.

ART. 8. (*Duty to carry out the profession with proper care*). - The lawyer must carry out his professional duties with care.

ART. 9. (*Duty not to disclose confidences and secrets*). - It is a lawyer's principal and fundamental duty as well as his right to preserve confidences and secrets with regard to the services carried out and with regard to information which has been given to him by his client or of which he has become aware in circumstances relating to his representation (4) of the client.

I. The lawyer shall also preserve the confidences and secrets of former clients in judicial proceedings and otherwise.

II. A lawyer must also preserve confidences and secrets of a person who seeks advice from him, even if the lawyer does not agree to represent that person.

(3) I have translated *correttezza* as « integrity ». The term seems to have the connotation of « courtesy », « civility », « rectitude », and perhaps *educazione* in the Italian sense of preparation or background that reflects moral and intellectual values. *Lealtà* seems not be « loyalty », which might be closer to *fedeltà*, but « honesty » - that is the term I have used to translate *lealtà* here.

(4) As noted above, I have used the word « representation » in lieu of « mandate » or « employment ».

III. The lawyer shall assure that professional secrets are respected by his colleagues and employees and by all persons who collaborate with him in carrying out his professional activity (5).

IV. There are exceptions from this general rule in those cases where the disclosure of information concerning a lawyer's client becomes necessary:

- a) for effectively carrying out his representation of his client;
- b) for preventing his client from committing any particularly serious crime [*reato di particolare gravità*];
- c) for proving facts in a controversy between a lawyer and his client;
- d) in proceedings concerning the way in which the client's interests have been represented.

In any case such disclosure must be limited to, those facts strictly necessary to achieve the limited purpose set out above.

ART. 10. (*Duty to exercise independent professional judgment*). - In the exercise of his professional activity a lawyer has the duty to preserve his independence and to defend his liberty from any external pressure or restrictions.

I. A lawyer must not take into account any interests relating to, his personal life.

II. A lawyer must not undertake commercial activities or activities of *mediazione* (6).

III. It is a violation of the disciplinary rules for a lawyer to make an agreement with persons relating to their activity of recovering debts [*credz'ti*] for the account of third parties.

(5) In this section, I have translated the word *collega* as « colleague », since it seems to refer to other lawyers with whom a lawyer is actually associated in some way. In several other places, I have translated *collega* as « another lawyer », since the term occurs in the context of dealings not only with « colleagues » in the American sense but also in the context of relations with opposing counsel or another lawyer with whom a lawyer is not associated. See, for example, Art. 22 (II).

(6) *Mediazione* is not « mediation » in the sense American lawyers use it, but rather a particular type of activity that is covered by Sections 1754-1765 of the Civil Code and is more like being a broker or a person who brings two parties together and thus facilitates a commercial agreement.

ART. 11. (*Duty to act as counsel*). - The lawyer must provide representation to a client if the judicial authorities ask him to do so in compliance with the applicable laws.

I. A lawyer who has been appointed counsel by the court [*difensore d'ufficio*] must inform the client, if possible, that the client has the right to select defending counsel of his own choice [*difensore di fiducia*] and he must also inform the client, in case he intends to request payment, that counsel appointed by the court must be remunerated in compliance with law.

II. It is a violation of the disciplinary rules to refuse without justification to act as appointed counsel [*gratuito patrocinio*] or to request payment from the client for such service.

ART. 12. (*Duty to represent the client competently*). - A lawyer shall not accept employment if he knows that he is not in a position to carry out the representation competently.

I. A lawyer must inform his client of any circumstances that may impair his ability to carry out the employment requested, evaluating the particular demands and complexity of each case and whether it may be appropriate to associate another lawyer in the representation.

II. If a lawyer accepts a professional employment, he is considered competent to handle the matter undertaken.

ART. 13. (*Duty to be professionally up to date*). - It is a lawyer's duty to keep his professional preparation up to date, maintaining and improving his knowledge with particular regard to those areas in which he usually practices.

I. The lawyer realises his continuing training by individual studies and by participating in cultural initiatives in the legal field and in the practice of law.

ART. 14. (*Duty to act truthfully*). - Declarations made in judicial proceedings regarding the existence or non-existence of objective facts which are a specific element for the judge's decision [*che siano presupposto specifico per un provvedimento del magistrato*] and with which the lawyer is directly acquainted must be true.

I. A lawyer may not deliberately introduce false evidence into the trial. In particular, an attorney shall neither put on record nor introduce declarations of persons concerning facts which the lawyer knows to be untrue.

II. A lawyer is obliged to mention rulings already obtained or requests for rulings already rejected when seeking a ruling arising out of the same factual situation [*in medesima situazione di fatto*].

ART. 15. (*Duty to fulfill fiscal obligations and pay social security contributions*). - A lawyer must comply with his duties concerning taxes and his social security contributions.

I. In particular, a lawyer must pay regularly and in a timely fashion contributions due to organs of the legal profession [*organi forensi*] and to the social security institution [*ente previdenziale*].

ART. 16. (*Duty to avoid incompatibility*). - A lawyer has the duty to avoid any situations of incompatibility which may prevent him from maintaining his enrolment in the Law List [*albo*]. In case of any doubt he shall request an opinion from the Bar Council [*consiglio dell'ordine*] (7).

I. It is a disciplinary violation to seek to enroll in the Law List while a situation of incompatibility exists without revealing that incompatibility, even if the situation of incompatibility is later eliminated.

ART. 17. (*Information on professional activity*). - A lawyer may honestly and truthfully inform people about his professional activity, respecting the dignity and decorum of the profession and the duties of secrecy and prudence.

The information shall be provided respecting the following rules.

(7) « Incompatibility » is a concept that does not exist in the American legal profession. In civil law countries, it is not uncommon for professionals like lawyers to be precluded by statute from participating in certain activities that are deemed incompatible with the exercise of a profession. In Italy, these include among other things most commercial activities.

I. As to the means the information is provided through: A) the following are allowed

- usual means (letters, business cards, plates);

- informative publication (brochures, circular letters) which may be sent also by mail to selected addressees (excluding the possibility to submit questionnaires or to allow prepaid responses);

- professional books, lists of lawyers, legal magazines, inventories and newsletters containing legal information (for instance up-dating of laws and the jurisprudence);

- relationships with the press (as provided for by article 18 of the Ethical Code for Italian lawyers);

- websites and networks for data communication (internet), provided for that they are owned by the lawyer or by a law firm or corporations of lawyers, within the limit of information and after having given notice to the Bar Council. As to sites which are already existing, the lawyer is obliged to give notice to the Bar Council of which he is member within 120 days.

B) the following are forbidden: - television and radio;

- newspapers (daily and periodical publications) and in general any advertisement;

- unusual means of diffusion and which are contrary to the decorum (distribution of booklets or letterhead or leaflets to the general public or to addressees without distinction by putting them into the letterboxes or leaving them in public places or distributing them in restaurants and bars or on windscreen wipers or in hospitals, prisons and similar, by advertising posters, testimonials, etc.);

- sponsorships;

- telephone calls to introduce the lawyer and visits at home which have not been specifically requested;

- the use of internet to offer services and advise free of charge, both on one's own behalf or on the sites of third parties.

C) The following is allowed if previously approved by the Bar Council (with regard to the modality and final purposes foreseen):

- seminars and conferences organised directly by law firms.

II. As to the contents of the information:

A) the following data is allowed and may be indicated:

- necessary personal data (name, address, also web address, telephone or fax numbers and e-mail address, date of birth and information concerning the professional education, photographs, foreign languages known, articles and books he published, teaching activity, decorations, as well as anything else pertaining to the person within the limits of the exercise of his/her professional activity;

- information referring to the law firm (members, name of founder(s), even if dead, the principal activities carried out; number of members, subsidiaries, opening hours);

- the indication of a logo;

- the indication of a quality certificate (any lawyer who wishes to mention a quality certificate will have to file with the Bar Council the proof of the certificate in force as well as the complete data of the certifying body and the field of application of the certification officially recognised by the State).

B) Further is allowed the use of internet and the web-site to offer legal advice, respecting the following obligations:

- to indicate personal data, VAT number and the Bar the lawyer is member of;

- to expressly declare to respect the ethical code for lawyers reproducing the text or specifying the way or means which allow to find the text or to consult it;

- to indicate the responsible person;

- to specify the details of a possible insurance policy, with coverage referred also to services on-line and to indicate the maximum coverage;

- to indicate the professional tariffs in force to fix the fees.

C) The following is forbidden:

- to indicate any data which concerns third parties;

- to indicate the names of clients (such prohibition is valid also in case the clients should agree with the publication);

- to indicate special qualifications (with the exception of those cases foreseen by law);

- to state prices for each individual service (it is forbidden to advertise that the first consultation is free of charge);
- to indicate the percentages of the cases won or to praise ones merits;
 - to indicate the lawyer's individual turnover or that of the law firm;
 - to promise the recovery of debts;
- to offer in general services (with regard to the provisions under article 19 of the Ethical Code of the Italian Lawyers). III. A lawyer may list, with the names of other lawyers in his office, the name of a deceased lawyer who was a member of that law office, on the condition that the latter has expressly agreed to such a listing during his life-time or made a testamentary disposition to that effect, or if his heirs agree unanimously.

ART. 18. (*Relationships with the press*). - In his relationship with the press and other media a lawyer must maintain balance and moderation in issuing statements and giving interviews, out of respect for the duty of discretion and confidentiality towards his clients and te, avoid competitive behavior towards other lawyers.

I. With the consent and in the interest of his client, an attorney may reveal information te, the press and other media if such information is not protected by the secrecy of investigation [*che non siano coperte dal segreto di indagine*].

II. A lawyer violates the ethical rules if he tries to gain publicity through indirect contributions to articles in the press; if he tries to call attention to his activity or successful results of his cases; if he makes use of his clients' names; if he offers unsolicited professional services; or if he maintains relations with the press or other media solely for the purpose of obtaining personal publicity.

ART, 19. (*SolicZtation of clients*). - A lawyer is forbidden te, offer professional services to third parties and in general to carry out any activity to promote contacts with clients through agents or any other illegal means.

I. A lawyer shall not pay fees, commissions or any other remuneration to another lawyer or any other person as compensation for the introduction of a client.

II. A lawyer violates the disciplinary rules if he offers free gifts or services to third parties, or if he makes payments or promises advantages in order to obtain legal employment.

ART. 20. (*Prohibition against using unsuitable and insulting expressions*). - In addition to the requirements of any provision of civil or criminal law, a lawyer must, in dealing with lawyers, judges, opposing parties, and third parties, avoid using unsuitable and insulting expressions in court pleadings or documents and in his professional activity in general.

I. Claims of provocation or retaliation for another person's insulting comments, or the fact that insults were mutual, do not excuse a violation of ethical rules.

ART. 21. (*Prohibition against carrying out professional activity without the appropriate title or using titles which one does not have*). - A lawyer must be enrolled in the Law List to provide judicial or extra-judicial legal assistance or advice or to use any legal title.

I. It is a violation of the ethical rules to use a professional title which one does not have or to carry out legal activity without the title appropriate to that activity or during a period of suspension. Any other lawyer who makes such irregular activity possible shall also be responsible for such a violation.

Title II - CONTACTS WITH OTHER LAWYERS

ART. 22. (*Contacts with other lawyers in general*). - A lawyer's contacts with other lawyers must always be based on honesty [*lealtà*] and integrity [*correttezza*].

I. A lawyer shall reply promptly to another lawyer's request for information.

II. A lawyer may not, without specific reasons, refuse to bring a claim against another lawyer if he thinks that the claim is well-founded or if he thinks that the other lawyer's position is groundless. However, the lawyer taking such a case shall inform the Bar Council as soon as possible about the legal steps, criminal and civil, which are to be taken against the other lawyer in

order to permit an attempt to reconcile the parties, except that Bar Council may be so informed subsequently in urgent or confidential cases.

III. A lawyer shall not electronically record [*registrare*] telephone conversations with another lawyer. Any recording during a meeting shall be allowed only with the consent of all persons present.

ART. 23. (*Contacts with lawyers and the duty to defend a client before the court*). - A lawyer shall base his conduct in judicial proceedings on the duty to defend his client, while safeguarding as far as possible his relationship with other lawyers. I. A lawyer shall be punctual at hearings and in any other meeting with other lawyers.

II. A lawyer must oppose any request from the opposing party to postpone hearings, to delay filing of documents, or to defer other actions, if such request is irregular or unjustified and if it is prejudicial to his client's interests.

III. A lawyer shall do his best to make his client pay the costs and fees which have been fixed in a judgement in favor of another lawyer.

IV. A lawyer selected directly by the accused [*difensore di fiducia*] shall inform any lawyer who was previously nominated by the court [*difensore d'ufficio*] that he has undertaken the representation.

V. In representing a client, a lawyer may collaborate with counsel for the other defendants, exchanging information, pleadings and documents if it is in his client's interests to do so and is in compliance with the law.

VI. In cases of joint defense, defending counsel must consult his co-counsel regarding any procedural choices to be made and inform co-counsel about any discussion with their mutual client in order to establish an efficient strategy for the trial.

ART. 24. (*Contacts with the Bar Council*). - A lawyer must collaborate with the Council of the Bar he belongs to and with any other Bar in response to a request related to the Bar's insti-

tutional purposes; in doing so he must scrupulously observe the duty of truthfulness. For such purpose any member shall inform the Council of facts he is acquainted with concerning the professional activities of lawyers [*la vita forense*] or the administration of justice which may require intervention from the Bar.

I. In disciplinary proceedings, it is not an independent violation for a member to fail to reply to the accusations he has been charged with or to fail to present any comments/reactions [*osservazioni*] or defense. However, such conduct may be taken into consideration by the judging organism [*l'organo giudicante*] when forming its opinion in the matter.

II. However, if the Bar Council, in connection with complaints filed by a third party or by another lawyer, asks a member for clarification or information or to undertake duties which are intended to obtain information or otherwise assist in the evaluation of a complaint, the member's failure to reply promptly is a violation of disciplinary rules.

III. A lawyer who has been named a member of the Bar Council must carry out those responsibilities with diligence, impartiality and in the interest of the whole profession.

ART. 25. (*Contacts with colleagues in the law firm*). - A lawyer must allow his collaborators to improve their professional preparation, remunerating them in proportion to their contribution to the lawyer's work.

ART. 26. (*Contacts with trainees*). - A lawyer shall ensure that the legal training period for *praticanti* is sufficiently efficient and profitable to provide adequate vocational training.

I. A lawyer shall supply the trainee with an adequate working place and, after an initial period, shall remunerate him in proportion to his professional contribution.

II. A lawyer shall attest to the accuracy of entries in the trainee's record-book [*libretto*] only after due oversight and without indulging in favors or friendship.

III. A lawyer shall be subject to discipline if he has a trainee carry out legal activity [*svolgere attività difensiva*] that is not allowed.

ART. 27. (*Duty to correspond with other lawyers*). - A lawyer may not directly contact an opposing party who is represented by another lawyer.

I. Correspondence may be sent directly to, an opposing party only where necessary to notify a person that a specific act required by law must be completed by a certain date or that a particular stipulated amount is coming due for payment [*richiedere determinati comportamenti o intimare messe in mora*] or to avoid expiration dates or forfeitures; in such cases a copy must be sent to the opposing party's lawyer.

II. It is a violation of the disciplinary rules for a lawyer to agree to meet with the opposing party, knowing that the party is represented by another lawyer, without informing the latter and without obtaining his permission.

ART. 28. (*Prohibition against revealing correspondence among lawyers*). - Correspondence marked as confidential or any correspondence containing proposals for negotiations or settlement sent to or received from other lawyers may not be produced or referred to in judicial proceedings.

I. Correspondence between lawyers that constitutes a final agreement may be produced.

II. Correspondence of a lawyer in which he assures the performance of services requested may be produced.

III. A lawyer may not provide to his client confidential correspondence between himself and another lawyer. However, where his employment is terminated, the lawyer may provide the correspondence to newly retained counsel who will be in charge of the matter and who is obliged to observe the same rules of confidentiality.

IV. A decision to suspend negotiations or settlement discussions, with a view to initiating judicial action, must be communicated to opposing counsel.

ART. 29. (*Information concerning another lawyer*). - Documents concerning the personal life [*posizine personale*] of opposing counsel or information concerning his person may not be produced in judicial proceedings, unless that information is

particularly relevant [*abbia essenziale attinenza*] to the facts involved in the proceeding.

I. A lawyer must refrain from expressing negative opinions on the professional activity carried out by another lawyer, and in particular about his conduct and alleged mistakes or incompetence.

ART. 30. (*The obligation to pay for services provided by another lawyer*). - Fading contradictory agreements, a lawyer who selects and directly engages another lawyer to provide representation or to assist in representation of a client must arrange for the compensation of the lawyer if the client does not do so, himself.

ART. 31. (*The obligation to instruct another lawyer and to keep him informed*). - A lawyer shall provide timely instructions to another attorney retained to represent or assist in the representation of a client [*collega corrispondente*]. Likewise, the *collega corrispondente* shall give the referring attorney timely, detailed information about the activity carried out and to be carried out. I. The election of domicile at another colleague's law firm is possible only after previous communication and with the latter's consent.

II. The correspondent lawyer [*avvocato corrispondente*] may not settle a controversy through negotiation without informing the lawyer who initially entrusted him with the matter.

III. In the absence of instructions, the correspondent lawyer must act in the most appropriate way to safeguard the interests of the client, informing the lawyer who entrusted him with the matter, as soon as possible, of any actions taken.

ART. 32. (*Prohibition against impugning settlements*). - A lawyer who has reached a settlement with the lawyer for the adverse party which was accepted by the parties must refrain from impugning the settlement in a judicial proceeding, unless that action is justified by particular circumstances which were unknown at the time of the settlement or which have arisen subsequently.

ART. 33. (*Replacement of counsel*). - When a lawyer is replaced during a proceeding by being discharged or by withdrawal-

wal, new counsel must inform his predecessor that he has been appointed and shall do his best, without prejudicing the representation, to ensure that former counsel is compensated for any services performed.

I. The lawyer who is replaced shall do his best to ensure that representation continues without injury to the client and shall supply newly appointed counsel with all materials necessary to continue the representation.

ART. 34. (*Responsibility of collaborators, substitutes and associates*). - Unless the circumstances result in separate and autonomous responsibility, collaborators, substitutes and assistants [*collaboratori, sostituti e ausilari*] do not have any disciplinary responsibility for the performance of specific tasks for which they have been made responsible (8).

I. Where lawyers are associated with each other [*in caso di associazione professionale*], only the lawyer or lawyers to whom a case has been specifically referred is subject to disciplinary responsibility.

Title III - LAWYER-CLIENT RELATIONSHIP

ART. 35. (*Relationship based on trust*). - The lawyer's relationship with his client is based on trust.

I. A lawyer must be entrusted with the representation of a client by the client or by another lawyer who represents such client.

If a lawyer is retained by a third party who intends to protect the client's interests or its own interests, the representation can be undertaken only with the consent of the client.

II. After being retained, a lawyer must refrain from entering into any economic relationship with the client which might, in any way, influence his professional relationship with the client.

(8) This refers to « associates », law clerks, and others who work in a legal capacity in a law office but who are not actually admitted to practice.

ART. 36. (*Autonomy of relationships*). - A lawyer is obligated to defend his client's interests as well as possible within the limits of the representation and in compliance with the law and ethical principles.

I. A lawyer shall not knowingly suggest unnecessarily onerous actions, nor counsel any conduct, action or transaction that is unlawful, fraudulent or legally invalid [*colpit[a] di nullità*].

II. Before accepting any employment, the lawyer must ascertain the client's identity as well as the identity of his client's possible representative.

III. In any case, respecting the professional duties also with regard to the secrecy, the lawyer must not obtain or administer funds which may not be referred to a clearly identified client.

IV. The lawyer must refuse to accept any employment when he may rightly deduce from known particulars that his activity may be used to realise any unlawful action.

ART. 37. (*Conflict of interests*). - A lawyer shall refrain from accepting any employment that may create a conflict with the interests of a client or which may interfere in the execution of any other employment, even if not a professional one.

I. A conflict of interest arises if the acceptance of a new client may result in a violation of confidentiality applicable to information supplied by another client, if the knowledge which the lawyer has about an existing client's business may provide an unfair advantage to the new client, or if the representation of an existing client limits the lawyer's independence in carrying out the new representation.

II. A lawyer who assists a married couple in a family controversy may not represent either of them in a subsequent controversy between the husband and wife.

III. The obligation to refuse an employment must be respected also if the opposing parties of a controversy revert to different lawyers who are members of the same law firm or professional association.

ART. 38. (*Failure to carry out representation*). - Failure to perform actions related to representation of a client, or the late

or negligent performance of such actions, constitutes a violation of professional duty if such behavior results from inexcusable and careless disregard of the client's interests.

I. Defending counsel nominated by the court [*difensore d'ufficio*] must carry out the representation with care and diligence. If he should not be able to attend a hearing, he must explain the reasons therefor to the responsible authority in a timely manner, or must arrange for another lawyer to assume responsibility for the representation at that hearing.

ART. 39. (*Abstention from hearings*) (9). - A lawyer is entitled to participate in a strike [*astensione*] called by the legal authorities in compliance with the provisions of the code of self-government of the lawyer's organization and the regulations in force.

I. A lawyer who exercises his right not to take part in such a strike must inform other counsel in advance.

II. A lawyer is not allowed to take part or to dissociate himself from a strike according to, his own convenience. A lawyer who agrees with the strike may not partially dissociate himself from it, participating only on certain days. Similarly, a lawyer who dissociates himself from a strike may not choose to, participate partially, and dissociate himself only for certain days.

ART. 40. (*The obligation to keep the client informed*). - When accepting employment, a lawyer shall inform his client clearly on any special aspects of the case and the importance of the controversy and on the activities to be carried out, indicating with precision the possible steps to be taken and possible solutions. A lawyer must also inform his client on the progress

(9) This provision is difficult to translate in part because there is no parallel on the American legal scene. With few exceptions (for example, several years ago the lawyers who represented criminal defendants in the District of Columbia courts called a « strike » concerning the fees they are paid), there are no lawyers' « unions » or other similar organizations that would be in a position to call a strike or *astensione*. I am also not at all sure that either clients or judges would be sympathetic to such actions.

of the representation whenever he thinks this opportune or whenever his client asks him to do so.

I. If requested to do so, a lawyer must inform his client about the likely duration and possible costs involved in the representation.

II. A lawyer shall inform his client about any actions needed to be taken to avoid the expiration of time-limits or other prejudicial effects.

III. A lawyer shall inform his client of any facts learned in the course of his representation.

ART. 41. (*The administration of funds received from other parties*). - A lawyer must administer punctually and diligently any money received from his client or received from third parties for certain acts or business [*determinati affari*] or on behalf of his client, and he shall account for such sums promptly.

I. It is a disciplinary violation to keep any sums received on behalf of the client longer than strictly necessary.

II. In case of fiduciary deposits, the lawyer shall request written instructions and adhere to them.

ART. 42. (*The restitution of documents*). - On request of his client, a lawyer shall return without delay any documentation received from the client in connection with the representation.

I. A lawyer may keep a copy of documentation without the client's consent only where this should be necessary to ensure payment of his *fées*, and only until such payment will have been effected.

ART. 43. (*Request for payment*). - Normally a lawyer requests from his client reimbursement for expenses and periodic payment of attorney's *fées* incurred in the course of the representation, as well as fair compensation upon termination of the employment.

I. A lawyer may not request compensation which is obviously out of proportion to the work undertaken or otherwise excessive.

II. If a client does not make payment promptly, a lawyer may not thereafter request any compensation higher than that previously agreed upon, unless such an arrangement has been previously agreed to.

III. A lawyer may not subject the payment to his client of sums of money which he receives on behalf of the latter to the recognition of his own rights or to the accomplishment of specific services (10).

IV. A lawyer is allowed to charge a client a lump sum for legal work, where he regularly provides services and legal advice to that client, on the condition that such sum is proportional to the work -anticipated and is not less than the minimum amounts provided by law.

ART. 44. (*Compensation*). - A lawyer is entitled to retain sums of money which he received from his client or from third parties to compensate him for his expenses [*le spese sostenute*], provided he gives notice to the client. A lawyer may also retain sums of money received in order to pay his own fees [*i propri onorari*] a) if his client has given his consent, b) if such sums have been awarded him in a judgement, payable by the adverse party, and he has not already received those expenses and fees from his client, or c) if he has made a request for payment for his fees to which the client has already agreed.

I. Except as indicated above or in cases of objection [*in caso di contestazione*], a lawyer shall put immediately at his client's disposal the sums received on the latter's behalf.

ART. 45. (*Prohibition of contingent fee [quota-litis] agreements*). - It is forbidden to make any agreement in which compensation for professional services is based on a certain percentage of the disputed property or of the value of the controversy.

I. It is permissible to stipulate in writing that extra compensation will be paid in the event a matter is resolved favorably,

(10) That is, the lawyer may not withhold funds due to a client on the condition that the client recognize certain rights of the lawyer or perform certain functions for the lawyer.

provided that such extra compensation is within reasonable limits and is justified by the results obtained.

ART. 46. (*Clazms against the client for non-payment of the lawyer's fees*). - A lawyer may take legal action against a client, after having withdrawn from employment, if he has not been paid for his professional services.

ART. 47. (*Withdrawal from representataôn*). - A lawyer is entitled to withdraw from representation of a client.

I. If a lawyer withdraws from employment, he must give adequate notice to the client and must inform him of steps necessary to avoid prejudice te, his case.

II. If the client does not retain a new lawyer within a reasonable period of time the lawyer who has withdrawn cannot be held responsible - in compliance with the legal regulations - for the unavailability of subsequent legal assistance, although he will be obliged to inform the former client of any communications concerning the representation that may be received by him.

III. If a lawyer is unable to locate his client in order to inform him of his withdrawal, the lawyer must send the client a registered letter addressed to his address as indicated at the General Registry Office [*indirizzo anagrafico*] or te, his last known domicile. By doing so, and in observance of the obligations of the law, the lawyer is relieved from any other responsibilities to the client, regardless of whether the client has actually received such communication or not.

TZtle IV - RELATIONS WITH THE OPPOSING PARTY, JUDGES AND THIRD PARTIES

ART. 48. (*Threatening actions against the adverse party*). - A lawyer may advise counsel for the opposing party of the lawyer's intention to take legal action, to file bankruptcy petitions, to file complaints or to take any other measure, if such statements are intended to inform the opposing party of possible judicial actions which might be taken; however, it is ethically improper to threaten unconscionable, excessive, or vexatious actions.

I. If a lawyer wishes to invite the opposing party to his office for discussion before starting any legal action, the lawyer must advise the opposing party that he may be accompanied by a lawyer of his own choice.

II. A lawyer may charge the opposing party fees and costs for any extra-judicial activity, on the condition that such activity was carried out in favor of one's own client.

ART. 49. (*Multiplicity of actions*). - A lawyer may not make the opposing party's financial situation worse by instituting onerous or multiple judicial actions if there are no real reasons to do so to safeguard his client's interests.

ART. 50. (*Requesting compensation from the opposing party*). - A lawyer may not request that the opposing party pay his fees, unless the parties have previously agreed to such payment and the lawyer's client has consented or unless such payment is otherwise provided by law.

I. Specifically, a lawyer is allowed to request payment of his professional fees from the opposing party where a settlement of a judicial proceeding provides that the attorney can seek reimbursement for his fees from the opposing party in the event his own client does not pay his fees.

ART. 51. (*Claims against former clients*). - A lawyer may undertake representation that is adverse to a former client if a) a reasonable period of time has passed, b) the matter of the new representation [*l'oggetto del nuovo incarico*] is different from the one carried out previously and c) there is no possibility of using information previously acquired.

I. The reasonableness of the period of time elapsed between the initial and subsequent representations must be evaluated in light of the intensity of the relationship with the client (11).

(11) This means that where the work on behalf of the first client involved a large scale case or continued over a long period, additional time needs to elapse before the second matter can be taken on.

ART. 52. (*Relations with witnesses*). - A lawyer who speaks to witnesses about circumstances involved in a judicial proceeding must avoid being too forceful [*con forzatura*] or making direct suggestions in an effort to obtain favorable evidence.

I. A lawyer does retain the right to carry out investigations in compliance with the terms and conditions of the code of criminal procedure and respecting the provisions hereinafter.

1. Both, a lawyer selected directly by the party [*difensore di fiducia*] and a lawyer nominated by the Court [*difensore d'ufficio*] are obliged to respect the respective rules when carrying out investigations.

2. The defending counsel in particular has the duty to evaluate the necessity or opportunity to carry out investigations in compliance with the requirements and the purpose of the defense on behalf of his client.

3. It is up to the defending counsel to decide about the choice of the object, the terms and the forms of the investigation, as well as about how to use its results.

4. If the defending counsel makes use of assistants, colleagues in his office, authorised private investigators and advisors, he may provide them all necessary information and documents to carry out his responsibilities, even if such documentation should have been declared secret, urging them however not to violate the secrecy and to communicate the results to the defending counsel only.

5. The defending counsel has the duty to preserve confidences and secrets with regard to the investigation documentation and its content until he uses it in the proceeding, with the exception of disclosing facts for just cause (*giusta causa*) in the interest of his client.

6. The defending counsel has further the obligation to, keep scrupulously and confidentially the investigation documentation during the whole time period which he considers necessary or useful for exercising his defense.

7. The defending counsel and the various parties interested are not allowed to pay compensation in whatever form to the

persons they asked to assist with the investigation, with the exception of reimbursing them the expenses based on receipts. 8. The defending counsel must inform the persons he questions for his investigation about his office, but he is not obliged to disclose the name of his client.

9. The defending counsel must moreover inform the persons he wants to, question in the course of his investigation that if they make use of their right not to reply, they may be invited to appear before the Public Prosecutor or to give evidence in front of the Judge and in such case they will be obliged to reply also to the questions made by the defending counsel.

10. The defending counsel must also inform the persons subject to investigation or charged in the same proceeding or in another proceeding linked or connected to this that if they make use of their faculty not to reply, they may be invited to give evidence in front of the Judge anticipating the taking of evidence in the pretrial stage [*incidente probatorio*]

11. If the defending counsel wants to get access to a private place, he must ask the authorisation to do so to the person who has access to such place, informing such person of his office and the nature of his action as well as of the possibility that if authorisation should be refused, the action may be authorised by the Judge.

12. The defending counsel may speak with the party injured in a crime and ask written declarations or information from it only upon written invitation and after having given notice to the counsel of the injured party if the existence of such counsel is known. If the injured party does not result to be assisted by a counsel, in the written invitation shall be indicated that in any case it would be useful to consult a lawyer and that a lawyer should participate in the meeting. In the case of minors, the invitation is sent also to the person exercising the parental authority who has the faculty to participate in the meeting.

13. The defending counsel, even if he does not draw up the minutes, must support by documentary evidence the status of the places and objects, having care not to modify, change or lose anything.

14. The defending counsel has the duty to respect the legal provisions and must in any case take those precautions to guarantee the genuineness of the declarations.

15. The defending counsel must give integral documentary evidence of the information obtained. If also phonographic reproduction of the information is ordered, the proves of such information may be documented in a summarised form.

16. The defending counsel is not obliged to give a copy of the minutes to the person who gave him the information nor to the defending counsel of such person.

ART. 53. (*Relations with judges*). - A lawyer's relations with judges must be based on the dignity and respect due to their respective offices.

I. Except in particular cases, a lawyer may not discuss a judicial proceeding with the judge before whom the proceeding is pending without the lawyer for the adverse party being present.

II. A lawyer who has been named as an honorary judge [*magistrato onorario*] must observe all obligations pertaining to such office as well as the regulations concerning incompatibility.

III. A lawyer may not take advantage of any friendship, relationship or other ties with a judge to obtain favors or preferences, and he must avoid emphasizing such ties in dealing with third persons.

ART. 54. (*Relations with arbitrators and expert witnesses*). - A lawyer must base his relations with arbitrators and expert witnesses on honesty and integrity, according to their respective offices.

ART. 55. (*Arbitration*). - A lawyer who accepts the position of arbitrator must respect the duties of independence and impartiality.

I. In order to guarantee respect for the duties of independence and impartiality, a lawyer may not exercise the office of formal or informal arbitrator, arbitrator nominated by the parties, or presiding officer [*presidente*], if he has professional relations with one of the parties involved in the matter or if he had relations in the past that might prejudice his independence.

In particular, a lawyer nominated as presiding officer must inform the parties if he has professional relations with one of the parties, withdrawing from the office if requested to do so.

II. In any case a lawyer must inform the parties of any factual circumstances or particular professional relations with counsel that might affect his independence and obtain the consent of the parties before continuing.

ART. 56. (*Relations with third parties*). - A lawyer shall treat the staff of the legal system, the staff of his own office, and any other person with whom he might come into contact in the exercise of his profession, with courtesy and civility [*correttezza*] and respect.

I. Even outside his professional role, a lawyer has the duty to act in his interpersonal relations in a manner that will not compromise the confidence of third parties in his capacity to fulfil his professional duty and in the dignity of the profession.

ART. 57. (*Election of the organs of the legal profession*). - A lawyer who takes part as a candidate or supporter of any candidate at the election for the representative bodies of the legal profession must act with honesty and avoid any form of publicity or action that is not consistent with the dignity of such offices.

ART. 58. (*If a lawyer becomes a witness*). - A lawyer should refrain as far as possible from testifying as a witness about circumstances of which he has obtained information in the course of his professional activity or which are related to any representation in which he has been engaged.

I. A lawyer shall never pledge his word with a judge about the truth of facts presented in the trial.

II. If a lawyer intends to appear as a witness in a matter, he shall withdraw from representation in the same matter and shall not resume it in the future.

ART. 59. (*Commitments to third parties*). - A lawyer must regularly fulfill commitments made to third parties.

I. A lawyer's failure to fulfill obligations which are not related to the exercise of his profession is a disciplinary violation if, due to its nature or seriousness, it compromises the confidence of third persons in the lawyer's capacity to fulfil his professional duties.

Title V - FINAL PROVISION

ART. 60. (*Closing provision*). - The specific provisions of this code are examples of conduct which occur most commonly and do not limit the field of application of the general principles expressed herein.

(Approved by the National Council during the session of April 17th 1997, with the modifications introduced on October 16th 1999 and on October 26th 2002).