



**MODEL CODE OF CONDUCT**

**FOR LEGAL AID LAWYERS IN CRIMINAL CASES**

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**MODEL PRACTICE STANDARDS**

**FOR CRIMINAL DEFENCE**

2014

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# MODEL CODE OF CONDUCT

## FOR LEGAL AID LAWYERS IN CRIMINAL CASES

### LEGAL AID REFORMERS' NETWORK

JUNE 2014

#### Introduction

##### History

This Code of Conduct was drafted by members of the Legal Aid Reformers Network (LARN)<sup>1</sup> through a number of meetings in Chisinau, Kiev and Tbilisi in 2013 which were convened by the Open Society Justice Initiative.

##### Purpose

The Code supplements more general Practice Standards, with which it should be read. The two are intended to operate together - with this Code drawing out issues of particular relevance to legally aid lawyer and the Practice Standards applying to all criminal practice. Both the Code and Practice Standards assume that all lawyers, including those funded by legal aid, are primarily guided by Codes of Conduct or their equivalent drafted by their own Bar Associations or other regulatory bodies. Nothing in either is intended to challenge that primacy. However, the two documents provide an opportunity to expand general provisions to cover the specific requirements of legally aided criminal work. They are built on the assumption that common professional obligations apply to all lawyers, both publicly and privately funded undertaking both civil and criminal work.

This is a model code, based on national precedents drafted in a number of Eastern European countries notably Georgia, Ukraine and Moldova. It is an attempt to adapt similar codes which have been drafted in common law countries, such as the US and the UK, for use in countries more influenced by a civil law model. The code can be used in whatever way is thought best - as advisory or incorporated into contracts with legal aid lawyers. It is not subject to copyright; free use of it is invited and suggestions for amendment are very welcome.

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<sup>1</sup> The Legal Aid Reformers' Network (LARN) is an international information-sharing network of organisations and individuals working to promote the right to legal aid and effective defence. LARN builds on the experience of the Open Society Justice Initiative, which has been promoting legal aid reforms and created an informal network of public defenders and legal aid managers across Europe and globally. The Network provides a virtual platform for policymakers and legal practitioners to exchange experiences and to collaborate in further developing newly created legal aid systems. LARN is open to any interested organisations and individuals. More information is available at [www.legalaidreform.org](http://www.legalaidreform.org).

## **Definitions**

‘Client’ in this document means an individual or legal person in receipt of legal aid and for whom a lawyer funded by legal aid is acting.

‘Criminal matter’ means any case or advice undertaken in relation to an issue which would be determined as ‘criminal’ under the European Convention on Human Rights.

‘Code of Conduct’ or ‘Code’ means this Code of Conduct unless otherwise identified.

‘LARN’ means the Legal Aid Reformers Network as identified in footnote 1.

‘Lawyer’ means any lawyer recognised as such by national legislation and includes any other person acting under the authority of a lawyer.

‘Legal aid’ means a state-funded scheme for the delivery of publicly funded legal services by legal aid lawyers to clients.

‘Legal aid authority’ means a body authorised by appropriate national legislation or otherwise to establish, organise, fund or maintain a scheme for the provision of legal aid.

‘Legal aid lawyer’ means any lawyer, whether employed on a salaried or other basis, to deliver legal aid by a legal aid authority in a criminal matter.

‘Practice Standards’ means the model standards as drafted by LARN.

‘Professional Code of Conduct’ means a code for the regulation of lawyers approved by an appropriate body such as a Bar Association which is binding on a lawyer.

‘Public defender’ means a salaried lawyer employed for the sole purpose of delivering legal aid.

## **Sources**

The following documents were helpful in drawing up this Code:

1. The Defence Lawyer’s Guide, Council of Union of Lawyers of the Republic of Moldova, Decision nr. 2 of 30.03.2012, Published in People’s Lawyer Nr. 3-4, 2012.
2. The Professional Standards for Public Attorneys working on Criminal Cases, developed by the Legal Aid Service of Georgia (draft as of September 2013).
3. The Public Defender Minimal Professional Standards, developed for the pilot Public Defender Offices in Ukraine, supported by the International Renaissance Foundation, the version of 2008.
4. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ;
5. The Public Defender Service Code of Conduct published by the Legal Aid Agency in England and Wales;
6. The Performance Guidelines for Criminal Defence Representation drafted by the National Legal Aid and Defender Association of the US;

## **1. Relationship with other Codes of Conduct**

- 1.1. A legal aid lawyer shall comply with any Professional Code of Conduct by which they are bound and have regard to any guidance by any professional body by which their conduct is governed. The code is secondary to the provisions of any Professional Code, which takes precedence over it and is intended to make more specific its provisions in relation to legal aid lawyers.
- 1.2. The Code should be read in conjunction with the model Practice Standards for legal aid lawyers in criminal cases also drafted by LARN.
- 1.3. The provisions of this Code may be incorporated into a contract with legal aid lawyers by the relevant legal aid authority to whom reference should be made for clarification and guidance.

## **2. The main duties of the legal aid lawyer**

A legal aid lawyer must:

- 2.1. Act in the best interests of his/her client; use all reasonable legal measures to do so; and provide active and high quality representation at all stages of the criminal process.
- 2.2. Carry out this duty within the provisions of any relevant Professional Code of Conduct, statute or rules of court and in accordance with the interests of justice.
- 2.3. Provide legal advice and representation to the defendant in the same manner and to the same degree as to a private client, except where limited by specific restriction on their appointment.
- 2.4. Honestly represent the interests of the client and advise him/her to choose the best strategy for their defence or plea. A legal aid lawyer is, however, bound by the instructions of a client save where these would involve misleading the court.
- 2.5. Maintain his/her professional independence and not allow it to be compromised by their funding or employment by the legal aid authority or any other interest such as the prosecution, court, any public authority, the lawyer's own interest or that of any other third party. For the avoidance of doubt, a payment for legally aided services does not constitute interference in the lawyers' independence.
- 2.6. Remain alert to conflicts of interests between the instructions of a client and respect for the rule of law. If a lawyer fears that such a conflict arises, he/she must explain the potential difficulty to his/her client. For example, a lawyer may need to explain why he/she cannot file a dishonest case or assist in doing so but such a refusal should not, by itself, undermine his/her duties to do the best for his/her client.
- 2.7. Carry out his/her duties with honesty and integrity. A legal aid lawyer shall never knowingly or recklessly give false or misleading information to the court or prosecution.

2.8. Represent the defence in the criminal procedure, being a party to the process with rights equal to the state prosecution.

2.9. Actively defend his/her client and, in particular;

(b) collect new pieces of evidence where necessary;

(c) not limit his/her contribution solely to reaction to the charges brought by the prosecution;

(d) not put a client under undue pressure to plead guilty;

(e) not advise a client to assert his/her guilt unless satisfied that the prosecution has sufficient proof;

(f) have the instructions of his/her client for the defence strategy including, in particular, if there is to be a plea of guilty;

(g) put the prosecution to proof of its case, if appropriate even when a client recognises his/her guilt to the lawyer

(h) act on the instructions of a client even when this is against the lawyer's advice provided that the client has been fully advised as to the consequences;

(i) keep the client regularly informed of the progress of the case; and

(j) not disagree with, or disapprove of, his/her client before judge or prosecution even if taken by surprise by something that the client says or does.

2.10. Act holistically for his/her client. Where a client is found or pleads guilty, the lawyer will:

(a) do his/her best to determine the cause of the illegal behaviour of the client; and

(b) assist in preventing his/her return to a criminal environment, undertaking reasonable measures to assist the client to address the social, health and any other services which could eventually help the client to resolve any issues which contributed to the commission of the crime - particularly in relation to offences committed for socio-economic, family or health reasons.

2.11. Treat all clients fairly and without direct or indirect discrimination based on race, colour, nationality or citizenship, ethnic origin or ethnicity, language, religion or religious belief, gender, age, birthplace, health condition, disability, sexual orientation, opinion, political affiliation, wealth, social origin, membership to a category of disadvantaged people.

2.12. Not refuse to act for a client because of:

(a) the nature of the allegation;

(b) the nature of the client; or

(c) the lawyer's own personal views and beliefs.

### **3. Competence and diligence of the legal aid lawyer**

- 3.1. A lawyer must have sufficient experience, knowledge and competence to provide quality representation. S/he should refuse to act in a case where she/he feels that they do not.
- 3.2. A legal aid lawyer must ensure that he/she has available sufficient time and resources, adequately to represent a defendant. This should be done before agreeing to represent a client or immediately after providing urgent initial representation. If, after taking initial instructions, s/he later considers that he/she is unable adequately to represent a client, s/he should explain this to the client and the appointing authority and take steps to withdraw from the case.

### **4. Record keeping, note-taking, maintaining case notes and files**

- 4.1. A legal aid lawyer shall keep a file for all every case where he/she provided legal aid.
- 4.2. The file must contain all material documents from the opening to the closing of the lawyer's involvement in the case.
- 4.3. The defence file should contain:
  - (a) procedural documents;
  - (b) personal notes on the discussions held on the case, the developments on the defence strategy; and
  - (c) any other information relevant to the defence of his/her client.Further suggestions for the content of the file are set out in an annex attached to this document.
- 4.4. The lawyer should remember that the case file has a double purpose: to help the lawyer in preparing and organizing his/her defence and to provide sufficient information to an outsider that might review the case file to understand the lawyer's strategy of the case and have the relevant proofs regarding lawyer's work on the case.
- 4.5. Each defence file is best organised in chronological order in various appropriate categories (for instance pieces of proof, procedural acts and copies of materials in the criminal file, complaints and challenges of the lawyer etc.). It should contain a list of its contents. The file may be kept in electronic or paper format, as required by relevant legal regulations or, if these do not exist, as the lawyer considers best, provided that it can easily be made available in whatever form.
- 4.6. The lawyer should ensure that the file is kept in his/her archives for as long as is provided by national legislation.

## **5. Confidentiality and exceptions to confidentiality**

- 5.1. A legal aid lawyer must keep all information about a client confidential exactly as a lawyer in private practice.
- 5.2. As a limited exception to this duty, a lawyer funded by legal aid should inform the client that their file may be reviewed by other lawyers in charge of quality for the legal aid administration or within a public defender office but only for the purpose of assuring that the client has received sufficiently high quality services.
- 5.3. Lawyers inspecting a file for quality purposes are themselves subject to a duty of confidentiality in relation to its contents.
- 5.4. The client shall be asked for consent to the above, preferably in writing.
- 5.5. The client may, if appropriate, be asked to agree a list of family members and others with whom the lawyer may discuss aspects of the case. It is recommended that this agreement is in writing.

## **6. Conflicts of interest**

- 6.1. A legal aid lawyer may not represent a client if to do so would give rise to a conflict of interest with an existing or previous client either of the lawyer him/herself or any partner or employee of the lawyer.
- 6.2. A lawyer should also not act for a client where there is a conflict or risk of a conflict:
  - a) with the legal aid lawyer him or herself;
  - b) where there is any risk of breach of confidentiality;
  - c) if there is any threat to the independence of the lawyer;
  - d) where there is any third party whose relationship to any legal aid lawyer or employee of the respective legal aid office might reasonably cause the client to believe that the legal aid lawyer may not act in that client's best interests.
- 6.3. Lawyers should be alert to conflicts of interest between co-defendants or those facing charges in relation to the same events. If a conflict emerges between two existing clients, the lawyer shall retain the one who instructed him first and refer the second. unless the lawyer feels so compromised that she/he should refer both.
- 6.4. A legal aid lawyer must not accept an assignment from a new client where information obtained in the service of a former client would be relevant to the case.

## **7. Unsolicited payment**

- 7.1. A legal aid lawyer shall not offer or accept any fee, gift, benefit, commission or any other form of compensation, direct or indirect, related to the provision of legal aid to a legal aid client.
- 7.2. A legal aid lawyer may contact the legal aid authority for verification of a client's financial eligibility for legal aid but, while the client is legally aided, in no circumstances may the legal aid lawyer solicit any payment from the client.

## **8. Refusing to accept a legal aid client or ceasing to represent a client**

8.1. A legal aid lawyer must refuse or cease to represent a legal aid client in the following circumstances:

- a) there is a significant risk of conflict of interest or significant risk of breach of confidentiality arises;
- b) a client's instructions conflict with the lawyer's duty to the court;
- c) the client refuses to be represented by the respective legal aid lawyer or solicits his/her replacement and the legal aid appointing authority accepts it;
- d) the legal aid lawyer cannot fulfil his/her obligation due to illness, long-term travel, impossibility to communicate with the client in the latter's language and an interpreter is not provided.

8.2. A legal aid lawyer may refuse or cease to represent a legal aid client in the following circumstances:

- a) the client's behaviour towards the legal aid lawyer or any other employee of the legal aid office is violent, threatening or abusive;
- b) there is inadequate trust between the client and the lawyer;
- c) the legal aid lawyer's extensive workload, incompetence or lack specialization in the respective field or there is another substantial reason approved by the appropriate person in the legal aid administration for refusing to accept, or ceasing to represent the client.

8.3. If the legal aid lawyer refuses to accept a client or ceases to represent a client, he/she shall give reasons to the client for doing so, except when the client refuses to be represented by the respective legal aid lawyer or solicits his/her replacement and the legal aid appointing authority agrees.



## **Annex 1**

### **Suggested content of a defence file**

The suggested content of a defence file includes:

1. Statements of the client.
2. Notes on meetings with the client and, specifically, their instructions.
3. A note on the intended defence strategy.
4. Copies of any criminal file materials.
5. Copies of any documents drafted by the lawyer
6. Any other evidence or information
7. A record of time spent on the file.
8. Any information about client satisfaction obtained by the lawyer eg in response to a questionnaire.

# MODEL PRACTICE STANDARDS

## FOR CRIMINAL DEFENCE

### LEGAL AID REFORMERS' NETWORK<sup>2</sup>

JUNE 2014

#### Introduction

##### History

These Practice Standards were drafted by members of the Legal Aid Reformers Network (LARN) through a number of meetings in Chisinau, Kiev and Tbilisi in 2013 which were convened by the Open Society Justice Initiative.

##### Purpose

The Practice Standards cover all criminal work, whether privately or publicly funded. For legally aided work they should be read in conjunction with a Code of Conduct also drafted by LARN. Both the Code and Practice Standards assume that all lawyers, including those funded by legal aid, are primarily guided by Codes of Conduct or their equivalent drafted by their own Bar Associations or other regulatory bodies. Nothing in either is intended to challenge that primacy. However, the two documents provide an opportunity to expand general provisions to cover the specific requirements of legally aided criminal work. They are built on the assumption that common professional obligations apply to all lawyers, both publicly and privately funded undertaking both civil and criminal work.

These are model Practice Standards, based on national precedents drafted in a number of Eastern European countries notably Georgia, Ukraine and Moldova. They are an attempt to adapt similar standards which have been drafted in common law countries, such as the US and the UK, for use in countries more influenced by a civil law model. The standards

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10. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ;
11. The Public Defender Service Code of Conduct published by the Legal Aid Agency in England and Wales;

12. The Performance Guidelines for Criminal Defence Representation drafted by the National Legal Aid and Defender Association of the US;

## **1. Initial meeting with the client.**

### **1.1. Purpose of the first meeting.**

1.1.1. The main goals of a first meeting with a client are:

- (a) to establish trust with the client;
- (b) to obtain preliminary information regarding the client and the case;
- (c) to provide information particularly about procedure to the client and including any urgent initial advice; and
- (d) to explain his/her rights to the client.

### **1.2. Preparation for first client interview.**

1.2.1. Prior to conducting the initial interview with the client, the lawyer, should ensure that they are familiar with:

- (ci) the elements of the offence and the potential punishment of any charges which it is known that their client is facing;
- (cii) generally relevant substantive and procedural criminal law and its application in their particular jurisdiction, as well as all other relevant law;
- (ciii) relevant jurisprudence of national courts;
- (civ) the relevant provisions of the European Convention on Human Rights and, in particular, Articles 3, 5 and 6;
- (cv) the relevant jurisprudence of the European Court of Human Rights;
- (cvi) recent developments in domestic national court jurisprudence and the European Court of Human Rights.

1.2.2. The lawyer shall take measures to verify if there is no barrier to communicating with the client - whether in terms of language, the client's mental capacity or otherwise - and, if such might exist, request involvement of the relevant additional services.

### **1.3. Advice during first interview**

1.3.1 The lawyer should meet the arrested client as soon as possible after receiving of information about his/her arrest. In almost every case, the lawyer should meet the client before police investigative proceedings begin.

1.3.1. The lawyer should begin by presenting him/herself and explain his/her status (as legal aid lawyer) and role in the case.

1.3.2. The lawyer should discuss the question of charging with his/her client and agree arrangements. A legal aid lawyer should explain, where appropriate, that the client

does not need to pay for the service and make sure that all doubts regarding his/her independence are clarified.

1.3.3. The lawyer should clarify the health and mental competence of the client and take appropriate measures if the client has immediate medical needs, whether physical or psychological.

1.3.4. The lawyer should ascertain that the client has been properly treated prior to being seen and, in the event of any complaint, should take details; explain the right to pursue the complaint and seek instructions to do so; record any visible injuries; seek medical assistance if required; explain his/her rights to the client; seek to protect the client from any further abuse; and record the complaint in the appropriate way.

1.3.5. The lawyer should obtain information relevant to obtaining pre-trial release from the client including:

(i) the client's ties to the community, including the length of time he or she has lived at the current and former addresses, family relationships, immigration status (if applicable), employment record and history;

(ii) the client's physical and mental health, educational and any armed services record;

(iii) the client's past criminal record, if any, including arrests and convictions for adult and juvenile offences and any prior record of court appearances or failure to appear in court; any pending charges; whether the client is on probation, bail or parole; and the client's past or present performance (if any) under supervision;

(iv) the ability of the client to meet any financial conditions on release;

(v) the names of individuals or other sources that the lawyer can contact to verify the information provided by the client and permission to contact them;

(vi) the client's immediate instructions.

1.3.6. The lawyer should explain their role and the confidentiality of any interview between client and lawyer. They should explain the presence of any third party at the interview and the consequences for confidentiality.

1.3.7. The lawyer should check that the client:

(k) is aware of relevant constitutional and human rights guarantees, in particular the right of silence;

(l) knows his/her rights in relation to legal aid;

(m) is aware of court procedure and what will happen;

(n) has been properly informed about his arrest and his rights in relation to it.

1.3.8. The lawyer should explain to the client:

(a) the procedures that will be followed in setting the conditions of pretrial release;

- (b) the type of information that will be requested in any interview that may be conducted by a pre-trial release agency;
  - (c) the need not to make unnecessary statements concerning the offence;
  - (d) the charges and the potential penalties faced by the client;
  - (e) an overview of the progression of the case, where possible.
- 1.3.9. Whenever possible, the lawyer should use the initial interview to gather additional information relevant to preparation of the defence, including:
- (d) the facts surrounding the charges against the client;
  - (e) any evidence of improper police investigative practices or prosecutorial conduct which affects the client's rights;
  - (f) any possible witnesses who should be located;
  - (g) any evidence that should be preserved;
  - (h) where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offence.

## **1.4. The immediate strategy**

- 1.4.1. Once the lawyer considers she/he has obtained sufficient information, she/he should advise the client on what strategy is best adopted in any immediate interview or interrogation. This may range according to the circumstances from silence through full or partial admission of guilt to denial.
- 1.4.2. The lawyer should take, and follow, his/her client's instructions provided that the client is clear; aware of the consequences; and not requiring the lawyer to act unprofessionally.
- 1.4.3. The lawyer should advise the client on the procedure that will apply to his/her case.
- 1.4.4. The lawyer should take any immediate action that is required.

## **2. Pre-trial**

### **2.1. Developing a Defence strategy.**

- 2.1.1. The lawyer should develop an active defence strategy for handling the case which s/he explains to the client at the earliest appropriate stage and which the client agrees.
- 2.1.2. The lawyer should continue to review the strategy throughout the progress of the case. Any change should be discussed with, and agreed by, the client.
- 2.1.3. The lawyer should get acquainted with the materials of the case to the extent

maximally possible at each stage of the proceedings

- 2.1.4. The lawyer should conduct an independent investigation of the facts of the case regardless of the accused's admissions or statements to the lawyer of facts constituting guilt. This should be conducted as promptly as possible.
- 2.1.5. The lawyer should consider whether the investigator should be encouraged to examine particular witnesses or obtain particular pieces of information.
- 2.1.6. The sources of investigative information may include the charging document; the accused; potential witnesses; police and prosecution; physical evidence; the crime scene; specialist or expert assistance.
- 2.1.7. The lawyer shall actively participate in all procedural actions where the client participates, unless not informed in time by criminal investigation body.
- 2.1.8. The lawyer shall strive to meet with the client as soon as possible after any procedural action in which only the client participated in order to satisfy themselves that the client was not subject to any abuse, pressure or ill-treatment and to identify what happened.
- 2.1.9. The lawyer, with his client's consent, should take the appropriate action in the event of a breach of the client's rights.

## **2.2. Pre-trial Release Proceedings.**

- 2.2.1. The lawyer should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.
- 2.2.2. The lawyer should specifically consider whether the terms of Article 5 or 3 of the European Convention on Human Rights have been breached.
- 2.2.3. Where the client is not able to obtain release under the conditions set by the court, the lawyer should consider pursuing modification of the conditions of release under the procedures available.
- 2.2.4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, the lawyer should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, the lawyer should advise the client and others acting in his or her behalf how properly to post such assets.
- 2.2.5. Where the client is incarcerated and unable to obtain pretrial release, the lawyer should alert the court to any special medical or psychiatric and security needs of the client and request that the court direct the appropriate officials to take steps to meet such special needs.

2.2.6. The lawyer should obtain the following information from the client before any pre-trial hearing that will consider a remand in custody (if not done before):

- (i) if the client has criminal records and if he/she has arrest history;
- (ii) if the state of health does not allow him/her to be arrested;
- (iii) if the client has a permanent place of residence;
- (iv) if the client has a permanent work place;
- (v) if the client has dependants in the family;
- (vi) if the client has people or an organisation that can “guarantee” for him/her or if there is a witness that can testify against the prosecution facts;
- (vii) if the client can pay the bail.

2.2.7. The lawyer should strive to use the collected information to obtain the lightest preventive measure.

2.2.8. At a hearing to consider pre-trial release, the lawyer should, where it would be helpful, produce evidence to assist the client and ensure that the prosecution has produced sufficient evidence to meet the standard for keeping the client in custody.

2.2.9. The lawyer should consider challenging or appealing a negative decision on bail. If an investigative judge has not examined the evidence presented by the defence, the lawyer should ask the appeal court the re-examination of the respective pieces of evidence;

2.2.10. The lawyer should consider whether a renewed application for bail should be made if there is any choice of circumstances. They should consider opposing any undue extension of the arrest of their client.

### **2.3. Diversion procedures (reconciliation of the parties; plea-bargaining; simplified procedures)**

2.3.1. The lawyer should consider any options open to his client to divert the case from the courts or to process it through a simplified procedure. The lawyer may, if appropriate, explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

2.3.2. The lawyer should ensure that a client only agrees to accept guilt either in court or in any out of court process where:

- the client is fully aware of the implications, which have been explained by the lawyer;
- consent to plead guilty is full and voluntary;
- the facts asserted by the prosecution are admitted by the client;



- all rights of the client, particularly where a juvenile or otherwise vulnerable, have been respected.

## 2.4. General trial preparation

2.4.1. The lawyer should ensure that there is adequate time to prepare the case in accordance with Article 6 of the European Convention on Human Rights and, if not, shall seek an adjournment.

2.4.2. The lawyer should ensure that she/he has a clear strategy for managing the trial.

2.4.3. To prepare for the trial, the lawyer should:

- e) inspect the case file;
- f) take copies of all relevant documents;
- g) study the documents;
- h) decide if there is further evidence to be obtained by either the defence or the prosecution;
- i) ensure that the evidence is presented to the court in a proper manner;
- j) draft a concluding statement where this is appropriate and consider if this should be given to the judge or jury;
- k) prepare adequately for the hearing in relation to the likely evidence, law and procedure;
- l) consider whether the defence should call any witnesses if this is allowed and appropriate and to prepare any such witnesses for the trial, taking care to preserve professional independence;
- m) prepare the client for the hearing. This should include, where appropriate, advising on suitable courtroom dress and demeanour. The lawyer should be alert to the potentially prejudicial effect of the client appearing before the court in clothing that indicates that they have come from prison. The lawyer should ensure that the client understands his/her trial strategy and that they have agreed a way of conferring during the trial. If necessary, lawyer should seek a court order to have the client available for conferences.

2.4.4. The lawyer should ensure that she/he fully informed as to the rules of evidence, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

2.4.5. The lawyer should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, lawyer should prepare motions and memoranda for such advance rulings.

2.4.6. Throughout the trial process lawyer should endeavour to establish a proper record

for appellate review. As part of this effort, lawyer should request, whenever necessary, that all trial proceedings be recorded.

2.4.7. Throughout preparation and trial, lawyer should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

2.4.8. Where a lawyer has begun to act for a client at a late stage in the proceedings, she/he should consider whether to ask the court to review once again evidence that has been considered before she/he was instructed.

2.4.9. A lawyer should consider asking the court for an adjournment if, in exceptional circumstances, it becomes clear during the hearing that material evidence should be presented to the court but that it has not been obtained, either by defence or prosecution.

2.4.10. Where an accusation against a defendant is amended by the prosecution at the last moment, the lawyer must consider if she/he should ask for adjournment to obtain evidence or adequately prepare a defence.

2.4.11. The lawyer may at any stage of the court enquiry request with reasons an examination of the corpus delicti or a review of the documents and minutes of the procedural acts.

### **3. Jury selection**

3.1. In countries that include rights to select juries, lawyers should be familiar with the law and procedures by which a jury is selected.

3.2. If possible, lawyers should seek to obtain a prospective juror list in advance.

3.3. Where appropriate, lawyers should draft questions for prospective jury members in advance of trial in order to elicit information about the attitudes of individual jurors; to convey to the panel certain legal principles which are critical to the defense case; preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial; to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; to establish a relationship with the jury.

### **4. Presenting the Defence Case**

4.1. The lawyer must have a clear strategy for the presentation of the defendant's case. S/he must consider whether to make an opening statement if one is allowed.

4.2. The lawyer must ensure that the defendant's case is presented as well as is possible.

## 5. Closing argument

- 5.1. The lawyer must prepare their closing arguments in advance and consider whether to give the court a written summary.
- 5.2. The lawyer must be familiar with any limitations on what the prosecution and defence can present to the court.
- 5.3. Lawyer should be familiar with the local rules and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.
- 5.4. In developing closing arguments, the lawyer should review the proceedings to determine what aspects can be used in support of defence summing up and must consider:
  - (a) highlighting weaknesses in the prosecution's case;
  - (b) favourable inferences to be drawn from the evidence;
  - (c) using helpful testimony from direct and cross-examinations; and responses to anticipated prosecution arguments;
  - (d) how the prosecutor may seek to rebut the defence arguments.
- 5.5. The lawyer should consider objecting if the prosecutor exceeds the scope of permissible argument and seeking the appropriate remedy.
- 5.6. The lawyer should bear in mind the dangers of losing the court's attention. A logical and coherent structure is important; it may be helpful to begin and to end statements to the court with the most important aspects which are to be borne in mind by the court; it will be desirable not to spend too long on facts which are undisputed.

## 6. Sentencing

- 6.1. Among the lawyer's obligations in the sentencing process are:
  - (1) where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, and financial implications;
  - (2) to ensure the client is not harmed by inaccurate information or information that might have been inappropriately disclosed to the court;
  - (3) to ensure all reasonably available mitigating and favourable evidence, which is likely to benefit the client, is presented to the court;

- (4) to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offence, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;
  - (5) to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the pre-sentence investigation report before distribution of the report.
- 6.2. The lawyer should ensure that the client understands any sentence that s/he receives.
- 6.3. The lawyer shall seek, where possible, to improve the convict's condition during any term of imprisonment. Should there be any such prospects, the lawyer shall explain all possibilities to the client and their favourable and unfavourable consequences. The lawyer is not obliged to represent his/her former client in the procedures related to the serving of the sentence.

## **7. Trials in absentia**

- 7.1. If appointed to act in a trial in absentia, the lawyer should represent the interests of the defendant as best as can be done without specific instructions.
- 7.2. A lawyer may not in a trial in absentia positively assert anything on which they have received no instructions but they should test the prosecution's case to the extent possible.

## **8. Appeal and Review**

- 8.1. The lawyer should explain to the client the contents of any court decision and prospective ways to challenge it in national and, if relevant, international courts.
- 8.2. The lawyer shall advise the client in the event of a guilty verdict on the possibilities of appeal or review of both the finding of guilt and the sentence. Subject to rules of court, s/he should follow the instructions of his/her client in the making and terms of an appeal.
- 8.3. The lawyer should pay careful attention to any applicable time limits, particularly if a lawyer has only been instructed at the appeal stage.
- 8.4. The trial lawyer should cooperate in providing information to any separate appellate lawyer concerning the proceedings in the trial court.
- 8.5. A lawyer instructed in an appeal should draft the appeal reference, underlining the inconsistencies of the accusation and, if appropriate, presenting in a positive

manner the personality of the defendant.

- 8.6. The lawyer should attach to the appeal the list of appropriate documents if he/she invoked the need to present new pieces of proof as provided by the procedure described by the legal provisions.
- 8.7. Where the defendant wants to file an appeal but is unable to do so without the assistance of lawyer, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.
- 8.8. If the trial court proceedings were fully recorded by technical devices, together with the minutes of the court sittings, the lawyer shall request a possibility to listen to the audio recording to the court sitting.
- 8.9. Should the minutes of the court proceedings contain any errors or be incomplete, and should such defects distort the circumstances of the case studied in the court for the benefit of the prosecution, the lawyer shall note all such places in the minutes. Should an audio recording be available, the lawyer shall note all differences between the minutes and the recording.
- 8.10. The lawyer should inform the client of any procedures available for requesting a discretionary review of, or reduction in, the sentence imposed by the trial court, including any time limitations that apply to such a request.
- 8.11. The lawyer should be acquainted with the circumstances of penalty enforcement, the correction means for convicts, the ways to enforce the security and preventive measures to protect the rights, freedoms and interests of the person as well as to offer help to the convicts in their social adaptation.
- 8.12. The lawyer should inform the client about the mandatory character of the final court decisions, as they become enforceable and the ordinances of the prosecutor on the termination of criminal prosecution.

## **9. Vulnerable clients**

**Note: This section will be redrafted in the light of any draft from the European Commission on the protection of vulnerable suspects and defendants.**

### **9.1. Juveniles**

- 9.1.1. Juveniles are particularly vulnerable in and lawyers must understand this when acting for them.
- 9.1.2. As a rule, it is desirable that a lawyer who acts for juveniles has undergone special training in juvenile justice.
- 9.1.3. While offering state guaranteed legal aid to minors lawyers comply with **additional principles** to the general ones, namely:

- (a) ensuring the protection of the child - in any decision taken the lawyer makes sure that the minor is in physical and psychological safety. The lawyer does not limit only to the legal representation of the minor in the respective case, but takes actions to ensure the integrity of the child to the community where he/she comes from and prevent crime recurrence.
- (b) respect for child's dignity – the lawyer treats with respect the minor, irrespective of his/her age and abilities, involves the minor in all decisions relevant for his/her defence.
- (c) increased accountability of the parents on their duties – the lawyer contacts the parents and explains them the circumstances of the case and the need for their accountable involvement.
- (d) multi-dimensional intervention – the lawyer always asks the involvement of the social assistant or of the probation councillor from the place of residence of the minor to undertake a social research and prepare the pre-sentence report. The lawyer insists on the presence of the social worker or the psychologist and at least one of the parents or of the legal representative at any procedural actions undertaken with the participation of the minor.
- (e) Confidential discussions with the minor – it is important that the lawyer has confidential discussions with the child in the absence of his/her parents, who usually are the legal representatives and are present at all the procedural actions. The lawyer explains the rights and duties in a language understood by the child.

9.1.4. Immediately after taking over the case, the lawyer should contact the parents or the legal representatives of the minor and the social assistant of the probation officer from the place of residence of the minor to collect relevant information about the state of health, references from school, employer and other relevant institutions, and other information necessary to support the application of the softest preventive measure, as well as the living and educational conditions of the minor, the level of intellectual, volitional and psychological development, the character and temper particularities, his/her interests and needs, the influence of the adults on the minor, the causes and conditions which have contributed to committing the crime and other information necessary to support the application of the softest preventive measure or penalty.

## **9.2. Clients with a mental disability**

- 9.2.1. A lawyer has a duty in every case to consider whether his/her client has the mental capacity required:
- (a) to give instructions;
  - (b) to have committed the crime of which they are accused;
  - (c) to meet the terms of particular assistance for those lacking such capacity either during the process of the trial or sentence.
- 9.2.2. Where a lawyer doubts such mental capacity of his client s/he should implement such procedures as exist for dealing with such cases.

## **9.3. Non Nationals**

- 9.3.1. A lawyer should remember that his/her duties are the same, regardless of the nationality of his/her client.
- 9.3.2. In particular, lawyers should remember that:
- (a) The European Convention on Human Rights applies to all, regardless of nationality;
  - (b) all are entitled to legal aid;
  - (c) there is a particular obligation on the lawyer to ensure that his/her client understands the proceedings and that interpretation and translation is obtained if required;
  - (d) the relevant embassy or consulate is informed;
  - (e) particular attention may need to be given to the issue of obtaining pre-trial release of the client.

## **10. Professional Development**

- 10.1. The lawyer should pursue continuing professional development through reading of appropriate journals and articles, both academic and socio-legal; organisation of and participation at meetings, seminars, conferences, round tables; and undertaking other forms of training and exchange of experience.
- (2) request appropriate copies of any relevant documents which are available regarding the client's case, including copies of any charging documents, arrest protocol or other recorded actions of the police or prosecution;
  - (3) ensure that they are familiar with the legal criteria for determining pre-trial release and the procedures that will be followed in setting those conditions;
  - (4) talk informally to any investigating officer to discover information about the circumstances of the case.