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Developing a Global Program for Enhancing Accountability: Key Ethical Tenets for the Legal Profession in the 21st Century

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DEVELOPING A GLOBAL PROGRAM FOR ENHANCING ACCOUNTABILITY: KEY ETHICAL TENETS FOR THE LEGAL PROFESSION IN THE 21ST CENTURY

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I. INTRODUCTION

In August 2002, the growing Enron scandal sounded a loud wake-up call for the international legal community. As public outrage escalated over corporate misconduct and the illicit practices of Vinson

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& Elkins,¹ state bar associations in the United States shifted uncomfortably under rising questions of their effectiveness to regulate delinquency amongst corporate lawyers. Ultimately, the federal government intervened and new corporate accountability laws were passed that required the Securities and Exchange Commission (SEC) to establish rules necessitating corporate lawyers to further disclose evidence of wrongdoing in the corporations that they represent.²

As admirable as the work of the SEC is, in order for real change to occur, the legal community must reassess and improve its own ethical standards and methods of accountability. Ineffective or incomplete codes of conduct must be updated in order to adapt to the changing needs of the legal profession.

One attempt to reach this goal can be found within the International Bar Association (IBA). The IBA's Code of Ethics for lawyers, first promulgated in 1956 and revised in 1988, will soon be subject to another major rewrite. It is hoped this exercise will be the catalyst for a major shift in focus so that all jurisdictions will recognize the fundamental importance of enhancing accountability in the legal profession by accepting and adhering to common principles of ethics.

However, before this task can begin, it is important to assess the current state of rules of professional conduct for lawyers in different jurisdictions. This exercise will give the IBA insight into common principles of ethical conduct. It also allows the IBA to determine which of these principles should be universally incorporated into existing codes.

The principles selected for this review promote accountability in one of three ways. Firstly, they outline the principles that govern an attorney's responsibility to her client. Secondly, they promote responsibility to the institutions of the legal profession. Finally, they demand accountability to society and to the rule of law.

It is beyond the scope of this Article to review all legal codes of conduct. Therefore, the author has included a selection of geographically diverse codes that can be divided into three main categories. The first category includes codes of conduct developed by various national bar associations. These include the codes of conduct of Zimbabwe, Lithuania, England and Wales, Hong Kong, and the code of conduct for lawyers of the European Union. The second category includes codes of major state bar associations in the United

1. Vinson & Elkins, Enron's Houston-based law firm came under fire in mid-2002 due to demands that it should have required greater disclosure in relation to "Enron's off-the-books partnerships that hid \$1 billion in company losses." *Pitt Says Lawyers Will Be Held Accountable To Directors*, N.Y. TIMES, Aug. 13, 2002, at C2.

2. *Id.*

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States. Thirdly, the author has chosen to include codes of conduct of various international judicial bodies. This category includes the current IBA Code of Ethics, guidelines for lawyers appearing before the proposed International Criminal Court as developed by both the United Nations and the IBA, as well as the codes of ethics for lawyers appearing before the International Criminal Tribunals for the former Yugoslavia and Rwanda. The United Nations Principles on the Role of Lawyers is also included in this category. Although not a code of ethics in itself, the U.N. Principles are included to give the IBA an idea as to the minimum ethical standards of international law mandated from the legal profession.³

Analysis of the selected samples brought to light a group of principles that comprise a necessary framework for enhancing accountability through codes of professional conduct. Some of these key principles, such as professional independence, diligence, conflict of interest, and guidelines governing relations with the court are universal to all codes of conduct. However, certain important principles were not found to be common in all examined cases. If the legal community aims to establish a working system of accountability, clearly outlined disciplinary measures, guidelines for lawyer/client communication, standards of personal integrity, confidentiality,

3. The IBA Sample Set for Preliminary Research for Revision of the 1988 IBA International Code of Ethics consists of: BASIC PRINCIPLES ON THE ROLE OF LAWYERS (United Nations 1990), *available at* <http://www1.umn.edu/humanrts/instree/i3bprl.htm>; CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION (1998), *available at* <http://www.in-law.net/eng/dialogare/ilcodicedeontologico.pdf>; CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE (2002) (on file with the author); CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES] (2000), *available at* <http://www.barcouncil.org.uk/47/1/1/index.htm>; CODE OF CONDUCT OF THE BAR OF THE HONG KONG SPECIAL ADMIN. REGION (1997), *available at* http://www.hkba.org/the-bar/code_of_conduct/code_of_conduct.doc; CODE OF PROF'L ETHICS FOR LAWYERS (Bar Ass'n of the Republic of Lithuania 1999), *available at* <http://www.advoco.lt/docs/en/etik-kod-engl.doc> [hereinafter LITHUANIAN CODE]; CODE OF PROF'L CONDUCT FOR DEFENCE COUNSEL: INT'L CRIMINAL TRIBUNAL FOR RWANDA (1998), *available at* <http://www.ictr.org/wwwroot/ENGLISH/basicdocs/codeconduct.htm>; D.C. RULES OF PROF'L CONDUCT (1990), *available at* http://www.dcb.org/lawyers/ethics/legal_ethics/rules_of_professional_conduct/index.cfm#board; INT'L CODE OF ETHICS (Int'l Bar Assoc. 1988), *available at* http://www.iit.edu/departments/csep/PublicWWW/codes/coe/International_Bar_Association_88.html; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L CRIMINAL COURT (Int'l Bar Assoc.), *available at* http://www.lchr.org/intl_justice/icc/icc_conduct_0502.pdf; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L TRIBUNAL FOR YUGOSLAVIA (United Nations 1997), *available at* <http://www.un.org/icty/legaldoc/index.htm>; THE LAWYER'S CODE OF PROF'L RESPONSIBILITY (N.Y. State Bar Assoc. 1970), *available at* http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Lawyers_Code_Of_Professional_Responsibility/CodeofResponsibility.pdf;

methods of financial arrangement, legal training, lawyer/client communication, and disciplinary measures must be addressed in all legal codes of ethical behavior.

II. COMMON THREADS: UNIVERSAL PRINCIPLES OF ETHICAL BEHAVIOR IN THE LEGAL PROFESSION

The concepts that follow below form the ethical consensus of the legal community. They stipulate core principles governing the attorney/client relationship, an attorney's obligations to the legal community, and society in general. When looking to redraft its code in 2003, the IBA will most certainly include these key principles, for no code is complete without them.

A. *Professional Independence*

A cornerstone of a legal code of conduct addresses the independence of the profession. Professional independence is necessary to ensure trust in the process of justice. Accordingly, all codes assert that lawyers have a fundamental obligation to preserve their independence while discharging their professional duties.⁴ Most codes of conduct are similar in that they assert lawyers should remain independent from all other influences, especially those that may arise from personal interests or external pressure.⁵ This also includes barring acceptance of a brief or instructions to a lawyer from the client that would make it difficult to maintain professional independence.⁶

However, after examination of the selected sample set, it became apparent that although all codes embrace the idea of professional independence, each has its own preoccupation with what outside influences must be limited. Codes of the former Soviet Union are much more concerned with limiting the influence of the state,⁷ while codes of historically capitalist states like England and Wales seem to see threats to independence coming from the private sector.⁸ Most international codes regulating judicial bodies link professional

4. See, e.g., INT'L CODE OF ETHICS, *supra* note 3, at art. 3 ("Lawyers shall preserve independence.").

5. See, e.g., CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3, at art. 2.1.1.

6. See, e.g., CODE OF CONDUCT OF THE BAR OF THE HONG KONG SPECIAL ADMIN. REGION, *supra* note 3, at para. 59 (barring acceptance of a "brief or instructions" that give the appearance of partiality).

7. See, e.g., LITHUANIAN CODE, *supra* note 3, at para. 2 (while performing his professional duties a lawyer shall be independent from state authorities . . .).

8. See, e.g., CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES], *supra* note 3, at 104(a)(i) (requiring barristers be "completely independent in conduct and in professional standing as sole practitioners").

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independence with professional competence and are quite vague in their stipulation of what professional independence should be. This is quite in contrast to the state bar associations of the United States, which issue lengthy codes stipulating the specifics of professional independence. Accordingly, there are few codes that achieve a sophisticated balance between indistinct concepts and overwhelming particulars.

The code that most accurately and completely addresses the issue of professional independence can be found in Article 5 of the IBA Code of Professional Conduct for Counsel Appearing Before the International Criminal Court:

- (1) In providing representation to a Client, Counsel shall:
 - (a) act with competence, skill, care and honesty;
 - (b) exercise independent professional judgment and render open and honest advice.
- (2) Counsel must not:
 - (a) permit his or her absolute independence, integrity and freedom from external pressure to be compromised;
 - (b) do anything as may lead to any inference that his or her independence may be compromised;
 - (c) compromise his or her professional standards in order to please the Client, the Court or a third party.⁹

The above-quoted provision sets clear parameters for the boundaries of professional independence. It sets both positive and negative obligations to members of the legal profession without entangling them in numerous particulars.

B. Diligence

Another core value in a legal code of conduct is a positive obligation of diligence. Lawyers must diligently represent their clients

9. CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L CRIMINAL COURT, *supra* note 3, at art. 5.

in order to protect their clients' best interests.¹⁰ Lawyers must carry through to conclusion all matters undertaken for the client within the scope of their legal representation.¹¹ Such diligence can extend beyond the client—the lawyer must also avoid unnecessary expense or waste of the court's time.¹²

The principle of diligence can best be described by reference to Rule 1.3 of the District of Columbia Rules of Professional Conduct:

- a. A lawyer shall represent a client zealously and diligently within the bounds of the law.
- b. A lawyer shall not intentionally:
 1. Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or
 2. Prejudice or damage a client during the course of the professional relationship.
- c. A lawyer shall act with reasonable promptness in representing a client.¹³

The lawyer's obligation to be diligent varies from code to code. International codes directly state that one must diligently represent the client from the beginning until the termination of the lawyer's duties,¹⁴ while certain national codes describe diligence as a characteristic of one's responsibilities, but do not highlight it as a separate principle of the attorney-client relationship.¹⁵

Diligent legal representation is one of the most important values a code of ethics can uphold. Diligence forms the basis of an accountable attorney/client relationship. A code of ethics that wishes to enhance accountability will promote this value in its own right.

10. See, e.g., CODE OF PROF'L CONDUCT FOR DEFENCE COUNSEL: INT'L CRIMINAL TRIBUNAL FOR RWANDA, *supra* note 3, at art. 6; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L TRIBUNAL FOR YUGOSLAVIA, *supra* note 3, at art. 11.

11. See, e.g., CODE OF PROF'L CONDUCT FOR DEFENCE COUNSEL: INT'L CRIMINAL TRIBUNAL FOR RWANDA, *supra* note 3, at art. 6; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L TRIBUNAL FOR YUGOSLAVIA, *supra* note 3, at art. 11.

12. See, e.g., CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES], *supra* note 3, at § 701(a).

13. D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 1.3.

14. See, e.g., CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L TRIBUNAL FOR YUGOSLAVIA, *supra* note 3, at art. 8.

15. See, e.g., CODE OF CONDUCT OF THE BAR OF THE HONG KONG SPECIAL ADMIN. REGION, *supra* note 3, at para. 111.

C. *Conflict of Interest*

Another key tenet to ensure an ethically bound legal profession is preventing situations where a conflict of interest may arise. Most codes address conflicts of interest by outlining situations that describe a conflict of interest rather than providing a definition as to what it is. At a minimum, each of the codes underlines that lawyers must always place the client's interests above their own. Another basic tenet is that a lawyer may not represent or act on behalf of two or more clients on the same matter.¹⁶ Additionally, certain codes give the lawyer great autonomy in deciding what constitutes a conflict of interest.¹⁷ Other codes call on attorneys to disclose to clients if they feel that they have been placed in a situation where they may face a conflict of interest.¹⁸ Furthermore, most codes stipulate that a lawyer is not permitted to represent a client with respect to a matter if:

1. That matter involves a specific party or parties and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer;
2. Such representation will be or is likely to be adversely affected by representation of another client;
3. Representation of another client will be or is likely to be adversely affected by such representation;
4. The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.¹⁹

An ideal provision on conflicts of interest will have general guidelines backed by specifics. It is important not only to stipulate

16. See, e.g., D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 1.7(a); INT'L CODE OF ETHICS, *supra* note 3, at R. 13.

17. See, e.g., CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES], *supra* note 3, at art. 703 (giving the barrister broad discretion to both determine if a conflict exists and remedy the conflict).

18. See, e.g., D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at 1.7; INT'L CODE OF ETHICS, *supra* note 3, at R. 13.

19. D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 1.7.

what a conflict of interest is, but also to define the situations that constitute a conflict of interest.

D. Relations with the Court

A highly important principle of legal conduct concerns the way in which lawyers interact with members of the court and their peers. A code of conduct must show respect for the institutions and procedures of the law. Therefore, it is important to construct guidelines governing behavior in court as well as promoting civility amongst lawyers outside of court.

All the codes reviewed include provisions that address a lawyer's relationship with the court. The codes generally require lawyers to maintain due respect when appearing before a court or tribunal. A number of the codes provide fairly lengthy and detailed requirements for a lawyer's behavior in court. The Code of Conduct for the Bar Council of England and Wales²⁰ provides an example of the detailed format covering a lawyer's relations with the court. Under this Code, a barrister when conducting proceedings in court:

- (a) is personally responsible for the conduct and presentation of his case and must exercise personal judgment upon the substance and purpose of statements made and questions asked;
- (b) must not unless invited to do so by the Court or when appearing before a tribunal where it is his duty to do so assert a personal opinion of the facts or the law;
- (c) must ensure that the Court is informed of all relevant decisions and legislative provisions of which he is aware whether the effect is favorable or unfavourable towards the contention for which he argues;
- (d) must bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;
- (e) must not adduce evidence obtained otherwise than from or through the client or devise facts which will assist in advancing the lay client's case;

20. CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES], *supra* note 3.

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- (f) must not make a submission which he does not consider to be properly arguable;
- (g) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify insult or annoy either a witness or some other person;
- (h) must if possible avoid the naming in open Court of third parties whose character would thereby be impugned;
- (i) must not by assertion in a speech impugn a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation;
- (j) must not suggest that a victim, witness or other person is guilty of crime, fraud or misconduct or make any defamatory aspersion on the conduct of any other person or attribute to another person the crime or conduct of which his lay client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to the lay client's case and appear to him to be supported by reasonable grounds.²¹

An ideal relationship with the court should promote respect for legal institutions as well as civility in one's conduct. Most of the codes reviewed contain provisions outlining how lawyers should behave towards opposing counsel and their colleagues in general. The codes underline that lawyers should treat their professional colleagues with the utmost courtesy and fairness.²² Counsel should also recognize all other counsel appearing or acting in relation to proceedings before a court as professional colleagues and should act fairly, honestly, and courteously towards them and their clients.²³ In doing so, the codes suggest that fairness and courtesy between counsel promote civility in the profession.

A good outline of the relationship between a lawyer and the court in codes of conduct will promote respect of and responsibility to the institutions of law as well as to the attorneys with whom they practice.

21. *Id.* § 708.

22. See CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3, at art. 5.8.

23. See CODE OF PROF'L CONDUCT FOR DEFENCE COUNSEL: INT'L. CRIMINAL TRIBUNAL FOR RWANDA, *supra* note 3, at art. 17.

Such relationships not only strengthen a lawyer's professional outlook, but increase his or her feeling of liability to the profession as well.

III. IMPORTANT DIFFERENCES: KEY ETHICAL TENETS IN A NEW AGE OF ACCOUNTABILITY

While the above principles certainly provide a cornerstone for ethical behavior in the legal profession, these principles as a whole are insufficient to constitute a complete framework for accountability. Upon reviewing the sample set of codes, one can distinguish a group of ethical tenets that are not included in all codes of conduct, but should be. These principles are a natural extension of the principles discussed above.

A. *Trust and Personal Integrity*

Although all codes address issues of personal conduct, very few link the issue of trust to personal behavior. Only the IBA's Code of Ethics, the EU's Code of Conduct, and the Zimbabwe Law Society's Code of Conduct address the issue of trust as one that, in turn, can only exist if the lawyer's personal honor, honesty, and integrity are beyond doubt.²⁴ However, although other legal codes do not directly link the two issues, they do attempt to regulate improper behavior to varying degrees. State bar associations of the United States have a particular fixation on one's "moral character."²⁵ These codes stipulate specific behaviors that constitute breaches of personal integrity, including alcohol abuse, and also establish mechanisms for reporting such misconduct.²⁶ With the exception of the European Union, most international codes of conduct are much more vague on this issue. They seem to suggest that a lawyer should remain impervious to corruption, but do not go beyond this.

The virtue of integrity both in practice and in private life is a professional obligation.²⁷ This obligation includes abstaining from any behavior that could discredit the profession.²⁸ In order to increase accountability in the legal profession, codes of conduct must address

24. See CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3, at art. 2.2; CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3. INT'L CODE OF ETHICS, *supra* note 3, at R. 2.

25. See, e.g., THE LAWYER'S CODE OF PROF'L RESPONSIBILITY, *supra* note 3, at Canon 1, EC 1-3 (requiring bar applicant have "good moral character").

26. See, e.g., D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 8.4 (listing activities constituting professional misconduct).

27. *Id.*

28. See INT'L CODE OF ETHICS, *supra* note 3, at R. 2.

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the lawyer as a complete person, not just as an agent of the profession. Lawyers' obligations to the profession do not end when they step outside the courtroom. If a lawyer's personal behavior is not ethically bound, then it will be reflected in their professional practices. A key to increasing general societal accountability is to ensure that codes address lawyers as members of society, not just as members of the legal profession.

B. Confidentiality

With the exception of the Lithuanian Bar Association, all bodies include provisions on the confidentiality of lawyer/client communication in their codes of conduct. Confidentiality is based on the idea that an essential part of a lawyer's role is to provide a forum in which clients can share information that they would not be able to tell others. In order to maintain a bond of trust between lawyer and client, any information shared with a lawyer is given on the basis of confidence.²⁹ Unsurprisingly, considering the complexities surrounding the issue of confidentiality, the details of these provisions vary.

One body of codes addresses the principle of confidentiality through more general language that contains brief provisions underlining the importance of the principle of confidentiality.³⁰ Likewise, there are some jurisdictions that set forth extremely detailed provisions dealing with lawyer/client confidentiality,³¹ and others that say little or nothing on the subject.³² Acknowledging the unique aspect of confidentiality and the fact that the issue will be handled differently by national jurisdictions, certain international codes, for example, require confidentiality "[e]xcept where the law or custom of the country concerned requires."³³ Most codes require that the duty of confidentiality continues after the attorney/client relationship has ceased.³⁴ Also, confidential information cannot be divulged without the consent of the client.

Another key issue surrounding client confidentiality is when confidentiality can be broken. The codes provide various prescriptions

29. See, e.g., CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3, at art. 2.3 (confidentiality rule).

30. See, e.g., *id.*; CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3, at art. 2.3.

31. See, e.g., D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 1.6.

32. For instance, the Lithuanian Code has no relevant confidentiality provision. See LITHUANIAN CODE, *supra* note 3.

33. INT'L CODE OF ETHICS, *supra* note 3, at art. 5.

34. See, e.g., CODE OF CONDUCT FOR THE BAR COUNCIL [AT ENGLAND AND WALES], *supra* note 3, at art. 702.

for this situation. Some codes strictly stipulate that confidentiality cannot be broken;³⁵ however, other codes attempt to provide some sort of balance between the obligation to respect a client's privacy and society's need to obtain that information. For example, the Bar Association of Hong Kong stipulates that confidentiality must be upheld unless the court orders otherwise, it interferes with a lawyer's public duty, or the lawyer's professional interest requires it to be broken.³⁶

Without the certainty of confidentiality, there is no trust.³⁷ Therefore, confidentiality is a primary and fundamental duty of a lawyer.³⁸ However, if keeping a client's confidence could cause danger to society, then a lawyer should be able to breach client confidentiality for the greater good. A code of conduct that truly promotes accountability in the legal profession will strike a balance between these two conflicting demands.

C. *Communications Between Lawyer and Client*

Communication between a lawyer and client is addressed in one of two ways. Most codes commonly see communication as an integral part of diligence, and it is usually addressed as a subset of the diligence clause. For example, the EU Code of Conduct states that "[a] lawyer shall advise and represent his client promptly, conscientiously and diligently."³⁹

However, other codes draw a distinction between lawyers' obligations to be diligent and their obligations to maintain an open line of communication with their client. The District of Columbia Rules of Professional Conduct require a lawyer to "keep a client reasonably informed about the status of a matter" and to "promptly comply with reasonable requests for information."⁴⁰ There is also a general requirement for a lawyer to explain matters reasonably to the client in order for the "client to make informed decisions regarding the representation."⁴¹

Another fundamental principle of the attorney/client relationship is establishing open lines of communication between lawyers and their

35. See, e.g., *id.*; CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3, at art. 2.3.

36. CODE OF CONDUCT OF THE BAR OF THE HONG KONG SPECIAL ADMIN. REGION, *supra* note 3, at para. 116.

37. CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3, at art. 2.3.

38. *Id.*

39. *Id.* art. 3.1.2.

40. D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 1.4(a).

41. *Id.* at R. 1.4(b).

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clients. Although a lawyer's duty to communicate with the client would seem to be a part of the duty to be diligent, this is an oversimplification of the issue. To establish a truly functional attorney/client relationship, a lawyer must offer a client diligent service, but must also keep the client informed of the details of the case. This ensures that a client makes informed decisions and that the attorney is acting in the client's best interests.

D. Financial Arrangements Between Lawyer and Client

Provisions dealing with financial arrangements between lawyer and client, if they exist at all, tend to concentrate on the reasonableness of the fee charged. Codes generally state that a fee charged by the lawyer should be fully disclosed to the client and should be fair and reasonable.⁴² However, most jurisdictions do not establish guidelines for what is fair and reasonable, giving individual attorneys autonomy to set the price as they please. This can lead to inflation in attorneys' fees. In light of this, some codes establish clear parameters as to what is fair and reasonable:

- a. A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 3. The fee customarily charged in the locality for similar legal services;
 4. The amount involved and the results obtained;
 5. The time limitations imposed by the client or by the circumstances;
 6. The nature and length of the professional relationship with the client;

42. See, e.g., CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3, at art. 3.4.1; CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3, at art. 3.3.1.

7. The experience, reputation, and ability of the lawyer performing the services; and
8. Whether the fee is fixed or contingent.⁴³

It is interesting to note that provisions requiring lawyers to account in good faith for the time spent working on a case and to maintain records can only be found in the recent international codes and in the Code of Conduct for the Bar Council of England and Wales.⁴⁴ The latter code provides a more detailed description of record keeping:

A barrister . . . must ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the last of the following: his fees have been paid, any taxation or determination or assessment of costs in the case has been completed, or the time for lodging an appeal against assessment or the determination of that appeal, has expired, and must provide his professional or BarDIRECT client (or where the lay client is subsequently acting in person, the lay client) with such records or details of the work done as may reasonably be required.”⁴⁵

Although most codes address financial arrangements between lawyers and their clients, provisions regarding record keeping and transparency vary, and in some cases do not exist at all. The Enron debacle has taught the legal community the hard lesson that lawyers must account for all financial transactions between them and their clients. Financial transparency is an important pathway to a responsible legal profession. In short, legal codes must provide guidelines toward the reasonableness of fees, and records must be kept of all money exchanged in order to establish a fully accountable legal community.

43. D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 1.5.

44. *See* CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES], *supra* note 3, at art. 701; CODE OF PROF'L CONDUCT FOR DEFENCE COUNSEL: INT'L CRIMINAL TRIBUNAL FOR RWANDA, *supra* note 3, at art. 11; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L CRIMINAL COURT, *supra* note 3, at art. 13; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L TRIBUNAL FOR YUGOSLAVIA, *supra* note 3, at art. 19(a).

45. CODE OF CONDUCT FOR THE BAR COUNCIL [OF ENGLAND AND WALES], *supra* note 3, at art. 701(f).

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E. Discipline

It is interesting to note that for an issue as key as disciplining lawyers, the codes take a very diverse approach to the subject matter. Several codes do not contain *any* provisions on discipline.⁴⁶ Still more codes include a very detailed list of prohibited activities.⁴⁷

For the purpose of creating a more general global set of ethical guidelines, it is more appropriate to ensure that a lawyer is disciplined for violating or attempting to violate the relevant code, or assisting or inducing another person to act in a similar way. However, follow-through is necessary to the upholding of any disciplinary measure. Codes must ensure that disciplinary proceedings are structured in such a way that action against a delinquent lawyer is mandatory.

F. Training Young Legal Practitioners

Another provision on which the codes are generally silent is the training of young legal practitioners. The only associations that mention training are the European Union and Zimbabwe. However, most of these provisions are vague generalizations rather than solid guidelines. For example, the EU promotes training young lawyers to encourage trust and cooperation among member states.⁴⁸ However, the EU code does not stipulate what constitutes adequate training or how this should be implemented. Zimbabwe's code is remarkably similar. While it recognizes the need to have highly trained young lawyers, it offers few stipulations on how to do so.⁴⁹

If one wants to promote a highly professional legal community, bar associations must mandate that their young practitioners be highly trained. This is especially important for regional and international legal bodies and young legal systems. Good training promotes cooperation, professionalism, and a dedication to the rule of law.

46. See CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3; CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3; INT'L CODE OF ETHICS, *supra* note 3.

47. See, e.g., D.C. RULES OF PROF'L CONDUCT, *supra* note 3, at R. 8.4; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L CRIMINAL COURT, *supra* note 3, at art. 22; LITHUANIAN CODE, *supra* note 3, at R. 4; THE CODE OF PROF'L CONDUCT OF DEFENCE COUNSEL: INT'L CRIMINAL TRIBUNAL FOR RWANDA, *supra* note 3, at art. 4; THE CODE OF PROF'L CONDUCT FOR COUNSEL APPEARING BEFORE THE INT'L TRIBUNAL FOR YUGOSLAVIA, *supra* note 3, at art. 35.

48. See CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION, *supra* note 3, at art. 5.8.

49. See CODE OF CONDUCT FOR LEGAL PRACTITIONERS OF ZIMBABWE, *supra* note 3, at 5.8.

IV. CONCLUSION

The idea of developing a global program for enhancing accountability through an internationally accepted code of ethics is both appealing and challenging. Whether such an effort would be manifested in an “internationally accepted code of ethics” or reflected in general standards that are voluntarily adopted by practicing lawyers, the opportunity to draft such a global accountability standard is ripe.

There are already common areas of ethical conduct that are fundamental to the legal profession. However, on a closer look there are key tenets that are not universal to all jurisdictions, but which should be. By incorporating these two groups, the legal community can form a solid code of ethics that would promote accountability to its members.