

# ETHICS OF ATTORNEY-AT-LAW IN KOREA



Woojin Kim

## ATTORNEY-AT-LAW ACT

- Chapter 4. Rights and Obligations of Attorneys-at-law (Art. 21 – Art. 39)
  - ✓ Art. 23 (Advertisement)
    - may advertise educational credentials, careers, etc.
    - prohibited from running certain types of advertisement
  - ✓ Art. 24 (Duty to Maintain Dignity)
  - ✓ Art. 25 (Duty to Observe Association Regulations)
    - regulations of KBA (Korean Bar Association)
    - regulations of local bar association

## ATTORNEY-AT-LAW ACT

- Chapter 4. Rights and Obligations of Attorneys-at-law (Art. 21 – Art. 39)
  - ✓ Art. 26 (Duty to Maintain Confidentiality)
  - ✓ Art. 27 (Duty to Perform Designated Services including Public Interest Activities)
    - not less than 20 hours a year
  - ✓ Art. 29-2 (Prohibition on Defense without Submitting Power of Attorney, etc.)
    - related issues : grossly excessive fees, tax evasion, inappropriate contact with public officials in charge

## ATTORNEY-AT-LAW ACT

- Chapter 4. Rights and Obligations of Attorneys-at-law (Art. 21 – Art. 39)
  - ✓ Art. 31 (Restriction on Acceptance of Cases)
    - conflict of interests
    - attorney-at-law retired from public office
  - ✓ Art. 31-2 (Restriction on Acceptance of Cases by Bar Exam Passers)
    - not less than 6 months of engagement / training required
  - ✓ Art. 34 (Prohibition of Partnership with Non-Attorney, etc.)
  - ✓ Art. 38 (Prohibition of Concurrent Holding of Offices)

## CODE OF ETHICS FOR ATTORNEY-AT-LAW

- General Ethics (Art. 1 – Art. 2)
  - manner of performance, duty to the truth, etc.
- Ethics on Duty (Art. 3 – Art. 12)
  - ✓ Art. 7 (Prohibition of Establishment of Dual Offices)
  - ✓ Art. 9 (Prohibition of Solicitation of Cases)
  - ✓ Art. 11 (Prohibition of Cooperation with Client in Illegal Acts)
  - ✓ Art. 12 (Protection of Personal Information)
- Ethics for Client (Art. 13 – Art. 34)
  - ✓ Art. 14 (Prohibition of Financial Dealings with Client)

## CODE OF ETHICS FOR ATTORNEY-AT-LAW

- ✓ Art. 18 (Maintenance of Confidentiality)
  - prohibited from divulging confidential matter of client
  - prohibited from disclosing communication with client and documents written during performing duties
- ✓ Art. 20 (Explanation at the Time of Acceptance of Cases)
- ✓ Art. 22 (Restriction on Acceptance of Cases)
- ✓ Art. 29 (Conclusion of Cases)
- ✓ Art. 32 (Agreement in Writing)
- ✓ Art. 33 (No Additional Fees without Justifiable Reasons)
- ✓ Art. 34 (Prohibition of Distribution of Fees, etc.)

## CODE OF ETHICS FOR ATTORNEY-AT-LAW

- Ethics for Courts, etc. (Art. 35 – Art. 45)
  - ✓ Art. 36 (Duty to the Truth in Legal Proceedings)
  - ✓ Art. 37 (Facilitation of Proceedings)
  - ✓ Art. 40 (Prohibition of Referral by Public Officials)
  - ✓ Art. 45 (Prohibition of Direct Negotiation with Counterparty Represented by Other Attorney or Legal Representative)

## FOREIGN LEGAL CONSULTANT ACT

- Foreign Legal Consultants
  - qualified as an overseas-licensed lawyer
  - approved by the Minister of Justice
  - register with KBA
  - residency requirement
- Foreign Legal Services
  - legal advice with regard to statutes of country of license
  - legal advice with regard to agreements country of license is a party to, or universally approved international customary law
  - representation of international arbitration case



## CODE OF ETHICS FOR FLC

- Ethics on Duty (Art. 4 – Art. 15)
  - ✓ Art. 6 (Prohibition of Exaggerated Advertisement)
  - ✓ Art. 7 (Prohibition of Establishment of Dual Offices)
  - ✓ Art. 9 (Prohibition of Solicitation of Cases)
  - ✓ Art. 10 (Prohibition of Use of Broker)
  - ✓ Art. 14 (Prohibition of Cooperation in Illegal Acts)
  - ✓ Art. 15 (Prohibition of Abetment of Perjury)

## CODE OF ETHICS FOR FLC

- Ethics for Clients (Art. 16 – Art. 21)
  - ✓ Art. 17 (Prohibition of Acceptance of Cases)
  - ✓ Art. 18 (Restriction on Acceptance of Cases)
  - ✓ Art. 20 (Confidentiality)
- Ethics for Fees (Art. 22 – Art. 30)
  - ✓ Art. 24 (Prohibition of Additional Fees)
  - ✓ Art. 25 (Prohibition of Conditional Fees)
  - ✓ Art. 27 (Prohibition of Fees for Building up Relationship with Public Officials in Charge)
  - ✓ Art. 28 (Prohibition of Evidence Manipulation)

## CODE OF ETHICS FOR JUDGE

- ✓ Art. 1 (Defense of Judicial Independence)
- ✓ Art. 2 (Maintenance of Dignity)
- ✓ Art. 3 (Fairness and Integrity)
  - free from prejudice and discrimination
- ✓ Art. 4 (Faithful Performance of Duties)
  - refrain from expressing opinion publicly with regard to specific case
- ✓ Art. 5 (Extra Activities)
- ✓ Art. 6 (Restriction on Financial Dealings)
- ✓ Art. 7 (Political Neutrality)

## EVALUATION OF JUDGES BY ATTORNEYS

- evaluate judges at the end of every year
- participation not mandatory, but voluntary
- since 2008 (initiated by Seoul local bar association)
- currently all of 14 local bar associations carry out respective evaluation of judges for the members in their regions
- evaluation items include fairness, dignity and consideration, balance and promptness, faithfulness and capability, etc.
- 5 ratings (very good, good, fair, poor, very poor)

## EVALUATION OF JUDGES BY ATTORNEYS

- KBA collects outcome from local bar associations and delivers it to the Supreme Court
- currently no legal basis for evaluation of judges (based on KBA guideline, not on statutes or regulations)
- the Supreme Court has yet to agree to take outcome into account in judicial administration
- part of outcome is released to the press (while top excellent performing judges are made public, poorest performing judges are not)
- currently judges do not evaluate attorneys-at-law (some raise their voice for introduction of evaluation of attorneys)

## ISSUE OF CONFIDENTIALITY

- Can legal opinion written by legal counsel be admitted as evidence of guilt? No
  - ✓ Court of original instance
    - on the ground of Attorney-Client Privilege
  - ✓ Supreme Court (May 2012, en banc)
    - not on the ground of Attorney-Client Privilege
    - but on the ground of relationship of Art. 314 (Exception to Admissibility of Evidence) and Art. 149 (Secrets in Course of Profession and Refusal of Witness) of Criminal Procedure Act

