CHAPTER THREE

JUDICIAL ETHICS/JUDICIAL CODE OF CONDUCT

[ETHICAL DUTIES JUDGES IN JUDICIAL ACTIVITIES]

Ethical Duties of Judges in Judicial activities

- **1.INDEPENDENCE**
- It is court independence from interference of other bodies [executives, legislative, other organs] both institutionally and personally, decisional. It is immunity from interference, **is it absolute independence?**
- This judicial independence is recognized under Bangalore principles of Judicial Conduct, ICCPR, UDHR, Federal Advocates Code of Conduct, The Constitution etc
- Judicial independence is *sin quo none* of democratic state—It is a prerequisite for democracy and impartial administration of Justice.
- Judicial Independence has institutional and individual aspects.
- The individual aspect of judicial independence is personal or decisional independence.
- It refers to state of mind of judges.
- It is concerned with the judge's independence in fact.
- Security of tenure and financial security guarantee decisional independence

Independence…

- Security of tenure exists when the other branches of government (executive or legislature) cannot remove the judge from office in discretionary or arbitrary manner until retirement or for life.
- Financial security implies rights of judges to non-reducible Salary while they are in office.
- Judges whose salary is reduced or increased upon the discretion of the executive or legislative have no decisional independence.
- FDRE Constitution establishes independent judiciary both at federal and state level—Article 78[1]
- Article 79(2) declares that judges are free from interference of any kind.
- The Ethiopian judiciary is immune from interference of the executive, legislature or any other body.[Principle, theoretically]
- Ethiopian judges enjoy security of tenure. As per Article 79(4) judges cannot be removed from their office arbitrarily or at the discretion of the executive or legislature[theoretically].

Decisional Independence…

- Limits to Decisional Independence:
- ***Ex parte communication***: judges are prohibited from discussing the merits of pending case or from giving opinion on media on pending case.[on bench only]
- ***Question****: can a judge discuss the merits of pending case with other judge presiding over the case? What about with his child, wife, other judges of same court?*
- ***Justifications:*** This restriction is not protect the right be heard, to build public trust, confidence on courts and to ensure judge's decision is based only on law and evidence.

Decisional…

- All private communications of merits of pending case is prohibited by rules of ex parte communication except with another judge trying the case. (Art.23 of Federal Code of Conduct Procl. 2001).
- ***Question: does ex-parte communication rules prohibit judges from discussing impending case? Why?***
- ***Gifts/Donation:*** judges are prohibit from taking gift/donation, bribery or any other *gifts in relation to pending or impending cases*.[article 25]
- ***Justification:*** it affects decisional independence of Judges and public perceive the court/judge as partial[lack of impartiality]—erodes public confidence of court.
- donation to judges can create a sense of obligation on the part of the recipient and an expectation of reciprocal benefit on the part of the donor.
- Judge X is residing in Y house free of rental payments, he bought 1.5M car @ 1M. Is it prohibited under rule of donation? Why? Can he take residential house as his birth day gift? What if he has got meal invitation @ Senaf International Hotel Nekemte?

2.IMPARTIALITY

- Conceptually speaking, it is being free from any form of biasness or prejudice in decision making or discharging one’s own duty or job.
- It could also be deciding case no other than basing on law and evidence.
- It may also mean treating litigants equally as per the due process of law.
- It is the fundamental quality of a judge.
- It applies not only to the decision itself but also to the process by which the decision is made.
- Impartiality and independence are separate and closely related ethical duties of judges.
- They are mutually reinforcing.
- Independence is the necessary conditions to impartiality & is a prerequisite for attaining impartiality.

IMPARTIALITY…

- Impartiality cannot exist without independence but independence can exist without impartiality.
- Thus, an independent judge who is free from any influence (executive & legislature) or any other persons could be partial due to his own perception or interest.
- ***Two Aspects to Requirements of Impartiality***:
- ***Subjective or real impartiality:*** ***is*** **a judge's personal impartiality as an individual.**
- **A judge is presumed to be subjectively impartial until proven otherwise.**
- exists when a judge has prejudice or bias towards one side or another or a particular result.
- exists when a judge has a prejudice or bias against one of the parties. That means, the judge is subjectively partial in such cases.
- E.G: a judge who is predetermined to rule in favor of the plaintiff despite the merit of the case is subjectively partial.
- Its purpose is to preserve the interests of the litigants. It is usually presumed to exist.

IMPARTIALITY…

- ***Objective or perceived Impartiality:*** **is the parties' and public's belief that the Court as an institution is impartial.**
- Achieving objective impartiality requires conferral of some guarantees by judges to eliminate any suspicions regarding their impartiality.
- exists when a ***reasonable observer*** is free from legitimate doubt in the impartiality of the court.
- Whether the judge is actually biased or not will not be taken into consideration to determine the existence of objective impartiality—rather in the **reasonable man standard**
- ***To be objectively impartial, judge should avoid behaviors/actions such as:***
- unjustified reprimand of advocates insulting,
- inappropriate remarks about litigants and witnesses,
- Judges should not place themselves in the position of an advocate/parties to examine or cross examine witnesses.
- Avoids conflict of interests.
- *All forms of bias i.e. leaning, inclination or bending towards one side or result.*

Cases/Grounds where Judge Should Recuse from the Case: Art.33, Proc. 1234/21

- Federal Courts Establishment Proclamation **[1234/2021]** obliges judges to recuse/withdraw from the case by their own motion where:
- ***The judge has connections with parties or advocate***—affinal or consanguineal relationship [relatives], if he was legal representative, tutor or advocate [later become a judge] etc. for one of the parties
- ***The judge has connection with the case*** (has interest in the case) to avoid conflict of interest
- ***He previously acted as a judge, mediator, arbitrator, in connection with the case or subject matter of dispute. What if a judge was previous acted as judge of lower or appellate court in the process of remand? See art.33(1)[c]***
- ***Other grounds*** [grounds which are sufficient reasons to conclude that injustice may be done if judge entertain the case fall under this category]—**article 33 of the Procl. No. 1234/2021**
- ***Example:*** social or business relationship of a judge, personal knowledge of evidence, personal relationship not covered above

Hypothetical Case

- **Moti** has been serving as a judge for the past five years. He carries out his judicial activities competently and diligently. He is not only a diligent and competent judge but also a man of high integrity in his religious life. **Moti** usually attends church. Due to his high moral integrity, he was given a post in the administration of church. He works in cooperation with **Abdi,** Pastor of the church. **Abdi** is trusted not only by **Moti** but also by the surrounding community at large. Last week **Moti** could not believe his eyes. Charged with rape, **Abdi** was in the court room with two policemen where **Moti** is on the bench. Should **Moti** preside over **Abdi's** case? On what ground should he recuse himself? Why? Does he violate federal courts' Code of Judicial Conduct if he fails to recuse himself? Why? This is not clearly addressed under Federal Judges Code of Conduct Proclamation
- **Then the question is whether injustice may occur if Moti preside over the case. There is a possibility of believing what Abdi says whether he tells the truth or not. It negatively affects the evidence of the prosecution. That is, it may create injustice if Moti preside over the case. The only ground is to avoid the possible occurrence of injustice.**
- **But this doesn't mean that every social [being member of same idir, ikub, praying in the same church or mosque] or business relationship should be a ground for recusal or withdrawal of judge from a case. In what ever case, the judge's impartiality should not be under question**

Impartiality…
Questions for Discussion

- Does personal Knowledge of disputed fact affect the impartiality of presiding judge? How?
- What if a presiding judge aware of disputed fact after ruling over the case?
- Does romantic relationship between judge and one the parties or advocates affect impartiality of the judge? How? What about friendship?
- What if a judge presiding over the case is a plaintiff at other court where the current plaintiff is a presiding judge?
- That is, Moti is a presiding judge on case b/n Abdi and Abbi @ X court and Abdi is a presiding judge over case b/n Moti and Begna @ Y court

3. Competence & Diligence

Ethical Duty of Competence

- ✓ The ethical duty of competence of judges requires “legal knowledge, skill, thoroughness and preparation” i.e. the judge should be competent (by knowledge, preparation, skill etc) to discharge his duty.
- ✓ judge should have the skill required to carry out his judicial function [writing summon, judgement, dissenting opinion].

Ethical duty of Diligence

- ✓ A judge is diligent when she/he “considers soberly, decide impartially and act expeditiously”
- ✓ Judges have an ethical duty to seriously and thoughtfully consider the matter before them.
- ✓ Diligent judges determine the matter expeditiously for they should not waste time or energy.
- ✓ Diligence can be affected by the burden of work, adequacy of resources, time for research, deliberation and writing etc.
- ✓ Diligence is important to bring competence of judges (diligent judge prepare himself for his work, up date his knowledge etc)
- ✓ Training is important activity to enhance the competence and diligence performance of judges.
- ✓ Expeditious disposition of a case is one aspect of diligence. It requires judges to decide the matter with reasonable promptness.
- ✓ Patience, dignity and courtesy are essential attributes of ethical duty of competence and diligence

4. EQUALITY

A constitutional right of every one to be equally treated (non-discriminatorily) before the law

- a judge shall equally treat all litigants before the courts and protect their right.
- Judge should not treat litigants on the ground of sex, race, color, nation, nationality, language, religion, political opinion, property, birth, etc. [this ethical duty of judges is recognized under FDRE Constitution, ICCPR, ICESCR, CEDAW, etc.]
- Stereotyping should be avoided to realize equality. Example, judge should not be influenced by attitude of the society that members of certain ethnic group are potentially criminals.
- Judges should not manifest prejudice towards any person or group on irrelevant grounds.
- Judges should avoid speech, gesture, or conduct that shows gender discrimination.
- ***Question: does the concept of treating equals equally and in equals unequally works for this ethical requirement?***

5. ACCOUNTABILITY

- Responsibility, being answerable for failure of discharging official duty.
- According to Article 12 of the constitution, “any public official” or an “elected representative” is accountable for failure in official duties.
- Are judges public officials? Elected representatives?
- ***Officials of the Federal Government" means a member of the House of Peoples' Representatives and of the House of the Federation, officials of the Federal Government above ministerial rank, ministers, judges of the Federal Supreme Court and other officials of the Federal Government of equivalent rank [article 2/6/ Proc. 1234/2021]***
- ***Are judges [federal or state] Accountable in Ethiopia? To whom they are Accountable?***
- According to Michael Kirby, Judges are accountable on three grounds. 1) judges render decision in public. 2) decision of judges is reviewed by the appellate court. 3) Judges are appointed by executives or legislature who is accountable to the people.
- ***He also added that legitimate public criticism & comments on judicial performance is a means ensuring judicial accountability. Do you agree?***
- ***Don’t you think that judicial accountability affects judicial independence?***
- ***How can we promote both judicial accountability and independence without violation of one over the other?***
- ***Can we ensure judicial independence while implementing judicial accountability?***

6. CIVILITY AMONG JUDGES

- Civility is a politeness or courtesy.
- This ethical duties of judges requires them to be polite/courteous, cooperation and respect among judges.
- Judges have ethical duties to respect each other, not to insult each other, to cooperate with fellow judges in discharging their duties.
- Judges should not criticize each other in private or public, through media etc.
- Appellate court judges should avoid personal attack on lower court judges.
- Intemperate criticism of a fellow judge is incivility.
- Incivility implies lack of respect and cooperation among judges.

Ethical Requirements of Judges in Extra Judicial Activities

- Extra judicial activities are activities that have no connection with judicial duties.
- Judges are human beings & have economic, social, political, religious, commercial and other relationship with other persons.
- Judges are prohibited to carry on activities which are in consistent with judicial duties[art.28 Federal Judges Code of Conduct]
- judges are prohibited form using the office for advancing personal interest. [art.27]
- ***What is the purpose of restricting or prohibiting judges from engaging in certain extra-judicial activities?***
- ***To* avoid the appearance of partiality [ensuring public trust/confidence of courts—impartiality], not to discourage social or business arrangements of judges.**
- ***There are extra-judicial activities allowed or prohibited for judges***

EXTRA-JUDICIAL ACTIVITIES ALLOWED/PROHIBITED FOR JUDGES

EXPERIENCE OF OTHER JURISDICTIONS

- **Passive Investments[ownership of shares, bonds]—allowed [US]—doesn't consume court time but may raise issue of conflict of interest—where judges should withdraw by their own motion.**
- **Education—allowed ; judges may up grade themselves through legal education.**
- **Membership in Organization—allowed; judges are allowed to become member a business organizations or associations**
- **Serving as Mediator or Arbitrator—Allowed;**
- **Active Management and Involvement in Business—Prohibited;** In US judges are prohibited from serving as officer, director, manager, advisor or employee of any business.
- **Practice of Law—Prohibited; in India and US, while in judicial office judge cannot give advocacy service,**
- **Political Participation—Prohibited; judge may not assume judgeship while member of political organization [Ethiopia, proc. 24/1996, art. 8]**
- **Acting as Fiduciary[trustee, guradian] —Prohibited; [India, US] judge may use his position to get advantage when he is assigned as fiduciary or trustee, executor, administrator etc.**
- **A judge may act as fiduciary for family members, close friends, etc where such service doesn't interfere with proper performance of judicial activities.**

Appointment, Removal, Withdrawal, Transfer & Promotion of Judges

- Appointment: Judicial selection, appointment may serve as a primary condition for ensuring judicial accountability.
- Systems of Appointment, selections, Promotion of Judges: Two broad systems
- **Career Judicial System/Civil Service system**: the selection, appointment, and promotion of judges are made from within a judicial career system or civil service [Judicial administration council, Chief Justice etc plays great role]
- **Non-career Judicial System:** selection, appointment and promotion procedures are made through appointment by the executive, legislature, or some combination, as well as by partisan and non-partisan elections. This kind of judicial selection and promotion procedures tend to promote judicial accountability to external forces, such as the government, political parties, interest groups, and the public. ***Countries: US, Canada***
- ***South and southeast Asian countries follow career judiciary or mixed and non-career***
- ***Where do you categorize Ethiopia?***

Appointment, Removal & Withdrawal of Judges in Ethiopia

- Appointment: Criteria for Appointment
- Nationality
- Legal training or Skills: graduation in law
- Diligence, sense of justice and good conduct
- Consent
- Age; 25 years & above, why not 18 and above?
- Federal Judges Appointment: Nomination members of JAC—Chair man of JAC will provides details of nominees[detail profile] to the council—council chooses candidate-judge—chair person present selected candidate to prime minister—prime minister may accept all or some of candidates—HPR approval/rejection
- Similar route is followed for appointment of judges at regional level.

Withdrawal & Removal of Judges

- **Judges should withdraw from the case when the grounds provided under article 33 of proclamation No.1234/2021 are fulfilled[see the impartiality]**
- **The executive plays important role in the appointment of the federal judges. However, the executive has no role in removing judges from their office [theoretically speaking].**
- **Article 79 of the constitution lays down that judges can be removed from their office only upon decision of the judicial administration council and approval of that decision by the legislature, state councils or House of Peoples' Representatives.**
- **Even the legislature can remove the judges only on certain grounds:**

a. Violation of Disciplinary Rules

b. Gross incompetence or inefficiency

c. Incapacity to carryout judicial duties due to illness

Factors that Influence Ethical Requirement of Judges

- **Remuneration/meager Salary,**
- **Resource of the court—Scarcity of Court Resource—Human or Material Resource,**
- **Workload and**
- **Off bench activities.**

Liabilities/Responsibilities Judges for Breach of Rules of Conduct

- **Violation of code of judicial conduct results in disciplinary measures.**
- **It may also results in Violation of code of judicial conduct results in disciplinary measures.**
- **Federal Judicial Administration Council is vested with the power of disciplining judges that violate the Federal Code of Judicial Conduct.[Disciplining Agency]**
- **States also have their own State Judicial Administration Council [Disciplining Agency]**
- Ordinary courts do not try disciplinary matters.
- Even they have no appellate jurisdiction or power of review over disciplinary matters.
- Disciplinary Measures:

a) Oral warning –the least serious discipline Measure

b) Written warning—the 2nd least Serious disciplinary Measure

c) Fine not exceeding three months salary

d) Demotion of the post and cut in salary

e) Removal from office—the most serious disciplinary measure

The Procedures of Disciplinary Proceedings

- Disciplining judge is not adversarial system i.e. no duty to prove the case against the judge—the JAC decides it.
- **Initiation:** any person can initiate disciplinary proceeding against the judge—JAC, its members or third party petitioner. No requirement of vested interest as per art. 33(2) of CPC.
- **Investigation:** the JAC will investigate the case and reject or accept the case.
- **Hearing:** the Council conducts hearing when it believes that the petition against the judge is proper. Where the council finds breach of judicial code of conduct, it will ***warn, fine, demote or remove the judge from office based on gravity of the discipline.***

CHAPTER FOUR
ADVOCATES' ETHICS

- Who is an **advocate**?
- Legal professional/a person who speaks on behalf of other and advocacy service is speaking for others.
- A person who assists, defends, pleads or prosecutes for another or represent another.
- advocacy is a special type of agency[art.2205(2)] and an advocate is a special agent.
- Why special? This is because the issue involved is legal issues, and the agent is a lawyer who is acquainted with knowledge, skill and developed some sort of attitude in the field of law.
- ***Advocate*** means a person licensed to provide private advocacy services pursuant to this Proclamation. For the purpose provided under Article 8 of this Proclamation, foreign national Advocate who is granted advocacy service license pursuant to foreign law, is regarded as an Advocate [**art. 2(1) Proc. No. 1249/2021-*Federal Advocacy Licensing & Administration Proc.]***
- ***What is advocacy Service?*** means any kind of legal service provided by an advocate or a law firm for payment of a fee or in expectation of direct or indirect future benefit, or **pro bono[art.31, Proc. 1249/2021]**, including the following:
- **a) providing consultation on legal issues; conducting negotiations except in criminal cases;**
- **b) drafting legal documents or submitting documents on behalf of a client**; **Question: Is there advocacy Service free of charge? why?**

Ethical Requirements of Advocates in relation to their Clients: General

- Who is a client in advocate-client relationship? a person consuming the service of a professional, lawyer (advocate).
- Advocate-client relationship is established when a person manifests to an **advocate** his intent that the latter provides legal services for him; and the advocate manifests to the client to do the same.
- the client's problem may involve significant personal and property interests, individual freedom and responsibility, or even life itself.
- Thus, To provide such advice and assistance the advocate must be *skillful*, *diligent*, and *trustworthy*.
- At the same time, the advocate must be faithful to the requirements of law and the rules of professional Conduct.
- ***An advocate shall have the responsibility[legal as well as ethical] to assist the justice machineries [organs of administration of justice] in the effort to promote respect for the law and the attainment of justice.***

1.Diligent and Competent Representation

- **Diligence:** implies being careful; which usually involves the use of a lot of effort to do so.
- An advocate shall act with reasonable diligence and promptness in representing a client.
- An advocate should act with commitment and dedication to the interests of the client.
- He has professional discretion in determining the means by which a matter should be pursued.
- **Competence:** One of the ethical requirements of an advocate in relation to his client as lawyer is to provide competent service or competent representation.
- ***competent representation:*** the ability of an advocate to discharge his responsibility towards his client in a reasonable & well manner.
- Generally competent representation requires the legal knowledge, skill, attitude, thoroughness and preparation reasonably necessary for the representation.
- Incompetent advocate should not accept representation of his client or not take the case.

Competence…

- **Thoroughness & Preparation**
- **Competent handling** of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem,
- It also includes adequate preparation.
- **Maintaining Competence:** To maintain the requisite knowledge and skill, an advocate should engage in continuing study and legal professional development programs.
- **Communication:** there should be openness b/n advocate and client to avoid misunderstanding in advocate-client relationship—**Lack of openness is one of the major sources of misunderstanding in the advocate –client relationship.**
- The advocate should be ***transparent*** to his client as much as practically possible.
- **Withholding Information:** in some cases, attorney has no choice but to keep information from a client[withhold information]
- In some circumstances, an advocate may be justified in delaying transmission of information[***withholding information, not disclosing]*** when the client would be likely to react imprudently to an immediate communication[when client experience behavioral problems or mental issues—in such cases, disclosing information harm the client. ***But what if the advocate has an ethical duty not to withhold information of his client?***

2.Duty of confidentiality

- What are confidential client information?
- **Information about a client or a client's matter contained in oral communications, documents, or other forms of communications, other than information that is generally known, if the lawyer or the lawyer's agent learns or comes into possession of the information.**
- The advocate must be transparent. Confidentiality is a key to be transparent.
- Unless these parties owe duty of confidentiality each other they feel fear of exposition of private in formation and refrain from telling the whole truth.
- ***The observance of the ethical obligation of an advocate to hold confidential information of the client:***
- *facilitates the full development of facts essential to proper representation of the client and*
- *encourages people to seek early legal assistance.*
- A fundamental principle in the client-lawyer relationship is that the advocate maintains confidentiality of information relating to the representation.

Duty of Confidentiality…

- The principle of confidentiality is given effect in two related bodies of law:
- ***attorney-client privilege in the law of evidence and the rule of confidentiality established in professional ethics.***
- The attorney-client privilege applies in judicial and other proceedings in which a n advocate may be called as a witness or other wise required to product evidence concerning a client.
- An advocate may not disclose Confidential Client information except as authorized or required by the rules of Professional Conduct or other law.
- Generally, an advocate shall not reveal information relating to representation of a client.
- This duty continues even after the end of client-advocate relationship.

Exceptions to duty of confidentiality of advocate

- ***duty of confidentiality is not absolute and there situations where advocate has no duty to make client information confidential:***

- If information is of common knowledge,
- An advocate may reveal such information to the extent the lawyer reasonably believes it necessary,
- With respect to the client- lawyer relationship, when the client consents after he is adequately informed concerning the use or disclosure,
- With respect to the interests of third persons, when the lawyer acts with ***actual or apparent authority***
- ***To prevent the client from committing a criminal act*** that the advocate believes is likely to result in imminent death or substantial bodily harm
- To establish a claim or defense on behalf of the advocate in a controversy between him and the client, to establish a defense to a criminal charge or civil claim against the advocate based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- ***Authorized disclosure***, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, advocate may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Cont'd…

- The lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. A lawyer has a duty not to use false evidence. This duty is to avoid assisting a client in criminal or fraudulent conduct.
- ***Question: X is an advocate of Y, client. Y told all facts of the case including the fact that he has committed crime of rape against the victim Z. The X agreed to counsel, represent the Y before court. Y want representation not only because he has no knowledge of law but also to conceal this fact and not to be convicted thereby punished. Does X violate his ethical code of conduct? Why?***
- The advocate may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated the rule of conduct because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.
- The lawyer may learn that a client intends prospective conduct that is criminal and likely to result in imminent death or substantial bodily harm.

Disclosing Information to Advance Client Interests or for Purposes of Law

- Lawyer may disclose information of his client, When the he reasonably believes it will advance the interests of the client in the representation, for example:

- ✓ By providing it in confidence to colleagues of the lawyer such as employees, contractors, and other persons who aid the lawyer in representing the client,
- ✓ By presenting evidence or argument in proceedings; or
- ✓ By disclosing confidential client information to other persons,

Disclosing Information When Required by Law

- Disclose confidential client information when required by law, for example when ordered to do so by a tribunal, if the lawyer takes reasonably appropriate steps to asset that the information is privileged or otherwise protected against disclosure.
- A lawyer disclose confidential client information when required by law, for example when ordered to do so by a tribunal, if the lawyer takes reasonably appropriate steps to asset that the information is privileged or otherwise protected against disclosure.

Disclosing Information in Lawyer's Self-Defense

- A lawyer may use or disclose confidential client information to the extent that the lawyer reasonably believes necessary in order to defend himself.

Using or Disclosing Information to Prevent Death or Serious Bodily Injury

- When the client intends to commit a crime or fraud that threatens to cause death or serious bodily injury, advocate may disclose client confidential information.
- When disclosure of information necessary in view of the imminence of death or injury.

Contract of Advocacy

- Is a contract between advocate and client about the representation.
- Basically, it governs scope of representation and fee of agreement.
- Contract of advocacy is regulated by general principle of the law of contract especially law of agency.

Scope of Representation

- Both an advocate and client have authority and responsibility in the *objectives* and *means* of representation.
- The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.

Scope of Representation…

- An advocate is not required to pursue objectives or employ means simply because a client wishes to be done.
- Even if he acted within his scope of power, the advocate is responsible for violation of the codes of conduct if he carried out the misdeeds of his client.
- The advocate should assume responsibility for technical and legal issues.
- The scope of representation may be limited by contract of advocacy/agreement/.
- An advocate should not knowingly assist client in criminal or fraudulent conduct and this should be not subject matter of the representation i.e. it is violation of ethical conduct of advocate.
- Advocate is not permitted to reveal the client's wrongdoing but he should avoid of suggesting how it might be concealed.
- A lawyer may not continue assisting a client in a conduct that the he originally supposes is legally proper but then discovers is criminal or fraudulent. He should rather ***withdraw representation***.
- **Advocate should not participate in a transaction to effectuate criminal or fraudulent acts or evasion of any liability such as escape of tax liability, criminal liability, or other liability.**

Terms of Payment

- An advocate may require advance payment of a fee, but is obliged to return any unearned portion.
- He may accept property in payment for services, such as an ownership interest in an enterprise or Company.
- It may be determined by contract of advocacy.

Advocacy Fee/Fee Agreement

- In pple, *Advocacy fee* is contractual but where he has no right to claim payment of advocacy fee where unless he carried out his advocacy service within the scope of this professional duties [art.2219 and 2220 civ. Code]—advocacy is all about agency and hence the pertinent provisions of Civ. Code dealing with agency are, *mutate mutandis,* applicable.
- Advocates should charge and accept fair, reasonable and legal fees,
- In particular, advocate should take into account the following factors in determining advocacy fees:
  - the experience, reputation, and ability of the lawyer or lawyers performing the services
  - the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly,
  - the difficulty of the question involved
  - the importance of the matter
  - the responsibility assumed;
  - the fee customarily charged in the locality for similar legal services,
  - the time limitations imposed by the client or by the circumstances;
  - the amount involved and the results obtained
  - the fee customarily charged in the locality for similar legal services
  - **Generally, the advocate must avoid all methods and attitudes likely to give to his profession a profit-seeking or commercial character.**

3.Duty of Loyalty & Avoiding Conflict of Interest

- Loyalty is an essential ethical requirement of advocate in client-advocate relationship to a client.
- Duty of loyalty prohibits advocate to avoid any sort of transactions (including representing another client) where that transaction adversely affects the client.
- Advocate shall be loyal to his client with regard to the representation. If advocate is loyal to his client, he can also avoid possibility of conflict of interests.
- Simultaneous representation in unrelated matters of client whose interests are generally adverse to each others [e.g. competitive traders] is unethical.
- ***Question: Can advocate act as advocate against a person he represents in some other matter, even if it is wholly unrelated? why?***
- The general rule is that an advocate may not act as lawyer against a person he represents [his client] in some other matter, even if it is wholly unrelated.
- ***If conflict of interest arises after representation has been undertaken, the advocate should withdraw from the representation.***
- The advocate's own interests should not be permitted to have adverse effect on representation of a client.
- Simultaneous representation of parties, whose interests in litigation may conflict, such as co-plaintiffs or co-defendants is ethical prohibited [***Conflict in Litigation is prohibited]***
- Art.24, 1249/21 also require loyalty to justice of advocate

Conflict of Interest: Prohibited Transactions

- An advocate shall not enter into a business transaction with a client or knowingly acquire:
- an ownership,
- possessor,
- security or other pecuniary interest adverse to a client except where client consents in writing, client is given a reasonable opportunity to seek the advice of independent counsel in the transaction, etc.
- An advocate shall not provide financial assistance to a client in connection with pending or contemplate litigation, except:
- An advocate may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter and
- An advocate representing an indigent client may pay court costs and expenses of litigation on behalf his client.
- **An advocate shall not accept compensation for representing a client from one other than the client unless: the client consents after consultation, there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship and information relating to representation of a client is protected.**

Giving *Probon* Service is Duty of Advocate

- **Pro Bono Advocacy Service**" means an advocacy service provided by an advocate or law firm at minimal or no charge to persons listed under Article 31 Sub-Article (1) of this Proclamation as in need of such services and to persons who provided by other relevant laws [art. 2(11) of 1249/21 Procl.]
- maximum of three cases per year,
- For indigent [person who cannot afford to pay for advocacy service]
- to charity organizations, civic societies and mass institutions
- to those persons whom courts request the provision of pro bono advocacy service
- Other persons listed under art.33

Chapter 5
Ethics of Public Prosecutor

- Public prosecutor is a public official [a lawyer] that represents the government (public) against an accused (suspect) in a criminal proceeding before a court of law. He prosecutes to serve the interest of the public.
- The public prosecutor, in some cases, may involve in civil matters on behalf of the government or individuals.
- **Eligibility Requirements to be Public Prosecutor**
- Age; 18 and above, why not 25 w/c is in case of judges?
- Nationality
- Loyalty to the national laws
- Having no criminal record except petty offenses & offenses punishable up on complaint
- Having ethical conducts such as impartiality, independence, integrity, loyalty, avoiding conflict of interest,
- Being lawyer

Basic Ethical Requirements of Public Prosecutor in discharging official duties

- **1. Independence:**
- Prosecutors should be independent from encroachment of any other institution or officials or organ[executive or legislative] in discharging their official duties & they shall obeys the law only.
- Legally speaking, cabinets of ministers or cabinets of state administrative organs, civil servants are prohibited not to interfere in the activities of public prosecutor’s office.
- Public prosecutor shall be entitled to refuse or to release any information on any investigation materials that are under the review by Public Prosecutor's Office.
- He shall be free from interference from within as well as

2. Confidentiality

- The public prosecutor should respect the principle of confidentiality of information he/she has acquired during the performance of his/her official duties except for legal reason.
- **Confidentiality of information=non-disclosure of information obtained in official capacity + not using the information acquired while discharging professional duties both for his/her private interests and private interest of 3rd parties.**
- **Such information should be used only to satisfy the real need of the public, to secure peace, order and security of the public.**
- **Exceptions to duty of Confidentiality:**
- Disclosure is allowed where it is necessary to discharge his lawful duties, required by the law, such information is of public knowledge, etc.
- This duty of confidentiality may extend even after quitting the office.

3. Loyalty & Avoiding Conflict of Interest

- In all his/her official activities, the public prosecutor is expected to be loyal to the interest of the public[government].
- He has to also avoid conflict of interests [any interest that contradicts with official duties disabling him to decide fairly & without bias].
- He should withdraw/recuse/disqualify by his own motion from prosecuting the case where he has direct or indirect interest in the case [relatives, friends, economic or other interests].
- Avoidance of such conflict of interests safeguards independence & impartiality for promoting public interest.

4. Immunity, Diligence and Competence

- ***Immunity of Prosecutors***: Law should guarantee them some sort of privilege or exemption from responsibility in order to function their duties freely.
- They should not be detained like ordinary citizens and they should be immune from such kinds of detentions.
- ***Competence***: he should have [up grade] required legal knowledge & skills to be competent in performing his profession duties.
- The ethical rule of ***competency*** applicable to the ***judges*** and the ***advocates*** is also applicable to ***public prosecutor*** engagement despite the existence of different responsibility.
- ***Diligence***: He/she should give decisions timely and promptly taking in to account public money, public confidence etc while respecting the right to speedy trial of suspect/accused.
- He should utilize the public time and resource for the purpose to which it is allocated.
- He should duly be in office during office hours and must do what should be done in time.

Ethical Duties of Prosecutors in relation to Accused/Suspect, Court and Other Institutions

- Informing clearly rights of suspect/accused, respecting legally guaranteed rights during in pre-trial stage during investigation ***e.g. right to keep silent & whatever suspect tells will as evidence before court***. Withholding such information from suspect is unethical.
- Not only respecting legally guaranteed rights of suspect but also not encroaching in such rights is ethical duty of prosecutor.
- It is unethical to withhold what is in favor of the suspect in the process of investigation.
- He has to be impartial towards suspect or public or the justice, ***being partial for either amounts to violation of his ethical duties***.
- He should always act neutrally and independently only in line with equality, truth and justice based on the rules and principles of the law. Though he represents the public/gov't, he should be impartial towards suspect/accused, he should avoid any bias against suspect/accused.

In Relation to Suspect/Accused…

- During trial stage, there are standards of ethics expected from the prosecutor.
- He should respect the rights of the accused/suspect.
- He should respect adjournments and available except in case of force majeure/good cause.
- He should respect the principles of public and adversarial debate.
- He should not require for hearing in camera unless the law provides so. Where he shows such behavior, the public prosecutor is considered to have violated the standards of ethics.
- The public prosecutor is also expected to respect the principles of adversarial debate.
- In all cases, the proceeding in the court should be adversarial.
- The principle of adversarial debate requires ***fair trial*** in that both of the parties to the case are properly heard—example, Prosecutor should always observe the obligation of timely communication of evidences to the person prosecuted or his representative.

In Relation to Accused/Suspect…

- The public prosecutor should avoid prejudice against the person prosecuted. There is no situation of enmity between the accused and the public prosecutor.
- Thus, the public prosecutor should not have biased position against the suspect.
- The public prosecutor should always present the law properly.
- **In Relation to Court:**
- The public prosecutor should respect the independence of the judges. How?
- He is expected to accept and comply with the orders and decisions of the judges. It is not ethically acceptable that the public prosecutor makes critical comments in respect of the nature of decisions taken by judges.
- Except on grounds provided by law, ***the public prosecutor should refrain from behaving and doing acts that encroach in the independence of judges***.
- It is ethical duty of prosecutor to wear necessary gown dressing & suited cloth where he appears before court to give due respect to dignity of court.

In Relation to Other Institutions

- In the course of discharging his official duties, the public prosecutor should not refuse to obey the orders of his superior [legal order]. It would be violation of the requirements of ethics of his profession if the public prosecutor refuses to obey orders of his superior.
- He is not bound to accept clearly unlawful or an order against his professional conduct.
- It is ethical duty of public prosecutor to continue a proceeding started by another prosecutor, if he refuses to continue proceeding started by another it is violation of his ethical standard.

In Relation to Police:

- He should have smooth relation with police.
- He should overlook the police judicial activities, for instance, he should supervise police judicial activities in order to avoid improper things such as unlawful arrest of individuals or unnecessary/unlawfu stay of lawfully arrested individuals in police custody.

Engaging in Activities Outside Official Duties

- The public prosecutor in principle should be devoted and dedicated to the responsibility to which he/she is assigned.
- Every priority should be given to his/her main duty of representing the public in cases that involve the public interest. [he is agent of public]
- He shall not undertake any outside activity which would impair his service or which in any way conflicts with his duties or is inconsistent with his position and profession as a prosecutor.
- Generally, the extra activities shouldn't be against the conduct of the prosecutor's professional ethics.
- ***Can public prosecutor be member of a political organization in Ethiopia?***
- ***This is not clearly addressed under code of conduct of prosecutors. Such question must be assessed whether such activity contradicts the ethical duty of independence, impartiality, dignity of profession, office time, public confidence, issues of conflict of interest or not.***

Liability for Violations of Code of Conduct of Prosecutors

- **Administrative[Disciplinary] Liabilities: Warnings [oral or written], fine not exceeding one's month salary, disallowance of promotion, demotion & dismissal from office.**
- **Criminal Liability—violation of ethical code of conduct may result in criminal liability of prosecutor.**
- **Civil Liability: Prosecutor may also civilly liable for violation of ethical code conduct, for instance, article 2027 of Civ. Code.**

THE END!