

The Nairobi Code

MODEL RULES OF ETHICS IN REFUGEE CASES

1. SCOPE AND PURPOSE

These rules are intended to guide legal aid providers in the context of refugee status determination procedures and other legal aid services offered to refugees.

These rules are subordinate to any applicable domestic rules governing the provision of legal services, and are intended only to supplement such rules.

2. DEFINITIONS

The term “*legal advisor*” refers to any person providing advice and/or representation to people seeking recognition as refugees, or to people who have been recognized as refugees and are seeking other assistance.

The term “*services*” refer to the advice, document preparation, and/or representation that a legal adviser may provide.

“*Advice*” includes providing an opinion about how law or policy applies to a particular person’s circumstances.

“*Document preparation*” includes assisting a person in preparing written documents in the person’s own name, including but not limited to personal testimonies, that are intended for submission in support of an RSD or other application.

“*Representation*” includes acting on behalf of another person either orally or in writing, including the submission of memoranda arguing that a person meets the legal criteria for refugee status or communicating with UNHCR or other bodies on a client’s behalf about his or her case.

The term “*client*” refers to a person to whom a legal advisor has agreed to provide services and who voluntarily accepts those services.

The term “*prospective client*” refers to a person who has sought services from a legal adviser but to whom the adviser has not yet agreed to provide services.

3. ADVISOR-CLIENT RELATIONSHIPS

3.1 Advisors shall in all cases clearly explain to prospective clients whether they can offer services of any kind, and shall provide clear explanations of the type of services they offer. The objectives and scope of any advisor- client relationship shall be explicit before the advisor begins to conduct any work on the case, and before the client is asked to agree to the representation.

3.2 In order to maximize impact, legal aid providers may limit their services. For instance, some agencies may provide only advice or document preparation, or may focus their services on particular types of client who either have particularly acute needs or whose cases raise especially important legal issues. However, advisors must inform client of any limits in the services to be provided at the beginning of the advisor-client relationship.

3.3 Notwithstanding Rule 3.4, a legal adviser is under no obligation to provide services to a prospective client, and may decide to decline to provide assistance unless prohibited by Rule 3.4.

3.4 Subject to the provisions of rule 3.2, legal advisers shall not deny services to any person on the basis or race, gender, sexual orientation, nationality, political opinion, religion, age, family status, indigence or membership in a particular social group.

3.5 Advisor-client relationships may begin only with the voluntary, informed consent of the client, and may continue only if this consent continues. A client may end his or her relationship with a legal adviser by clear and explicit communication, orally or in writing. An allegation by a client of ethical misconduct against an advisor shall be presumed to indicate that the client no longer consent to continuing the advisor-client relationship.

3.6 Clients should remain in control of the goals of representation. If at some point during the advisor and client relationship, the client and advisor are unable to agree on the goals or strategies of representation the advisor may withdraw from representation.

3.7 Clients shall be entitled to view and obtain copies of all materials in their files. Legal advisers shall provide copies of the materials to the client upon the client's request, during or after the end of the advisor-client relationship. However, advisers may maintain records of their work on a client's case, and are not required to destroy files, even if requested by a client.

3.8 The legal adviser shall notify the adjudicating body in writing when the advisor client relationship has terminated.

4. DILIGENCE

4.1 An advisor shall act responsibly and with due diligence in the handling of a client's case and shall act within the bounds of the law and these rules to obtain the best results possible for the client.

4.2 Advisors shall complete all work as agreed with clients. Advisors shall complete all required documents for a client by any deadline applicable.

4.3 Advisors are responsible for maintaining regular access to published UNHCR materials and country of origin information necessary to assist clients in refugee status determination applications and other matters.

4.4 Advisors shall maintain a filing and records system in order to record their work on a client's case

5 CONFLICTS OF INTEREST

5.1 Advisors shall not provide services to any prospective client where the advisor has a direct financial or personal interest that is opposed to the client's interest.

5.2 Advisors shall not offer services to any prospective client where another client of the same advisor has interests that are opposed to the prospective client's interests.

5.3 Where two clients of the same advisor develop a conflict of interests after the beginning of an advisor-client relationship, and where local ethical or professional standards would permit, the advisor shall seek to refer one or both of them to alternative advisors immediately.

5.4 Where advisors have a personal relationship with the client that could interfere with his or her exercising objective judgment, the advisor shall seek to refer the client to an alternative legal advisor, if available.

5.5 Where Rule 5.3 or 5.4 applies and alternative legal advisors are unavailable, an advisor may assist clients where a conflict of interest exists only after clearly and explicitly notifying the clients of the conflict and its potential consequences, and after seeking ways to limit the scope of representation so as to minimize conflicts.

6. CONFIDENTIALITY

6.1 Clients and prospective clients are entitled to confidentiality of the information obtained from them or others by their advisors. The confidentiality privilege is owned by the client, not by the advisor. Except as provided for in these rules, confidentiality may be waived only with a client's explicit consent.

6.2 An advisor shall protect the confidentiality of all information that is gathered regarding a client's affairs, except as specifically provided for in these rules. Advisors shall maintain files and records in a manner designed to protect the clients' confidentiality. The duty to maintain client confidence continues beyond the termination of the advisor client relationship unless otherwise provided in these rules.

6.3 Confidentiality shall not apply to information that has entered the public domain with the client's consent. When a client voluntarily allows a piece of information to enter the public domain, the client will be presumed to have waived confidentiality on that piece of information. However, advisors may not reveal information that has entered the public domain against the wishes of the client, or without the client's consent.

6.4 An advisor may reveal confidential information about a client to other legal advisors for the purpose of professional consultations, so long as the other advisors will be bound by the same duty of confidentiality and so long as the other advisors do not have a conflict of interest as described in Rule 5.

6.5 Where an advisor believes a client is likely to inflict bodily harm on another person in the imminent future, the advisor must take prompt steps to inform the appropriate authorities, and may reveal that amount of confidential client information which is necessary to prevent bodily injury.

6.6 An advisor may reveal confidential information as minimally necessary to defend him or her from any formal accusation of breach of these ethical rules.

6.7 A legal advisor or organization employing a legal advisor may use information collected from clients' cases in publication and writings without the consent of affected clients only if the publication is sanitized of any unique details that would allow an interested person to identify the person involved.

6.8 A legal advisor or an organization providing legal services must train all staff and support personnel on their responsibility to maintain client confidential information and ensure that client confidences are maintained.

7. DUTY OF INTEGRITY

7.1 An advisor shall adhere to the truth in all communications, shall urge his or her clients to do the same, and shall not encourage, advise, or assist any person to make false or misleading statements to any tribunal or agency before whom the advisor appears on the client's behalf.

7.2 Notwithstanding Rule 7.1, the advisor is not the decision-making body regarding the validity of applications for refugee status recognition or other matters, and has no duty to screen out or turn away prospective clients who have relatively weak claims.

7.3 An advisor shall conduct his or her interactions with other parties in a courteous, professional manner, consistent with principles of respect for other people and principles of human rights and non-discrimination.

7.4 When an advisor knows that a client has made misstatements of fact to a tribunal or adjudicating body before the beginning of the advisor-client relationship, and there are no contrary local profession ethical rules, the following shall apply:

7.4.1 The advisor shall not reveal the past misstatements to any person or body with the client's explicit consent

7.4.2 The advisor shall attempt to persuade the client to correct the statements.

7.4.3 The advisor shall not proceed in making any communication to the adjudicating body or any other body that are founded on the past misstatements, and shall not take any actions likely to lead the adjudicating body or any other body to rely on the past misstatements.

7.5 An advisor shall not knowingly sign or otherwise be associated with any letter, report or other documents, make any statement or offer any submission with respect to a client which contains false or misleading information. An advisor shall not submit to an adjudicating body any document which the advisor knows to either be a forgery or to contain false or misleading information.

7.6 When client makes statements to an adjudicating body after the beginning of the advisor-client relationship that the advisor knows to be false, the following shall apply:

7.6.1 The advisor shall not reveal the misstatements to any person or body without the client's explicit consent.

7.6.2 The advisor shall attempt to persuade the client to correct the statements to the adjudicating body.

7.6.3 The advisor shall not proceed in making any communications to the adjudicating body or any other body that are founded on the misstatements, and shall not take any actions likely to lead the adjudicating body or any other body to rely on the misstatements.

7.6.4 Where the misstatement goes to the heart of the representation and the client refuses to correct the misstatement, the legal advisor shall cease the representation.

8. DUTY TO AVOID EXPLOITATION

8.1 An advisor shall not engage in any relationship either directly or indirectly that is likely to compromise his or her independent judgment on behalf of the client in rendering legal services and shall not exploit his or her client for financial, sexual or other gain. To avoid all doubt, any sexual or business relationship between a legal advisor and a current client shall be presumed to be exploitative.

8.2 Advisors shall not solicit or receive any services, products, or labor for which a person might normally be compensated in money or other exchange from any current client or for six months after the end of an advisor-client relationship, except as permitted by Rule 5.5 where a relationship pre-existed the need for legal services and no alternative legal advisors are available.

8.3 Advisors shall not enter into any financial relationship with any current client or for six months after the end of an advisor-client relationship.

Promulgated at
SOUTHERN REFUGEE LEGAL AID CONFERENCE (SRLAC)
Nairobi, Kenya
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Attached Annexes

Annex 1

Model Minimum standards of qualifications for Legal Advisors for Refugees

Annex 2

Complaint Mechanism as a Feature in a Professional Accountability Structure for Legal Aid Providers

Annex 1

MODEL MINIMUM STANDARDS OF QUALIFICATIONS FOR LEGAL ADVISORS FOR REFUGEES

Qualifications of Legal Adviser: Subject to any domestic rules to the contrary, a person may be recognized as a legal advisor for refugees if they meet either criteria A or B:

Criteria A:

- Current license issued by the relevant authority of a member state of the United Nations as a lawyer, solicitor, attorney, barrister, counselor-at-law or equivalent professional designation.

Criteria B:

- Undergraduate degree, equivalent to a Bachelor's degree or is a current student in a supervised legal clinic connected with an accredited university or other legal institution or
- Is a person with more than 2 years experience working in refugee matters

and

- Training in refugee law (minimum 20 hours)
- Training in interviewing techniques and testimony writing (10 hours)
- Training in ethical responsibilities (2 hours)

Training may consist of independent reading, observation of practitioners or other types of instruction.

A person who is recognized as meeting either of these criteria may offer the full services of a legal adviser to applicants in refugees.

Annex 2

COMPLAINT MECHANISM AS A FEATURE IN A PROFESSIONAL ACCOUNTABILITY STRUCTURE FOR LEGAL AID PROVIDERS

At the very least, every legal aid provider shall have a client complaint mechanism as part of its office handbook of operating procedures. These procedures shall be communicated to each client at the beginning of the relationship.

Some suggested elements of the complaint procedure include:

1. Preprinted complaint forms which are in the major languages spoken by the client community. The form should assist the complainant in making the complaint by suggesting necessary elements such as date and place of action complained against and an opportunity to provide a narrative of the incident.
2. Each organization should determine the procedure for dealing with anonymous complaints. On their own anonymous complaints can never be the source of a negative action against an employee.
3. Instructions on how to communicate the complaint should appear on the form and also in a conspicuous public area of the legal aid provider's office.
4. The complaint should be investigated and resolved in a timely fashion by a disinterested party.
5. The results of the complaint process should be communicated to the complainant where known.
6. The employee complained against shall have the presumption of innocence.
7. The person complained against should be notified of the complaint. The person complained against should have a right to reply to the complaint and all evidence used against them and to be heard by the independent investigator.
8. The organization shall keep records of all complaints submitted as well as of the investigation findings and resolutions.
9. The range of sanctions for violations of ethical duties should be part of the office handbook of operating procedures.