

GUIDELINES FOR AN INTERNATIONAL REGULATORY INFORMATION EXCHANGE REGARDING DISCIPLINARY SANCTIONS AGAINST LAWYERS

Introduction:

Globalisation has had a significant impact on the legal profession. Today, more lawyers than ever are crossing national borders, virtually and physically, to serve clients' needs. These numbers will continue to increase. With this growth in cross-border legal practice, in the interests of and to enhance client and public protection, lawyer accountability and cooperation between the Regulatory Authorities in each relevant jurisdiction have become ever more important.

A first step towards achieving such accountability is to encourage and facilitate better communication and cooperation between Regulatory Authorities in different jurisdictions, which may include entering into voluntary arrangements to facilitate the exchange of relevant information between these Regulatory Authorities.

These guidelines acknowledge that Regulatory Authorities in different jurisdictions have different rules concerning the confidentiality of an individual's personal information/data and the release of this information to a third party and that each Regulatory Authority shall release information on an individual to another Regulatory Authority only in accordance with that Regulatory Authority's own rules.

These guidelines focus on those cases where a disciplinary sanction has been imposed upon a lawyer. However they do not intend to prevent any wider exchange of information between Regulatory Authorities, if the relevant rules applicable to that regulatory Authority so permit, e.g. where proceedings may be anticipated, pending, ongoing or have been concluded without imposing a sanction or where a lawyer being suspected of having committed a disciplinary offence in a particular jurisdiction has left that jurisdiction, and disciplinary proceedings in respect of that suspected disciplinary offence have not been taken by the Regulatory Authority of that jurisdiction.

A. Preamble

1. The International Bar Association (IBA), on the 28th May 2011, adopted International Principles on Conduct for the Legal Profession (the 'IBA Principles') which included principles on independence, honesty, integrity and fairness, conflicts of interests, confidentiality and professional secrecy, clients' interests,

lawyers' undertakings, clients' freedom, property of clients and third parties, competence and fees.

2. The expression 'Regulatory Authority/Authorities' in these guidelines means any body, which has the right to impose disciplinary sanction(s) against a lawyer upon a finding that the lawyer has violated the applicable rules or standards of lawyer ethics and/or professional conduct.

3. Given the global mobility of lawyers, Regulatory Authorities in one jurisdiction (the 'Host Jurisdiction') need to know whether a lawyer is admitted and authorised to practice in that lawyer's jurisdiction of admission (the 'Home Jurisdiction'), and also that lawyer's disciplinary history. Also Regulatory Authorities in a lawyer's Home Jurisdiction need to know a lawyer's disciplinary history in any Host Jurisdiction where that lawyer practices.

4 The IBA is promoting these Guidelines on International Regulatory Information Exchange (the 'Guidelines') in pursuance of the IBA Principles, the public interest, the protection of clients and for the proper administration of justice and the rule of law.

5 Accordingly whilst these Guidelines are voluntary, the IBA encourages the adoption of protocols or regulations coming as close as possible to these Guidelines by Regulatory Authorities in each jurisdiction.

B. Information Exchange

1. A Regulatory Authority may decline to disclose lawyer disciplinary information to a Regulatory Authority in another jurisdiction if it believes that the Regulatory Authority in that other jurisdiction does not substantially respect or obey the IBA Principles. Additionally a Regulatory Authority may decline to disclose lawyer disciplinary information to a Regulatory Authority in another jurisdiction where it believes such information may be improperly used by that Regulatory Authority.

2. Regulatory Authorities in each jurisdiction should be aware of the person in charge, in each Regulatory Authority in the jurisdictions with which they intend to share disciplinary information, and which person is responsible for sending, receiving and responding to requests for lawyer disciplinary information. Each Regulatory Authority should, where practicable, provide each such Regulatory Authority with this relevant contact information.

3. Each Regulatory Authority should consider the development of protocols or regulations for the exchange of lawyer disciplinary information, which protocols should be consistent with these Guidelines

C. Imposition of Discipline

1. The expression 'discipline' as used in these Guidelines refers to a sanction imposed by any Regulatory Authority against a lawyer upon a finding that the lawyer has violated the applicable rules or standards of lawyer ethics and/or professional conduct. Discipline may include, but is not limited to, disbarment (revocation of license or ability to practice or striking from the roll), resignation with charges pending or in lieu of discipline, suspension (prohibition or restrictions of the right to practice for a period of time), censure, reprimand, admonition, probation, limitations on practice and/or the imposition of fine(s).

2. Upon the imposition of discipline against a lawyer in any jurisdiction, including a lawyer's Host Jurisdiction, and subject to paragraphs B & F of these Guidelines, the Regulatory Authority of the jurisdiction imposing the discipline should, either upon request from another jurisdiction or of its own volition, provide the following information to its foreign regulatory counterpart(s) in any jurisdiction(s) in which it knows the disciplined lawyer is licensed/admitted/permitted to practice or has applied to be permitted to practice (including that lawyer's Home Jurisdiction):

a. The lawyer's residence and business addresses, telephone number(s), and e-mail address (es).

b. Dates of licence/admission, if applicable, in the Home Jurisdiction.

c. Details regarding any disciplinary proceedings which resulted in the imposition of discipline against the lawyer, including the substance of the allegations of misconduct; the date the proceedings were initiated; the date upon which the proceedings were concluded; the description of the proceedings; any findings made; and the discipline imposed or actions taken in connection with those proceedings; and

- d. A description of the sending Regulatory Authority's disciplinary process or the location where such information can be found.

D. Notice to Lawyer

The Regulatory Authority that sends information about a lawyer to another Regulatory Authority should, if it has the lawyer's contact information, notify the lawyer of its actions. The Receiving Regulatory Authority, if it has the lawyer's contact information, should notify the lawyer that it is in receipt of such information.

E. Subsequent Action by Receiving Regulatory Authority

1. The receiving Regulatory Authority should acknowledge to the sending Regulatory Authority its receipt of such information.
2. The receiving Regulatory Authority should notify the sending Regulatory Authority of any responsive action that it takes.

F. Protection of Confidentiality & Personal Data

1. Information exchanged between Regulatory Authorities shall only be provided and used for the purpose of enhancing the protection of clients and the public and in the interest of the proper administration of justice.
2. It is specifically acknowledged that separate jurisdictions have different rules concerning the confidentiality of an individual's personal information/data and the release of this information to a third party, including another Regulatory Authority, and that any disclosure and use of such information is subject to the laws and regulations applicable to the disclosing and/or the receiving, as the case may be, Regulatory Authority.
3. In advance of an exchange of disciplinary information to another Regulatory Authority, any Regulatory Authority participating therein must first satisfy itself that such exchange is consistent with the laws and regulations applicable to it.
4. It shall be for each Regulatory Authority to define exactly the level and type of disciplinary information, which should be disclosed to another Regulatory Authority.
