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**SUBSIDIARY LEGISLATION 55.09**

**NOTARIES' CODE OF ETHICS REGULATIONS**

18th May, 2018

*LEGAL NOTICE 155 of 2018.*

1. (1) The title of these regulations is the Notaries' Code of Ethics Regulations. Citation.

(2) The Code of Ethics applicable to Notaries for the purposes of the Notarial Profession and Notarial Archives Act shall be that set out in the Schedule. Cap.55

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**SCHEDULE****Code of Ethics for the Notarial Profession****Arrangement of the Code**

- Title 1: Of Conduct and Diligence
- Title 2: Of Independence and Impartiality
- Title 3: Of Professional Relationships
- Title 4: Of Unlawful Competition
- Title 5: Of Professional Secrecy and Confidentiality

**Title 1: Of Conduct and Diligence**

- 1.1 Every notary shall act with dignity and must observe such fundamental values of truth, honesty, equity, integrity, independence, impartiality and freedom.
- 1.2 Every notary shall refrain from using methods or adopting attitudes that are likely to reduce his or her good reputation and/or that of his or her profession.
- 1.3 Every notary shall make every effort to keep himself or herself informed and knowledgeable in the area of his or her profession, while at the same time and as far as he or she is able, contributes to the development of his or her profession by exchanging his or her knowledge and experience with his or her colleagues or students. Any specialization in a particular field should not be detrimental to his or her professional competence in general.
- 1.4 Every notary has the right and duty to perform his or her functions in accordance with the law and he or she shall not influence the parties' free will and act in accordance to such will.
- 1.5 Every notary shall strive at achieving harmonisation and bringing the parties in agreement when in dispute, while at the same time observing the principle of equity during his or her entire activity. Respect for the primacy of truth must be the sacred duty of every notary.
- 1.6 Every notary shall strive for the correction of errors, inaccuracies or any omissions in his or her work.
- 1.7 No notary shall use for his or her own personal benefit any monies, securities or any other property entrusted to him or her in the practice of his or her profession. Such monies, securities or any other property shall not be used by said notary as a personal loan or an investment to his or her own advantage whether in his or her own name or through an intermediary. He or she shall take reasonable care of the corporeal property entrusted to his or her care.
- 1.8 If a notary participates in matters which are not related to the exercise of his or her profession, he or she shall act with due care in order to protect his or her professional independence and obligations.

- 1.9 Every notary is obliged to have an insurance policy according to law and to provide the Notarial Council with a copy of any report or relative documentation regarding his insurance policy if required to do so by the Notarial Council without delay.
  - 1.9.1 The Notary is obliged to keep his office in an adequate and sustainable manner and that it can continue to provide an uninterrupted service to the public without prejudice to Article 11(b) Notarial Profession and Notarial Archives Act.
  - 1.9.2 Reviewing of acts shall be done in an adequate manner by the revising officer and every notary is bound to help the revising officer in a manner that does not encumber or hinder the revising officer's work.

### **Title 2: Of Independence and Impartiality**

- 2.1 In the performance of his or her functions, the notary shall act impartially and shall remain in a position of equidistance between all parties making use of the notary's services, regard however being had to the varying degrees of expertise, experience and knowledge of the parties. Such functions must be carried out unequivocally, in accordance with the common interest and wishes of all the parties concerned.
- 2.2 The notary shall ignore any intervention by a third party that might influence in any manner the performance of his or her professional duties to the detriment of the parties making use of the notary's services.
- 2.3 The Notary shall not:
  - (a) Employ agents to promote or tout his office and services;
  - (b) Promote his or her office and services with specialised agencies and authorities such as financial institutions, estate agents and the like;
  - (c) Consent that his or her profession, office and services be advertised;
  - (d) Collaborate with other entities whatsoever, in such a manner as to reduce the notary's impartiality or independence;
  - (e) Carry out his services in the offices of third parties in such a manner as to reduce the notary's impartiality or independence;
  - (f) Authorise, instruct, or allow third parties to put pressure on other persons to use his or her services. Furthermore, the notary shall be obliged to immediately ask such third parties to desist from such actions, should the notary find out that third parties have done so even without the notary's acquiescence. In any case, the notary shall be obliged to immediately inform the Notarial Council and, if applicable, the third parties' representative body/bodies, of such actions.

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**Title 3: Of Professional Relationships**

- 3.1 Relationship with colleagues
- 3.1 In his relationship with other notaries, a notary is bound to act according to the principles of loyalty, respect, fairness, generosity, solidarity and co-operation, and with the intent of raising the prestige and the public significance of the profession. Any manifestation of vanity and disloyal competitiveness should be avoided.
- 3.2 The following are rules that shall govern the relationship between notaries:
- (a) A notary shall inform his colleague, in a professional and respectful manner, of any possible errors or omissions which he believes his colleague has committed.
  - (b) A notary shall strive for the correction of errors, inaccuracies or any other omissions in his or her work within a reasonable time whenever he is requested to do so by a colleague. This shall also apply in cases where it is legally possible for such corrections to be carried out by another notary, but where it would be easier for such corrections to be made by the notary who has made such omissions in view of the fact that such notary already has a professional relationship with the parties whose signature is required.
  - (c) Any dispute or difference of opinion which arises between notaries shall be settled with the assistance of the Notarial Council.
  - (d) A notary shall provide copies of notarial deeds and documents to his colleagues whenever requested within a reasonable time-frame, ideally within a period of ten (10) working days from the day of the request. This time limit applies most specifically to notarial deeds which have not been deposited by the notary at the Notarial Archives.
  - (e) A notary is bound to exchange his systematic views and information with colleagues. If consulted by a colleague, a notary must give his opinion and recommendations within a reasonable time, depending on the urgency of the situation.
  - (f) A notary is bound to replace his colleague, who due to any serious impediment or illness, cannot receive certain acts. In this eventuality, the notary shall be entitled to verify and ascertain for himself the will of the parties and other matters as he deems fit.
  - (g) A notary shall not betray the good faith or breach the trust of a colleague, or manifest in any manner disloyal practices towards a colleague.
  - (h) A notary shall refrain from expressing critical opinions in relation to his colleagues in the presence of third parties, including other colleagues, clients, state authorities and institutions, as this may compromise the good reputation of the profession in general or of a particular colleague by discrediting the competence, knowledge and service of another notary. A notary may however give objective technical advice on the work of a

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colleague if the particular method or procedure employed or adopted by such other notary is not legally correct. In doing so the notary must be objective and professional and must refrain from passing criticism of a personal nature directed at his colleague.

- (i) In cases of collaboration with another notary or with another professional, a notary must maintain his professional independence and shall not perform any task that goes contrary to what is professionally ethical.
- (j) When a notary is requested by a client to render services which have already been requested from and commenced by another notary, he shall, before accepting to render any services, inform the client to settle any dues with his colleague. The notary shall also personally inform his colleague and shall collect any fees and expenses due to him.
- (k) A notary may not collaborate with another notary, whose warrant has been rescinded or temporarily suspended, by signing any notarial deeds or any other documents drawn up by that notary, or by rendering any services whatsoever in collaboration with such notary.
- (l) A notary shall refrain from trying to employ any employees who are already employed by a colleague. Moreover, a notary shall inform his colleague of his intention to employ an employee who was previously employed by another notary.

### 3.2 Relationship with the Notarial Council

3.2.1 The notary shall cooperate with the Notarial Council in the most ample manner and shall provide the Notarial Council with any information requested by it in the performance of its duties, within the time stipulated by the Notarial Council, and the notary shall provide timely assistance as requested during any inquiry into the notary's conduct.

3.2.2 The notary is expected to attend the Annual General Meeting of the Notarial College and to attend seminars organised by the Notarial Council.

3.2.3 Members of the Notarial Council shall:

- (a) perform their functions with dedication and commitment;
- (b) perform their functions with impartiality and strict confidentiality;
- (c) where a conflict of interest arises, raise such issue before the other members of the Notarial Council, and refrain from getting involved in that particular matter;
- (d) attend Notarial Council meetings;
- (e) promote and encourage collegiality between notaries;
- (f) assign specific tasks to other notaries who are not members of the Notarial Council if they are of the opinion that such notaries, although

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not Council members, may contribute to the development and improvement of the notarial profession in general.

3.3 Relationship with Public Authorities

- 3.3.1 In his relationship with public authorities and institutions, the notary must perform his duties in a professional manner in a way which attracts a high regard to the notarial profession.
- 3.3.2 A notary shall not seek, in any manner, the employment or collaboration of civil servants against payment or compensation of any kind.
- 3.3.3 In case of dispute, a notary shall not take individual action against public authorities and institutions without primarily consulting with the Notarial Council.

3.4 Relationship with clients

- 3.4.1 In the performance of his duties towards his clients, the notary shall act diligently and professionally. He shall display reasonable availability towards his clients and maintain efficiency throughout the whole notary-client relationship, in particular keeping the clients informed and updated throughout the whole notary-client relationship.
- 3.4.2 The advice a notary should give to his client must be disinterested, frank and honest. A notary must inform and make all parties acquainted with the applicable legal provisions and while ascertaining that the will of the parties is reflected in the notarial deed, he must ensure the legitimacy of the notarial deed, and must provide the parties with impartial and correct legal advice to assist them in taking the right decisions.
- 3.4.3 A notary should give all the necessary information required by the client and assist the client in taking a fully informed decision.
- 3.4.4 A notary should render account to his client whenever it is so requested.
- 3.4.5 A notary shall always act impartially and shall perform his functions in the common interest of all parties concerned. He shall refrain from offering his services, especially in instances where his impartiality is imperative, in cases where a conflict of interest exists or could arise. There shall be deemed to be a conflict of interest in all situations where a notary is inclined to favour some of the parties to the detriment of the other parties and his fidelity to both parties may be seriously affected.
- 3.4.6 A notary shall not pay or receive any benefit from either of the parties or from any third parties (such as estate agents and architects), in connection with the practise of his professional duties. Such payments give rise to a conflict of interest and renders the notary unimpartial in the performance of his duties.
- 3.4.7 Being a public officer and not merely an independent professional, a notary may not cease to act on behalf of a client except in cases where he has a valid cause, such as loss of confidence between the notary and the client, conflict of interest or a situation which renders his professional independence

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questionable, inducement by a client to perform illegal, unfair or fraudulent acts and clients who refuse to pay the notary whenever he renders a service.

- 3.4.8 In cases where a notary assumes particular duties which go beyond the normal practice, the notary has a duty to inform the client regarding the scope of the responsibility which he is assuming.
- 3.5 Relationship with trainee notaries and with employees
- 3.5.1 A notary is bound to provide trainee notaries with legal training and to ensure that they receive adequate notarial practice according to law. In so doing, a notary is bound to acquaint trainee notaries with the fundamental principles of the profession and with the principles of professional ethics.
- 3.5.2 A notary must involve trainee notaries in every aspect of the notarial profession in such a way as to equip such trainee notaries with the abilities required to perform the duties and functions of the notarial profession.
- 3.5.3 The notary must inform the trainee notaries that they are also bound by the rules and principles of this Code of Ethics.
- 3.5.4 A notary is also bound to ensure that his employees are adequately trained and equipped to perform their duties in a professional manner. Moreover, a notary must as a general rule refrain from having his trainee notaries and employees act as mandatories in notarial deeds received by him to safeguard the fundamental principle of impartiality.

#### **Title 4: Of Unlawful Competition**

- 4.1 Notaries are obliged to restrain from unfair competition, which includes without limitation:
- 4.2 A notary's co-operation and over association with certain individuals who pressure clients to choose that particular notary in order to receive some sort of financial aid
- 4.3 Gaining clients by reducing the notarial tariff fixed by law irrespective of the service rendered.
- 4.4 Gaining clients by concluding transactions which are motivated by a consideration (causa) which is immoral, illegal or goes against public policy.
- 4.5 Any form of persuasive practises used by a notary in order to attract a person to use his or her services in the future, including any request or suggestion to a person that any notarial acts required by him in the future should be made only at his or her notarial office.
- 4.6 Concealment of any documents which should be made known to his or her colleagues in order to facilitate or improve their work.
- 4.7 A notary omits certain behaviours which are part of his or her fundamental duties and as a result produces hasty work to the detriment of both his or her clients and his or her colleagues.

- 4.8 A notary is prohibited to advertise his or her professional services individually or engage in or allow advertising that may be false, deceitful or likely to be misleading.
- 4.9 The Notarial Council is permitted to advertise collectively information relating to the notarial profession as a whole for the purpose of providing easier access of information to the general public.
- 4.9.1 It shall be lawful for a notary to put up an electronic website whereby he gives general information about his or her office hours and the location of his or her office. However, the inclusion of information particularly relating to one's level of competence, efficacy of his or her services or claiming that he or she is in possession of specific qualities or skills is strictly prohibited.
- 4.9.2 Participation or cooperation in broadcast television programmes, radio programmes or writing articles in newspaper columns, concerning both his or her profession and any other event open to the public (even if it contributes to his fame via the means of mass communication), shall not be treated primarily as tools for advertising his or her capabilities as a notary or any other specialisation relating to his or her notarial profession. When participating in such events as above referred to, the notary shall strive to uphold the prestige and dignity of the notarial profession.

#### **Title 5: Of Professional Secrecy and Confidentiality**

- 5.1 Even though a Notary is a Public Official and gives Public faith to acts inter vivos and once these acts are published he or she is duty bound to give copies of these acts when requested or obliged by the act itself, any other act causa mortis (not being a declaration causa mortis) and any other private writings (including preliminary agreements), advice (including title reports) and conversations shall be subject to strict observance of professional secrecy as defined by the Professional Secrecy Act and as defined by other legislation including the Data Protection Act and notarial practice.
- 5.2 This obligation shall bind the Notary during and after the completion of his work, except giving copies as stated in five point one (5.1) above, and in the other matters mentioned in five point one (5.1) above, even after the death of the persons performing said act.
- 5.3 No Notary shall disclose that a person has retained his or her services (unless this results from the published deed), unless he or she is required to do so by the nature of the case or by Law. All notaries shall avoid indiscreet conversation concerning a client and the services rendered to him and this both with another Notary or third parties.
- 5.4 The receipt of an act does not in any manner authorise a Notary to disclose to third parties the existence of such act, except where a copy of such act (being an inter vivos act) is expressly requested or this results from the obligations emanating from the same deed. A Notary should especially be careful when issuing copies of a will and to do this only in terms of the Notarial Profession and Notarial Archives Act.



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- 5.5 No confidential information can be used by a Notary with a view of obtaining a direct or indirect benefit for himself or herself or for another person even if this does not result in direct prejudice to the interests of his or her client.
- 5.6 Any person employed by a Notary or subcontracted by a Notary or a student doing Notarial practice, who becomes aware of any confidential information in accordance with article 7(1) of the Professional Secrecy Act and Data Protection Act, is also bound by the duty of professional secrecy and confidentiality as herein defined and the Notary has to see that all his employees/subcontractors/students are aware of this.
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