



ICCBA Declaration on Obligations under the Code of Conduct for Counsel and Proposed Amendments thereto

The Executive Council and Professional Standards Advisory Committee (“PSAC”) of the International Criminal Court Bar Association (“ICCBA”), taking note of Decision SDO-2017-18-DB (“Decision”) of the Disciplinary Board of the International Criminal Court (“Disciplinary Board”) dated 6 September 2017 and concerning a Counsel on the ICC List of Counsel (*who is not an ICCBA member*), issues the following Declaration:

1. Noting that, pursuant to Article 20(1) of the ICCBA Constitution, the “ICCBA shall adopt the Code of Conduct for Counsel of the ICC (‘Code’) to regulate the ethical duties and the professional conduct of Counsel and staff”;
2. Further noting the ICCBA President’s signature on 5 October 2017, on behalf of the ICCBA, to the GQUAL Action Plan, which seeks to raise awareness about and achieve concrete actions to address the underrepresentation of women in leadership positions in international bodies;
3. Also noting that, from the ICCBA’s inaugural year (2016-2017), the issue of work place harassment and the working conditions of ICC Support Staff has been on the agenda of the Executive Council, and recognising the important work of Support Staff’s elected representatives on the ICCBA Counsel Support Staff Committee in this process;
4. Additionally noting the Executive Council’s: (i) endorsement of comprehensive work place protections and benefits for Support Staff within a fundamentally reformed legal aid system;¹ and (ii) establishment in 2017 of a Working Group on Harassment, which was mandated by the Executive Council in January 2018 to establish an ICCBA hotline to confidentially receive complaints of harassment by legal team members, the guidelines for which are presently being drafted and will be placed on the ICCBA’s website as soon as possible;
5. Noting that, pursuant to Article 7.1 of the Code of Professional Conduct for counsel (“Code”), “*Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings” (emphasis added);*

¹ See ICCBA Comments on ICC Registry Draft Concept Paper on Legal Aid, 24 April 2017, pp. 30-31 (minimum fee levels for Support Staff); 34 (introduction of legal services contracts for Support Staff); 34-35 (inclusion of maternity, paternity, and sick leave provisions within the legal aid system), available at: https://docs.wixstatic.com/ugd/ff5a5e_91839eee83344f6b979f146268a0fad1.pdf.



6. Further noting that, pursuant to Article 7.4 of the Code, “*Counsel shall supervise the work of his or her assistants and other staff, including investigators, clerks and researchers, to ensure that they comply with this Code*”;
7. Noting the Disciplinary Board’s confirmation in the Decision that Article 7.1 of the Code forbids the creation of an environment that has sexual overtones in the context of a professional setting;
8. Further noting the Disciplinary Board’s finding in the Decision that “the role of a lawyer is one involving a position of trust, and requires an exemplary performance in all circumstances, not only with respect to one’s client, but also with respect to those who work on the client’s behalf”;
9. Underlines the responsibility of Counsel to comply with the provisions of the Code including ensuring that his or her assistants and other staff comply with the provisions of the Code;
10. Informs that the ICCBA shall submit, through the appropriate process, a proposed amendment to the Code that assists in clarifying the definition and scope of ‘respectful and courteous’ conduct under Article 7(1) of the Code;
11. Notwithstanding this, further underlines the ICCBA’s view that, pursuant to Article 7(1) and 7(4) of the Code, Lead Counsel in particular is obligated to create a work environment that is respectful of all persons and sensitive to the different cultures, backgrounds and legal communities of the members of Counsel’s legal team;
12. Pending adoption of the proposed amendment to the Code, expresses the strong view that acts of harassment and sexual harassment, as defined in the United Nations Secretary-General’s Bulletin of 11 February 2008 on the *Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority* (ST/SGB/2008/5), fall below the ‘respectful and courteous’ relations standard set out in Article 7(1) of the Code, in particular that:
 - a. Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment; and



- b. Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.

13. Hereby decides that:

- a. This Declaration shall be posted on the ICCBA's website and distributed to all ICCBA members;
- b. The Chief of the Counsel Support Section of the ICC Registry will be requested to facilitate distribution of the Declaration to all persons on the ICC List of Counsel, List of Assistants to Counsel, List of Experts, and List of Investigators;
- c. The PSAC is instructed to organise as soon as possible, in consultation with the ICCBA Training Committee, trainings on the professional obligations of legal team members pursuant to Article 7(1) and 7(4) of the Code, which shall underline, *inter alia*, that acts of discrimination, harassment (including bullying), and sexual abuse constitute conduct liable to bring the legal profession into disrepute, and which cannot be accepted in any form.

Unanimously adopted by the ICCBA Executive Council and ICCBA Professional Standards Advisory Committee on this 2nd day of March 2018