The *Rechtsanwälte* and *Rechtsanwältinnen* of the Federal Republic of Germany, together with the other members of the Bars, adopt the following Rules of Professional Practice through their Assembly of freely elected representatives. The term *Rechtsanwalt* is used hereafter as a gender-neutral professional title.

Rules of Professional Practice
Version of 01 November 2011[1]

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[1] Last amended by a decision of the Statutory Assembly of 1 April 2011, BRAK-Mitt. 2011, 194.

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Part One
Free exercise of the profession

§ 1 Freedom of legal practice

(1) The Rechtsanwalt exercises his profession freely, independently, as a member of a self-determined and self-regulated profession, subject only to the law and the Rules of Professional Practice.
(2) The Rechtsanwalt's freedom rights are a safeguard of the citizen's participation in the law. His activities serve the realization of a society governed by the rule of law.
(3) As an independent adviser and representative in all legal matters, the Rechtsanwalt has to protect his client from a loss of rights. He has to accompany the client with a view to shaping the law, avoiding conflicts and settling disputes. He has to protect him from wrong decisions taken by the courts and authorities and has to act as his client's safeguard against unconstitutional impairment of his rights and against the government exceeding its powers.

Part Two
Professional duties
Section One
General professional and fundamental duties

§ 2 Confidentiality

(1) The Rechtsanwalt has the right and the duty to observe confidentiality.
(2) The right and the duty to observe confidentiality apply to all information that becomes known to the Rechtsanwalt in the course of his professional activity and also after the Rechtsanwalt has ceased to act for a client.
(3) The duty of confidentiality does not apply if the present Rules of Professional Practice or other legislation provide for exceptions, or if the enforcement of or defence against claims arising from a case, or if the defence of the Rechtsanwalt's own interests require the disclosure of information.
(4) The Rechtsanwalt shall explicitly require his staff and anyone participating in his professional activity to observe the duty of confidentiality (§ 43a(2) Federal Lawyers' Act).

§ 3 Conflict of interest, refusal to accept instructions

(1) The Rechtsanwalt must refrain from acting for a new party if he has advised or represented another party in the same matter, if there is a conflict of interest or if he has been seized with the matter in any other professional way as defined in § 45 and § 46 of the Federal Lawyers' Act.
(2) The prohibition specified in paragraph (1) also applies to all Rechtsanwälte connected with him in joint practice or through shared office premises, regardless of the legal or organisational set-up. Sentence 1 does not apply where, in a particular case, the clients involved in a case presenting a conflict of interest have expressly agreed, following comprehensive information, to be represented by the Rechtsanwalt, and where this is not

against the interests of the proper administration of justice. Information shall be provided in writing, as well as the declaration of agreement.

(3) Paragraphs (1) and (2) also apply if the Rechtsanwalt leaves one joint practice or shared office to work in another joint practice or shared office.

(4) If a Rechtsanwalt realises that he acts in violation of paragraphs (1) to (3) he shall inform his clients immediately and must cease to act for all other clients involved in the same matter.

(5) The aforementioned provisions do not affect the duty to observe confidentiality.

§ 4 Clients' money and other assets

(1) In compliance with the duties arising from § 43a(5) of the Federal Lawyers' Act, the Rechtsanwalt shall hold clients' money in third party accounts.

(2) Clients' money and other assets, in particular securities and other deeds of a financial nature shall be passed on to the entitled immediately. As long as this is not possible, clients' money has to be held in third party accounts. These are usually current accounts. The amount held in a collective clients' account must not exceed 15,000.00 € per party and shall not be held for more than one month. Other assets have to be held separately. The aforementioned provisions do not apply as long as something else has been agreed in writing. A statement of clients' money shall be established promptly, upon termination of instructions at the latest.

(3) A Rechtsanwalt shall not deduct his legal costs from a client's funds which have been earmarked for payment to someone other than that client.

§ 5 Office and branch office

The Rechtsanwalt is obliged to fulfil the material, personnel and organisational prerequisites for the exercise of his profession at his office and branch office.

Section Two
Special duties with regard to publicity

§ 6 Publicity

(1) A Rechtsanwalt may give personal information and information about his services provided the information supplied is objective and relates to his professional activities.

(2) Publicity as to success rates or turnover is not permitted. References to cases and clients may only be made provided the respective client has explicitly given his consent.

(3) A Rechtsanwalt shall not participate in an effort designed to make third parties conduct publicity for him which he himself is not permitted to conduct.

§ 7 Reference to individual professional practice areas

(1) Apart from references made to “Fachanwalt“ specialisations*, individual areas of professional practice may be mentioned only on the condition that the Rechtsanwalt can prove that he has acquired special knowledge in the mentioned area through training, professional experience, through publications or in any other way. If a Rechtsanwalt uses qualifying additions, he must have the respective theoretical knowledge as well as extensive practice experience in the area referred to.

(2) References made in accordance with paragraph (1) are not allowed where they create a danger of confusion with “Fachanwalt” specialisations or where they are otherwise misleading.

(3) Where Rechtsanwälte practice jointly and in respect of other forms of professional co-operation, the aforementioned provisions apply mutatis mutandis.

§ 7a Mediator

The title of mediator may only be used by those who can prove that, on the basis of appropriate training, they master the principles of mediation procedure.

§ 8 Declaration of joint professional practice and other forms of professional co-operation

Where Rechtsanwälte associate to practice jointly, their co-operation may be publicized only where it occurs in the form of a professional partnership or in any other way with professionals mentioned in § 59a Federal Lawyers’ Act. Publicizing any other form of professional co-operation is permissible, provided it does not give the impression of joint practice.

§ 9 Designation of a firm

A designation must be used uniformly.

§ 10 Headed notepaper

(1) The Rechtsanwalt shall mention his office address on the letterhead. Where more than one office, one or more branch offices are maintained, the respective addresses of all Rechtsanwälte mentioned on the letterhead have to be mentioned (§ 31 BRAO).

(2) Even where a law firm uses a designation, the names of all partners have to be mentioned on the firm’s notepaper with at least one first name written out in full. The same applies to names of other persons included in a designation as defined by § 9. The number of partners, employed or independent staff mentioned in the firm’s letterhead must be at least equivalent to those mentioned in the designation.

(3) Where Rechtsanwälte have established a professional co-operation with members of other professions, the specific professional titles of the latter have to be mentioned.

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* Note: in order to be able to use the title „Fachanwalt“, a lawyer has to acquire exceptional theoretical and practical knowledge in a chosen area of specialisation and has to pass an additional exam.

(4) The names of retired practice owners, partners, employed or independent staff may only be kept on the letterhead if their retirement is made clear.

Section Three
Special duties with regard to accepting, handling and terminating instructions

§ 11 Informing the client

(1) The Rechtsanwalt shall inform his client promptly about any events and measures taken, which are relevant to the progress of the matter. In particular, the client shall be informed about any important documents received or sent.
(2) Client inquiries shall be answered promptly.

§ 12 Avoiding the opposing counsel

(1) The Rechtsanwalt must not contact or negotiate with another party directly, without prior consent of that party's Rechtsanwalt.
(2) This does not apply in case of imminent danger. In such a case the Rechtsanwalt of the other party shall be informed immediately; copies of written communications shall be sent to him immediately.

§ 13 Default judgements

(*annulled*)

§ 14 Service of documents

The Rechtsanwalt shall accept properly sent documents and notify the receipt thereof immediately, indicating the date on the certificate attesting the receipt. If the Rechtsanwalt refuses to assist the service of a document that does not fulfil the formal conditions of service, he shall notify the sender immediately.

§ 15 Change of instructions

(1) The Rechtsanwalt who takes over a case previously dealt with by another Rechtsanwalt shall ensure that the latter is informed about this take-over immediately.
(2) The Rechtsanwalt who accepts instructions for a case already handled by another Rechtsanwalt shall inform the latter thereof immediately.
(3) Paragraphs (1) and (2) do not apply if the Rechtsanwalt only provides advice.

§ 16 Legal aid and legal advice aid

(1) The Rechtsanwalt has the duty to inform his client about the availability of legal aid where there is a justified reason to do so.
(2) If legal aid is granted, the Rechtsanwalt may only accept any kind of payment from his client or third parties if it is made voluntarily and provided that the client or the third party know that they are not obliged to make such payments.

§ 16a Refusal of legal advice aid

(1) (*annulled*)
(2) The Rechtsanwalt is under no obligation to apply for legal advice aid.
(3) The Rechtsanwalt may refuse or terminate legal advice aid in a particular case for an important reason. An important reason may lie in the person of the Rechtsanwalt or in the person or the conduct of the client. An important reason may also be the fact that the approval of legal advice aid does not comply with the conditions set out in the Legal Advice Aid Act (*Beratungshilfegesetz*). An important reason exists, in particular, if:

a) the Rechtsanwalt is prevented from providing advice/representing a client because of illness or an excessive workload;
b) (*annulled*)
c) the client who is entitled to legal advice aid refuses the cooperation necessary to work on the case;
d) the relationship of mutual trust between the Rechtsanwalt and the client is seriously disturbed for reasons related to the client as a person or because of the client's conduct;
e) it turns out that the client's income and/or assets do not justify the granting of legal advice aid;
f) (*annulled*)
g) (*annulled*)

§ 17 Retention of reference files

A Rechtsanwalt who refuses to hand over reference files (§ 50(3), (4) Federal Lawyers' Act) can still satisfy his client's legitimate interest in the release of such files by providing him with copies thereof, unless his client has a particular interest in the originals. In this case the Rechtsanwalt may offer to give the originals in trust to another Rechtsanwalt instructed by the client, if this satisfies the legitimate interest of the client.

§ 18 Conciliation, arbitration and mediation

If the Rechtsanwalt acts as a conciliator, arbitrator or mediator, he is subject to the rules of professional law.

Section Four
Special duties regarding the courts and authorities

§ 19 Inspection of files

(1) A Rechtsanwalt who receives original documents from the courts and authorities for inspection must only hand them over to his office staff. This also applies to the file as a whole when it is handled within the Rechtsanwalt's office. The documents shall be stored with great care and must be returned immediately. When they are photocopied or duplicated in any other way, it shall be ensured that unauthorised persons do not obtain knowledge of them.

(2) Photocopies and duplicates may be handed over to the client. However, where legal provisions or a legitimate order issued by the body giving out the files limit the right to inspect the files, the Rechtsanwalt shall respect these provisions when transmitting the file's contents to clients or any other persons.

§ 20 Professional attire

Where this is customary, the Rechtsanwalt wears a robe when appearing in court. There is no professional duty regarding the appearance in a robe before a civil *Amtsgericht* (local District Court).

Section Five
Special duties with regard to fee agreements and billing

§ 21 Fee agreements

(1) The prohibition to charge or agree upon fees that are less than the legally prescribed fees also applies to relations with third parties which pay the fees instead of or together with the client, or who have committed themselves vis-à-vis the client to exempt the client from all accruing charges.
(2) *(annulled)*[2].

§ 22 Fee sharing

In terms of § 49b(3), sentences 2 and 3 Federal Lawyers' Act, adequate remuneration usually means fees split into equal amounts regardless of whether they are reimbursable or not.

§ 23 Billing

Upon termination of a retainer, at the latest, the Rechtsanwalt shall promptly draw up a statement for the client or the party liable to pay the fees listing fees paid in advance.

Section Six
Special duties with regard to the Bar, its members and staff

§ 24 Duties towards the Bar

(1) Of his own accord, the Rechtsanwalt shall notify the Council of the Bar promptly of:
1. a change of name,
2. the establishment of and changes in office and home addresses,
3. the means of telecommunication used in the office and the respective numbers,

[2] Annulled by a decision of the Federal Ministry of Justice of 7 March 1997, Federal Gazette of 8 March 1997, c.f. BRAK-Mitt. 1997, 81.

4. the entering into or the dissolution of a partnership, a *Partnerschaftsgesellschaft** or any other association for joint exercise of the profession,
5. the commencement and termination of employment relations with Rechtsanwälte.

* A certain form of partnership defined in the „Partnerschaftsgesellschaftsgesetz“.

(2) In order to comply with the duties regarding the Rechtsanwalt's obligation to furnish information as enumerated in § 56 Federal Lawyers' Act, the Rechtsanwalt shall provide comprehensive information to the Council of the Bar and shall produce the relevant documents upon request.

§ 25 Complaints about colleagues

If a Rechtsanwalt wishes to draw a colleague's attention to the fact that he is violating a professional duty, this must be done confidentially, unless the client's or the Rechtsanwalt's interests call for a different kind of response.

§ 26 Employment of Rechtsanwälte and other staff

(1) Rechtsanwälte must only be employed on appropriate terms. Appropriate terms are conditions which:

a) allow adequate case work, taking into consideration the employed Rechtsanwalt's experience and the liability risk of the employer,
b) ensure a remuneration of the employed Rechtsanwalt which is commensurate with his qualification, performance and scope of activity as well as the advantages resulting from this activity for the employing Rechtsanwalt,
c) allow the employed Rechtsanwalt to, upon request, dedicate an adequate amount of time to further training,
d) provide for adequate compensation payments where a prohibition of competition has been agreed.

(2) The Rechtsanwalt must not employ other staff and apprentices on inappropriate terms.

§ 27 Participation of third parties

Third parties who do not co-operate with a Rechtsanwalt on the basis of a joint exercise of the profession must not participate in the economic result of legal activity. This does not apply to staff remuneration, pensions and related benefits, payments made for the take-over of a firm and payments which are made in the course of the settlement of a professional co-operation.

§ 28 Apprenticeships

The Rechtsanwalt shall ensure that the activities of an apprentice undergoing training in his firm are geared towards the accomplishment of the educational goal.

Section Seven
Special duties with regard to cross-border activities

§ 29 Rules of Professional Practice and CCBE Code of Conduct.

(1) In relation to the cross-border activities of the Rechtsanwalt as defined in Article 1.5 of the Code of Conduct of the Council of the Bars and Law Societies of the European Community (CCBE) of 28 November 1998 (cf. annex to Rules of Professional Practice), that Code is applicable in lieu of the present Rules of Professional Practice, unless European Community law or German constitutional law, statute law or subordinate legislation take precedence. If the Code of Conduct of the Council of the Bars and Law Societies of the European Union is applicable, the Rechtsanwalt shall inform the foreign lawyer immediately that European Community law and German constitutional law, statute law or subordinate legislation take precedence; this has to be taken into consideration especially when Article 5.3 of the CCBE Code of Conduct is applied.

(2) Other cross-border activities are subject to the present Rules of Professional Practice.

Section Eight
Special duties with regard to professional co-operation

§ 30 Co-operation with members of other professions

A Rechtsanwalt may only co-operate in a professional association with members of other professions as defined in § 59a(1) Federal Lawyers' Act in the form of a partnership or in any other way of joint practice, or in a joint office, if they respect the Rules of Professional Practice of the legal profession. This also applies to practise in association with members of other professions as defined in § 59a (3) Federal Lawyers' Act, provided they practise in the Federal Republic of Germany.

§ 31 (*annulled*)

§ 32 Termination of professional co-operation

(1) In the event of a dissolution of a partnership and in the absence of other contractual arrangements, the partners shall ask the clients who they wish current matters to be dealt with in the future. If the former partners do not agree on how to put this question to the clients, they shall issue a joint circular letter. If the former partners cannot agree on such a letter, each of the partners may obtain the decision of the clients individually. The outgoing partner may affix a note concerning his move at the former seat of the firm for the period of one year. During this period, the remaining partner shall answer any inquiries as to the new address, telephone and fax numbers of the outgoing partner.

(2) In the event of a partner leaving a partnership, paragraph (1) applies to those clients whose current matters the outgoing partner was handling at the time of his withdrawal or

for whom he acted regularly prior to his departure. His right to inform all clients about his leaving the partnership remains unaffected.

(3) Paragraph (1) and (2) apply *mutatis mutandis* to the termination of any other form of professional co-operation if it has acted like a partnership vis-à-vis third parties.

§ 33 Validity of the Rules of Professional Practice in professional co-operation

(1) Insofar as the provisions of the present Rules of Professional Practice provide for rights and duties of the Rechtsanwalt with a view to the partnership as a form of professional co-operation, they apply *mutatis mutandis* to all other legal forms of professional co-operation.

(2) In any kind of professional co-operation every Rechtsanwalt shall ensure that the provisions of the present Rules of Professional Practice are also respected by the organisation as a whole.

Section Nine
Field of application

§ 34 Other members of the Bar, foreign lawyers

(1) As far as European lawyers as defined in § 1 et seq. of the Law regulating the activity of European lawyers in Germany (EuRAG) and their activity in the Federal Republic of Germany are concerned, § 1 to § 33 and annexes apply *mutatis mutandis*.

(2) European lawyers pursuing a temporary activity in the Federal Republic of Germany in accordance with § 25 et seq. EuRAG, are subject to the provisions of § 1 to § 33 which apply in accordance with § 27 EuRAG and *mutatis mutandis*.

(3) Regarding lawyers from other States who are members of a Bar as defined in § 206 and § 207 Federal Lawyers' Act, § 1 to § 33 and annexes apply *mutatis mutandis* as far as their activity in the Federal Republic of Germany is concerned.

(4) Lawyers who are in possession of a permission to provide legal advice as defined in the *Rechtsberatungsgesetz* (German law on the provision of legal advice) and who are members of a Bar, are subject to § 2 to § 13, § 15 to § 19, § 21 to § 33 and annexes, which apply *mutatis mutandis*.

Part Three
Final provisions

§ 35 Entry into force and signature

(1) The present Rules of Professional Practice enter into force three months after transmission to the Federal Ministry of Justice, provided the Federal Ministry of Justice does not annul the Rules of Professional Practice in part or as a whole, but not before the first day of the third month following their publication in the *BRAK-Mitteilungen*.

(2) The day of entry into force shall be published in the *BRAK-Mitteilungen.*

(3) The Rules of Professional Practice shall be signed by the Chairman and the Secretary of the *Satzungsversammlung* (Statutory Assembly).