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REPORT ON THE REVIEW OF THE RULES OF CONDUCT FOR THE BAR MEMBERS ON THE ADHERENCE TO THE EUROPEAN STANDARDS

Contract No. AID-OAA-I-13-00032, **Task Order No.** AID-121-TO-16-00003

Nove Pravosuddya Justice Sector Reform Program (New Justice)

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Development Objective 1: More Participatory, Transparent and Accountable Government Processes

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Submitted by:
Chemonics International Inc.

October 22, 2018

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OVERALL PERSPECTIVES AND RECOMMENDATIONS

1. The Council of Bars & Law Societies of Europe (CCBE) Charter of Core Principles and Code of Conduct have two important objectives: **facilitating cross-border legal practice** and **supporting values fundamental to the rule of law and democracy**.
A national lawyer code of conduct needs to serve two additional purposes: **defining disciplinable offenses** and providing **day-to-day guidance for lawyers** on ethical issues that arise in practice. All four purposes are important. When conducting a review, it is useful to consider them "one at a time" in a several stage process.

2. The US national American Bar Association (ABA) Model Rules (MR) took 110 years to reach their current form. They are reviewed on a continual basis by the ABA as well as the state authorities that adopt them as binding codes. This report's recommendations for improvement in no way diminish the **accomplishment that the Ukrainian Rules of Conduct represent**. A nation's lawyer conduct code should be a "work in progress," which learns from the country's experience, that of other nations, and international and regional documents like the CCBE Core Principles and Code.

3. In my review thus far, the **Ukrainian Rules of Conduct (URC) seem to generally conform well to CCBE standards.** They also **address well the usual basic issues important in a national code,** e.g., conflicts and confidentiality while **also taking up extension of basic principles to particular situations**, e.g., working with clients "under a disability" and representing non-human, artificial person organization clients. The **length, current organization of the URC, and lack of cross-references to other pertinent governing law**, however, **meant that I could not complete a comprehensive review of how the URC meets all CCBE standards and items that should be covered in a national code** within a reasonable allocation of time.

4. More importantly, the **structure of the URC impedes their value to national and cross-border lawyers** for whom they need to address the following purposes: (a) a **clear and concise statement of what constitutes a disciplinary violation**; (b) useful **day-to-day practice guidance** for lawyers; (c) **facilitating cross-border practice** by providing a clear place where foreign lawyers easily can find "the Ukrainian rule" on various points.

5. The **most useful next step** in enhancing the URC's usefulness and facilitating their review against national standards and utility as a national code **would be a restructuring that**

- reviews the existing articles to **define concise statements of disciplinable offenses;**
- **eliminates repetition** and **is structured so each important principle**, e.g., a lawyer's confidentiality duty, the legality principle, is **stated only once and** its **application** in particular situations **is addressed through a cross reference** to the basic principle **rather than a restatement** of the principle;
- adds a **definitions section**;
- adopts a **numbering system** like that followed in the CCBE CC or the ABA MR so an Article's number **relates it to the topic of the section**, e.g., core principles in Section 2 might begin with 2 in the way that CCBE CC General Principles is followed by code sections 2.1 through 2.8;

- numbers **paragraphs and subparagraphs within code sections f**or ease in reference, e.g., CCBE CC 2.1 is followed by 2.1.1. and 2.1.2 and MR paragraphs and subparagraphs are identified for ease in precise citation, e.g., MR 1.6(b)(1) and, with that restructuring, **reviews each Article's internal logic**;
- adds a **commentary** that **separates out** things currently in the URC that go beyond concise statements of disciplinable rules and instead provide **guidance or aspirational statements**. **Commentary also usefully could include (**a) the **"reason for the rule**" to aid in interpretation; (b**) examples** of application; (c) **cross reference within the rules** following the convention stated above of only stating a principle once and then cross-referencing; (d) **cross references to other sources of law** governing lawyer conduct, including the Ukrainian Law on the Bar and Practice of Law;
- moves **provisions on the Bar's structure and processes** into a separate document so the Rules of Conduct focus on defining disciplinable offenses and day-to-day guidance for lawyers.

6. With a URC that was more user-friendly, a later review could focus on priorities on the "**most important problems to be solved**." Core principles and important concepts regarding the role of lawyers and their relationship to clients and the justice systems are inherent to the lawyers' role and generally cut across legal systems. Countries vary considerably, however, in what points are of the most concern at a particular point in time. As discussed in point 2 above, the US ethical rules have evolved and changed considerably over their 110-year history as the nature of law practice has changed.

7. A future review should **keep in mind "first principles**." Lawyer independence is important so lawyers can and will serve their public purposes in a democratic society governed by rule of law. Independence does not exist for the benefit of lawyers. Hence, the formulation that lawyer (and judicial) independence must be balanced by accountability. **Lawyer ethics codes and the disciplinary process (as with their judicial counterparts) must be considered carefully to affirm independence necessary to perform lawyers' public functions and how they can withstand "accountability perversions.**" Accountability perversion includes efforts to use the disciplinary process to intimidate lawyers from doing a proper job for their clients, challenging unlawful government action, or "going after" competitors or political enemies.

8. This report is focused on the Ukrainian Rules of Conduct, the code of ethics for Ukrainian lawyers. Point 1 above discusses the two central roles for a national code: defining disciplinable offenses and day-to-day guidance for lawyers as well as two important additional purposes: facilitating cross-border legal practice and supporting values fundamental to the rule of law and democracy. Countries sometimes create documents varyingly called Standards, Core Principles, Statements of Values, Creeds, and the like. These bring together important cross-cutting themes and values underlying a national code that can get a bit "lost" in the detail of defining rules that will be an appropriate basis discipline and provide useful commentary for day-to-day guidance on specific situations. Standards, core principles, values statements, or similar documents also can go beyond the "minimums" of "the Rules" to aspirational standards and guidance about what a "good lawyer" does.

Efforts regarding common values that reach beyond lawyers to include judges and prosecutors and any other relevant legal profession are important as a complement to a nation's rules of conduct. While the day-to-day functions each profession performs in the justice system differ warrant differing rules of conduct, **a strong justice system operating under rule of law in a democracy needs all legal professions to hold some core values in common.** The recent September 21, 2018 Professional Ethics in Justice Resolution signed by the Chairs of the Ukrainian Council of Judges, Council of Prosecutors, and Council of

Advocates recommends permanent cooperation among these bodies with the purpose of defining common ethical principles, establishing high standards of justice in Ukraine, providing professional training for members of the three legal professions represented, and raising the level of professional ethics in the court process. This seems a valuable effort to be supported.

ABBREVIATIONS USED IN THE REPORT

This report uses the following acronyms:

- **URC** for the Rules of Professional Conduct approved by the Reporting and Elective Congress of Attorneys of Ukraine in 2017, June 9, 2017.

- **LoU** for the Law of Ukraine on the Bar and Practice of Law (Bulletin of the Verkhovna Rada (BVR), 2013, No. 27, p. 282) with amendments introduced by the Law of Ukraine No 1702/VII dated October 14, 2014, BVR 2014, No 50-51, 2057.

- **CCBE** for Council of Bars & Law Societies of Europe.

- **CCBE CP** for Council of Bars & Law Societies of Europe (CCBE) Charter of Core Principles.

- **CCBE CC** for Council of Bars & Law Societies of Europe (CCBE) Code of Conduct.

- **MR** for United States Model Rules of Professional Conduct adopted and periodically amended by the American Bar Association (ABA). The ABA is a voluntary association with no regulatory authority. The binding rules for attorneys are those that are adopted by the authorities empowered to set conduct rules for the bar(s) to which they belong. Generally, that means the highest tribunal within a state. State authorities with authority to adopt binding codes look to the ABA Model Rules as a model. Analogous to the CCBE, one objective of the MR is sufficient conformity and respect for comity among jurisdictions to facilitate law practice across state borders. State professional conduct codes are sufficiently uniform and akin to the MR that most US law schools teach the MR in their required professional responsibility courses. The National Conference of Bar Examiner's (NCBE) Multistate Professional Responsibility Exam (MPRE), which almost all US jurisdictions require as part of the qualifying exam for state bar admission, tests on the MR. When discussing a United States approach to Rules of Conduct, I refer to the MR as if they were a national code because, in large part, the binding state codes generally conform to the MR.

PART ONE: PERSPECTIVES FOR REVIEW OF NATIONAL RULES OF CONDUCT

CONFORMITY TO THE COUNCIL OF BARS & LAW SOCIETIES OF EUROPE (CCBE) CHARTER OF CORE PRINCIPLES AND CODE OF CONDUCT

The opening description to the CCBE CP and CCBE CC, as well as the CCBE Code Preamble, express the two purposes of the CCBE documents. As CCBE Code 1.3 says, "a particular purpose" is to "mitigate the difficulties" of "'double deontology,'" meaning areas where national codes conflict and create problems for cross-border practice. This recognizes that there are areas in which national rules of conduct legitimately will differ and set down ways to handle these differences in cross-border practice.

A second is to express the "core principles . . . common to the whole European legal profession, . . . which are essential for the proper administration of justice, access to justice and the right to a fair trial." The Commentary on the Core Principles and the Preamble from the Code point out that "[r]espect for the lawyer's professional function is an essential condition for the rule of law and democracy in society."

These two functions, **facilitating cross-border practice** and **supporting values fundamental to the rule of law and democracy,** are important and appropriate ones for an entity like the CCBE to pursue. The CCBE, though, is rooted in an **acknowledgement that its role is supporting and reconciling national codes, which serve additional purposes.**

ADDITIONAL CENTRAL OBJECTIVES FOR NATIONAL RULES OF CONDUCT

A national set of Rules of Conduct needs to serve **two additional central purposes** with regard to its usefulness to the bar and the public in the home country. I say "additional" because, of course, a **first purpose of a national code also should be supporting values fundamental to the rule of law and democracy**.

One additional purpose is to **define disciplinable offenses**. Most countries administer lawyer discipline in a "quasi-criminal" context with the "ultimate sanction" being disbarment. By "quasi-criminal," I mean the structure tracks the criminal process: prosecutable offenses clearly defined; burden on the prosecution to prove at a stated standard of proof; and the defending lawyer's right to notice of charges and opportunity to defend. Such a process has "two sides." On the one hand, a nation's bar, with its mission to protect clients and act in the public interest, needs to define behavior that is "out of bounds" and should have consequences. This can be termed the **"accountability mechanisms."** On the other hand, legitimate accountability instruments such as lawyer or judicial ethics codes can be used by political enemies to "go after" those "standing up" to the government, political adversaries, political enemies, or other forces seeking to compromise appropriate lawyer or judicial independence. Czech professor David Kosař refers to this phenomena as **"accountability perversion"** in his important 2016 Cambridge University Press book, PERILS OF JUDICIAL SELF-GOVERNMENT IN TRANSITIONAL SOCIETIES.

The wording of lawyer (like judicial) conduct rules must be seen through multiple prisms. On the one hand, one must consider what bounds Rules of Conduct should set. On the other, one has to consider drafting appropriate for items that could be the **basis of a bar disciplinary proceeding**. The disciplinary authorities must know clearly what must be proven. The Ukrainian Code of the Code of Administrative Adjudication (Article 2) states that the subject of power acts should be: "… 3) justified, that is, taking into account all the circumstances relevant to the decision-making (commission of action); … 5) in good faith; 6) reasonable;…". Thus the decision of the disciplinary authority should be clear, specific, justified and reasonable. As in a criminal statute, drafters must be alert for ambiguous or overbroad language.

Another equally important purpose of national conduct rules is to provide a single place where lawyers can go to get **day-to-day guidance** on what to do in situations that arise in practice, particularly where reasonable ethical precepts conflict. For example, client confidentiality is an important basic norm of the lawyer-client relationship. On the other hand, most countries acknowledge that there are competing considerations such as danger to life, clients' use of lawyers to commit crimes and frauds that injure others, and so on. MR 1.6(b) lists seven situations in which a lawyer may have the discretion to reveal a client confidence at least in a limited manner. These exceptions and the accompanying comments are crafted carefully to give guidance on considerations to take into account regarding whether a lawyer should act on this discretion and in what manner. As discussed in Part Two, if requirements regarding lawyer conduct are found in "other law" outside the lawyer's code, commentary to the code can provide day-to-day guidance for lawyers by making the cross reference.

Conflict of interest is another area in which balancing competing considerations is important. When a lawyer turns down a prospective client by determining that representation is precluded because of confidences received from a former client, the past client's interest may be protected. On the other hand, the prospective client's choice of lawyer (and the lawyer's access to a client) has been restricted. Motions to disqualify counsel in litigation in US courts for past client conflict were filed so frequently that courts and bars grew wary that conflict rules were being used as a "tactic" to restrict the choice of lawyers for others rather than for protection of past client confidences. Bars also realized ways that clients sometimes strategically consulted and retained counsel with a primary objective of depriving potential adversaries of a particular lawyer's services in the future. Hence, US conflict of interest law has developed somewhat elaborately to balance competing legitimate concerns in conflict of interest, e.g., past clients interest in confidence protection against prospective clients choice of lawyer.

In my initial assessment of the URC against the CCBE, it seems that **generally the URC comply with the CCBE.** There are examples, though, where the CCBE recognizes that national rules legitimately will differ, and I did not find it easy to determine what the Ukrainian rule/law was. One example is "professional secrecy." Some CCBE-member countries observe a lawyer's right and obligation to keep conversations among lawyers secret even from their clients. Other CCBE members are like the US in forbidding a lawyer to keep secret from the client something that is in the client's interest to know. The Commentary to CCBE CP (b), the confidentiality principle, refers to this difference among jurisdictions. CCBE CC 5.3 on Correspondence between Lawyers accommodates this difference for cross-border practice by saying that a lawyer coming from a professional secrecy jurisdiction, who is communicating from a lawyer from another country, must determine if the rules of the second country allow the second lawyer to preserve professional secrecy. If not, the first lawyer should not make the communication. Previously, I referred to the day-to-day guidance function for national Rules for the country's own lawyers. A national lawyer conduct code also should give foreign lawyers the place to find guidance on an issue like professional

secrecy on which nations sometimes differ. Commentary should direct a reader to the relevant provision. I reviewed the URC and LoU several times to find out whether Ukraine observes professional secrecy and could not find the national rule.

The URC also **address well the usual basic issues important in a national code,** e.g., conflicts and confidentiality while **also taking up extension of basic principles to particular situations**. For example URC Article 37 addresses working with clients "under a disability," comparable to MR 1.14, and Articles 38 and 39 address working with non-human, artificial person organization clients as addressed in MR 1.14.

PART TWO. DRAFTING CONSIDERATIONS REGARDING THE URC

The ABA MR were proceeded by the 1969 Model Code of Professional Conduct and, before that, the 1908 Canons of Professional Ethics. Hence, today's ABA Model Rules represent 110 years of experience and revision of lawyer conduct standards. Furthermore, the states each have their own evolutionary history for their rules of conduct. The ABA's process often looks to experience in the states when considering the wisdom of a conduct rule, comment on it, and structure of the disciplinary process.

Given Ukraine's relatively short history as a democratic country, the Rules of Conduct are a significant achievement. The comments on how they could be "better drafted" should be seen in that light. The ABA Model Rules overall are quite thoughtful and well-drafted. We should remember, though, it has taken 110 years to "get there."

SEPARATE DISCIPLINABLE OFFENSES IN THE RULE; DEFINE CLEARLY AND CONCISELY

One fundamental purpose of national rules of conduct must be to protect the public from abuse. Clients depend on lawyers to protect matters crucial to their lives and businesses and advocate for their rights under the law including their property, livelihoods, family structure, and liberty. Lawyers' actions also affect third parties and the integrity of the legal system overall. Lay people often do not have the background to understand what they have a right to expect of lawyers and assess whether they are getting that level of service. Hence, the concern in the profession overall to create an enforceable code of conduct for lawyers to protect the public. A lawyer's conduct code must be sufficiently clear to let lawyers and the public know what is required, forbidden, allowed, and where there is discretion, the appropriate considerations to be taken into account.

While lawyers do not lose their freedom in a disciplinary process, they can lose their right to practice law, and a disciplinary finding carries a "stigma," in some ways akin to a criminal conviction. Hence, the US and many other countries characterize lawyer discipline as a "quasi-criminal" process meaning that many of same concerns about process apply. A general rule-of-law principle is that criminal offenses should be clearly defined—not "void for vagueness." Prosecutors need to know what they must prove. The adjudicatory body must decide if necessary proof was provided at the specified standard of proof. The accused must have clear notice of the offense definition and specific charges against her. She must have a right to defend—using the offense's definition as the standard.

SINGLE STATEMENT OF A PRINCIPLE WITH CROSS REFERENCE

The CCBE and the MR seek to state a general principle "only once." The URC seems to me to be repetitious in a number of instances—to take up the same issue again in a slightly

different context and sometimes with using different words. Some examples that seemed problematic are as follows:

--URC Article 20 seems to restate the obligation of Article 9 to avoid conflict of interest.

--URC Articles 10, 22, 35, and 55 regarding confidentiality seem to cover overlapping ground.

--The recently-added articles on social media express concern about core values like confidentiality or conflict of interest issues as they arise in social media. I think it would be more useful drafting to cross reference to the principle rather than restating it in the social media section.

--The URC quite appropriately cites the legality principle that lawyers should represent their clients loyalty and vigorously but within the framework of the law and rules. They cannot become accomplices in client wrongdoing. The concept seems to be discussed in Articles 7, 19, 25, 42, 43, 46, 47, and 49 without a cross-reference system.

--The URC should be commended for being explicit about a lawyer's responsibility for supervising others. This is a recent, and overdue, addition to the US MR. This concept though is mentioned in at least Articles 61, 62, 67, and 68.

--The URC parallel the US approach of paramount concern for client's interests and respect for the client's right to set the objectives for representation (within the bounds of legality). The URC also recognize that, for these client rights to be effective, a lawyer must communicate effectively so the client can make decisions. It would be good to have a strong central statement of that client control principle linked to the lawyer's duty to communicate effectively. This now is mentioned at least in Articles 8, 18, and 26.

DEFINITIONS SECTION

The MR commence with a definitions section. Two important provisions, which recur in various places in the MR, are "confirmed in writing" and "informed consent." (MR 1.0(b) and (e)) The URC, like the US, provides for the possibility of waiver of potential conflict in some situations with client consent. Consent also is used with regard to disclosure of client confidences. Given the importance of the concept of consent, I think there should be an overall definition in the URC. The MR definition of consent is valuable in cautioning lawyers about the information they must give clients in order for clients to be able to give informed consent.

The term consent also recurs in a number of places in the URC. This is one of a number of concepts that could benefit from being defined in a single place such that it is clear that subsequent uses of the term refer to that definition.

NUMBERING SYSTEM LINKING THE RULE TO THE SECTION TO WHICH IT PERTAINS AND REVIEW OF A RULE'S INTERNAL LOGIC

One simple—but important—thing about structure. The CCBE CC, LoU, and MR all are structured so subsections can be citied, e.g., CCBE 5.3.2.

While the URC are divided into Sections, the articles are numbered consecutively from 1-70. The CCBE CC and MR both have numbering systems such that particular code/rule sections are designated with a number showing the overall section of which they are a part.

For example, Section 1 of the Model Rules is about the Client-Lawyer Relationship so the reader knows that a MR 1.X is about one of the duties of lawyer to client. Section 3 is about the lawyer's role as advocate so the reader is alerted that a MR 3.X refers to a duty the lawyer has in an adversary proceeding, e.g., those duties that weigh the lawyer's duty to the client against duties to the court and third parties.

SYSTEM FACILITATING CITATION OF PARAGRAPHS AND SUB-PARAGRAPHS; REVIEW A RULE'S INTERNAL LOGIC

In a process of reformatting, I strongly suggest adopting a numbering system like that in the Model Rules or the CCBE Code. For example, Article 10 on confidentiality, of course a very important provision, as 10 paragraphs and the third paragraph has four bulleted items. It is cumbersome to cite with precision what part of the rule one is talking about. As the decisions of the disciplinary authority should be clear, specific, justified and reasonable, it is better to clearly the state the paragraph, part and bulleted item when mentioning the rule.

The URC Articles often have multiple paragraphs, but there is no concise way to cite with precision which subpart of the rule one is talking about. Reorganizing the URC articles into subsections, not only would make citation easier but also, would ferret out places where the content is not in a logical order. For example in URC Article 9, the first paragraph is a general statement about statement about conflict between a lawyer and a client's interest. The second paragraph switches from lawyer and client conflict to conflicts among clients. The third paragraph also concerns client to client conflict, those that arise "midstream" from getting confidential information from a new client. The fourth paragraph, though, goes back to point in the first paragraph about the conflict between a lawyer and a client's interest rather than the client-to-client interest point in the intervening paragraphs.

GUIDANCE AND ASPIRATIONAL STATEMENTS IN COMMENTARY

Commentary also provides a way to balance the purpose of a national code to define what offense are "prosecutable" versus providing day-to-day guidance on what to do in various situations. Separating "rules" from "comments" is a solution in this regard.

Disciplinary offenses need to be clear on what is required and what is forbidden—the specifics of for what lawyers can be prosecuted. The day-to-day guidance function, though, often addresses what "is recommended," "is good practice," and statements of the overall objectives of a rule. That is helpful and valuable, but merging it with what is required and forbidden can create problems for the fairness of rules as the basis for disciplinary prosecutions.

COMMENTARY ALSO REASON FOR THE RULE, EXAMPLES, INTERNAL CROSS REFERENCES, REFERENCES TO OTHER PERTINENT LAW

Reason for the Rule: Lawyers from civil law countries, of course, are well aware of the code interpretation principle of looking to the policy underlying a rule for interpretation. The Ethics 2000 revision of the Model Rules restructured the Comments such that the first comment to each rule states the policy underlying the rule.

Examples: Day-to-day guidance often is best achieved with commentary on the application of a basic principle in situations that often recur in law practice. For example, MR Rule 1.7, the basic conflict of interest rule, has one of the longest commentaries—35 comments. These comments go into detail about situations such as where a potential conflict appropriately can

be waived by informed consent of a client and those where the lawyer should make a judgment that there is an actual conflict or potential that is too great and refuse the joint representation.

Internal Cross References: Previous section 2.2 of this report discussed the importance of stating a principle only once and then cross referencing to it. Sometimes, such a reference should be in the Rule itself; in others in the Comment.

References to Other Pertinent Law: One important purpose of commentary is alerting lawyers that there are rules and bodies of law outside the Rules of Conduct that also impose duties on lawyers and, in some instances, need to be consulted and read with a Rule of Conduct. For example, the CCBE CP Commentary on confidentiality acknowledges that some jurisdictions also have a law of "attorney-client privilege" regarding a subset of confidential information, the communication between lawyers and clients. This is true in the United States where privilege is defined in evidentiary law regarding what is admissible in court and what is protected by "privilege," e.g., attorney-client, doctor-patient, spousal privilege. While the ethical duty of confidentiality and attorney-client privilege law share many concepts in US law, they are different bodies of law, found in different places, serving different purposes, and sometimes imposing different duties on US lawyers. MR Comment [3] refers to privilege (and the work-product doctrine) as bodies of law related to the ethical duty of confidentiality. Hence, this "flags" for lawyers that there are additional considerations and lets them know they need to look "outside" the MR for the specifics of those requirements.

Appendix A provides analyses that I did of the URC against four CCBE Core Principles: confidentiality, conflict of interest, competence, and client fees. In some instances, I found what seemed to be important, pertinent provisions in the Law of Ukraine on the Bar and Practice of Law (LoU). URC has 70 Articles and the English translation is 20 pages in 11-point font with small margins. The LoU's English translation is 43 pages. Finding the relevant provisions, even for only these four CCBE Core Principles, became too daunting a task.

Below are some examples of provisions in the LoU that do not seem to be referenced in the URC but of which it seems to me that Ukrainian and lawyers from other states need to be aware.

--The LoU, like US law, provides for exceptions. LoU 22(4) gives an exception for a lawyers' rights to defend themselves in a proceeding questioning their service (comparable to MR 1.6(b)(5) and parallel exceptions to privilege). LoU 22(6) makes an exception for "relevant information" to the legislation on money laundering and the legislation on financing of terrorism and weapons of mass destruction. This gets to the controversial provisions regarding the FATF gatekeeper regulations. The US approach on client crime or fraud is both broader and narrower. The Ukrainian exception seems to allow the relevant state body to determine what should be turned over in this regard. The US approach requires the lawyer to make a determination that information subject to privilege is within the "crime-fraud" exception in that the lawyer's services were secured or used toward this end. Comparable to the LoU provision, URC Article 10 refers to the exception when a client makes a complaint against the lawyer. I could find no reference in the URC to the exceptions in the LoU to revelation related to the laundering, terrorism and weapons of mass destruction laws.

--LoU Article 27(1) says that legal services agreements should be in writing, and this seems to include the fee agreement. LoU Article 27(2) then states some situations where fee agreements can be oral. I did not see a comparable reference in the URC.

--Another example concerns attorney-client privilege. URC Article 10, and the LoU to which it refers, both use the term "attorney-client privilege." The definition of the term, though, is information the lawyer became aware of during representation as well as advice given. This seems to track the ethical duty of confidentiality acknowledged by the CCBE and MR 1.6

rather than the narrower use of "attorney-client privilege" as the term is used in the CCBE and US law. This provides an example of something that a foreign lawyer in cross-border practice with Ukraine should know: "attorney-client privilege" is defined differently in the URC and LoU than it is in some other countries and in the CCBE.

MOVE PROVISIONS ON BAR STRUCTURE AND PROCESSES TO ANOTHER DOCUMENT

At least much of the material in Articles 64-70 is about the governance structure of the bar. In order to keep central the usefulness of Rules of Conduct as the disciplinary code and for day-to-day guidance of lawyers, I recommend separating rules of the structure of bar organization and any other matter, which does not relate to disciplinary offense definition and day-to-day guidance be moved into a different body of rules.

PART THREE: SETTING PRIORITIES

PROBLEMS TO BE SOLVED

In my experience in working in the US and 32 other countries, the conceptual questions in lawyers' ethics and regulation of lawyers are consistent across cultures. They are inherent in the nature of the relationship between lawyer and client and the lawyer's role in a justice system. While the questions are relatively constant, the CCBE's reference to the "double deontology problem" recognizes that "the answers" to common questions may differ among countries.

Given the length, breadth, and scope of the Ukrainian Rules of Conduct (URC) and the Law of Ukraine on the Bar and Practice of Law (LoU), it is easy to get lost in the detail. Time and energy are limited so it is well to prioritize what are particularly significant problems in lawyer conduct and the way the URC have (or have not) been implemented. The most important problems" will vary with time. In working with the URC, I had some sense of what the drafters were "trying to fix"—and the ways it was the same and different from US perceptions of the "most important" problems (and the ways that definition may have changed over time).

In addition to my presentation on September 11, 2018 at Professional Discussion: "Rules of Attorney Ethics: Application Practices and Prospects for Enhancement" and those of Ms. Lubov Krupnova, Deputy Head of the High Qualifications Disciplinary Commission, National Bar Association of Ukraine, and Mr Serhii Drelinskyi, Deputy Head of the Legal Aid Quality Assurance Department, Coordinating Center for Free Legal Aid Provision, those attending were asked for their views on the most important current problems to be solved and then through polling on smart phones the attendees could select the 10 items that they thought most important. The results appear as Appendix B.

KEEPING "FIRST PRINCIPLES" IN MIND

As previously discussed, the CCBE's central concern, in addition to facilitating cross-border practice, is supporting values fundamental to the rule of law and democracy. A "cleaner" redrafted version of the URC would make it easier to step back and consider how well it supports those important values.

PART FOUR: BEYOND "RULES" AND "CODES"

This report primarily is focused on how well the URC fulfil the two central roles for a national code: defining disciplinable offenses and day-to-day guidance for lawyers as well as two important additional purposes: facilitating cross-border legal practice and supporting values fundamental to the rule of law and democracy. To do so, the report looks at the URC against CCBE documents and the ABA Model Rules.

The CCBE Core Principles were adopted in 2006, following on the Code of Conduct for European Lawyers, which date back to 1988. The Core Principles highlight the fundamental values underlying the CCBE Code. The Preamble to the ABA Model Rules addresses basic values regarding the lawyer's role in society reflected in the specific Rules and Comments that follow.

Countries sometimes create documents beyond Rules of Conduct varyingly called Standards, Core Principles, Statements of Values, Creeds, and the like. These bring together important cross-cutting themes and values underlying a national code that can get a bit "lost" in the detail of defining rules that will be an appropriate basis discipline and provide useful commentary for day-to-day guidance on specific situations. Standards, core principles, values statements, or similar documents also can go beyond the "minimums" of "the Rules" to aspirational standards and guidance about what a "good lawyer" does.

Efforts regarding common values that reach beyond lawyers to include judges and prosecutors and any other relevant legal profession are important as a complement to a nation's rules of conduct. While the day-to-day functions each profession performs in the justice system differ warrant differing rules of conduct, a strong justice system operating under rule of law in a democracy needs all legal professions to hold some core values in common.

The recent September 21, 2018 Professional Ethics in Justice Resolution signed by the Chairs of the Ukrainian Council of Judges, Council of Prosecutors, and Council of Advocates recommends permanent cooperation among these bodies with the purpose of defining common ethical principles, establishing high standards of justice in Ukraine, providing professional training for members of the three legal professions represented, and raising the level of professional ethics in the court process. This seems a valuable effort to be supported.

ANNEX A. ANALYSIS OF THE URC ON FOUR CORE PRINCIPLES OF THE CCBE

INTRODUCTION

My original assignment was to consider the Ukrainian Rules of Conduct against the Council of Bars and Law Societies of Europe (CCBE) Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers as well as other international standards.

I formulated a common template for comparison and made an analysis staring from four CCBE Core Principles: #2 Confidentiality; #3 Conflicts of Interest; #6 Setting Fees; #7 Competence. Those four analyses are provided in this appendix.

I concluded that the URC generally conforms "reasonably well" to the CCBE. As described in the main report, however, a national code needs to serve purposes additional to those the CCBE seeks to address. Furthermore, while the substance of the URC is overall good, its format and drafting render it difficult to use and analyze with precision. The report lists several dimensions for a redraft without substantive change, e.g., addition of a commentary; adoption of a more precise numbering system; adding a definitions system; "scrub" to state a principle only once and eliminate repetition.

Such a drafting revision, in itself, would be a tremendous advance toward a set of conduct rules that could be fairly used in disciplinary proceedings and would be of day-to-day help to Ukrainian lawyers. The process likely would yield some matters to be considered for review, e.g., agreeing on a single definition of a concept. It also would provide a document on which it would be easier to have a policy discussion of a few matters that might be considered for change.

CCBE CHARTER CORE PRINCIPAL (B) (#2): CONFIDENTIALITY

"the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy;"

OVERALL RECOMMENDATIONS

The URC comply with the CCBE Charter and Code in all respects.
The following items could be made clearer in the URC regarding lawyers' obligations. They do not represent matters "out of compliance" with the CCBE. They, however, represent things that are useful for a fuller understanding of lawyers' obligations under Ukrainian ethical rules and law.

I have made a general point about the usefulness of "commentary" to the URC. Both the CCBE Core Principles and Code of Conduct have commentary, and the US Model Rules have following comments. For example, commentary on URC provisions on confidentiality could note that the URC and LoU define "attorney-client privilege" comparably to the ethical duty of confidentiality referred to in the CCBE (and the US MR) rather using "privilege" in the way it is done in the CCBE (and US law).

URC commentary also could reference the exception in the LoU for revelation related to inquiries regarding law enforcement on money laundering, terrorism, and weapons of mass destruction. As I have noted elsewhere, there may be reasons not to incorporate provisions of other law in the URC themselves. Nonetheless, if the LoC, or some other law, imposes a duty, grants an exception, or otherwise provides some important substantive provisions about what lawyers should do, it would be useful for commentary to the URC to note that and makes some kind of cross reference regarding where to look.

The URC should be clear on whether Ukraine recognizes professional secrecy for correspondence between lawyers or not. National differences in this regard are one of the areas the CCBE flags as frequently coming up in cross-border practice. If the Ukrainian norm on "professional secrecy" is in some other source of law," this at least should be referenced in commentary. If this point is not defined anywhere, it seems perhaps something the URC should add. At the least, a "visiting lawyer" involved in cross-border dealings with a Ukrainian lawyer well may look to the URC for guidance on whether Ukraine recognizes this concept.

CCBE CORE PRINCIPAL COMMENTARY

The commentary on the confidentiality principal "stresses the dual nature of this principle"—that confidentiality is not only the lawyer's duty but also a "fundamental right of the client."

The core principal mentions not only the ethical duty of confidentiality to the client but also "professional secrecy." The commentary points out that some jurisdictions see confidentiality as the client's alone while, in others, the concept of "professional secrecy" protects communications between lawyers imparted in confidence, even to the point of keeping them confidential from the client.

The commentary also refers to "legal professional privilege" defining this as "prohibit[ing] communications between lawyer and client from being used against the client."

The commentary refers to these three items (legal professional privilege, confidentiality, and professional secrecy) as "related concepts.

The commentary also states that the confidentiality duty to the client remains "even after the lawyer has ceased to act."

CCBE CODE OF CONDUCT PROVISIONS

Core principle #2 is implemented through CCBE Section 2.3 that states:

--the general duty of lawyers to keep client information confidential defining the scope as "all information that becomes known to the lawyer in the course of his or her professional activity;"
--states the obligation is not limited in time;
--states lawyers' duty to be sure all who work with them in representing a client observe the confidentiality duty.

CCBE 2.3 is stated broadly enough to address the ethical duty of confidentiality as well as any narrower definition of attorney-client privilege that might be limited to communications between lawyer and client.

Professional secrecy is addressed in CCBE Section 5.3. As acknowledged above, some jurisdictions observe professional secrecy among lawyers while others (like the United States) consider it unethical for lawyers to agree to keep communication between them secret from the client if it is in the client's interest to know. CCBE 5.3 deals with this issue by saying in 5.3.1 that a lawyer has to make clear in communicating with another lawyer if she wants the information to be kept confidential. CCBE 5.3.2 provides that, if the receiving lawyer is unable to make this promise of confidentiality, that the communicating lawyer must be told before making the communication.

The provisions on conflict of interest in the Code recognize that protecting confidentiality is one of the primary concerns of conflict of interest rules. That will be dealt with under conflict of interest. Here I consider only things directly related to confidentiality.

CCBE CODE OF CONDUCT COMMENTARY

The commentary on CCBE 2.3 adds nothing substantive.

The commentary to CCBE 5.3 points out that the difference in professional secrecy rules among jurisdictions "gives rise to many misunderstandings" and cautions that hence "lawyers must be very careful in conducting cross-border correspondence." It then repeats the guidance on determining in advance whether a receiving lawyer can keep communication among lawyers in confidence.

COMPARISON OF THE CCBE TO THE US APPROACH

Bodies of confidentiality norms

As the commentary to the confidentiality principle refers, the US also has three related concepts regarding confidentiality. Two of them parallel two of the three in the CCBE. The first is the lawyer's ethical duty of confidentiality to the client. The second is the law of attorney-client privilege, which is a concept from evidentiary law regarding what is admissible in court and a lawyer has a right (and ethical duty) to refuse to reveal. In the US, the third is work-product immunity, which is a protection of material created by a lawyer in anticipation of litigation. Work product was first recognized by a US Supreme Court case and is now codified in a rule of civil procedure. The third concept in the CCBE is

"professional secrecy" among lawyers, which is not a concept recognized in US ethical rules.

While the substance of what is confidential in US law among the ethical duty, privilege, and work product overlap, there are also differences in what they cover. The ethical duty is broadest encompassing all matters "relating to the representation of a client" so the information need not have come from the client. This seems comparable to the CCBE general ethical duty. The attorney-client privilege only encompasses material communicated between lawyer and client for the purposes of seeking and receiving legal advice—so, for example, material from a third party discovered in investigating a client's matter is not within privilege. Work-product concerns only material created by the lawyer in anticipation of litigation, e.g., witness statements, memos.

Exceptions

The US MR spend considerable space on discretionary and mandatory exceptions to confidentiality. The CCBE does not allude to such exceptions in national conduct rules and law. I assume that the CCBE realizes and expects that jurisdictions may formulate some exceptions to confidentiality. I assume they do not address this point because their focus is on the "basic duties" and principles to observe "cross-border." I read nothing in the CCBE to attempt to forbid such national exceptions.

While MR 1.6(a) states the ethical duty of confidentiality. MR 1.6(b) states a list of discretionary exceptions. These include, for example, 1.6(b)(1) to "prevent reasonably certain death or bodily harm" and 1.6(b)(2) and (3), which concern situations where the client has used the lawyer's services to further a crime or fraud that is "reasonably certain to result in substantial injury to the financial interests or property of another." MR 3.3(c) provides situations where a duty to reveal may become mandatory in proceedings before a tribunal. MR 4.1(b), when read with MR 1.2(d) forbidding attorney assistance in a client crime or fraud, specifies situations when disclosure can become mandatory if necessary to avoid such assistance. MR 1.13(c), regarding of organization clients, provides limited circumstances when confidential information can be revealed to prevent "substantial injury" to the organization client.

Attorney-client privilege has some exceptions as well. Privilege is a matter of state evidentiary law unless the question at stake is litigated in a federal court. The law of attorney client privilege, though, is increasingly uniform. Proposed Federal Rule of Evidence 503(b) summarizes commonly-recognized exceptions. The American Law Institute Restatement of the Law Governing Lawyers also outlines some exceptions. For example, comparable to previously described parts of the MR, attorney-client privilege law has an exception regarding situations in which a client consults a lawyer to obtain assistance to engage in a crime or fraud or otherwise uses a lawyer's services to do so.

Professional Secrecy

The US is one of the jurisdictions to which the CCBE commentary refers as holding confidentiality is the client's and forbidding a lawyer's promise to keep communications between lawyers secret as to the client.

UKRAINIAN RULES OF CONDUCT (URC) & LAW OF UKRAINE ON THE BAR AND PRACTICE OF LAW (LOU)

Scope of the basic duty and its "label"

The basic URC is Article 10, which references the Law of Ukraine on the Bar and the Practice of Law (LoU). Both the URC and LoU refer to "attorney-client privilege." Both define the concept as information the lawyer became aware of during representation as well

as advice given. Hence, this seems to be the broad definition of the general duty of confidentiality in the CCBE and MR 1.6, rather than the narrower way the US defines attorney-client privilege and the allusion to privilege in the CCBE. If indeed the direct translation from Ukrainian is "attorney-client privilege," it seems useful for URC commentary to say that the Ukrainian meaning of this term is the lawyer's duty of confidentiality, as well as the legal system's obligation to respect the privilege, rather than the narrower way that privilege is used as an evidentiary concept in some jurisdictions.

Duration & Extension to People acting for the Lawyer

In URC Article 10 and elsewhere, the URC protects client information in a way that meets CCBE standards. Article 10 provides, as the CCBE and US law do as well, that the ethical duty (privilege) is not limited in time. Article 10 also is explicit regarding the lawyers' obligation to assure that people acting on their behalf preserve confidential information. URC Article 35 also says that the duties of confidentiality remain in force after the completion of the lawyer's service.

Exceptions

American lawyers often simplistically "learn" the confidentiality duty but seem unaware of the exceptions to the ethical duty and in the evidentiary rules, most prominently to situations where failure to reveal would implicate a lawyer in the client's crime or fraud. The URC have general provisions about abiding by the law, but this is an example of my general point that I think at least commentary to the URC should point out places where the LoU, or other law, adds additional pertinent requirements or guidance to lawyers practicing in Ukraine.

Comparable to the US approach to exceptions to confidentiality and attorney-client privilege, LoU Article 22 provides for exceptions to privilege. LoU 22(4) gives an exception for a lawyers' rights to defend themselves in a proceeding questioning their service (comparable to MR 1.6(b)(5) and parallel exceptions to privilege). LoU 22(6) makes an exception for "relevant information" to the legislation on money laundering and the legislation on financing of terrorism and weapons of mass destruction. This gets to the controversial provisions regarding the FATF gatekeeper regulations. The US approach on client crime or fraud is both broader and narrower. The Ukrainian exception seems to allow the relevant state body to determine what should be turned over in this regard. The US approach requires the lawyer to make a determination that information subject to privilege is within the "crime-fraud" exception in that the lawyer's services were secured or used toward this end. URC Article 10 refers to the exception when a client makes a complaint against the lawyer. I could find no reference in the URC to the exceptions in the LoU to revelation related to the laundering, terrorism and weapons of mass destruction laws.

Professional Secrecy

URC Article 50 directly track the language of CCBE Article 5.3 on the lawyers informing each other as to expectations of secrecy for communication between them. I, however, did not see any reference in the URC to what the Ukrainian rule **is.** Do you follow the US pattern of no professional secrecy between lawyers as to their clients? I believe France is an example of a country that observes professional secrecy. The CCBE recognizes that either is an acceptable choice. It seems, though, the URC should make clear on "which side" Ukraine is. There may be reasons not to put the provision in a URC, but commentary should direct a reader to where the answer is found.

CCBE CHARTER CORE PRINCIPAL (C) (#3): CONFLICTS OF INTEREST

"avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;"

OVERALL RECOMMENDATIONS

The URC seems consistent with CCBE Core Principle (c)(#3) and CCBE Sections 2.7 and 3.2. The URC adequately respects the basic principles of the European legal profession and meets the CCBE minimums for cross-border practice. My recommendations do not go to conforming the URC to the CCBE but rather to how they could be "better drafted" for more useful guidance to Ukrainian lawyers on the complicated questions of lawyer conflicts of interest.

In this regard, I find the CCBE also problematic. For example, one point of confusion within the CCBE itself is the scope of confidential information that gives rise to a past client conflict. See the discussion below.

Conflicts of interest are an area where the day-to-day guidance function of a national code is particularly important. Conflicts of interest, by definition, involve a complex balance of competing interests. On the one hand, the lawyer must consider the duty of client loyalty, the client's right to independent advice untainted by a lawyer taking the considerations of others or her own into account, and confidentiality obligations to clients. On the other hand, sometimes clients with potentially conflicting interests will see advantages in having a single lawyer represent them in a matter, e.g., several people setting up a business together. And, as described more fully below, US law and rules are complex, in part, because they "balance" the rights of existing and former clients with the interests of prospective clients in having a broad choice of attorneys as well as a concern not to restrict lawyers' practice in overly-broad ways. As described briefly, extensive litigation over conflicts of interest in US courts gave rise to concern that disqualification motions were sometimes used as litigation tactics rather than genuine efforts to protect clients 'interests and that some clients employed strategies to restrict lawyers from being available to others, e.g., business competitors.

While it is not necessary or sensible to go "all the way" to the highly developed US guidance, there seem to me a few ways in which the URC could be made more useful to lawyers and clients.

First, as described below, some articles seem repetitious and overlapping. As a general drafting matter, it could be useful to gather up the "general principles" in one place and not repeat them with specific applications.

Second, as later described, the URC (like the US) provides the possibility of waiver of potential conflict in some situations with client consent. I think the URC generally could benefit from an overall definitions section including a definition of "consent" including what a lawyer has to inform a client as well as perhaps a definition of "written." (See the US MR for an example.) Regarding my discussion of URC Article 16, I think redrafting should make clear that a lawyer must affirmatively notify clients regarding issues of potential conflict with other clients rather than suggesting some aspects at least only must be explained on "client demand."

With regard to current client conflicts, I agree with the US approach that not all current client conflicts should be waiveable by the client. Rather the lawyer should have to make an independent judgement that she can adequately represent all clients in this matter. Many clients cannot understand all the complexities of what "could happen" to make this judgment, even when explained by the lawyer. Furthermore, US potential liability for

lawyers acting in conflict of interest is substantial enough that lawyers need to remind themselves not to undertake "risky" joint representations. (While that might not be an issue for Ukrainian lawyers under your breach of fiduciary duty, malpractice or disqualification lawyer, lawyers still need to be reminded they should make a judgment about whether they really "can" adequately represent two current clients with potentially conflicting interests.)
Third, the US law and the MR have become increasingly precise in the distinction in current client conflicts versus conflicts based on representation of a past client. Current client conflict protection is broader because there are issues not only of confidentiality but also loyalty, e.g., the temptation in a current matter to "pull a punch" to favor a "better," "richer," "more favored" client. With past clients, the issue is largely one of protecting confidences. Hence, in the US, all former client conflicts are waiveable while some current ones are not. Imputation based on representation in a former firm (which is not current) can be "cured" with a unilateral screen. The scope of confidence that constitutes a former client issue is specifically defined. I think, at the least, the URC should have a more precise and narrower definition of the scope of confidence in a former client representation that raises a potential conflict such that a lawyer would have to reject a new representation.
Fourth, in some senses, all aspects of lawyer-client relationships have potential conflicts in the lawyer's personal interest versus the clients, e.g., fees. On the one hand, Ukraine, the CCBE, and the US all give the general exhortation that the client's interest must override, as long as it is lawful and so on. On the point again of the "guidance" function for a nation's code, the US MR 1.8 picks out some issues of lawyer and client conflict that arise so frequently that it is deemed useful to have specific guidance on them. As described below, none of these are complete bars, but they spell out what considerations have to be taken into account, what kind of consent can cure, when they are imputed to the firm, and so on. It seems it might be useful for Ukraine to look at MR 1.8 and consider if there are any specific situations of potential conflict between the lawyer's interest and that of a client that arise often enough more specific guidance should be given.

CCBE CODE PRINCIPAL COMMENTARY

The commentary notes three types of conflicts of interest that forbid taking clients. The first is taking two clients "in the same matter if there is a conflict, or a risk of conflict, between the interests." The second is if the lawyer "is in possession of confidential information obtained from another current or former client." The third concerns "a conflict of interest between the client and the lawyer." The final sentence of the commentary says this principle is closely linked to (CCBE CP b) confidentiality, (CCBE CP a) independence, and (CCBE CP c) loyalty.

CCBE CODE OF CONDUCT PROVISIONS

CCBE Section 2.7 articulates the general principle that a lawyer must "always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession."

Section 3.2 specifically addresses conflict of interest. The section restates the concerns encompassed by the previously-discussed commentary on the principle with the following refinements and additions. (I have not noted all language differences—only those that I think might be significant in interpreting the CCBE Principle and Code of Conduct provision.)
Section 3.2.1 adds "significant" to the concern on "risk" of a conflict. The commentary only speaks about the decision to take clients. 3.2.2 addresses "midstream conflicts" and says that the lawyer should cease acting for all clients involved when a conflict arises, "whenever there is a risk of a breach of confidence," or "where the lawyer's independence may be impaired."
By US standards, the commentary language on confidential information from a former client that bars representation of a new client adverse to that client is overly broad in that it says a lawyer must refrain from taking a new client if the lawyer is in possession of confidential

information obtained from . . . the former client." 3.2.3 narrows that a bit in saying that refusal should be based on "risk of a breach of a confidence" or "if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client." 3.2.4 "imputes" the knowledge of one lawyer in an association to all the others within the association.

The CCBE does not refer to client waiver. Likewise it does not forbid waiver, and I am sure many member jurisdiction's national rules, like those in the US, have waiver provisions. The URC, like the US MR, address waiver. In my opinion, that is appropriate—so long as there is adequate definition of what type of disclosure and consent are necessary for such waiver.

CCBE CODE OF CONDUCT COMMENTARY

Commentary to 2.7 adds nothing substantive.

Commentary to 3.2 refers to a lawyer acting as a "mediator" among clients while the Code section itself does not use that term. As noted below, in 2002 the US repealed MR 2.2 on lawyer as intermediary concluding that this role was too "fraught" for lawyers. On the one hand, US lawyers can act as mediators who do not "represent" any client (MR 2.4) or undertake a joint representation (MR 1.7) in which the lawyer works with clients how they will proceed in a joint matter where clients have potentially differing interests, e.g., setting up a business together, a married couple making an estate plan. The US though has determined that going the step further to the lawyer being both a "mediator" and an adequate client representative for both parties are inconsistent and fraught with problems for both lawyers and clients. Otherwise, the commentary on CCBE 3.2 adds nothing except the caveat about how imputation is considered for English barristers.

COMPARISON OF THE CCBE TO THE US APPROACH

Here are a few "bottom lines" of the lengthy explanation below.

--Conflict of interest law is the most complex and developed aspect of US professional responsibility law. I devoted about 25% of the 42 class hours of my US required course in Professional Responsibility to this topic because it was the most complex and difficult, and something that a US lawyer must not ignore.

--Absent significant "dishonesty" on the lawyer's part, **conflicts among a lawyer's clients** usually are not the subject of lawyer discipline. They, however, can have quite severe consequences in disqualification of client representation before a court and in civil damage actions against lawyers. Situations of conflict **between the lawyer's own interest and that of the client**, though, often are the subject of discipline.

--US conflict law is complex in part because of imputation to all lawyers in a firm. US lawyers are often in very large firms and have clients with complex corporate families.

--Like the CCBE and Ukrainian law, a US lawyer's confidentiality duty extends past the current representation. The loyalty duty is also considered a general one extending as long as one represents the client. US law and rules, though, are concerned that spreading the conflict too broadly regarding future clients restricts not only the lawyer's practice of her profession but also clients' choice of lawyers. And clients can, and occasionally have, made creative use of conflicts rules to restrict adversaries' access to lawyers. Conflict of interest also has been litigated so extensively in disqualification cases that courts became wary of it as a litigation tactic. US law conflicts law is so complex because it seeks to go beyond "just don't" to acknowledging that free client choice of lawyers is a factor too.

Conflict of interest law is the most complex and developed aspect of US professional responsibility law. Between the 1969 Model Code of Professional Responsibility and its replacement with the Model Rules of Professional Conduct in 1983, US courts decided a flood of cases on conflict of interest because the issue can be raised in a motion by an adverse party in litigation to disqualify a lawyer (and the lawyer's entire firm). Likewise, allegation of a lawyer acting under conflict of interest can be the one basis for a client's action against a lawyer for breach of fiduciary duty or malpractice. In some US jurisdictions, such damage actions also may be brought by third parties damaged by a lawyer's action.

While, as described below, the MR today include multiple rules defining conflicts of interest along with numerous explanatory comments, conflicts of interest among clients are more likely resolved in the matters previously described, e.g., disqualification as counsel, civil damage actions by clients or third parties. Because most US states require a criminal defendant to prove "actual innocence" for a malpractice damage claim rather than only a lawyer's breach of duty, criminal malpractice claims are rare. A lawyer's conflict of interest, however, can be the basis for a criminal defendant's request for a new trial in criminal cases (or quasi-criminal matters like deportation) claiming inadequate assistance of counsel. **Conflict of interest among clients** is rarely adjudicated in a bar discipline matter while discipline matters sometimes deal with serious matters of **lawyer and client conflict**. While the disciplinary authorities generally do not want to hear the factual issues regarding lawyers acting in conflict of interest among clients, they might consider lawyer discipline if factual findings about a lawyer were made by a court in a disqualification, breach of duty, or ineffective assistance of counsel matter. This particularly might be true if the lawyer were found to have acted clandestinely, otherwise dishonestly, and to have significantly advantaged himself or another client at the client's expense. Conflicts of interest among clients are often complicated and quite fact specific to the clients and the matter. I think bar discipline authorities somewhat "stay away" from them because they acknowledge that the trial judge in a matter on the merits will be better equipped to assess whether a conflict should be actionable.

As described in the introduction, a major function of a national code is one-stop, day-to-day guidance on "what to do." Hence, the 1983 Model Rules, and the amendments since, have revised and expanded on guidance about conflicts of interest, although as above, the client to client conflict issues are rarely the source of bar discipline. The 1969 Model Code only had some general admonitions. As below, the MR have multiple sections and extensive comments. In large part, these codify case law as a "restatement" would.

MR 1.7 and its 35 comments address current client conflicts. MR 1.7 and its comments have been revised multiple times as new situations come up in case law and ethics opinions and because it is very difficult to devise "general rules" to address the myriad ways conflict situations arise. MR 1.7(b) allows the lawyer to seek a client's informed consent to representation in a situation that falls within the general standard of 1.7(b) if the lawyer "reasonably believes" the lawyer can "provide competent and diligent representation to each affected client," the representation is not forbidden by law, and the representation does not involve one client's assertion of a claim against the other in the same matter before a tribunal. This rule, when combined with the imputation rule in 1.10, means that every lawyer in even an extremely large firm must seek a conflict of interest waiver before the firm takes on a matter adverse to a current client—even if the matters are being handled by offices on different continents and on completely unrelated matters. Not only are many US firms large with multiple offices, but also they often have clients with complex corporate families so the reach of adversity to "a client" can be quite broad. In common practice, corporate clients often waive conflicts for unrelated, non-litigation matters but generally are loathe to allow any firm that represents them on anything to litigate against them. MR 1.7

[C] 22 addresses when a lawyer may ask for an "advance waiver" about representation of adverse future clients when taking on a client. Comment 24 addresses "positional conflicts," e.g., taking conflicting positions for clients on the same issue. Other comments address additional specific situations that arise with some frequency.

MR 1.8 addresses conflict between lawyer and client. It has 11 subsections, each addressing different conflicts deemed to serious and arise with enough frequency to address specifically: (a) business transactions with clients; (b) using client information to the client's detriment; (c) inter vivos and testamentary gifts from clients; (d) media rights to the story of a client's representation; (e) financial assistance to clients; (f) compensation by third parties for client representation; (g) aggregate settlement of claims for multiple clients; (h) limitation of a lawyer's malpractice liability and settlement of claims with clients; (i) acquiring a proprietary interest in the subject of litigation; (j) sexual relationships with clients; (k) when the requirements of the preceding sections extend to associated lawyers and when they are personal only to the involved lawyer. None of the MR 1.8 subsections are flat "absolute bars." They rather give criteria and conditions on when the subject matter is forbidden versus when it can take place if some conditions are met.

MR 1.9 is the former client rule. Representation adverse to a former client is limited only to situations of the "the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client." (MR 1.9(a)) Such adversity, though, is "always waiveable" with the former client's "informed consent, confirmed in writing." (MR 1.9(a)) As mentioned above. CCBE 3.2.3 has language I consider overly broad on this point. The commentary narrows it a bit, but I still find it overly broad to balance the interests of past clients with that of prospective clients. The CCBE also does not make provision for client waiver.

MR 1.9(c) adds that a lawyer cannot use (or reveal) information "relating to the representation to the disadvantage of the former client" with the caveat "except as these Rules would permit or require with respect to a client, or when the information has become generally known."

MR 1.10 is the imputation rule.

MR 1.11 defines conflict of interest with regard to former and current government officers and employees.

MR 1.12 defines restricted conflicts for former judges, arbitrators, mediators or other third-party neutrals.

MR 1.13 concerns representation of organization clients. While it is not only a "conflict of interest" rule, its specifics about what a lawyer is to do when she determines an employee or officer of an organization is acting contrary to the organization client's interest is in a sense a "conflict of interest" rule.

MR 1.18(c) and (d) set up cautionary rules on how to handle discussions with prospective clients without getting "conflicted out" of existing client relationships or unduly restricting future representation if a lawyer declines a matter.

MR 1.11 always "softened" imputed disqualification to an entire firm for a "tainted" lawyer who moved from government to private employment. This was from a concern not to discourage lawyers from government service. This "softening" was through the use of "unilateral screens," meaning allowing a firm to erect "a screen" around the tainted lawyer without client consent. Relatively recently MR 1.10 was amended to allow the same kind of

screening to "contain" a taint in private firms lawyers who represented a client in a former firm.

The CCBE commentary refers to the independence concern as well as confidentiality and loyalty. US conflicts law recognizes lawyers should act for clients independent from influence of others. MR 1.8(f) is a specific rule on that regarding third-party payment of fees. MR 5.4 is a general rule on professional independence. US law, however, does not usually mention independence from third-party influence under the "conflict of interest" heading, although the same considerations are recognized.

UKRAINIAN RULES OF CONDUCT (URC) & LAW OF UKRAINE ON THE BAR AND PRACTICE OF LAW (LOU)

URC Article 6 enshrines the independence principle regarding not being guided by the instruction of other people.

URC Article 9 concerns impermissible conflicts of interest. The first paragraph is a general statement about conflict between a lawyer and a client's interest. The second paragraph addresses current client conflicts but seems to say all can be waived by "written consent." The third paragraph addresses "midstream conflicts" that arise from getting confidential information from a new client. The fourth paragraph goes back to the conflict between a lawyer and a client's interest. It seems it might be better drafting to link the first and fourth paragraphs on lawyer vs. client interest rather than having the two paragraphs on client-to-client interest in between. The final paragraph concerns an obligation to terminate representation when a conflict arises.

URC Article 16 concerns information that an attorney must provide to a prospective client "[u]pon a client's demand." Part of the paragraph is about proper qualifications. The other part though seems to be about conflict of interest. Article 9 and 20 forbid taking on representation with a conflict of interest. Article 21 concerning taking cases for mediation between clients defines what is necessary for written consent as well as giving an independent judgment the lawyer must make about whether she "can" represent multiple parties in a mediation among them adequately.

Perhaps the reference to conflict of interest should be removed from URC Article 16 so it is clear that information about potential conflict is not something that a lawyer has to provide only upon "client demand." Other sections flatly prohibit such representation without consent so this seems inconsistent. The URC seem only to define consent for the purposes of a waiver in a mediation among clients. "Confirmed in writing" and "informed consent" are both defined terms in the MR. (MR 1.b) and (e)) Those definitions provide useful guidance of what the client must be told in order for a consent to be effective. Consent is used in the URC in other places as well, particularly with regard to waiver of confidentiality. I think it would be useful, like the MR, to have a general definitions section and include at least "consent" there—including what information a lawyer must provide for client consent to be adequate. Such guidance is not only for client protection but gives lawyers guidance on what to do (and some protection if they do it). In addition, URC Article 21 specifies a judgment a lawyer must independently make, comparable to MR 1.7(b)(1), before representing clients in mediation between them. URC Article 9 also could include a similar provision that a lawyer must make an independent judgement like that in URC Article 21 (third subsection of first paragraph) that she can "do the job" rather than throwing it all on client consent.

URC Article 20 in some ways seems to restate the obligation of Article 9 to avoid conflict of interest. It seems to me that Articles 9 and 20 usefully might be consolidated to avoid confusion.

I have referred to URC Article 21 on undertaking mediation among clients because it includes a definition of adequate consent and requires an independent assessment of the lawyer. I favor the US approach of defining adequate consent generally for purposes of the entire code and requiring an independent assessment of the lawyer before even seeking client consent in a potential current client conflict. Elsewhere I address that the US MR repealed MR 2.2 on lawyer as an intermediary in 2002 considering it simply too "fraught" to be a good idea. MR 2.4 concerns lawyers serving as a mediator or other third-party neutral, but in that situation it must be clear that the lawyer does not "represent" any party. As described above, lawyers may represent multiple clients in a matter in which they do not have direct adversity, e.g., setting up a business together. That, inherently, requires guiding some discussion among the parties on the agreement they want to reach—but the US frames that in terms of adequate "representation" of all parties with informed consent about the ground rules for this mutual representation, which is a different framing that "mediating" among them.

URC Article 54 requires that a lawyer's participation in social, academic, or public activity must take into account general RPC duties and professional duties must take precedence. I raise some general questions about whether it would be better to have fewer simpler statements of duties rather than seemingly repeating overlapping duties. This one though, in itself, does not seem problematic.

Thus far, I have not had time to look comprehensively at the LoU to see if there provisions there that modify, or potentially could contradict, any URC on conflict of interest

CCBE CHARTER CORE PRINCIPAL (F) (#6): FEES

"fair treatment of clients in relation to fees;"

OVERALL RECOMMENDATIONS

As discussed in the introduction, I believe a set of national rules should give a bar member as close to "one-stop" guidance their day-to-day actions as possible. This includes at least references in commentary to provisions in "other law," e.g., the LoU, which are relevant to an ethical duty. For example, US ethical rules "flag" that the substance of attorney-client privilege law is found in evidentiary law. (MR 1.6 [C] 3) Likewise MR 3.4 refers to not "unlawfully" obstructing another party's access to documents or other material with potential evidentiary value. Comment [2] refers the reader to "applicable law," which sometimes varies among US states and with federal law, on when destruction of documents might be obstruction of justice.

I recommend that the Rules of Conduct be carefully compared to the Law of Ukraine on the Bar and Practice of Law (LoU) to see if there are places the LoU imposes requirements on lawyers that are not reflected in the Rules. Likewise, consideration should be given to whether there such requirements specific to the practice of law exist in other bodies of law. Specific to fees, Article 27 of the Ukrainian Law on the Bar says that legal services agreements, which includes the fee provisions, must be in writing. I also "flag" that it seems the LoU includes a statement that fees must be based on time spent, although this seems inconsistent with some other language in the section. This seems to me different from what URC Article 28 says about the basis on which a fee can be assessed.

The CCBE uses the same overall standard for fees that the US does: "fair and reasonable." The URC and Law on the Bar refer to reasonable but I do think add "fair." If they mean something different, it seems "fair" should be added to be consistent with the CCBE. If they express the same concept, it seems still there is "no harm" in adding the language the URC so they are clearly consistent with the CCBE.

The CCBE points out there are two areas where many national jurisdictions vary today. The first is whether legal services can be provided by entities in which non-lawyers have investments, are in management, and share fees. This relates to what is sometimes described as "alternative business structures (ABS)" and also to "multidisciplinary practice (MDP)." Traditionally, many jurisdictions had rules forbidding the development of ABS and MDPs. Australia and the UK pioneered in dramatic changes in these regards, and many other jurisdictions are considering whether to make similar changes.

The second is whether contingency fees based on the value of the recovery or other benefit to the client are permitted. Such fee arrangements have long been part of the US system but forbidden in many other countries. As the CCBE points out, such differences are a thicket for a cross-border lawyer. To me the Ukrainian Rules are not as clear as they could be on where Ukraine comes out on these points including on fee-sharing and referral fees. Fees is one of the areas with considerable potential for cross-border conflict so it seems important to me that both Ukrainian lawyers and foreign lawyers whose practice touches Ukraine are able to understand easily and clearly what the Ukrainian rules are.

CCBE CORE PRINCIPAL COMMENTARY

The commentary adds more specifics regarding what constitutes fair treatment: fully disclosed to the client; fair and reasonable; comply with law and professional rules to which the lawyer is subject. The commentary states a rationale for imposing these limitations by

saying that fee setting, by its nature, is has the inherent danger of conflict in lawyer and conflict interest.

CCBE CODE OF CONDUCT PROVISIONS

Article 3 of the CCBE CC includes five sections related to fees.

Section 3.3 forbids a *pactum de quota litis*, which refers to an agreement prior to conclusion of the matter to pay a share of the result regardless of whether this is related to the sum of money recovered or another benefit to the client. 3.3.3 says this does not include what in the US is called a "contingency fee" because that is in proportion to the value of the matter. If the pertinent rules and law allow, this CCBE provision says such fees are not forbidden.

Section 3.4 restates the three components of fair treatment stated in the commentary above.

Section 3.5 limits the payment a client makes on account for fees or costs to a reasonable estimate of those. It says though if a client does not make this reasonable comment, the lawyer can withdraw as long as this is consistent with the general withdrawal rule in 3.1.4.

Section 3.6 defers to national rules and law on whether fee sharing with a non-lawyer is permitted, e.g., the UK permits such arrangements for alternative business structures. 3.6.2 exempts payments to a deceased lawyer's heirs or as part of taking over a retired lawyer's practice.

Section 3.7 says a lawyer should strive to be as cost-effective as possible and advise the client appropriately settlement, alternative dispute resolution, or referral to legal aid if appropriate.

CCBE CODE OF CONDUCT COMMENTARY

The commentary to CCBE 3.3 draws the distinction in an "unregulated" contingency fee versus one that is "under sufficient regulation and control for the protection of the client and the proper administration of justice."

The commentary to 3.4 acknowledges that many states have "machinery" for regulating lawyers' fees. It references the Lawyers Establishment Directive saying that a lawyer might be subject to both Host and Home state rules regarding a fee.

Commentary on 3.5 and 3.6 do not add anything substantive to the code section.

Commentary to 3.7 flags that a lawyer may not be familiar with how legal aid works in another country and will need to become familiar with that.

COMPARISON OF THE CCBE TO THE US APPROACH

Like the CCBE, MR 1.5 sets an overall the fair and reasonable standard for client fees. 1.5(a) details factors that can be considered in what is fair and reasonable. MR 1.5(b) is the comparable US rule on disclosure. MR 1.5(c) provides for contingent fees, which for many years have been part of the US system to make legal services available and are common practice in personal injury matters. Sometimes state law or ethical rules impose limitations on contingency fees, e.g., maximum percentages that can be charged as fees. Alternatives to hourly billing are increasingly common in "high end" practice such that contingencies are now sometimes offered to clients who can afford hourly billing including corporate matters so

contingency fees are no longer only common in US personal injury matters. MR 1.5(d) forbids their use in domestic (family) and criminal cases. MR 1.5(e) sets out rules for fee-sharing among lawyers in different firms. MR 5.4 continues to forbid associations with non-lawyers, outside investment in law firms, and management of legal services entities by non-lawyers. With the advent of the ABS approach in countries like the UK and Australia, there are recommendations and predictions that the US should follow suit, but thus far it has not.

UKRAINIAN RULES OF CONDUCT (URC) & LAW OF UKRAINE ON THE BAR AND PRACTICE OF LAW (LOU)

URC Articles 28, 29, 30, and 31 are those directly related to payment of fees.
As described in the next section, Article 27 of the LoU seems to suggest that fee agreements would be part of what has to be in writing unless they fall in the exception for oral agreements in 27(2)(1). As below, I was unclear what that section means.

URC Article 28 refers to a fee being "within reasonable limits," but it does not include the "fair and reasonable" limitation of the CCBE (and the US). URC Article 28 includes some, but not all, of what is in LoU Article 27. It does not include the language that fees must be related to time spent. I think these two need to be considered carefully against each other.

The Rules usefully address some issues additional to those in the CCBE, e.g., payment due after termination.

Article 6, third paragraph, provides an attorney "may share his or her fee with other persons if this is not prohibited by the legislative acts on the bar and practice of law." I did not see a provision on this in the LoU. Given what a contentious issue this as some countries have moved to an ABS model and how controversial fee-splitting and referral fees have been in many countries, it seems important that the URC be clear what is permitted and not or at least make a more specific reference than to the LoU, which does not seem to say anything on the point.

LoU Article 1(4) defines "contract on the provision of legal services" to include an agreement under which the client undertakes to pay. LoU Article 27, though, uses the term "legal services agreement" but seems to talk about the same thing. Article 27 says such agreements must be in writing with two exceptions for oral form in Article 27(2). I do not understand what Article 27(2)(1) means. It refers to payment of the fee, but I am not sure what it says.

LoU Article 30 says the basis for calculating the fee as well as procedure for payment must be specified in the legal services agreement. Article 30(3) lists circumstances that can be taken into account although ends with "other essential circumstances." It includes the requirement the fee must be "reasonable." It though then says it must be "based on the time spent by the attorney," which seems to preclude what we would call contingency agreements or "value billing," in the US. Article 30(2) says a fixed fee is possible, but read with Article 30(3) it seems to say that the fixed fee has to be based on some kind of time estimate. Given a fixed fee is set in advance, it is hard to how it would always be "based on the time spent by the attorney." At most, it would be an estimate.

CCBE CHARTER CORE PRINCIPAL (G) (#7): COMPETENCE

"the lawyer's professional competence;

OVERALL RECOMMENDATIONS

An initial question is whether competence refers to **what a lawyer "brings,"** i.e., **the skills and knowledge the lawyer "has" versus what the lawyer "does,"** i.e., that the lawyer **acts** competently including with the diligence and zeal appropriate to a lawyer. A lawyer can have excellent training and experience but act quite "incompetently" because the lawyer does not spend the time and effort, whether from too heavy a case load, some type of impairment, or simply inattention, to represent the client competently. As described below, the American approach is to focus less on the competence with which a lawyer "starts" versus where the lawyer "gets" and what the lawyer "does." For example, the American rules explicitly state that competence in a matter can be acquired with effort and study.

I first completed the analyses regarding confidentiality, conflicts of interest, and fee setting. Those three topics are somewhat "discrete," and the CCBE and national codes of which I am aware have a fairly common understanding of what is encompassed in each topic. As previously stated, the definition of what is encompassed by "competence" has more varying meanings. This analysis does not go into all the dimensions of what competence might encompass.

CCBE CORE PRINCIPLE COMMENTARY

The commentary refers to "appropriate professional education and training" and then refers to post-qualification (continuing professional development) training as an increasing focus because of the rapid changes in law and practice and the technological and economic environment. The commentary also says professional rules "often stress" refusing cases with which the lawyer is not competent to deal. This is the "what the lawyer 'brings'" sense of competence.

CCBE CODE OF CONDUCT PROVISIONS

CCBE Section 3.1.3 says lawyers "shall not" handle matters they know or ought to know they are not competent to handle without cooperating with a lawyer with the necessary competency. This section also includes the admonition that lawyers must judge they have time to handle the representation.

CCBE 3.1.3 presumably refers to the lawyer's duty to a prospective client regarding competency. CCBE 5.2.1 expands this duty to a "colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake." The section goes on to say, in that instance, the lawyer should help the foreign lawyer get the information necessary to find an appropriate lawyer.

CCBE 3.1.2 adds to competence that "A lawyer shall advise and represent the client promptly, conscientiously and diligently."

CCBE 5.8 refers to maintaining and developing professional knowledge and skills "taking proper account of the European dimension of their profession."

I first thought that the CCBE does not talk as explicitly about diligence in pursuing the client's legitimate claims as the US MRs do. The CCBE ten principles though include (e) #5 on loyalty to client, which requires putting the client's interests above that of the lawyer or

third parties. I later noted that CCBE 4.3's on defending a client honorably and fearlessly addresses this point. So, those concepts are present in the CCBE but are categorized under a different heading than "competence."

CCBE CODE OF CONDUCT COMMENTARY

The commentary does not add anything substantively to the sections referred to above.

COMPARISON OF THE CCBE TO THE US APPROACH

MR 1.1 sets forth the competence duty. Competence is defined as requiring "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment [2] notes that competence can be gained through "necessary study" as well as association of another lawyer. The Comment also notes "A newly admitted lawyer can be as competent as a practitioner as a practitioner with long experience. " In the context of the comment, that refers to the basic skills learned in legal training as well as undertaking the study and effort to become competent for the matter. While it is not explicit in the comments, case law and ethics opinions sometimes point out that it may be inappropriate to charge the client for the additional study necessary to "become competent" in a field in which one is not already knowledgeable. Comment [8] has language similar to the CCBE about continuing professional development.

While MR 1.3 refers only to lawyers acting "with reasonable diligence and promptness in representing a client," Comment [1] says that "[a] lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Like the CCBE, Comment [2] refers to assuring one has enough time for competent representation. Comment [3] cautions against "procrastination" in pursuing a client's matter.

MR 3.1 on lawyer as advocate admonishes regarding lawyer's duty not to pursue frivolous claims but qualifies this by citing against the defense lawyer's role to "defend the proceeding as to require that every element of the case be established." Comment [1] refers to the advocate's "duty to use legal procedure for the fullest benefit of the client's cause" so long as the line to abuse of legal proceedings is not crossed.

UKRAINIAN RULES OF CONDUCT (URC) & LAW OF UKRAINE ON THE BAR AND PRACTICE OF LAW (LOU)

The "first principle" regarding competence in the RPC seems to be Article 11. The first paragraph refers to knowledge needed. The second paragraph starts to talk about what the lawyer does with the knowledge in saying "shall provide professional legal assistance to a client, defend and represent him/her competently and in good faith" and referring to "thorough preparation." This article also refers to continuing education and assuring that others who work with him on a matter also are competent.

Article 17 regarding accepting matters says lawyers must assess their ability to perform. The third paragraph refers to associating a lawyer with the necessary expertise if the lawyer does not have it and getting the client's consent to that association.

The URC I had noted as relevant to CCBE CP on respect for rule of law likely are relevant as are sections I had "sorted" under the CCBE loyalty principle (URC Articles 6, 27, 43, and 48)

ANNEX B. PROFESSIONAL DISCUSSION "RULES OF ATTORNEY ETHICS: APPLICATION PRACTICES AND PROSPECTS FOR ENHANCEMENT"

AGENDA

USAID
ВІД АМЕРИКАНСЬКОГО НАРОДУ

ПРОГРАМА
«НОВЕ ПРАВОСУДДЯ»

ВИЩА
КВАЛІФІКАЦІЙНО-
ДИСЦИПЛІНАРНА
КОМІСІЯ АДВОКАТУРИ

БЕЗОПЛАТНА
ПРАВОВА
ДОПОМОГА

Координаційний
центр з надання
правової допомоги

Agenda

Professional Discussion:

"RULES OF ATTORNEY ETHICS: APPLICATION PRACTICES AND PROSPECTS FOR ENHANCEMENT"

Tuesday, September 11, 2018, 10:00-14:00

Small Conference Hall, 2nd Floor, Grand Coference Hall of te Nationalk Academy of Science of Ukraine,
Volodymyrska Street, 55
Kyiv, Ukraine

09:30 – 10:00	**Registration, Welcoming Coffee**
10:00 – 10:20	**Welcoming Remarks** **Natalia Petrova,** *Deputy Chief of Party, USAID Program «New Justice»* **Oleksandr Drozdov,** *Head of the High Qualifications Disciplinary Commission, National Bar Association of Ukraine*

	Oleksii Bonyuk, *Director of the Coordinating Center for Free Legal Aid Provision*
10:20 – 11:10	**Presentation of the preliminary opinion prepared based on the outcomes of an expert analysis of the Rules of Attorney Ethics of the Ukrainian National Bar Association for completeness and compliance with the Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers** **Leah Wortham,** *Law Professor, Columbus School of Law, The Catholic University of America (CUA), Washington, D.C.*
11:20 – 12:10	**Interactive Session. Comments and remarks from the participants.** *Moderator:* **Leah Wortham,** *Law Professor, Columbus School of Law, The Catholic University of America (CUA), Washington, D.C.*
12:10 – 12:30	**Coffee-Break**
12:30 – 13:20	**Disciplinary Practice of the High Qualifications Disciplinary Commission of the National Bar Association of Ukraine** ***Lubov Krupnova,*** *Ph.D., Deputy Head of the High Qualifications Disciplinary Commission, National Bar Association of Ukraine* *Discussion*
13:20 – 14:00	**Adherence to the ethical requirements while providing free legal and legal assistance in one criminal procedure** ***Serhii Drelinskyi****, Deputy Head of the Legal Aid Quality Assurance Department, Coordinating Center for Free Legal Aid Provision* *Discussion*
14:00	**Conclusions**

WHICH ISSUES OF THE PROFESSIONAL ETHICS OF THE ADVOCATE, TO YOUR MIND, NEED AMENDMENTS/IMPROVEMENTS THE MOST?