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# The primary responsibility of the attorney to the client

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## ABSTRACT

With the conclusion of the advocacy contract, attorney and client have the right and duty to one another and they have mutual legal relations, duties and responsibilities. Obviously, the legal delimitation of the responsibilities is effective in preventing potential conflicts between the contracting parties of advocacy and, therefore, reduces the volume of court cases effectively. Attorney's obligations to the client are either directly from the legal contract, or are indirect from the agreement between the attorney and client may also have its origin in addition to the conditions and obligations under the contract, or be independent. However, it is necessary to fulfill such obligations. Obligations that are directly derived from law practice contract are due to the nature of the contract. Mere for the realization of the contract, without clear cause are the responsibility of the attorney. In this paper, the class of obligations as "the primary responsibility of the attorney to the client" will be discussed. In this paper, it will be tried to explain the importance of the primary responsibilities of the attorney to client, this issue is examined from various aspects in Iranian law and to some extends, in some countries, particularly Egypt and the UK as possible to the right as a comparative study.

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## Introduction

In broad areas of litigation, individual attorney-client relationships lull our profession into a false sense that clients are adequately protected (Erichson, 2003). When an attorney discovers at the outset of representation that the attorney must serve a discovery subpoena for production of documents on another current client of the attorney or the attorney's law firm, serving the discovery subpoena is an adverse action such that a concurrent client conflict of interest arises. To represent a client who seeks to serve such a subpoena, the attorney must seek informed written consent from each client, disclosing the relevant circumstances and the actual and reasonably foreseeable adverse consequences to the client providing consent.

Prospective Client requests Attorney to represent Prospective Client in litigation. Before agreeing to represent Prospective Client, Attorney runs a conflict check listing the adverse parties and all potential witnesses identified by Prospective Client and Attorney. The conflict check reveals that Witness Client, a potential witness who has documents critical to the litigation, is represented by Partner, another attorney at Attorney's law firm in an unrelated matter.

Is it a conflict of interest for Attorney to accept the representation of Prospective Client and serve a discovery subpoena for documents ("document subpoena") on Witness Client? If it is a conflict of interest, may Attorney do so with informed written consent of Prospective Client and Witness Client? What obligations arise if an attorney seeks informed written consent to such a representation? (STATE BAR OF CALIFORNIA, 2011).

Buried in a comment of the Restatement (Third) of the Law Governing Lawyers (2000) is the clear, but neglected, statement: —If the lawyer's conduct of the matter gives the client a substantial malpractice claim against the lawyer, the lawyer must disclose that to the client. While this unequivocal

statement gives the impression that the principle is the subject of multiple reported decisions and academic commentary, in fact it is not. To the contrary, while this duty of self-reporting has been discussed in a handful of ethics opinions (N.Y. State Bar, 2000 & Col. Bar, (2005), a couple of court decisions (Dorsey & Whitney, 2009), and a few bar journals, there has been no comprehensive academic treatment of this topic (Cooper, 2010).

## Definitions

### Commitment

An act of committing to a charge or trust: as a consignment to a penal or mental institution, or as an act of referring a matter to a legislative committee, the state or an instance of being obligated or emotionally (The Merriam-Webster Unabridged Dictionary)

### Advocacy

Advocacy is a political process by an individual or group which aims to influence public-policy and resource allocation decisions within political, economic, and social systems and institutions. Advocacy can include many activities that a person or organization undertakes including media campaigns, public speaking, commissioning and publishing research or conducting exit poll or the filing of an amicus brief. Lobbying (often by lobby groups) is a form of advocacy where a direct approach is made to legislators on an issue which plays a significant role in modern politics ("Lobbying Versus Advocacy: Legal Definitions". NP Action. Archived from the original on 2 April 2010. Retrieved 2010-03-02.)

### Client

A person who engages the professional advice or services of another <a attorney's clients> ((The Merriam-Webster Unabridged Dictionary)

### Attorney:

Attorney is the official name for a lawyer in certain jurisdictions. A lawyer, according to *Black's Law Dictionary*, is "a person learned in the law; as an attorney, counsel or solicitor;

a person who is practicing law."<sup>[1]</sup> Law is the system of rules of conduct established by the sovereign government of a society to correct wrongs, maintain the stability of political and social authority, and deliver justice. Working as a attorney involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who retain (i.e., hire) attorneys to perform legal services.

The role of the attorney varies significantly across legal jurisdictions, and so it can be treated here in only the most general terms (Hazard, 2004).

#### **Substitution of attorney**

A substitution of attorney is a legal document that may be created during a lawsuit if a party wishes to replace its attorney with another one. Both attorneys must sign the document (which is otherwise void).

#### **Public defender**

A public defender is a attorney appointed to represent people who cannot afford to hire an attorney.

Brazil is the only country where an office of government-paid attorneys, with the specific purpose of providing legal assistance and representation to the destitute, free of charge, is established in the Constitution, although the 1963 US Supreme Court case *Gideon v. Wainwright* ruled that the Sixth Amendment of the Bill of Rights requires the government to provide free legal counsel to indigent defendants in criminal cases.

[http://en.wikipedia.org/wiki/Public\\_defender](http://en.wikipedia.org/wiki/Public_defender)

#### **Attorney Assistance:**

People who cannot afford to get an attorney can demand the law to introduce an attorney assistant.

#### **The main obligations forms of attorney**

Obligations arising from agreement between attorney and client; including:

Fulfilling the obligations, following the law and provisions of and attorney letter, considering client interests and skills to comply with compliance, offering the account cults and the restitution of property to client

Obligations arising from the trusting nature of the relationship between attorney and client; including:

Commitment of the attorney to fulfill advocacy affairs such as: doing the case of advocacy based on the contract, preliminaries and essential preparations of the case of advocacy, preliminaries and essential preparations of the nature of advocacy, preliminaries and essential preparations of legal and customary.

Attorney's obligation to uphold the interest of the client, attorney's commitment to keep client confidentiality, attorney's obligation to submit the accounts and records of client representation and property restitution

#### **Attorney's obligation to submit the accounts of the law, including:**

Failure to submit the necessary accounts due to the nature of the transaction, no necessity to submit accounts due to the general view of special circumstances, no necessary to submit account due to the previous agreement giving the attorney and the client, and no power of attorney to submit the account

#### **Attorney's obligation to extradite client's property and documents**

After the implementation of advocacy and representing the account, attorneys must dedicate the client's entire property as trustee in his hand, every time the client wants to submit to him. If this is delayed for no valid reason, he is answerable even with no fault.

Egyptian Civil Code (Article 705, paragraph 2), Lebanon (Article 789) and Syria (Article 671) declare in a clear text that the attorney must represent everything he has received during his advocacy to the client, unless they are lost or damaged. Then the lawyer is obligated to pay such property or its price. This sentence is also expressed with the same words at the Iraqi Civil Code (Article 935) and Lebanon (Article 790).

#### **Lawyer's duty to self-report to his client**

Despite the dearth of direct authority requiring self-reporting, as several bar organizations and other courts have noted in dicta, the duty is well-grounded in two of the Model Rules of Professional Conduct (Col. Bar, 2005). The first is Rule 1.4 entitled —Communication,|| which requires, in pertinent part, that —A lawyer shall keep the client reasonably informed about the status of the matter (MODEL RULES OF PROF'L CONDUCT R. 1.4(a)(3) (2007)and —explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (*Id.* at R.1.4(b)). The comments to Rule 1.4 explain that —reasonable communication between the lawyer and the client is necessary for the client effectively to participate inthe representation (*Id.* at R.1.4, cmt 1). The Restatement of the Law Governing Lawyers echoes this language (RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 20 (2000).

This self-reporting duty is well rooted in Rules 1.4 (Communication) and 1.7 (Conflicts of Interest) of the Model Rules of Professional Conduct, as well as the fiduciary law governing the attorney-client relationship upon which the rules of professional conduct are based. The lawyer's duty to communicate—to keep the client reasonably informed about the status ofthe matter|| and —explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (MODEL RULES OF PROF'L CONDUCT R. 1.4(b) (2002). —surely incorporates the duty to report mistakes, at least significant ones. Moreover, the duty to avoid personal interest conflicts also compels self-reporting. Once the lawyer's conduct has given rise to a substantial malpractice claim by his client, the lawyer might want to settle the litigation quickly in order to try and hide his mistake or minimize the damages available to the client in a subsequent malpractice case; alternatively, the lawyer might want to litigate the case to the end to vindicate his (or his law firm's) original advice while the client's interest would be best served by reaching the quickest and least expensive resolution of the litigation.

But not all mistakes require reporting. I have argued that only material mistakes need to be reported i.e. when the error is one that a reasonable client would find significant in making decisions about (1) the lawyer-client relationship and (2) the continued representation by the lawyer or law firm. Thus, the lawyer must ask how bad the mistake was and how much harm did it cause.

Finally, there are several significant negative consequences for the lawyer who fails to self-report. Most significantly, the failure to self-report could itself be the subject of an independent breach of fiduciary duty claim, which, if successful, could lead to the lawyer having to forfeit his fee even in the absence of any injury directly caused by the failure to self-report. In addition, the failure to self-report could hurt the lawyer's defense of the underlying malpractice claim in two significant respects. First, the failure to self-report could make the lawyer look bad in the jury's eyes and make it more likely that the lawyer will lose the malpractice case. Second, the failure to self-report could establish the malice necessary for an award of punitive damages

against the lawyer. These negative consequences should give lawyers an incentive to think more about their potential self-reporting obligations and, in the appropriate circumstances, to report their errors to their clients.

### Conclusions

Attorney and client have duties, responsibilities and authorities to each other that explanation and clarifying the misessential for complying and fulfilling them as well as for the relevant conflict prevention. Responsibilities of the attorney to the client go into two categories: "primary responsibilities" and "secondary responsibilities". Primary responsibilities of the attorney to the client are those duties and obligations which are directly related to the nature of advocacy contract. In this paper, the issue has been studied in four domains:

The first domain includes responsibility relating to the legal counsel, the delimitation of which happens in two ways: 1) the case of advocacy should be based on mutually agreed terms and law 2) and arrangements for carrying out the law. Second domain: the obligation of attorney to respect the interests of the client. Third domain: commitment of attorney to keep client's secrets and confidentiality and fourth domains: the commitment of the attorney to dedicate account representative to client and restitution of property and documents. In the four areas discussed, the subject was studied focusing on the Iranian law in the case of necessity, the commonalities and distinctions material presented from the viewpoint of Egyptian and British law were also proposed (Cooper, 2010).

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