



CCBE and Belgian ethics rules re. counsel remuneration

28 August 2014 – Steven Callens

I. **CCBE rules on counsel remuneration**

- **CCBE** = “*Conseil des Barreaux Européen*” or “*Council of Bars and Law Societies of Europe*”
- 32 European states and > 1 million European lawyers
- **Code of Conduct** for European Lawyers
- **Binding** for all lawyers in **cross border activities** within EU, EEA and Swiss Confederation (and also with “observer members” e.g. Russia, Albania)
- Adopted at the **national level** by many European Bars, Law Societies and European legislators (esp. in cross border activities)

I. CCBE rules on counsel remuneration (cont'd)

3.4. Regulation of Fees

*A fee charged by a lawyer shall be fully disclosed to the client, shall be **fair and reasonable**, and shall comply with the law and professional rules to which the lawyer is subject.*

I. CCBE rules on counsel remuneration (cont'd)

3.3 Pactum de Quota Litis

3.3.1. *A lawyer shall **not** be entitled to make a pactum de quota litis.*

3.3.2. *By “pactum de quota litis” is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to **pay the lawyer a share of the result** regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.*

3.3.3. *“Pactum de quota litis” does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.*

I. CCBE rules on counsel remuneration (cont'd)

3.5 Payment on account

*If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a **reasonable estimate** of the fees and probable disbursements involved.*

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but not untimely.

I. CCBE rules on counsel remuneration (cont'd)

3.6 Fee Sharing with Non-Lawyers

3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

II. Belgian rules on counsel remuneration

Where? - Belgian Code on Civil Proceedings + local bar rules

Rules? – Modesty – no *pactum de quota litis* – no work for free or at loss

Criteria? – Importance and nature of the case, financial health of the client, urgency, complexity, result, experience of counsel, ...

II. Belgian rules on counsel remuneration (cont'd)

Sanctions?

- Breach of modesty => Counsel remuneration can be reduced by Judge/Arbitrator (after having obtained the Bar's non-binding advice)
- *Pactum de quota litis* => nullity (but counsel still has right to claim "normal" fees)

II. Belgian rules on counsel remuneration

Best practices?

- Agreement in writing with terms & conditions and fee calculation
- Detailed invoices
- Advance payments
- Payment in cash not in kind
- Avoid remuneration discussions or settle amicably

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