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## Ethics of the Legal Profession in Palestine

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ETHICS OF THE LEGAL PROFESSION IN  
PALESTINE

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## I. INTRODUCTION

On April 3, 2016, the Council of Palestinian Bar Association (“P.B.A.”) adopted the long-awaited Legal Profession Code of Ethics (hereinafter “the Code”).<sup>1</sup> The Code came after a century of the legal profession’s practice in Palestine.<sup>2</sup> Throughout the past century, there have been a set of ethical standards observed by Palestinian lawyers.<sup>3</sup> Such standards were based on legal profession general statutes or following the commonsense traditions practiced by the authorities that administrated the profession.<sup>4</sup> However, the Code is the first comprehensive codification of the legal profession’s ethics in the history of Palestine. Indeed, the Code’s adoption can be considered as a breakthrough.

The Code, like other lawyer codes of ethics elsewhere around the world, deals with the lawyer’s behavior under four headings: one relates to the honor of the profession, the second pertains to the lawyer-client relationship, the third deals with the lawyer’s interaction with fellow lawyers and, finally, lawyer’s behavior towards the judiciary.<sup>5</sup> Yet certain ethical standards are derived from the general 1999 Advocates Law that regulates the legal profession<sup>6</sup> as well as from statutes inherited from previous periods in Palestine. As to methodology, this Article will rely on the applicable law in Palestine as well as on the practice by interviewing practicing lawyers, using oral history, and Palestinian Bar Association reports and materials. This Article will also refer to court judgments and decisions of the Bar Association disciplinary council that investigated and punished lawyers who committed misconducts. Theoretical and comparative literature will be consulted as needed.

Part II of this Article starts by reviewing the developments of legal ethics as regulated and practiced in the previous periods. Part III explores the substantive provisions of the current Code of Ethics and

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1. AL-JARĪDAH AL-RASMIYAH AL-WAQAE’ AL-FISTINIYA [PALESTINE GAZETTE] No. 127, at 208 (Dec. 4, 2016) (Palestine).

2. Mutaz Qafisheh, *A Century of the Legal Profession in Palestine: Qui Vadis?*, 25 INT’L J. LEGAL PROF. 175, 196 (2018).

3. *Id.*

4. *Id.*

5. Legal Profession Code of Ethics (2016) (Palestine).

6. QANOUN AL-MUHAMEEN (قانون المحامين) [Advocates Law] (1999) (Palestine) [hereinafter Advocates Law].

the disciplinary measures applied by the Palestinian Bar Association against lawyers who breach the ethical standards.

## II. *DEVELOPMENTS OF LEGAL ETHICS IN PALESTINE*

The current regulation of the legal profession in Palestine (the West Bank and Gaza Strip) is an amalgamation of the various legal systems that had been brought to the country since its detachment from the Ottoman Empire (through British, Jordanian, Egyptian, Israeli and Palestinian rules) until now.<sup>7</sup> While the Ottoman legal system was based on Islamic Law and Continental Law, legislation that was enacted by Britain until May 1948 came as a reflection of the Common Law.<sup>8</sup> The West Bank and Gaza were subjected to the continental-like legal system from 1948 to 1967.<sup>9</sup> When the West Bank was annexed by Jordan, the Jordanian law, which largely derived from the Egyptian/French legal school, was extended to that part of Palestine.<sup>10</sup> Egypt administered Gaza without imposing Egyptian law, retaining most of the British-enacted legislation.<sup>11</sup> After its occupation of the West Bank and Gaza in June 1967, Israel did not apply its law to the occupied territory, with the exception of East Jerusalem.<sup>12</sup> Israel, rather, ruled Palestine by previous legislation and added a series of military orders that amended existing law.<sup>13</sup> This section looks at the legal profession in each of the periods Palestine has undergone in the past century with a focus on lawyer's ethics.

### A. *Early Steps*

When Palestine was under the Ottoman Empire, the profession was codified by the Case Agents (Advocates) Law of January 14, 1876.<sup>14</sup> This law was similar to the legal profession legislation in modern states. It incorporated various features relating to the

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7. Mutaz Qafisheh, *Legislative Drafting in Transitional States: The Case of Palestine*, 2 INT'L J. OF LEGIS. DRAFTING & L. REFORM 7 (2014).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. 5 COMPLETION OF LAWS: OTTOMAN LEGISLATION APPLICABLE IN ARAB STATES DETACHED FROM THE OTTOMAN GOVERNMENT 346 (Aref Ramadan ed., 1928).

profession, including the qualifications for one to become a lawyer, bar rules, and professional responsibility.<sup>15</sup> This law came in the context of the reform process that the Ottoman Empire pledged to undertake in 1839 to modernize the Empire's institutions by importing legislation from Europe.<sup>16</sup> In 1871, a law school was opened in Istanbul,<sup>17</sup> from which a number of Palestinians graduated and returned home.<sup>18</sup>

As early as 1918, the British regulated certain aspects relating to lawyers, for example the fees of lawyer's services.<sup>19</sup> Towards the end of the Ottoman rule, a small number of lawyers existed in the country;<sup>20</sup> the highest statistics indicate the presence of eighty-three lawyers.<sup>21</sup> The legal profession was first supervised by the British-appointed Attorney General who granted licenses to lawyers.<sup>22</sup> The British enacted the first legislation that governed the legal profession, Advocates Ordinance No. 13 ("the 1922 Ordinance"), on July 22, 1922.<sup>23</sup> By this time, the number of lawyers had reached 123.<sup>24</sup> This instrument, along with its corresponding Rules, founded a governmental Legal Board to administrate the legal profession,<sup>25</sup> including lawyers' admission, an apprentice system, bar examinations, practice fees, and professional responsibility.<sup>26</sup> With the increasing number of lawyers (estimated at 358 in 1937),<sup>27</sup> the 1922 Ordinance was comprehensively revised and replaced by Advocates Ordinance

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15. Case Agents Law (1876) (Palestine).

16. See Feras Milhem, *The Origins and Evolution of the Palestinian Sources of Law* 17-51 (2004) (unpublished Ph.D. dissertation, Vrije Universiteit) (on file with author); see also LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM (Terence C. Halliday & Lucien Karpik eds., 1998).

17. GEORGE E. BISHARAT, *PALESTINIAN LAWYERS AND ISRAELI RULE: LAW AND DISORDER IN THE WEST BANK* 20 (1990).

18. Assaf Likhovski, *History of British Legal Education in Mandatory Palestine*, in *EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST & BEYOND* 177, 178 (Mutaz M. Qafisheh & Stephen A. Rosenbaum eds., 2016).

19. Advocates Fees Rules of Nov. 7 (1918) (Palestine) [hereinafter *Advocates Fees Rules*]; ROBERT HARRY DRAYTON, *THE LAWS OF PALESTINE IN FORCE ON THE 31ST DAY OF DECEMBER 1933*, at 2937 (1934).

20. ASSAF LIKHOVSKI, *LAW AND IDENTITY IN MANDATE PALESTINE* 25 (2006).

21. BISHARAT, *supra* note 17, at 24.

22. BISHARAT, *supra* note 17, at 25.

23. DRAYTON, *supra* note 19.

24. LIKHOVSKI, *supra* note 20, at 26.

25. Advocates Ordinance No. 13 (1922), art. 6 (Palestine).

26. Advocates Examinations (Payment of Expenses) Rules, *PALESTINE GAZETTE* (Supplement 2) No. 448, at 503 (June 21, 1934) (Palestine).

27. LIKHOVSKI, *supra* note 20, at 26.

No. 32 of November 21, 1938 (“the 1938 Ordinance”).<sup>28</sup> This legislation remained the key instrument governing the legal profession until the end of the British rule.<sup>29</sup>

The 1938 Ordinance assigned the administration of the legal profession to a governmental body named the “Law Council,” which was regulated by Law Council Ordinance No. 33 of November 21, 1938 (which was passed on the same day as the 1938 Ordinance).<sup>30</sup> The Council replaced the previous Legal Board that had supervised the profession since 1922. The Council was headed by the Attorney General as *ex officio* and was made up of a minimum of six members, including four practicing lawyers appointed by the British High Commissioner for three-year renewable terms.<sup>31</sup> In effect, the Council took over the functions assigned to bar associations in modern states. At the end of the British rule in 1948, there were over 1,000 practicing lawyers in Palestine; about half of them were Arab Palestinians.<sup>32</sup> These lawyers, most of whom found themselves in the West Bank, Gaza, or Jordan (as refugees from the parts of Palestine that became Israel), constituted the founders of the profession in the coming decades.

Lawyers’ ethics were known in Palestine from the outset. The rules regarding the ethics that lawyers should adhere to were in place and lawyers were aware that if they breach such ethical rules, they would be subject to punishment. The law incorporated obligations that lawyers had to adhere to in order to protect the profession’s honor. No one could appear before the court as a lawyer without being licensed, subject to penalty.<sup>33</sup> Lawyers were obliged to work for the interest of their clients and to assist courts in achieving justice.<sup>34</sup> It was prohibited

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28. Advocates Ordinance No. 32 of November 21, 1938, PALESTINE GAZETTE (Supplement 1) No. 843, at 91 (Nov. 24, 1938) (Palestine) [hereinafter Advocates Ordinance No. 32].

29. Amendments were adopted in 1939, 1941, 1945, and 1946.

30. Law Council Ordinance No. 33 of November 21, 1938, PALESTINE GAZETTE (Supplement 1) No. 843, at 105 (Nov. 24, 1938) (Palestine) [hereinafter Law Council Ordinance No. 33].

31. *Id.*

32. LIKHOVSKI, *supra* note 20, at 26.

33. Advocates Ordinance (Amendment) No. 28 of July 3, 1935, PALESTINE GAZETTE (Supplement 1) No. 523, art. 24(1)(2) (July 4, 1935) (Palestine).

34. Advocates Ordinance No. 32, *supra* note 28, at art. 16(1).

for the lawyer to work for the opponent party in a lawsuit.<sup>35</sup> To avoid conflicts of interest, lawyers had to work on a full-time basis in the profession and not undertake other businesses.<sup>36</sup> Lawyers were banned from advertising or pursuing clients directly or through agents.<sup>37</sup> At the appearance level, lawyers were obligated to wear suitable attire before courts.<sup>38</sup>

The 1938 Ordinance comprised a series of disciplinary measures and penalties against lawyers who breached ethical rules: notification, reprehension, temporary suspension of practice, dismissal from the profession, and fines.<sup>39</sup> The Law Council was vested with the power to investigate complaints against lawyers, give the accused lawyer the right to defend him or herself, and to impose disciplinary actions through committees formed by the Council on a case-by-case basis.<sup>40</sup> When the Council or any of its committees convened to investigate a claim against a lawyer, only lawyer or judge members of the Council were allowed to participate in the proceedings.<sup>41</sup> The convicted lawyer had the right, within thirty days after the conviction, to appeal to a three-judge special court formed by the Chief Justice.<sup>42</sup> In order for the disciplinary measure to take effect, it had to be confirmed by the Chief Justice, whose decision would be published in the official gazette by the superintendent of the courts.<sup>43</sup>

Upon the withdrawal of British forces on May 14, 1948, Palestine was divided into three areas: the State of Israel which was established on 78% of Palestine; the West Bank that consisted of 20% of Palestine's land which was annexed by Jordan; and the Gaza which consisted of 2% of Palestine and came under Egyptian

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35. Advocates (Professional Conduct) Rules of September 8, 1930 (1930) (Palestine); DRAYTON, *supra* note 19, at 1825, art. 2.

36. Advocates Ordinance No. 32, *supra* note 28, at art. 16(2).

37. *Id.*, at art. 17.

38. Advocates (Forensic Robes) Rules of January 1, 1930 (1930) (Palestine) [hereinafter Advocates (Forensic Robes)]; DRAYTON, *supra* note 19, at 1824.

39. Advocates Ordinance No. 32, *supra* note 28, at art. 20.

40. Law Council Rules of 1938, arts. 15-17 (Palestine).

41. Law Council Ordinance No. 33, *supra* note 30, at art. 6.

42. Advocates Ordinance No. 32, *supra* note 28, at art. 20(2).

43. *See, e.g.*, Notice: Court of Discipline No. J/211/33 of June 8, 1933, PALESTINE GAZETTE, No. 369, at 769 (June 15, 1933) (Palestine). This case related to the suspension of Advocate Ismail Al-Khatib for three months as of June 15, 1933, as he was found "guilty of unprofessional conduct."

administration.<sup>44</sup> Let us briefly see how the legal profession survived after 1948 until the establishment of the Palestinian Authority in Gaza and the West Bank in 1994.

Ever since 1948, Gaza has developed a separate political, social and legal character.<sup>45</sup> Egypt controlled Gaza after the signing of the armistice agreement with Israel on February 24, 1949.<sup>46</sup> Egypt set up a military administration without extending Egyptian law in Gaza until June 1967.<sup>47</sup> The Egyptians retained the previous law. Gaza lawyers continued practicing before local courts. With no bar association, the Law Council that administered the profession under the British continued its functions based on the 1938 Law Council Ordinance.<sup>48</sup> The legal ethics remained as they were under that Ordinance. However, informally, lawyers in Gaza had founded a *de facto* bar (society) that took part in the regional Arab Lawyers Union in Cairo on behalf of Palestinian lawyers.<sup>49</sup>

Jordan annexed the West Bank shortly after signing the armistice agreement with Israel on April 3, 1949,<sup>50</sup> and remained therein until June 1967. After a short period of chaos, the legal profession gradually took a stronger shape in 1950. Former Palestinian lawyers, who found themselves in the west and east banks of the Jordan River, were allowed to practice law after being licensed by the Jordanian Minister of Justice.<sup>51</sup> The legal profession was strengthened with the formation of the Jordanian Bar Association in 1951, shortly after the adoption of the Civil Bar Association Law No. 31 of September 16, 1950, with a Palestinian lawyer from the West Bank as the head of the Bar.<sup>52</sup> This

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44. THE HISTORY OF LAW IN A MULTI-CULTURAL SOCIETY: ISRAEL 1917-1967, at 13-20 (Ron Harris et al. eds., 2002).

45. See generally ILANA FELDMAN, GOVERNING GAZA: BUREAUCRACY, AUTHORITY, AND THE WORK OF RULE 1917-1967 (2008).

46. Israel and Egypt General Armistice Agreement, Egypt-Isr., Feb. 24, 1949, 42 U.N.T.S. 252.

47. FATHI WAHIEDI, CONSTITUTIONAL DEVELOPMENTS IN PALESTINE: 1917-1989, at 33 (1992).

48. HUSEIN ABUHANNOUD, REPORT ON THE PALESTINIAN BAR ASSOCIATION FOR PALESTINIAN INDEPENDENT COMMISSION FOR CITIZENS' RIGHTS (2000); see *supra* notes 28-30 and accompanying text.

49. ABUHANNOUD, *supra* note 48 (referring to an interview with Ibrahim Sakka, a Gaza-based lawyer who practiced law under the Egyptian administration).

50. General Armistice Agreement, Isr.-Jordan, Apr. 3, 1949, 42 U.N.T.S. 304 (1949).

51. Interview with Fuad Shihadeh, the oldest lawyer in Palestine (now 93 years old) and the former President of the Jordanian Bar Association in Ramallah, Palestine (May 23, 2016).

52. BISHARAT, *supra* note 17, at 28.



law abolished the Advocates Ordinance of 1938 that was applicable in the West Bank.<sup>53</sup> The 1950 law was replaced by the Civil Bar Association Law No. 5 of February 6, 1955.<sup>54</sup> One year before the end of Jordan's presence in the West Bank, the Jordanian parliament passed the Civil Bar Association Law No. 11 of February 2, 1966.<sup>55</sup> In parallel, the Jordanian Bar adopted its bylaw on June 17, 1966.<sup>56</sup> The legal ethics in the West Bank under the Jordanians were largely a copy of those of the British rule in Palestine, including lawyers' rights and obligations, investigation procedures with lawyers, complaints processes, disciplinary measures, penalties, and appeals.<sup>57</sup>

### *B. Israeli Occupation*

When Israel occupied both the West Bank and Gaza in June 1967, Palestinians were ruled by the Israeli army. The army administered the territory by former law, using two military commanders (one in Gaza and another in the West Bank), and through separate but similar military orders that modified the existing law. The legal affairs came under the authority of the military justice officer who oversaw the legal profession, replacing the Bar in the West Bank and the Law Council in Gaza.<sup>58</sup> The justice officer was charged with licensing lawyers,<sup>59</sup> recognizing law schools, managing lawyers' daily work,<sup>60</sup> and their

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53. Civil Bar Association Law No. 31 of September 16, 1950 (1950) (Jordan).

54. Civil Bar Association Law No. 5 of February 6, 1955, *AL-JARIDA AL-RASMIYA*, JORDANIAN OFFICIAL GAZETTE, No. 1214, at 152 (Feb. 16, 1955) (Jordan).

55. Civil Bar Association Law No. 11 of February 2, 1966, JORDANIAN OFFICIAL GAZETTE No. 1905, at 315 (Mar. 5, 1966) (Jordan) [hereinafter Civil Bar Association Law No. 11].

56. Jordanian Bar Association Bylaws of 1966, JORDANIAN OFFICIAL GAZETTE No. 1978, at 105 (Jan. 16, 1967) (Jordan) [hereinafter 1966 Jordanian Bar Association Bylaws].

57. Civil Bar Association Law No. 11, *supra* note 55, at arts. 47-69; 1966 Jordanian Bar Association Bylaws, *supra* note 56, at arts. 32-48.

58. Order Concerning Local Courts No. 412 of October 5, 1970, art. 2, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—WEST BANK) (Mar. 1, 1971), 954 (1971) (Isr.).

59. HCJ 16/2000 (2002) (Ramallah).

60. Order on the Operation of Imprisonment Installation No. 29 of June 23, 1967, art. 11, 13, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—WEST BANK) (Sept. 15, 1967), 57 (1967) (Isr.).

relations to clients.<sup>61</sup> Israel banned politically active lawyers from practice,<sup>62</sup> and deported a number of them.<sup>63</sup>

Israel brought the profession back under the control of the government as was the case in Palestine before 1948. Without a Bar, the profession has become similar to the situation that existed during the Jordanian rule in the West Bank before 1950. Israel maintained the *status quo* that existed at the time of Egyptian rule in Gaza (1948-1967). Lawyers from the West Bank were allowed to appear before Gaza courts and *vice versa*.<sup>64</sup> Both were permitted to practice before Israeli military tribunals,<sup>65</sup> as well as before the Israeli High Court of Justice.<sup>66</sup> By defending prisoners before Israeli tribunals and in detention, Palestinians from the West Bank reconnected with their fellow Gazan lawyers after two decades of isolation. This gave them an opportunity to discuss and think of national and professional issues, as Palestinians, rather than Gazans or West Bankers.<sup>67</sup>

Shortly after the Israeli occupation, over fifty West Bank lawyers met in Jerusalem and signed a petition declaring that they would refrain from dealing with Israeli courts.<sup>68</sup> On August 22, 1967, the Jordanian Bar Association instructed West Bank lawyers to join the strike.<sup>69</sup> This, among other factors, led to the “deterioration of the formal courts system.”<sup>70</sup> Those who honored the strike were given salaries by the

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61. Order on Lawyer Licenses No. 260 of June 23, 1968, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—WEST BANK) (July 22, 1968), 516 (1968) (Isr.); Order on Lawyers (Gaza Strip and Northern Sinai) No. 63 of August 24, 1967, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—GAZA) (Dec. 31, 1967), 195 (1967) (Isr.).

62. Shihadeh, *supra* note 51.

63. Interview with Morsi Hujier, Head of Jerusalem/West Bank branch of the Jordanian Bar Association from 1981 to 1993, in Ramallah, Palestine (June 13, 2016).

64. Shihadeh, *supra* note 51.

65. Order Concerning Defense in Military Tribunals No. 400 of July 13, 1970, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—WEST BANK) (Mar. 1, 1971), 933. (1971) (Isr.).

66. Shihadeh, *supra* note 51; *see* Order on Security Instructions No. 378 of 1970, arts. 8, 19, 32, 42, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—WEST BANK) (Apr. 22, 1970) (1970) (Isr.).

67. Interview with Abdelrahman Abunaser, in Gaza, Palestine (June 6, 2016). He was the 1996 elected head of the Gaza Lawyers Society and the first President of the Palestinian Bar Association.

68. Hujier, *supra* note 63.

69. ABUHANNOUD, *supra* note 48.

70. BISHARAT, *supra* note 17, at 125.

Jordanians, were allowed to practice in Jordan,<sup>71</sup> and before the West Bank religious courts.<sup>72</sup> Those who refused to strike were expelled from the Jordanian Bar.<sup>73</sup> In Gaza, Palestinian lawyers continued pleading before Israeli-run civil and military courts.<sup>74</sup> In response, Israel permitted Israeli lawyers to appear before the courts to defend Palestinian clients.<sup>75</sup> However, in 1969, fourteen prominent West Bank lawyers decided to terminate the strike “based on the belief that Palestinian lawyers are better equipped to defend their fellow citizens, determining that the strike is useless.”<sup>76</sup> In 1971, over seventy lawyers resumed appearance before courts.<sup>77</sup> The split among West Bank lawyers produced two factions at odds: one striking and one practicing.

Practicing West Bank lawyers in 1983-1984 formed a body called the Arab Lawyers Union,<sup>78</sup> whose membership was voluntary.<sup>79</sup> The Union incorporated nine elected members, but it was not recognized by Israel.<sup>80</sup> Similarly in Gaza, advocates formed the Lawyers Society based on the existing Ottoman Association Law; they also adopted a written bylaw.<sup>81</sup> Notwithstanding the informal nature of these two bodies, they managed to organize the legal profession, adopt unified positions towards common national policies, issue membership cards, provide training to new lawyers, offer legal aid to needy persons, and

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71. Interview with Othman Takroui, Professor, in Hebron, Palestine. (May 22, 2016). He is a Palestinian lawyer and former advocate under the Jordanian rule. He was also a professor of law at Al-Quds University (in Jerusalem) and a judge at the Palestinian Supreme Court under the Palestinian Authority.

72. *Id.*

73. Shihadeh, *supra* note 51.

74. Abunaser, *supra* note 67; see Order on the Appearance of Israeli Lawyers in the Courts No. 958 of July 7, 1988, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—GAZA), (Sept. 25, 1989), 9029 (1989) (Isr.).

75. Order on the Appearance of Israeli Lawyers in the Courts No. 145 of October 23, 1967, PROCLAMATIONS, ORDERS AND APPOINTMENTS (ISRAELI OCCUPATION—WEST BANK), (Dec. 29, 1967), 306 (1967) (Isr.).

76. Shihadeh, *supra* note 51.

77. ABUHANNOUD, *supra* note 48 and accompanying text.

78. Interview with Fawzi Maswadi, Advocate, in Hebron, Palestine. (May 19, 2016). He has been a practicing advocate since 1966.

79. ABUHANNOUD, *supra*, note 48, at n.42 and accompanying text.

80. Interview with Adnan Abulaila, in Nablus, Palestine (June 13, 2016). He is one of the Arab Lawyers Union’s founders.

81. Interview with Dr. Abdelkarim Shami, Palestinian Ministry of Justice official in Gaza, Palestine. (May 25, 2016). He is also a lawyer.

defend lawyers' interests.<sup>82</sup> However, these representative bodies had no authority over issues relating to legal ethics.

The Union and the Society formed umbrella organizations for lawyers, having a *de facto* bar character without acquiring formal Israeli authorization with regard to the law profession. They had been regarded as social/political bodies under which lawyers could discuss professional and nationalistic matters.<sup>83</sup> Internal elections by consensus were conducted for the Union and the Society.<sup>84</sup> These bodies paved the way for the *de jure* establishment of the current Palestinian Bar Association.

### C. *Palestinian Authority*

In 1994, the Palestinian Authority ("P.A.") was established in Gaza and the West Bank after the signing of the Israeli-Palestinian Declaration of Principles on Interim Self-Government Arrangement of September 13, 1993, which was followed by the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of September 28, 1995.<sup>85</sup> The Protocol Concerning Legal Affairs of the latter agreement transferred the jurisdiction over the judicial system from the Israeli military to the Palestinian Authority.<sup>86</sup>

For a few years, Palestinian lawyers functioned as had been the practice under Israeli occupation, with awareness of the need for forming a unified Palestinian bar.<sup>87</sup> Lawyers continued to be represented by three informal bodies: the Arab Lawyers Union which included some 750 practicing members in the West Bank;<sup>88</sup> the Palestinian branch of the Jordanian Bar which comprised over 250 striking West Bank lawyers;<sup>89</sup> and the Lawyers Society of Gaza with

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82. *Id.*

83. Interview with Ishaq Maswadi, Lawyer, in Hebron, Palestine (May 18, 2016). He has been a practicing lawyer in the West Bank since 1975; Hujier, *supra* note 63; Abulaila, *supra* note 80; Abunaser, *supra* note 67.

84. Abunaser, *supra* note 67.

85. Declaration of Principles on Interim Self-Government Arrangement, Isr.-Palestine, Sept. 13, 1993, 32 I.L.M. 1525; Interim Agreement on the West Bank and the Gaza Strip with Selected Annexes, Isr.-Palestine, Sept. 28, 1995, 36 I.L.M. 551 (1997).

86. Interim Agreement on the West Bank and the Gaza Strip with Selected Annexes, Isr.-Palestine, annex IV, Sept. 28, 1995, 36 I.L.M. 551 (1997).

87. ABUHANNOD, *supra*, note 48, at n. 43-45 and accompanying text.

88. Abulaila, *supra* note 80.

89. Hujier, *supra* note 63.

about 300 members.<sup>90</sup> On July 9, 1997, President Yasser Arafat issued Decree No. 78 of 1997, which established a nine-member transitional council for the Palestinian Bar Association, headed by Mr. Abdelrahman Abunaser, the former elected head of the Gaza Lawyers Society.<sup>91</sup> The nine-member council was equally composed of the three former representative bodies, with three members coming from each body.<sup>92</sup> This decree was a breakthrough with regard to the legal profession as it unified Palestinian lawyers into a single body for the first time ever.

This transitional bar council was formally extended by Decree No. 2 of January 12, 1999 enacted by the Palestinian President, “until the enactment and enforcement of the Palestinian Bar Association Law and holding of the [bar] elections.”<sup>93</sup> The first election of the P.B.A. took place on July 11, 2003.<sup>94</sup> By and large, the subsequent Palestinian bar councils (2005-2018) built on the practices that were set forth by the first bar council.<sup>95</sup> The most recent P.B.A. election took place on April 5, 2018.<sup>96</sup>

The key achievement of the transitional Bar Council is its role in drafting the current law that governs lawyers, which was adopted by the Palestinian Legislative Council (parliament).<sup>97</sup> The law was endorsed by President Arafat as Legal Profession Law No. 3 of June 24, 1999, which entered into force on October 8, 1999.<sup>98</sup> This law repealed the 1938 Advocates Ordinance applicable in Gaza as well as the 1966 Bar Association Law enforced in the West Bank.<sup>99</sup> A few months later, the name of the law was changed to the Civil Advocates

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90. Abunaser, *supra* note 67.

91. Decree No. 78 of 1997, *PALESTINE GAZETTE* No. 19, art. 10 (Oct. 15, 1997) (Palestine).

92. Hujier, *supra* note 63.

93. Decree No. 2 of January 12, 1999, *PALESTINE GAZETTE* No. 28, at 52 (Mar. 13, 1999) (Palestine).

94. Minister Ali Muhanna, Lecture on Legal Profession and Bar Association: Current Situation and Future Prospects at Birzeit University’s Institute of Law (June 23, 2007).

95. *Id.*

96. Press Release, Palestinian Bar Association, The Bar Council Elects Advocate Mr. Jawad Obayat as a President of the Palestinian Bar Association for the Period 2018-2021 (April 10, 2018).

97. Qafisheh, *supra* note 7, at 26.

98. Legal Profession Law No. 3 of June 24, 1999, *PALESTINE GAZETTE*, No. 30, at 5 (Oct. 10, 1999) (Palestine).

99. *Id.*

Law.<sup>100</sup> On September 22, 2000, the General Assembly of the P.B.A. adopted a bylaw.<sup>101</sup> The law and its bylaw regulated various aspects related to the profession: the bar structure and its bodies, elections, financial resources, qualifications for law practice, the apprenticeship system, rights and obligations of lawyers, legal ethics, and disciplinary measures for lawyer misconduct.<sup>102</sup>

The current P.B.A. is composed of a General Assembly, Council, specialized committees, and geographic/district committees. The P.B.A. General Assembly incorporates all practicing lawyers whose number exceeds 6,000:<sup>103</sup> 4,459 in the West Bank<sup>104</sup> and 1,700 in Gaza.<sup>105</sup> The P.B.A.'s Council comprises fifteen members, nine from the West Bank and six from Gaza.<sup>106</sup> The Council manages the Bar through admitting lawyers and granting licenses to practice law, determining membership fees, and drafting bylaws for the General Assembly's approval. The Council also maintains and monitors the Bar's budget, carries out investment projects and makes decisions on disciplinary measures against lawyers who breach the professional ethics. It fixes lawyer's fees and arbitrates conflicts arising among lawyers.<sup>107</sup> There are fifteen specialized committees, each headed by one elected member of the Council; with a number of other members as needed for its work.<sup>108</sup> The present committees include the apprenticeship committee, women's committee, legal aid committee, freedoms committee, complaints committee, and disciplinary committee (sometimes called "council") that deals with legal ethics.<sup>109</sup>

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100. Law No. 5 of Dec. 28, 1999 Concerning the Amendment of Legal Profession Law No. 3 of 1999, PALESTINE GAZETTE No. 32, at 5 (Feb. 29, 2000) (Palestine) [hereinafter 1999 Concerning the Amendment of Legal Profession].

101. PALESTINE GAZETTE No. 34, at 117 (Sept. 30, 2000) (Palestine).

102. *Id.*

103. It should be noted that this figure is changeable as lawyers are admitted by the Bar regularly.

104. PALESTINIAN BAR ASS'N., ADMINISTRATIVE AND FINANCIAL REPORT 10 (2018) [hereinafter ADMINISTRATIVE AND FINANCIAL REPORT].

105. Interview with Ala Farra, Manager of the Gaza Bar, in Gaza, Palestine (June 30, 2018).

106. The Internal Regulations of the Palestinian Bar Association of 2000, art. 23 (1999) (Palestine).

107. Advocates Law, *supra* note 6.

108. ADMINISTRATIVE AND FINANCIAL REPORT, *supra* note 104, at 9-65.

109. *Id.* at 9.

### III. THE 2016 LEGAL PROFESSION CODE OF ETHICS

Before the adoption of the Code of Legal Profession in 2016, the Palestinian Bar used to punish lawyers over unethical acts by using the general obligations of lawyers specified in the 1999 Advocates Law. In a number of cases, lawyers were convicted based on Article 20 of the Advocates Law which sanctions any lawyer who “breaches his obligations as set forth in this law, its bylaws or legal ethics bylaw that the [bar] council may adopt, or who exceeds or neglects the professional obligations, misleads justice or carries out any conduct that affects the honor or ethics of the profession.”<sup>110</sup>

Aware of such a gap, the P.B.A. worked on the adoption of a code of ethics.<sup>111</sup> The Bar Council commissioned a lawyer to draft such a code.<sup>112</sup> It recently formed a committee to revise the draft and propose a comprehensive bill that yielded the current code of ethics. The P.B.A. Council adopted procedures for investigating unethical conduct,<sup>113</sup> proportional penalties for various conducts, and the formation of complaints committees. The Council developed a complaints form,<sup>114</sup> fees to be paid by the complainants,<sup>115</sup> notification process to the parties, and rules for the hearing sessions.<sup>116</sup>

The 2016 Legal Profession Code of Ethics set out the various standards of behavior that lawyers should adhere to. These standards can be divided into four categories: (1) general principles that aim to preserve the profession’s honor; (2) rules that govern lawyers’ relationships with clients; (3) stipulations that regulate relations among lawyers; and (4) provisions that pertain to lawyers’ relations with the judiciary. We will here explore these four categories, before moving on to the disciplinary measures that lawyers might be subjected to when they break the ethical rules.

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110. Advocates Law, *supra* note 6, at art. 20.

111. Press Release, Palestinian Bar Ass’n, Bar Association Organizes a Workshop on the Legal Ethics Bylaw (Oct. 4, 2015).

112. Ahmad Nasra, Draft Legal Profession Ethics Bylaw for the Palestinian Bar Association (2011).

113. Interview with Aala Abusafieh, P.B.A. Complaints Officer in Ramallah, Palestine (May 1, 2016).

114. A copy of the form is on file with the Author.

115. A receipt of paying fees by a complainant is on file with the Author (2013).

116. WALID ARDA, RULES AND ETHICS OF PROFESSIONAL CONDUCT: THEORY AND PRACTICE AT MUSAWA’S FOURTH CONFERENCE ON THE INDEPENDENCE OF LAWYERS 68-72 (2015).

*A. Honor of the Profession*

In all countries, the law practice is considered a prestigious profession and Palestine is no exception. The 1999 Advocates Law (“the Law”) and the 2016 Legal Profession Code of Ethics (“the Code”) endeavored to maintain the image of lawyers as individuals who deserve respect for their knowledge, values and professionalism. We will here touch upon features that the Law and the Code introduced to preserve the profession’s honor.

The Law and the Code view the legal practice not only as an independent profession, but also as a noble mission.<sup>117</sup> For this reason, the Law and the Code provided that lawyers are obliged to work towards achieving justice to preserve the supremacy of the rule of law and the independence of the judiciary. They should also defend human rights and freedoms, and equality between men and women.<sup>118</sup> Lawyers are bound to behave ethically all the time: when dealing with the general public, in their written memorials and oral pleadings, before courts and in their offices, in Palestine and abroad.<sup>119</sup> It is prohibited for lawyers to introduce themselves with academic degrees that they do not hold.<sup>120</sup> Lawyers need to enforce labor rights with respect to their employees.<sup>121</sup> Article 19 of the Code clearly provides that lawyers cannot use corrupt tactics through their personal connections or by using other illegal means, to win cases.<sup>122</sup>

With a view to protect the profession’s independence and dedication, lawyers may not accept other businesses, professions, or employment by private sector institutions or international organizations, or hold governmental positions.<sup>123</sup> The only exception is the possibility for lawyers to teach law at universities.<sup>124</sup> If a lawyer wishes to do other work, he would still have the right to register at the

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117. Advocates Law, *supra* note 6, at art. 7; Legal Profession Code of Ethics, *supra* note 5, at art. 2.

118. Legal Profession Code of Ethics, *supra* note 5, at art. 3.

119. Legal Profession Code of Ethics, *supra* note 5, at arts. 4-6.

120. Legal Profession Code of Ethics, *supra* note 5, at art. 8.

121. Legal Profession Code of Ethics, *supra* note 5, at art. 12.

122. Legal Profession Code of Ethics, *supra* note 5, at art. 19.

123. Advocates Law, *supra* note 6, at art. 6; Legal Profession Code of Ethics, *supra* note 5, at art. 18.

124. Advocates Law, *supra* note 6, at art. 7(3); Legal Profession Code of Ethics, *supra* note 5, at art. 18(3).



Bar as a “non-practicing lawyer.”<sup>125</sup> Indeed, the P.B.A. registers (in 2016) 4,551 non-practicing lawyers: 2,912 in the West Bank,<sup>126</sup> and 1,639 in Gaza.<sup>127</sup> Non-practitioners can be readmitted to the lawyers’s roll if they quit positions held outside the legal profession.<sup>128</sup>

However, there are many lawyers who are employed on a full-time basis as legal advisors, for example for banks, companies, and human rights associations. These lawyers do not only need to give advice to their institutions, but also to represent them in court. This situation puts the Bar at odds with this need of the private sector. Lawyers, who in fact work on a full-time basis as employees, found no way but to pretend that they have their own law offices, but in reality work somewhere else. To overcome this problem, the P.B.A. has recently developed a new regulation on the Resident Lawyer to allow employed lawyers in the private sector or civil society organizations to register in the Bar as practicing lawyers whose work is confined to the representation of the institutions that they work in.<sup>129</sup> These lawyers can also appear in courts on the cases relating to themselves and to close relatives.<sup>130</sup> This regulation has not been adopted yet as there are different opinions within the Bar on the modalities of the contribution of resident lawyers to the Bar’s revenues.<sup>131</sup> However, there is a general agreement on the need for such a regulation as a matter of principle and it might be adopted anytime in the near future.<sup>132</sup>

In the age of social media, Article 11 of the Code provided that lawyers are not allowed to misuse social media networks, particularly to insult the judiciary, fellow lawyers, or public or civil society institutions.<sup>133</sup> As most lawyers use, and a number misuse such networks, such as Facebook, on April 25, 2018, the P.B.A. Council

125. Advocates Law, *supra* note 6, at art. 8(1).

126. ADMINISTRATIVE AND FINANCIAL REPORT 2016, *supra* note 104, at, 23.

127. Interview with Riyad Sulaiman, member of the Training and Legal Committees of the Gaza Center of P.B.A., in Gaza, Palestine (June 6, 2016).

128. Advocates Law, *supra* note 6, at art. 8(2). In 2017, 144 non-practicing lawyers were re-admitted by the bar as practitioners; ADMINISTRATIVE AND FINANCIAL REPORT 2018, *supra* note 104, at 9.

129. Palestine Bar Association, Draft Resident Lawyer Regulations, presented for the consideration of the Palestinian Bar Association General Assembly (Mar. 30, 2018).

130. *Id.* at art. 5.

131. Interview with Mai Attallah, P.B.A. Public Relations Officer, in Ramallah, Palestine (July 19, 2018). She is also a lawyer.

132. *Id.*

133. Legal Profession Code of Ethics, *supra* note 5, at art. 11.

issued a general warning providing that those lawyers who abuse the freedom of expression over such networks would be subject to disciplinary actions based on the Code.<sup>134</sup> The warning instructed all lawyers who posted improper posts “to delete any publication that includes insults to others.”<sup>135</sup> Also, the Bar asked lawyers not to reply to such abuses but rather to report the matters to the Bar Council.<sup>136</sup>

Lawyers are banned, based on the Law, from advertising or running after the cases.<sup>137</sup> The Law did not define advertisement. The Code tried to bridge this gap by providing that the lawyer is prohibited from “advertising for himself in any form that runs counter to the law profession’s traditions or to use any means of publicity for himself or for his office, or to bring clients through ads, or by using paid brokers.”<sup>138</sup> Yet, in practice, lawyers do use indirect ways for advertisement. Some place huge banners at the façade of their offices, with fancy colors and lights. Others create websites for their law firms where they include details about the services that they provide. More importantly, certain lawyers use social media networks, particularly Facebook, to advertise indirectly by having a wide network of friends who share their postings. Some even directly advertise by using paid (sponsored) ads. Hence, the provisions of the Law and the Code in this regard are insufficient. Therefore, the P.B.A. needs to define the meaning of advertisement in order for lawyers to know what is exactly prohibited, and to avoid conflicting interpretations and disciplinary measures that might target them.

To contribute to social justice, lawyers are under an obligation to participate in legal aid programs for needy persons.<sup>139</sup> To this effect,

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134. Press Release, Palestinian Bar Ass’n, Announcement Regarding the Use of Social Media Networks (Apr. 25, 2018).

135. *Id.*

136. Press Release, Palestinian Bar Ass’n, Announcement Regarding the Abuse of Social Media Networks (June 21, 2018).

137. Advocates Law, *supra* note 6, at art. 28(1).

138. Legal Profession Code of Ethics, *supra* note 5, at arts. 16(1), 37; SHADE RAMADAN, *THE DISCIPLINARY RESPONSIBILITY OF LAWYERS IN PALESTINE* 29-30 (2017).

139. See Zaza Namoradze, *UN General Assembly Enacts Global Standards on Access to Legal Aid*, OPEN SOC’Y FOUND. (Dec. 20, 2012), <https://www.opensocietyfoundations.org/voices/un-general-assembly-enacts-global-standards-access-legal-aid>; Michael William Dowdle, *Preserving Indigenous Paradigms in to Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China*, 24 *FORDHAM INT’L L. J.* 56, 79-80 (2000); Frank S. Bloch & Iqbal S. Ishaq, *Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States*, 12 *MICHIGAN J. OF INT’L L.* 92 (1990); Richard

Article 20 of the Code states that “the lawyer should accept the order of the Bar President to represent those accused in criminal cases, or to file lawsuits in administrative, civil or public interest cases.”<sup>140</sup> In such cases, lawyers should work diligently and free of charge, and may not resign from the case save for exceptional instances and after the Bar’s approval.<sup>141</sup> According to Article 44(2.b) of the Advocates Law, “[any] lawyer, without a reasonable reason, refuses to perform the requested legal aid or neglect to defend the client professionally, may be subjected to disciplinary actions.”<sup>142</sup> Yet, in practice, lawyers who participate in legal aid services are often paid for their representation, however symbolically.<sup>143</sup>

The Law provided that the lawyer should have an appropriate law office dedicated to his work.<sup>144</sup> The Code added three specifications to the “appropriate office”: that the office is equipped enough to protect a client’s privacy; that the office is dedicated solely to lawyering functions, not to other businesses; and that the office is not part of a residential home.<sup>145</sup> The Code added that the lawyer should meet his client at his office, “save to exceptional circumstances.”<sup>146</sup> However, the exceptional circumstances are not defined. In practice, not all lawyers have the ability to open independent offices. It is common to find lawyers who inform the Bar that they work from certain offices that in reality they have never worked from; certain lawyers register as partners in law offices of a friend lawyer, while in fact they either work from home (many of them to take care of their families, or have other unofficial businesses, such as teaching, working as brokers or working

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Abel, *Law Without Politics: Legal AID Under Advanced Capitalism*, 32 *UCLA L. REV.* 474 (1985); DAVID MCQUOID-MASON, *AN OUTLINE OF LEGAL AID IN SOUTH AFRICA* 139-63 (1982).

140. Legal Profession Code of Ethics, *supra* note 5, at art. 20(1).

141. Legal Profession Code of Ethics, *supra* note 5, at art. 20(2).

142. Advocates Law, *supra* note 5, at art. 44(2.b).

143. Press Release, Palestinian Bar Ass’n, *Launching the National Strategic Plan for Legal Aid* (Dec. 31, 2015). See Ghannam et al., *Criminal Defense Law Clinics: A Path to Better Lawyering in Palestine*, in *EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST & BEYOND* 236-53 (Mutaz Qafisheh & Stephen Rosenbaum eds., 2016); Ahmad Barak, *The Right to Have a Lawyer at Investigation and Interrogation According to Palestinian Law and Legal Aid Bill*, 4 *L. J. OF THE PALESTINE B. ASS’N* 11, 26-27 (2013); DIANA BUTTU, U.N. DEV. PROGRAMME, *MAPPING STUDY: LEGAL AID SERVICES PROVIDED BY THE PALESTINIAN AUTHORITY* 26-27 (2011).

144. Advocates Law, *supra* note 6, at art. 26(1).

145. Legal Profession Code of Ethics, *supra* note 5, at art. 9.

146. Legal Profession Code of Ethics, *supra* note 5, at art. 9.

as real estate contractors). It is also common to find lawyers who gather in collective offices in order to reduce the cost. On the other hand, it is possible for lawyers, under Article 20(2) of the Advocates Law, to open law firms in the form of “civil companies”; but there are only twelve law firms that formally registered with the Bar as such, although the actual number of law offices in which lawyers act as groups are on the rise.<sup>147</sup> In effect, the Bar does not firmly monitor the existence of the “appropriate office”; it merely asks each lawyer to provide the address of his office in a fixed form while paying the annual membership fees.<sup>148</sup>

Furthermore, prominent lawyers who have heavy caseloads hire lawyers as employees in their offices, giving them either salaries, a percentage of revenue, or some combination of the two. In order to be formally compliant with the law, lawyers who manage law offices do make arrangements for their lawyer staff to appear as partners in the offices, while effectively working as “employees.” This situation is unfair, and probably unethical, as such employees do not enjoy the rights of labor law. To overcome this problem, the P.B.A. needs to recognize this fact and allow certain law offices to formally employ lawyers based on labor law, similar to the arrangement that the Bar initiated for resident lawyers, as discussed above.

### *B. Lawyer-Client Relationship*

The relationship between the lawyer and his client is probably the most significant ethical aspect that affects an ordinary person’s image of lawyers and the entire law profession. For this reason, Article 36 of the Code drew a general ethical obligation on lawyers *vis-à-vis* their clients in the following terms:

The lawyer shall defend his client honestly, sincerely and professionally. The lawyer shall endeavor to preserve the client’s rights. The lawyer shall be responsible if he exceeds the delegation that the client assigned him as well as for his serious professional negligence. The lawyer should say the truth to his client and give him professional legal advice.<sup>149</sup>

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147. Interview with Dawoud Fouda, Manager of the West Bank Bar, in Ramallah, Palestine (Jun. 28, 2018).

148. A copy of this form is on file with the Author. RAMADAN, *supra* note 138, at 27.

149. Legal Profession Code of Ethics, *supra* note 5, at art. 36.

Based on this framework, the Code touches upon the most frequent types of misconduct that have become commonplace among lawyers in recent years.

The lawyer should defend his client honestly and should work under the client's direction.<sup>150</sup> No lawyer may delegate his representation to another lawyer without the client's approval; but, if the power-of-attorney is silent regarding the delegation of representation to others, the lawyer may ask another to act on his behalf without the client's approval.<sup>151</sup> The lawyer may not take cases against any institution that he works in.<sup>152</sup> A lawyer may not represent a party in a case in which he previously acted as a judge, investigator or arbitrator.<sup>153</sup> The lawyer may not abandon the case at an inappropriate time;<sup>154</sup> and, if the lawyer wishes to resign representation from a given case, he is bound to continue the proceeding of that case if the client's interest requires so.<sup>155</sup> It is prohibited for the lawyer to be represented on behalf of two parties in a given case,<sup>156</sup> to represent a client adverse to another client who gave the lawyer a general power-of-attorney, or to represent a client adverse to a party whose case the lawyer expressed an opinion on.<sup>157</sup>

Confidentiality and privacy of the client should be preserved by the lawyer.<sup>158</sup> The lawyer cannot act as a witness against clients based on the information that he obtained during the proceedings of a given case. He should refrain from offering an opinion to the opponent party during a lawsuit, or after its conclusion.<sup>159</sup> It is illegal for a lawyer to

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150. Advocates Law, *supra* note 6, at art. 26(3).

151. 1999 Concerning the Amendment of Legal Profession, *supra* note 100, at 5.

152. HCJ 15/2005 (2006) (Ramallah); Legal Profession Code of Ethics, *supra* note 5, at art. 40(5).

153. Advocates Law, *supra* note 6, at art. 9; Legal Profession Code of Ethics, *supra* note 5, at art. 40(7).

154. Advocates Law, *supra* note 6, at art. 24; Legal Profession Code of Ethics, *supra* note 5, at art. 39.

155. Court of Cassation, 251/2009 (2009) (Ramallah).

156. Court of Cassation, 179/2004 (2005) (Ramallah); Legal Profession Code of Ethics, *supra* note 5, at art. 40(1).

157. Advocates Law, *supra* note 6, at art. 27(3); Legal Profession Code of Ethics, *supra* note 5, at art. 40(2-6).

158. Legal Profession Code of Ethics, *supra* note 5, at arts. 13-14 (the latter article deals specifically with the lawyer obligation of confidentiality in cases involving women subjected to violence); Ramadan, *supra* note 121, at 35-37.

159. Advocates Law, *supra* note 6, at art. 28(4-5); Legal Profession Code of Ethics, *supra* note 5, at arts. 17, 45.

buy assets or rights arising from a case that he is in charge of.<sup>160</sup> After the end of representation, the lawyer should hand back to the client any documents relating to the case.<sup>161</sup>

There is now a clear prohibition of client betrayal. Instances of betrayal may include: wasting time, providing false promises, taking money from the other party on behalf of the client and not giving it to the client.<sup>162</sup> Client betrayal, which is in effect the most severe misconducts by lawyers, also includes: accepting representation to appeal after the passage of the deadline fixed for appeal, taking advantage of the power-of-attorney to sell a client's owned land, conspiring with the lawyer of the other party, destroying the client papers that the lawyer obtained for defense, failing to return documents to the client as a way to put pressure on the client to pay more fees, continuing representation after the power-of-attorney's termination, and taking inflated fees.<sup>163</sup>

Negligence by lawyers amounts to unprofessional/unethical acts.<sup>164</sup> Examples of reported negligence are: failure to appeal a case on time, delaying the launch of a lawsuit after being represented,<sup>165</sup> confiscation of the client's assets received from the other party,<sup>166</sup> dropping a case without the client's permission,<sup>167</sup> absence from court hearings without justification,<sup>168</sup> conciliation with the other party without the client's approval, failure to register the main lawsuit after

160. RAMADAN, *supra* note 138, at 28-29.

161. Advocates Law, *supra* note 6, at art. 22(2); Legal Profession Code of Ethics, *supra* note 5, at art. 47(2); Palestinian Bar Association Disciplinary Council 238/2014 (2016) (Ramallah). Among other things, the lawyer in this case was accused of withholding the lease contract from the client and was suspended from practice for a month.

162. Palestinian Bar Association Disciplinary Council 67/2016 (2016) (Ramallah). In this case, the lawyer was suspended from practice for one month, despite the fact that he conciliated with the client.

163. Legal Profession Code of Ethics, *supra* note 5, at arts. 36-38.

164. RAMADAN, *supra* note 138, at 34-35.

165. *Id.*; Palestinian Bar Association Disciplinary Council 250/2013 (2016) (Ramallah). In this case, the lawyer was convicted and suspended from practice for one year on the ground that he failed to file the case at the court after being contracted by the client for representation.

166. Advocates Law, *supra* note 6, at art. 28(2); Legal Profession Code of Ethics, *supra* note 5, at art. 16(2). Palestinian Bar Association Disciplinary Council, 151/2014 (2015) (Ramallah). In this case, the lawyer was convicted and suspended from practice for eighteen months for selling a piece of land of his client and taking the money for himself, against the client's will.

167. Palestinian Bar Association Disciplinary Council 213/2015 (2016) (Ramallah).

168. Palestinian Bar Association Disciplinary Council 287/2014 (2016) (Ramallah).

starting the urgent case (the 2001 Palestinian Civil Procedures Law requires the plaintiff who claims a right before a court on a temporary basis due to urgency of the case to register the main lawsuit within eight days after initiating the urgent matter),<sup>169</sup> delaying the registration of land that he was assigned to register at the land authority, procrastination, claiming fees without performing the required task, and not filing relevant complaints in criminal cases.<sup>170</sup>

The financial arrangements between the lawyer and client often raise ethical issues. Sometimes lawyers exaggerate or mislead the client on their fees. On the other hand, some clients underestimate the lawyer's efforts and do not pay lawyers the required fees, especially when they win or lose the case quickly or when the parties decide to end the case by conciliation. Although Articles 21-23 of the 1999 Advocates Law addressed the question of the lawyer's fees as one of his rights in relation to the client,<sup>171</sup> the law did not specify the criteria for calculating such fees. For about two decades after the formation of the P.B.A., lawyers depended on the rules inherited from various legal systems that had been applicable in Palestine to determine their fees.<sup>172</sup> Specifically, West Bank lawyers used to revert to Jordanian law and its bylaws to claim their fees.<sup>173</sup> Courts, to overcome this legislative gap tended to decide the lawyer's fees as part of the same substantive judgments by which they decided the case.<sup>174</sup> In addition, the Bar formed various "lawyer's fees committees."<sup>175</sup>

The Code, at last, advanced clear rules regarding lawyer-client financial parameters, including the fees, and set related ethical standards. The lawyer may reach an agreement with his client regarding the fees. Fees, even with an agreement, should be proportionate given the case subject-matter, the lawyer's efforts, and the case result.<sup>176</sup> In all cases, lawyers may not ask for low fees as a means to attract clients

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169. 2001 Palestinian Civil Procedures Law, *PALESTINE GAZETTE*. No. 38, at 5 (Sept. 5, 2001) (Palestine).

170. Palestinian Bar Association Disciplinary Council, 143/2014 (2017) (Ramallah).

171. Advocates Law, *supra* note 6, at arts. 21-23.

172. RAMADAN, *supra* note 14, at 359; 1966 Jordanian Bar Association Bylaws, *supra* note 56, at 39-43; Advocates Law, *supra* note 6, at arts. 22-27; Advocates Fees Rules, *supra* note 19; DRAYTON, *supra* note 19, at 2937.

173. Court of Cassation, 631/2010 (2012) (Ramallah).

174. Court of Cassation, 194/2006 (2008) (Ramallah).

175. ADMINISTRATIVE AND FINANCIAL REPORT 2016, *supra* note 104, at 66.

176. Legal Profession Code of Ethics, *supra* note 5, at art. 46(1).

or compete with other lawyers.<sup>177</sup> If a fee agreement exists, the Code provided that the fees shall be between five and twenty-five percent of the case value in civil matters. In criminal cases, fees may be fixed based on the “significance of the case and its burden on the client.”<sup>178</sup> It is unethical for lawyers, in the absence of an agreement, to have fees according to their own estimation or to confiscate the case documents as a bargaining chip to force the client to pay fees.<sup>179</sup> The lawyer is bound to inform his client of any money that he receives on the client’s behalf.<sup>180</sup> To avoid turning him into an employee, no lawyer may receive monthly or annual fees in exchange for representation or advice.<sup>181</sup>

As legal advice is an indispensable lawyering function, the Code stipulated ethical rules that bound lawyers while giving consultations.<sup>182</sup> Article 48 set out the general principle underlying the ethics of the legal advice:

While providing advice from his office or within public or private institutions or for companies, the lawyer shall adhere to professional ethics . . . . He shall not hide his capacity as a lawyer, nor may he break the law to please his client, or to support a client’s illegal position.<sup>183</sup>

While legal advisors may not use misleading tactics to serve clients,<sup>184</sup> lawyers should strike a balance between the interests of the client that they advise and the law.<sup>185</sup> Article 41 of the Code bans lawyers from advising a client’s opponent on their case, or on related cases, even after the conclusion of the lawsuit, for any reason.<sup>186</sup>

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177. Legal Profession Code of Ethics, *supra* note 5, at art. 46(2).

178. Legal Profession Code of Ethics, *supra* note 5, at art. 46(3-4).

179. Legal Profession Code of Ethics, *supra* note 5, at art. 47.

180. Legal Profession Code of Ethics, *supra* note 5, at art. 38.

181. Legal Profession Code of Ethics, *supra* note 5, at art. 42.

182. See Shadi A. Alshdaifat, *Teaching Legal Ethics to Legal Advisors*, in *EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST & BEYOND* 485 (Mutaz Qafisheh & Stephen Rosenbaum eds., 2016).

183. Legal Profession Code of Ethics, *supra* note 5, at art. 48.

184. Palestinian Bar Association Disciplinary Council 98/2014 (2016) (Ramallah).

185. Legal Profession Code of Ethics, *supra* note 5, at art. 49.

186. RAMADAN, *supra* note 138, at 23-24.



*C. Relations Between Lawyers*

Lawyer cooperation with fellow lawyers comprises indispensable ethical dimensions.<sup>187</sup> Articles 21-22 of the Code drew the principles that underlie the inter-lawyer relationship.<sup>188</sup> This relationship should be based on moral conduct, respect, and rapid conflict resolution. The relationships among lawyers include: avoiding conflicts of interest, cooperation in lawsuits and pleadings, a lawyer's consent to accept representation in a case following a colleague's resignation, relations between practicing lawyers with their apprentices, and the obligations of the apprentices themselves.

Conflicts of interest among lawyers should be avoided. To this effect, lawyers cannot be partners in more than one law firm.<sup>189</sup> The lawyer may sue a fellow lawyer or the Bar only after getting permission from the P.B.A.'s Council.<sup>190</sup> Lawyers from the same law firm may not plead against one another on behalf of two different clients.<sup>191</sup> A lawyer must refrain from invoking private talks or communications with his fellow lawyer in court proceedings unless he obtains written consent to do so.<sup>192</sup>

Cooperation in lawsuits and pleadings, even between rival lawyers, constitutes an ethical and legal obligation. Article 28 of the Code binds all lawyers to respect the right of defense.<sup>193</sup> Each lawyer should supply his opponent party with his memos and written pleadings. If a lawyer attends a case of behalf of his colleague, the lawyer should perform all he could for a proper representation. Lawyers are banned, based on Article 31 of the Code, from "discussing the merits of the case with the other party, except with the presence of the other party's lawyer, or with that lawyer's written consent."<sup>194</sup> Lawyers cannot use in their memos or pleadings any irrelevant, illegal

187. RAMADAN, *supra* note 138, at 38-39.

188. Legal Profession Code of Ethics, *supra* note 5, at arts. 21-22.

189. Advocates Law, *supra* note 6, at art. 27(1); Legal Profession Code of Ethics, *supra* note 5, at art. 35.

190. Advocates Law, *supra* note 6, at art. 26(5); Legal Profession Code of Ethics, *supra* note 5, at art. 30.

191. Advocates Law, *supra* note 6, at art. 27(2); Legal Profession Code of Ethics, *supra* note 5, at art. 35.

192. Legal Profession Code of Ethics, *supra* note 5, at art. 29.

193. Legal Profession Code of Ethics, *supra* note 5, at art. 28.

194. Legal Profession Code of Ethics, *supra* note 5, at art. 31.

or humiliating issues.<sup>195</sup> Lawyers are generally prohibited from committing any misconduct, such as slander or false promises.<sup>196</sup> If he learns of any unethical behavior of a colleague or if he is required by the Bar to investigate such behavior, the lawyer must, “professionally and objectively,” inform the Bar Council of such unethical behavior.<sup>197</sup>

If a lawyer decides to resign from representing a client in a given case, no other lawyer may agree to replace the former lawyer without the written consent of the resigned lawyer. The same applies when the client decides to dismiss the lawyer from representation.<sup>198</sup> However, the Advocates Law and the Code are silent in the cases in which the lawyer refuses to leave the case. Indeed, sometimes lawyers refuse to consent as they need the client to pay them their pending fees.<sup>199</sup> In this situation, the applicable custom empowers the client to revert to the Bar Council and, in such cases, the Council normally gives its approval after resolving pending issues.<sup>200</sup> This custom has been indirectly codified by Article 27 of the Code, which requires lawyers to revert to the Bar bodies to resolve their conflicts.<sup>201</sup>

In Palestine the number of apprentice lawyers has been steadily increasing and the majority of disciplinary actions are caused by these apprentices’ unethical behavior. As a result, the Code dedicated three articles setting ethical requirements for apprentices (Articles 24-26).<sup>202</sup> While the total of registered apprentices in the West Bank was 540 in 2006, it reached 3,068 by April 2018.<sup>203</sup> In 2017 alone, 1,372 law graduates were admitted as apprentices in the West Bank.<sup>204</sup> In Gaza there are currently 1,200 apprentices.<sup>205</sup> That brings the total of apprentices in the country to over 4,200.<sup>206</sup> For this reason, it is relevant to briefly describe the apprenticeship system in Palestine, before moving to the ethical obligations and responsibilities of apprentices.

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195. Legal Profession Code of Ethics, *supra* note 5, at art. 32.

196. Legal Profession Code of Ethics, *supra* note 5, at art. 33.

197. Legal Profession Code of Ethics, *supra* note 5, at art. 34.

198. Legal Profession Code of Ethics, *supra* note 5, at art. 23(3).

199. Interview with Dr. Isam Melhim, Law Professor, in Hebron, Palestin (July 20, 2018).

200. *Id.*

201. Legal Profession Code of Ethics, *supra* note 5, at art. 27.

202. Legal Profession Code of Ethics, *supra* note 5, at arts. 24-26.

203. ADMINISTRATIVE AND FINANCIAL REPORT 2018, *supra* note 104, at, 7.

204. ADMINISTRATIVE AND FINANCIAL REPORT 2018, *supra* note 104, at, 7.

205. Farra, *supra* note 105.

206. These figures are changeable: some apprentices become practitioners, and new graduates register as apprentices.

The apprenticeship of lawyers now is a continuation of the system that the British erected in the 1920s and survived throughout the subsequent periods. The difference today is that the P.B.A. has developed a separate bylaw related to apprenticeship,<sup>207</sup> unlike previous legislation that regulated the system as part of the general bar law. Any graduate who wishes to become a lawyer should spend two years of service in an office of a lawyer who has over five years of practice experience.<sup>208</sup> The unpaid apprentice should train full-time and refrain from other jobs.<sup>209</sup>

The current apprenticeship system is problematic by all counts. Some practitioners do not have enough cases or experience to train new graduates.<sup>210</sup> Other lawyers lack interest in training newcomers, fearing competition.<sup>211</sup> Further, many apprentices believe that they mainly perform administrative and personal tasks for their lawyers.<sup>212</sup> As apprentices are unpaid, many find no other option but to work in variety of available jobs.<sup>213</sup> This puts them at odds with the law that bans apprentices from taking paid work.<sup>214</sup> It is not unusual to find apprentices who do not attend court hearings or report to law offices. It is not surprising, therefore, to find that seventy-two percent of apprentice lawyers distrust the apprenticeship.<sup>215</sup> Because the number of law students is rapidly increasing, the number graduates interested in becoming lawyers far exceeds the total of lawyers who are able or willing to offer training.<sup>216</sup> To make it even more difficult for law graduates to find supervisors, the P.B.A. decided in April 2018 to restrict practicing lawyers who have between five and ten years of experience from training more than one apprentice, instead of two as

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207. Palestinian Bar Ass'n., *Lawyers Apprenticeship Bylaw No. 1* of Oct. 8, 2004 (2004) (Palestine) [hereinafter *Lawyers Apprenticeship Bylaw No. 1*]; HJ 7/2004 (2005) (Ramallah).

208. *Lawyers Apprenticeship Bylaw No. 1*, *supra* note 207, at art. 8(a).

209. *Id.* at art. 7(b). It was decided that the Bar may expel an apprentice lawyer because he was working as a police officer. HJ 25/2004 (2005) (Ramallah).

210. MUSAWA, *THE THIRD LEGAL MONITOR: THE STABLE AND CHANGEABLE IN THE STATUS OF JUSTICE IN PALESTINE* 136 (2014).

211. *Id.*

212. On this, forty-nine percent of the apprentices believe that they work as 'servants' for their trainers. *See id.* at 144.

213. *Id.* at 139.

214. *Lawyers Apprenticeship Bylaw No. 1*, *supra* note 207, at art. 7(b).

215. MUSAWA, *supra* note 210, at 139.

216. Hadiel Halaika, *Apprentice Lawyers: Present and Prospects*, in MUSAWA, *THE FOURTH CONFERENCE ON THE INDEPENDENCE OF LAWYERS* 50-54 (2015).

was the case over the past decades; only those lawyers who have ten years of practice or above can train two apprentices.<sup>217</sup>

The ethical rules relating to the apprenticeship should be analyzed against this background. Article 24 of the Code draws the standards that lawyers should follow while dealing with their apprentices. As some lawyers consider the knowledge that they have acquired over the years to constitute professional “secrets” and often hesitate to transfer such “secrets” to apprentices, paragraph 1 of the aforementioned article provides that the supervising lawyer should advise the apprentice and supply him with the skills needed for the practice.<sup>218</sup> In particular, paragraph 2 adds, “[t]he [supervising] lawyer may not assign the apprentice with any task that falls outside training on lawyering. He may not require the apprentice to perform any task beyond his ability, or that exceeds the mandate set out in the law and the apprenticeship regulations.”<sup>219</sup>

At the same time, the apprentice lawyers should behave ethically. According to Article 29(2) of the Advocates Law, the ethics enshrined in the law or regulations regarding practicing lawyers apply to apprentices.<sup>220</sup> Specifically, Article 25(1) of the Code binds the apprentice to “(a) work closely with his supervising lawyer and report to his office; (b) study the case that he works on and discuss it with his supervisor; and (c) preserve the secretes of the his supervising lawyer and his office.”<sup>221</sup> If the apprentice abandons the training without a valid reason, the supervisor is under an obligation to inform the Bar.<sup>222</sup> In such cases, normally the Bar removes the apprentice from the training or reduces the time of absence from the two-year period reserved for the apprenticeship. In addition, Article 18 of the Code bans the apprentice from appearing as a practicing lawyer, for example by opening an independent office or engaging in advertising.<sup>223</sup> If the apprentice misleads the public by pretending that he practices law, he might be fined and/or imprisoned for two months and may face disciplinary action.<sup>224</sup>

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217. Lawyers Apprenticeship Bylaw No. 1, *supra* note 207, at art. 10(b).

218. Legal Profession Code of Ethics, *supra* note 5, at art. 24.

219. Legal Profession Code of Ethics, *supra* note 5, at art. 24.

220. Advocates Law, *supra* note 6, at art. 29(2).

221. Advocates Law, *supra* note 6, at art. 25(1).

222. Advocates Law, *supra* note 6, at art. 29(2).

223. Advocates Law, *supra* note 6, at art. 18.

224. Advocates Law, *supra* note 6, at art. 18(2).

*D. Lawyers' Relations with the Judiciary*

There are a number of ethical standards that lawyers should respect in relation to judges and prosecutors. Some of these standards are inherited from previous periods in Palestine and from other jurisdictions of the world, to which the current Advocates Law is lacking.<sup>225</sup> The 2016 Code has bridged this gap.<sup>226</sup> Such standards include: lawyers' respect of and cooperation with courts in good faith,<sup>227</sup> a prohibition against corrupting judges or discussing the case outside the courthouse,<sup>228</sup> and a rule against wasting the time of judges by, for example, requesting the session's delay without an adequate reason.<sup>229</sup> Lawyers should not mislead the court by changing the case facts, citing invalid legislation, or invoking contradictory precedents or non-existing jurisprudence.<sup>230</sup> The lawyer should attend court sessions on time, be brief, and avoid frivolous arguments or evidence manufactured to prolong proceedings.<sup>231</sup>

As was the practice in former periods in Palestine,<sup>232</sup> and as in elsewhere in the world, lawyers are required to dress in accordance with unified custom while appearing before judges in court sessions.<sup>233</sup> Article 9 of the Code specified the uniform "according to the decision [of the Bar Council] and in light of the traditions and customs of the legal profession, and based on the regulations of the Bar Association and other regulations."<sup>234</sup> In practice, lawyers are obliged by courts to wear a robe that covers the person's top, down to the middle of their legs. Judges strictly require lawyers to wear such robes during court

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225. *See generally* THOMAS D. MORGAN & RONALD D. ROTUNDA, MODEL RULES OF PROFESSIONAL CONDUCT AND OTHER SELECTED STANDARDS INCLUDING CALIFORNIA AND NEW YORK RULES ON PROFESSIONAL RESPONSIBILITY (Foundation Press, 2013); JAMES E. MOLITERNO, CASES AND MATERIALS ON THE LAW GOVERNING LAWYERS (4th ed., Lexis Nexis, 2012); Nigel Duncan & Susan L. Kay, *Addressing Lawyer Competence, Ethics and Professionalism*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 183-96 (Frank S. Bloch ed., 2011).

226. RAMADAN, *supra* note 121, at 31-32.

227. Legal Profession Code of Ethics, *supra* note 5, at art. 50.

228. Legal Profession Code of Ethics, *supra* note 5, at arts. 19, 52.

229. Legal Profession Code of Ethics, *supra* note 5, at art. 54.

230. Legal Profession Code of Ethics, *supra* note 5, at art. 53.

231. Legal Profession Code of Ethics, *supra* note 5, at art. 54.

232. Advocates (Forensic Robes), *supra* note 38.

233. Advocates Law, *supra* note 6, at art. 26(4).

234. Legal Profession Code of Ethics, *supra* note 5, at art. 9.

hearings, and also require that they wear exclusively black or blue suits under the robes, subject to expulsion from the courtroom.<sup>235</sup>

Finally, lawyers are obliged to respect the court personnel, the witnesses, the experts, and the other party. The lawyer is prohibited to influence either the witnesses or the technical experts. He should ask them to say the truth.<sup>236</sup> On the other hand, judges and judicial staff are under obligation to respect lawyers, and to treat them equally without favor or discrimination, according to the 2006 Judicial Code of Conduct,<sup>237</sup> and the 2011 Code of Conduct of the Judicial Institutions Personnel.<sup>238</sup>

### *E. Disciplinary Measures*

The unethical conduct discussed above is common among Palestinian lawyers and negatively affects the profession in the public's eyes.<sup>239</sup> Complaints on such issues are frequently and increasingly reported to, and processed by, the Bar Council. From September 2014 to September 2015, for instance, 199 complaints were filed against lawyers, incorporating fifty-three types of misconduct, which can be grouped under four categories: negligence, client betrayal, attacking other lawyers or the Bar, and ordinary crimes.<sup>240</sup> Certain complaints comprise a mixture of such misconduct.<sup>241</sup> Lawyers, or the Bar, do file complaints against certain lawyers for conduct including: suing a fellow lawyer without the Bar's clearance,<sup>242</sup> conflict with or mistreatment of apprentice lawyers, representing a client who already has another lawyer, and insulting another lawyer or the Bar.<sup>243</sup> People do complain against lawyers over ordinary crimes, including: slander,

235. Melhim, *supra* note 199.

236. Legal Profession Code of Ethics, *supra* note 5, arts. 56-69.

237. Decision of the High Judicial Council No. 3 of May 10, 2006, Concerning the Judicial Code of Conduct, arts. 3, 11, 18, 38, PALESTINE GAZETTE No. 67, at 75 (Oct. 19, 2006) (Palestine).

238. *Code of Conduct of the Judicial Institutions Personnel*, HIGH JUDICIAL COUNCIL (Dec. 12, 2011), [http://courts.gov.ps/details\\_ar.aspx?id=fXEQgCa26649084afXEQgC](http://courts.gov.ps/details_ar.aspx?id=fXEQgCa26649084afXEQgC) [<https://perma.cc/ZSN9-79DA>].

239. Beal Mallah, *The Stereotyping Image of Lawyers in the Palestinian Society: Effects on the Rule of Law*, Address at the International Conference on Legal Profession in Palestine from a Global Context: Prospects for Reform (Nov. 2016).

240. *See Musawa, supra* note 210 and accompanying text.

241. Palestinian Bar Association Disciplinary Council 207/2011 (2015) (Ramallah).

242. Palestinian Bar Association Disciplinary Council 188/2016 (2016) (Ramallah).

243. *See MUSAWA, supra* note 210 and accompanying text.

forgery, fraud, weapon possession, death threats, illegal restriction of liberty, and non-payment of debt.<sup>244</sup> Yet the Bar in most of the latter cases declares that it has no jurisdiction.<sup>245</sup>

Unethical conduct is investigated through disciplinary councils, whose work is set forth in Articles 30-35 of the 1999 Advocates Law and Articles 61-62 of the 2016 Code of Ethics. The P.B.A. established the Complaints Department on July 9, 1997, the very day of the Bar's foundation.<sup>246</sup> The Bar forms as many councils as needed, and each comprises three lawyers who have practiced for over ten years. Complaints may be reported to the Bar Council by the Attorney General, a fellow lawyer, or any of the parties.<sup>247</sup> After the preliminary examination of the claim, the Bar may refer the complaint to a disciplinary council, which carries out its investigation based on criminal procedure law.<sup>248</sup> The lawyer may be instructed to stop practicing during the investigation. Acting as quasi-judicial bodies,<sup>249</sup> disciplinary councils review written documents, notify parties, conduct pleading sessions, hear witnesses, discuss evidence, and record proceeding minutes.<sup>250</sup> After reaching its conclusion, the disciplinary council reports its findings to the Bar Council, which acts as an appellate court. The Council may uphold the disciplinary action, modify, or revoke it.<sup>251</sup>

In case of conviction, the Bar Council may decide to punish the lawyer through one of the following four penalties:<sup>252</sup> (1) notification;<sup>253</sup> (2) reprehension; (3) suspension of law license for a fixed period not exceeding five years; or (4) permanently freezing the

244. *Id.*

245. Abusafieh, *supra* note 113.

246. PALESTINIAN BAR ASS'N, REPORT OF THE COMPLAINTS DEPARTMENT FOR 2014-2015 (2016).

247. RAMADAN, *supra* note 138, 40-55.

248. HCJ 851/2009 (2011) (Ramallah).

249. The term 'court of discipline' was used for such bodies under the British rule and this 'court' was composed of judges and lawyers. *See, e.g.*, Advocates Ordinance 1922, *supra* note 25, art. 18.

250. In one disciplinary case (2015), for instance, the file comprised forty-seven pages; on another case, the file incorporated forty-eight pages (copies of these cases are on file with the author).

251. Disciplinary Report (Recommendation) on Case No. 252/2013 (Mar. 12, 2016) (Ramallah) (on file with the author). The Bar Council confirmed the recommendation on April 2, 2016.

252. Advocates Law, *supra* note 6, at art. 29.

253. HCJ 204/2010 (2011) (Ramallah).

lawyer's Bar membership (virtually expelling him from the profession).<sup>254</sup> When the decision is taken to expel the lawyer or suspend his practice, the Bar Council extends letters to this effect to a number of official institutions, including the High Judicial Council (courts), the Attorney General (prosecution), the Lands Authority, and the Companies Registry.<sup>255</sup> Convicted lawyers can appeal the Bar's decision within thirty days to the High Court of Justice.<sup>256</sup> In the year 2015/2016, nine convicted lawyers appealed the Bar's decision.<sup>257</sup> The convicted lawyer may not perform any lawyering act during the period of his suspension, subject to invalidity of such acts.<sup>258</sup> In such cases, the suspended lawyer may be convicted of a crime and be fined and/or imprisoned for two months according to Article 18(2) of the Advocates Law.<sup>259</sup>

The Bar Council has formed three "complaint committees" mandated to receive claims and to conduct preliminary examinations before referring cases to disciplinary councils.<sup>260</sup> Noticeably, the P.B.A. started to take complaints against lawyers more seriously. In 2014/2015, for example, out of 343 complaints received by P.B.A., only sixteen lawyers were referred to disciplinary councils and only three were convicted.<sup>261</sup> In the following year (until April 2016), the Bar Council referred fifty-three cases to disciplinary councils out of a total of 273 received complaints; forty-three lawyers were convicted: four notified, one reprehended, and thirty-eight were suspended from practicing temporarily (often three to six months), or permanently removed from the Bar.<sup>262</sup> In 2017 and 2018, the P.B.A. received 321 complaints; twenty lawyers were convicted.<sup>263</sup>

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254. HCJ 303/2010 (2011) (Ramallah).

255. *Abusafieh*, *supra* note 98. Copies of such letters on Case No. 252/2013 (Mar. 12, 2016) (Ramallah) are on file with Author. Such letters are normally sent also to the court at which the convicted lawyer often appears.

256. Advocates Law, arts. 33(3), 34(3); Ramadan, *supra* note 138, at 64-66.

257. See Administrative and Financial Report 2016, *supra* note 33 and accompanying text.

258. HCJ 144/2010 (2010) (Ramallah).

259. RAMADAN, *supra* note 138, at 60-63.

260. Investigated cases that were obtained from the P.B.A. in May 2016 in Ramallah (on file with the author). The Author has requested not to report the details of these cases as they are confidential.

261. ADMINISTRATIVE AND FINANCIAL REPORT, *supra* note 104, at 32-33.

262. ADMINISTRATIVE AND FINANCIAL REPORT, *supra* note 104, at 32-33.

263. ADMINISTRATIVE AND FINANCIAL REPORT, *supra* note 104, at 12.



In general, the image of lawyers is not positive in the eyes of the general public,<sup>264</sup> partially due to the lack of ethical conduct by a considerable number of them.<sup>265</sup> Also, in popular culture, the best lawyer is the “liar.” Honest lawyers are considered weak and mostly remain obscure. Hence, it is significant to teach legal ethics and professional responsibility at law schools as part of the apprenticeship period.<sup>266</sup> Some Palestinian law schools, like Hebron University, have started to teach “Legal Ethics” as a course.<sup>267</sup> Hebron University likewise includes legal ethics as an integral part of its legal clinics syllabi, whereby students are exposed to relevant rules of professional responsibility and analyze cases involving lawyers’ misconduct.<sup>268</sup>

Other sources of responsibility might apply to lawyers who violate professional ethics. Some lawyer misconduct could amount to criminal conduct, such as theft, fraud and breach of trust, and could be prosecuted based on the applicable penal codes: the 1936 Penal Code Ordinance in the Gaza Strip,<sup>269</sup> the 1960 Penal Code in the West Bank,<sup>270</sup> as well as the 2001 Criminal Procedures Law.<sup>271</sup> Those injured by the illegal acts of lawyers might claim effective remedy, including compensation and restitution, mainly based on the 1944 Civil Wrongs Ordinance,<sup>272</sup> and the 2001 Civil and Commercial Procedures

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264. BISHARAT, *supra* note 17, at 74-75.

265. Donald Nicolson, *Teaching Ethics Clinically without Breaking the Bank*, in EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST & BEYOND 450-71 (Mutaz Qafisheh & Stephen Rosenbaum eds., 2016).

266. See David Chavkin, *Experience is the Only Teacher: Bringing Practice to the Teaching of Ethics*, in THE ETHICS PROJECT IN LEGAL EDUCATION 52-78 (Michael Robertson, Lillian Corbin, Kieran Tranter & Francesca Bartlett eds., 2011). See generally Nina W. Tarr, *Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers*, 35 WM. MITCHELL L. REV. 1011 (2009); Detlev F. Vagts, *Professional Responsibility in Transborder Practice: Conflict and Resolution*, 13 GEO. J. LEGAL ETHICS 677 (2000).

267. Curricula of Hebron University College of Law and Political Science (2015) (on file with the author).

268. Mutaz Qafisheh, *Modern Legal Education in Palestine*, in EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST & BEYOND 231 (Mutaz Qafisheh & Stephen Rosenbaum eds., 2016); Ghannam et al., *supra* note 143, at 248.

269. 1936 Penal Code Ordinance in the Gaza Strip, PALESTINE GAZETTE (Supplement 1) No. 652, at 399 (Dec. 14, 1936) (Palestine).

270. 1960 Penal Code in the West Bank, JORDANIAN OFFICIAL GAZETTE No. 1487, at 374 (May 1, 1960) (Jordan).

271. 2001 Criminal Procedures Law, PALESTINE GAZETTE, No. 38, at 94 (Sep. 5, 2001), 94 (Palestine).

272. Regarding the Civil Rights Ordinance, 1944, PALESTINE GAZETTE (Supplement 1) No. 1380, at 149 (Dec. 28, 1944) (Palestine).

Law.<sup>273</sup> In both criminal and civil cases, the victim or injured person may revert to the court of first instance or the magistrate court, depending on the gravity of the crime and the sustained damages' value. The disciplinary decision by the Bar Council might feed these cases. However, such types of criminal and civil responsibility of lawyers are beyond the scope of this Article.

#### *IV. CONCLUSION*

Although legal ethics have been known and generally adhered to by Palestinian lawyers throughout the past century, the adoption of the 2016 Palestinian Legal Profession Code of Ethics can be considered a breakthrough. The Code comprehensively codified, for the first time ever, the values that lawyers should observe while practicing. The Code defines the practices that lawyers should follow to preserve the profession's honor and prestige, appropriate lawyers' behavior when interacting with their clients, the rules pertaining to inter-lawyer relationships and those that relate to the judiciary.

The Code addressed the roles that lawyers may play to contribute to social justice. It advanced the ethics relating to legal aid to marginalized groups, lawyers' fees,<sup>274</sup> and the lawyer's role in dealing with women who suffer from violence. The Code viewed the profession not merely as a source of income, but as a noble mission that protects the rule of law and the independence of the judiciary and promotes human rights and freedoms. The Code prohibited certain new misconduct that emerged in recent years and took into consideration the most common ethical standards that can be found in the codes of conduct of various jurisdictions around the globe. These standards would, in turn, increase the respect of the profession in the public eye and, more generally, contribute to the greater strengthening of the rule of law in the country.

While the current 1999 Palestinian Advocates Law sets out the disciplinary measures that can be initiated against lawyers who engage in unethical conduct, notwithstanding that the Palestinian Bar Association is increasingly taking lawyer misconduct more seriously. However, legal ethics still need time to take a firm root in legal education and training, the profession's traditions, and Bar actions. The 2016 Code puts Palestinian lawyers, as is the case of fellow lawyers in

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273. 2001 Civil and Commercial Procedures Law, *supra* note 169, at 94.

274. RAMADAN, *supra* note 138, at 20-22.

modern countries, on the right track when it comes to professional responsibility. That might, in turn, generate faith in the future of the legal profession in such a challenging context.