ATTORNEY-CLIENT PRIVILEGE

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1. INTRODUCTION

The purpose of this article is to analyze professional secrecy as it applies to the relationships between attorneys and clients.

In the first section of this analysis I will introduce general concepts with respect to professional secrecy which apply to attorneys as well as to other professionals such as medical doctors.

The second section of this analysis describes the characteristics of attorney-client privilege. This section will refer to the matter at hand, both from a legal ethics point of view and from the perspective of the positive law in force.

Finally, the third section of this analysis will describe the manner in which the attorney-client privilege is addressed in the different codes of ethics for lawyers.

In practice, this subject can usually be found in those chapters dealing with the general principles of legal ethics.

As explained by Ángela Aparisi Miralles in her book “Ética y Deontología para Juristas”1 [Ethics and Deontology for Lawyers], etymologically the word “Deontology” means the study of that which is an obligation or a duty. The term is composed by the Greek words deontos which

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means obligation or duty and *logos* which means treaty or speech. Thus, it refers to that part of philosophy which is concerned about the origin, nature, and purpose of duty, as opposed to anthology which refers to the study of the nature, origin, and purpose of being.

Currently, deontology mainly refers to the study of duties which emerge when practicing professions which are considered public interest professions, which require a relationship with the client or the patient, and which are freely exercised as monopolies since they require the professional to have a degree.

From that perspective, the deontological rules are basically professional ethics requirements. Therefore, just as it occurs with moral rules, deontological rules are taught to us as duties of conscience. Thus, as opposed to legal precepts, deontological rules as well as ethical principles precede the former and, in principle, bond the individual to the binding effect of the moral rule. Consequently, they establish criteria and parameters regardless of the existence of rules (basically deontological codes) which sanction or not the failure to comply with said duties.

The history of professional deontology has been intricately linked to the existence of deontological codes. The foregoing, to the extent that in various occasions, only those rules which appear in a deontological code are considered deontological rules.

In my opinion, the existence of non-codified duties which compliance is essential for the profession, is evident. Terms such as probity, prudence, and honor, are too broad to limit their scope to casuistry formulas.

In any case, and rejecting the strict equalization between deontological rule and codified deontology, it is necessary to admit that said codes have been and currently are valuable instruments which favor the publicity, certainty, and efficiency of deontological rules. Therefore, this analysis will refer to several of the referred codes.

As will be indicated below, the concept of professional secrecy has transcended beyond the deontological scope and is currently regulated in several laws.

It is precisely when the scope of said laws is discussed that professional secrecy is threatened. Due to the increase of crimes related to money laundering, terrorist financing, and drug trafficking, the possibility of exempting lawyers from protecting the attorney-client privilege has been suggested.

2. **THE PRINCIPLE OF PROFESSIONAL SECRECY**

According to Ángela Aparisi,\(^2\) perhaps one of the aspects that most defines a person is that of privacy, which can be explained as an inward opening of any human being.

\(^{2}\) Aparisi, Ángela, op. cit., p. 253
It is not just a matter of protecting the internal aspects of people but rather of guaranteeing that said “internal” aspects guide, without undue interference, the full development of each person according to his dignity.

In human relationships it is common and even necessary to share confidential matters with friends, relatives, professionals, etc. If the recipient of said information is unable to keep it and in turn reveals it, then he is infringing the covenant he had implicitly or explicitly established with the transmitter. In this case, part of a person’s privacy is revealed leading to personal and social consequences resulting from the possible repercussions this situation can entail. Hence, the foundation for and *raison d'être* of confidentiality both at a professional level and in a general context so to speak, lies in the protection of privacy and ultimately in personal dignity. It is a fundamental requirement which is especially recognized and valued in western cultures. This has led to the recognition of privacy rights in many constitutions.

In the catalogues of fundamental human rights and constitutional rights, which societies have been drafting for two centuries, the personal interests of individuals have been referenced in one way or another.

Rights to free association, free choice of occupation, respect for property, and personal domicile, are not but demonstrations that the law respects the different aspects of human beings.

The majority of constitutions throughout the world include laws which protect said individual strongholds. The German Constitution includes a right to have one’s personal or confidential matters be respected; the Spanish Constitution guarantees the rights to honor, to personal and family privacy, and to self-image.

In our country, articles 6, 14, and 16 of the constitution provide that the information regarding the personal life and personal information of individuals shall be protected by law. They also demand that a depravation or disturbance of freedom and property is only admissible when the authority has rendered its decision, with regard to the individual, based on previously existent legal provisions.

There are certain professions such as the medical and legal ones in which the provision of the professional service could require the prior revealing of the individual’s personal or private information. Therefore, a duty to maintain the obtained information secret and to be discrete emerges. This requirement not only refers to not revealing personal data through these means. The duty to maintain said information confidential also refers to the habit of being discrete, prudent, and cautious when speaking or writing.

Throughout history, many professionals have confirmed the importance of confidentiality in their respective codes of conduct. In reality this duty is, as we will prove, especially relevant in terms of the legal profession. The trust that a client vests in the attorney shall be backed-up by an impeccable behavior in this field. Professional secrecy is not only ethically recognized, but also legally.
3. ATTORNEY-CLIENT PRIVILEGE

3.1. General Concepts

In his book *Deontología Jurídica* [Legal Deontology], Dr. Victor Manuel Pérez Valera indicates that secrecy or stealth can be defined as the moral duty to not reveal to anyone the information known or received confidentially. Traditionally there are three types of confidentiality: natural, implied, and expressed, and the latter has three levels depending on whether the information is given in confidence, as a matter of friendship, or as a matter of exercising a profession. The latter, which is the most common type of expressed confidentiality, is known as professional secrecy. Furthermore, the duty of confidentiality is even more strict than in the previous cases so long as the information is shared by reason of exercising a profession and is not obtained through other means, since in that case it would represent another type of secret, but not privileged information as concerned with a profession.

In his book *Deontología Jurídica* [Legal Deontology], Rafael Gómez Pérez indicates that one must take into account that rarely will a person share something pleasant with his attorney. In fact, a person in need of an attorney is usually someone who is undergoing unpleasant situations or who is facing tensions or difficulties.

A client who appears before an attorney or notary public, and a litigant appearing before a judge, is faced with the need to reveal sensitive information that they would not otherwise reveal if they were not submerged in one of these situations.

Conversely, lawyers and judges (and, to a lesser extent, notary publics) frequently need to investigate other aspects of individuals’ private lives. These professionals cannot discretionally use the information they have obtained from individuals, and it would be considered contrary to the main principles of justice to reveal without cause the information they have acquired by reason of their profession.

Attorneys are under a stringent duty to maintain strict stealth of their profession.

We draw from the premise that a good defense requires a deep and rigorous knowledge of the occurred events (legal or illegal), concurrent circumstances, intentions, and details of the client’s personal life. Therefore, the attorney, due to the nature of his profession, is aware of extremely personal aspects of his client’s personal life. Every person who turns to an attorney should be completely certain that the information he or she provides is fully subject to professional secrecy. In fact, one of the main foundations of relationships with clients is the full trust that the attorney will not reveal what has been revealed to him.

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3 Mexico, Oxford University Press, S.A. de C.V., 2008, p. 157

The duty of confidentiality does not only impose a prohibition to reveal that information which has been made available to the professional by means of his work. It also implies maintaining, at all times, a behavior based on the strictest discretion and reserve. Said reserve shall not be limited to that information which relates to the matter at hand, but rather it shall extend to any other circumstance in which clients are, directly or indirectly, involved. Thus, it is possible to affirm that, in terms of professional ethics (and more specifically the attorney’s ethics), the duty of confidentiality represents a broader content than what is derived from ethics in general. Conversely, it is clear that it is only possible to reach such a strict level of stealth when the professional maintains, as a matter of habit, a prudent and discrete attitude at a personal level.

3.2. Elements of Attorney-Client Privilege

Based on the works of Ángela Aparisi and Rafael Gómez⁵, I will refer to the elements of professional secrecy.

3.2.1 Content

The duty of and the right to confidentiality include all the facts and events known to the attorney by reason of any of his professional activities.

They also include communications with foreign attorneys. Furthermore, their content shall be considered confidential, there being advisable to previously require from the foreign colleague acceptance that said information shall be considered as classified.

Hypothetically, let us imagine that the information got to the attorney through a channel other than his professional activity. In this case, the common virtue of discretion would also impose a duty to maintain said information confidential and to not reveal it, except when strictly necessary.

3.2.2 Timeframe

In the case of attorneys, the duty of professional secrecy shall persist after having provided the services, and even after the client’s death. The foundation of this requirement is that privacy is such an important aspect of a person’s life, that it shall be preserved regardless of the person’s death. There are also other important reasons for this requirement. First and foremost, because heirs or relatives of the deceased can have a legitimate interest in keeping the secret or, simply, in respecting the memory of the deceased. Conversely, it is also important to take into account that it is not illegal to reveal the deceased person’s secrets which could harm the latter’s honor or good image to his or her heirs or relatives.

3.2.3 Personal Scope

See Aparisi, op.cit., p. 262-267; Gómez, op.cit., p. 169 and 179.
Regarding the personal scope, the duty of confidentiality extends to every person who has access to the information. This is particularly important when the legal profession is exercised collectively.

A different aspect would emerge if it was strictly necessary to reveal to other people information which has become available while subject to professional secrecy. This circumstance could occur if an attorney who initiates a proceeding is then substituted by another, at any stage of the procedure. In these cases, the client must be previously informed and it shall not be assumed that the client authorized the revealing of said information to the other attorney. It would be more appropriate if the client expressly provides the information.

3.2.4 Special Circumstances and Cautions

There are certain circumstances in which the requirement of professional secrecy must be especially observed. These are circumstances in which it can be more difficult to maintain, in its entirety, the required secrecy. For example, in the event of an interview before any media (press, radio, television), press conference, etc. Prudence must cautiously be maintained in the event of cases which are subject to overwhelming public interest.

Conversely, it may prove useful to generally act cautiously at least as follows:

- Do not comment nor discuss professional matters in public places;
- Maintain a strict order in the documentation files, and especially, in the way the office is managed. Make sure that the documents are available only to those people who must work with them;
- Update files by destroying unnecessary documents or those containing particularly relevant information of a client one a procedure is over;
- Use recordings only when necessary. Be extremely cautious in the event said recordings include intimate secrets of the client;
- Those attorneys who are also scholars must be discrete when providing students with information related to matters handled by their law firms. Generally, when providing cases for practical exercises, they shall keep in mind that they ought to maintain professional secrecy.
- These matters have been aggravated since the generalized computer processing of data. With new means and instruments, it is necessary to acquire new customs and reserves. Thus, if on the one hand it is an obligation to create the necessary safety files in order to avoid the loss of data, on the other hand it is necessary to ensure that the computer processed data is only available to authorized individuals. In any case, it is not sensible to entrust private matters which attorneys can maintain in their memories or, if applicable, in documents kept with greater guarantees of safety, to computer processing.
3.2.5 Exceptions to the General Duty

In general, the principle of professional secrecy always governs (taking into account the characteristics of each profession) except in the event where there is a conflict with a higher legal requirement. This refers to circumstances in which there is no alternative to avoid seriously harming the client, the attorney, or a third party (for example, a client’s well-founded threat that he will take the life of a relative).

When evaluating the reasons which advise the revealing of a client’s confessions, the following criteria should be kept in mind:

- Proportionality requirement, which is a weighing of the goods at stake. The point is to evaluate the extent to which the possible harm to a third party is a sufficient reason to reveal the information protected by professional secrecy.

- Adequacy of the revealed information in terms of the sought purpose.

- Requirement of revealing strictly necessary information only.

3. Legal Protection of the Attorney-Client Privilege

The requirement of the referenced privilege, which at first was basically a professional ethics duty, has transcended beyond the moral scope and has also found a place within different laws.

3.1. Mexican Constitution

Our Constitution provides the following:

Article 6 ...

II. Information regarding private life and personal data shall be protected according to law and with the exceptions established therein.

Article 16 ...

Every person has the right to the protection of his personal data, to access, rectify and cancel the same, as well as to express opposition as provided by the law, which shall establish the cases of exception to the principles of data processing, for reasons of national security, public order regulations, public safety and health, or to protect third party rights.

[Paragraphs three to eleven]

Private communications are secret. The law shall punish according to criminal law any action against the liberty and privacy of such communications, except when they are voluntarily given by one of the individuals involved in them. A judge shall assess the implications of such
communications, provided they contain information related to the commission of a crime. Communications that violate the confidentiality duty established by the law shall not be admitted.

Only a federal judicial authority may authorize the intervention of any private communications, upon the request of the federal authority empowered by the law or by the Public Prosecutor of the corresponding state, wherefore the competent authority shall, in writing, state the grounds of the legal causes of the request, additionally describing the class of intervention required, the subjects and the term thereof. The federal judicial authority may not grant these authorizations when the matters involved are of electoral, tax, commercial, civil, labor, or administrative nature, nor in the case of communications of the defendant with his attorney.

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3.2. **Regulatory Law of Article 5 of the Constitution, Regarding the Practice of Professions in the Federal District**

The Law of Professional Services provides the following:

**Article 36.** Every professional shall be bound to observe strict confidentiality regarding the matters they have learned from their clients, except in terms of the reports compulsorily provided by the respective laws.

Conversely, article 71 of said Law provides that professionals shall be held liable for the illegal acts committed by their assistants or employees who are immediately under their direction or supervision. In my opinion, this article is unnecessary, since both the professional and his subordinates are liable if they engage in an illegal act.

**Article 71.** Professionals shall be held liable for the illegal acts committed by their assistants or employees who are immediately under their direction or supervision, so long as they did not provide adequate instructions or their instructions where the cause of the harm.

With regard to the foregoing, Book Four, Part One, Title First, Chapter V of the Federal District Civil Code, under title “Obligations arising from unlawful acts”, includes and governs the effects of unlawful acts.

Regardless of the fact that a person’s behavior is classified or not as a crime by the penal law, every person who acts against the law or good custom, causing harm is bound to repair the damages.

A civil wrong is a legal act which has the following characteristics:

- It is the voluntary behavior of a person, by any action or omission with willfulness or negligence.
- Said behavior is carried out against an imperative or prohibitive rule of conduct provided by law or custom. In fact, the provisions of article 1910 of the Federal District Civil Code relate to acting illicitly or against good customs.\(^6\)

- As a result of this behavior another person is harmed. It is important to note that there must be a causal link between the actor of the illicit behavior and the damage suffered by the victim, in such a way that the damage is a direct consequence of the behavior. Therefore, the referenced article 1910, in its final portion, excludes the actor’s liability if he can prove the fault or inexcusable negligence of the victim.

    The damage, for the purposes set forth herein, can be of several types: property, bodily, or moral.

    The effects of this legal act consist in the creation of a binding relationship which purpose is to repair the damage.

    It is evident that there can be no repair, in the full sense of the word, except in the case of property damages, that is, those which affect things that can be valued in money. However, in modern law it is common to use the concept of indiscriminate damage repair to refer to what corresponds to a true reparation of damage and to what is a monetary compensation for irreparable damages.

    When the damage consists of destroying or deteriorating things, the compensation amount shall be quantified according to the traditional criterion, which on the one hand considers the impoverishment or deterioration of property suffered by the victim, *damnum emergens*, and the privatization of the benefits that could be expected from the destroyed or damaged property, *lucrum cesans*.

    Moral damages, according to article 1916 of the Federal District Civil Code, should be understood as the non-physical injury inflicted upon a person’s feelings, affections, beliefs, decorum, honor, reputation, privacy, image, and physical appearance, or how the person is perceived in the opinion of others, regardless of the material damages suffered by the victim. In these cases, compensation shall be the payment of an amount of money, which amount is determined by the judge, who shall consider the infringed rights, the degree of liability, the financial situation of the responsible party and the victim, and any other case-relative circumstances.

    As I mentioned previously, in my opinion, an attorney who breaches the provisions of article 36 of the Law of Professional Services can also be held liable in terms of the above.

### 3.3. Federal District Criminal Code

\(^6\) Whoever, by acting illicitly, or against good customs, causes damage to another shall be obligated to compensate him or her, unless he or she can prove that the damage was caused as a result of fault or inexcusable negligence of the victim.
The referenced Criminal Code provides the following:

**Article 123.** Every person who reveals a secret or classified information which has become known or entrusted to him, or who uses said information to the advantage, whether personal or on behalf of others, without the consent of the transmitter and to the detriment of a person, shall receive a penalty of six months to two years in prison and shall have to pay a fine in the amount of twenty-five to one hundred days of minimum wages.

If the recipient became aware of the secret or classified information by reason of his job, position, profession, or trade, or if the secret was scientific or technological in nature, the prison term shall increase by fifty percent and the recipient shall be prevented from practicing his profession or trade for six months to three years.

In the event the recipient is a public official, he will be additionally dismissed and disqualified for six months to three years.

### 3.3.4. Federal Code of Criminal Procedure

This code provides the following:

**Article 243-Bis.** The following persons will not be obligated to make a declaration on the information they receive, have knowledge of, or have in their power:

I. Lawyers, technical consultants, and notaries public, with respect to matters in which they have been involved, when the information they have must be reserved to practice the profession:

   (Paragraphs II to V)

   In the event any of the persons involved in the previous paragraphs express their desire to declare and have the express consent of the person who told them the secret, information, or confession, said circumstance shall be recorded and the person’s testimony or declaration shall be heard.

### 3.4. Federal Criminal Code

Finally, in accordance with the previously transcribed provision of the Federal Code of Criminal Procedure, the Federal Criminal Code provides the following:

**Article 215.** A public official is liable for the offense of abuse of authority whenever the official incurs in any of the following conducts:

   (Paragraphs I to XIII)
XIV. Forces the persons referenced in article 243 Bis of the Federal Code of Criminal Procedure to declare with regard to information obtained by reason of their professional activity;

The person who commits the crime of abuse of authority in terms of paragraphs VI to IX, XIII and XIV shall be penalized with a nine-year term of prison, sixty to four hundred days of minimum wage, and dismissal and disqualification to perform another job, position, or public commission for two to nine years.

4. ATTORNEY-CLIENT PRIVILEGE IN CODES OF CONDUCT

As I mentioned previously, every code of conduct for attorneys that I consulted includes a section dedicated to professional secrecy. In this section I will make reference to codes that, with regard to the matter at hand, seem to me as more interesting.

4.1 Code of Conduct for Lawyers in the European Union

This code was adopted at the Council of Bars and Law Societies of Europe Plenary Session held on October 28, 1988.

4.2 Confidentiality

a) It is of the essence of a lawyer’s function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer’s obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

b) A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

The obligation of confidentiality is not limited in time.

c) A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

As can be noted, this code basically covers in a clear and concise manner all of the elements of professional secrecy, except with regard to the exceptions of an attorney’s professional secrecy duties.

4.3. Ibero-American Code of Judicial Ethics
This code was ratified on November 22, 1984.

**Article 38.** Extent of professional secrecy.

1. The attorney shall jealously protect the attorney-client privilege, which is a duty and a right inherent to the profession and to the right of defense given that the attorney serves as a recipient of the client’s secrets or confessions. Without attorney-client privilege there cannot be a proper relationship based on trust. Such right shall persist even after the attorney ceases to provide services.

2. The attorney-client privilege includes confessions made by the client, the opponent, colleagues, those resulting from interviews to settle or compromise, and those resulting from third parties, made to the attorney by reason of his profession. Furthermore, the attorney-client privilege also includes confidential or personal documents received by the attorney.

3. The attorney shall not admit he is exempted by any authority or person from keeping secrets. When summoned to testify, the attorney is entitled to challenge judges and any other authority and to refuse to answer questions which force him to breach the attorney-client privilege, although he must attend to the summons.

4. The attorney shall not call opposing counsel to the witness stand. Moreover, the attorney will avoid appearing spontaneously as a witness in the matters in which he participates; but if the foregoing were to be unavoidable, then the attorney must previously resign from his professional work, while ensuring impartiality, and shall not resume said work.

5. The attorney shall not intervene in matters which could lead him to reveal a secret, nor shall he take advantage, whether personal or on behalf of his client, of confessions received while practicing the profession, unless the attorney has the previous consent of the transmitter of the secret.

6. The obligation to be bound by the attorney-client privilege is extended to matters known to an attorney by reason of working collectively or in conjunction with other attorneys and through their employees. Furthermore, the attorney shall warn his collaborators, employees, and interns about the obligation to not reveal confessions or secrets made by clients and found in entrusted documents.

7. With regard to international cases, the attorney shall make sure to observe stricter rules which ensure the protection of the secret.

**Article 39.** Limits imposed to the exceptional revealing of secrets

1. The attorney-client privilege ceases to exist when the attorney is faced with the necessity of defending himself from accusations made by his client, employees, or third
parties, in which case the attorney shall reveal only what is essential for his defense, being allowed to show entrusted documents.

2. The attorney may also reveal strictly necessary information in furtherance of the legitimate right he has to collect attorney fees and consult the scope of the case with other colleagues, depriving the attorney from his personal connotations. The same applies for scientific publications.

3. If a client tells an attorney about his intentions to commit a crime, said confession is not subject to the attorney-client privilege nor it is protected by the same. Therefore, once the available deterrents have been exhausted, the attorney may reveal necessary information to prevent the crime and protect people and property which could be in danger.

4. Exceptionally, there are occasions in which the attorney, with or without the previous consent of the transmitter, and in furtherance of preventing greater injustices or wrongdoings, can reveal a secret told to him by the client. But it is advisable to require the previous authorization of the attorney’s bar association’s competent authority to cautiously investigate the case and determine the possible admissibility of said revelation.

As can be appreciated, this code broadly includes all of the aspects of the attorney-client privilege.

4.4. Code of Conduct of the Spanish Bar

This code was approved by the plenary session of the General Council of the Spanish Bar on November 27, 2002.

Article 5. Professional Secrecy

1. The confidence and confidentiality in the relationships between the client and the lawyer, inherent to the right of said person to privacy and not to declare against himself, as well as fundamental rights of third parties, obliges and grants the lawyer the right of secrecy with respect to all of the facts and news he might know by reason of any of the ways of the professional performance, and the lawyer shall not be obliged to declare about them as it is provided in article 437.2 of the Judiciary Act in force.

2. The right to and duty of the professional secrecy of the lawyer include the secrets and proposals of the client, those of the opponent, the colleagues and all the facts and documents that they may have known or received by reason of any of the ways of their professional acting.

3. The lawyer shall not provide the courts, or the client, with any of the letters, communications or notes he receives form the other party’s lawyer, except with the express consent of said party.
4. The conversations held with the clients, opposing parties or theirs lawyers, in person or by telephone or telematic means, shall not be recorded without the prior warning, and with the consent of all the parts involved and in any case shall be protected under the professional secrecy.

5. In case of collective practice of law, the secrecy shall extend to every component of the group.

6. The lawyer shall always ensure that his personnel as well as any other person cooperating in his professional practice respects the professional secrecy.

7. These duties of professional secrecy will remain even after the provision of services to the client cease, with no limit of time.

8. The professional secrecy is a main right and duty of legal profession. In the exceptional cases of great seriousness, in which the forced preservation of professional secrecy could cause irreparable damages or flagrant injustices, the dean of the Society shall provide advice to the lawyer, with the sole purpose of offering guidance, and if possible, of determining alternative means or procedures to solve the problem, taking into account the legally protected interests in conflict. This does not affect client’s freedom, which is not subject to the professional secrecy, but whose consent by in and of itself shall not exempt the lawyer from preserving it.

With regard to this code, it is important to observe the rigidity it provides in terms of exempting lawyers from maintaining professional secrecy, even in the extremely serious cases.

4.5. **Mexican Bar Association’s Code of Conduct**

This code was ratified in a special shareholders’ meeting of the Mexican Bar Association, upon the proposal of its Board of Conduct in 1949.

**Article 10. Professional secrecy**

Professional secrecy is a right and a duty of the attorney. Before clients, it is a duty that persists in its entirety even after the attorney has ceased to provide services; and it is a right that can be exercised before judges and other authorities. When called to testify as a witness, the attorney must attend to the summons and, with full independence of judgment, the attorney shall refuse to answer questions which cause him to breach his professional secrecy duty or that expose him to do so.

**Article 11. Extent of the obligation of the attorney-client privilege**

The obligation to observe professional secrecy includes confessions made by third parties to the attorney by reason of his profession, and those which result from conversations to carry out a transaction which ultimately failed. Attorney-client privilege also includes confessions made by colleagues. The attorney shall not intervene in any
matter in which he could be faced with the possibility of revealing the secret or taking advantage of the same without the consent of the client who shared the secret.

**Article 12. Termination of attorney-client privilege**

An attorney who is subject to an unjustified and serious attack by his client shall be excused from observing the attorney-client privilege and may reveal whatever information is necessary for his defense. When a client tells his lawyer about his intention to commit a crime, said confession shall not be protected by the attorney-client privilege and the attorney shall reveal whatever information is necessary to prevent a crime and protect people who can be in danger.

In my opinion, the provisions of this code cover clearly and concisely all of the elements of the attorney-client privilege set forth in this paper.

5. **CONCLUSIONS**

Professional secrecy is a subject of legal ethics.

Notwithstanding the foregoing, lawyers’ duty of and right to professional secrecy are reflected in the Mexican Constitution, federal laws, and Federal District laws, which are cited in section 3.3 hereto.

Professional secrecy has lately been subject to criticism. There are some who by making arguments related to national security, common good, the prevalence of public interest over private interest, have tried to diminish and even abolish the lawyer’s duty of confidentiality.

For all the reasons set forth herein, it is important to note that from an attorney’s perspective, the existence of the attorney-client privilege as a duty owed to clients and as a right against third parties is essential for the exercise of the profession and for the adequate administration of justice.

6. **QUESTIONS TO BE ADDRESSED**

1. In the event of crimes such as terrorist financing, money laundering, drug trafficking, abduction, etc., must the attorney be bound by the obligation of professional secrecy?
2. If the answer to the previous question is no, what consequences would emerge in terms of practicing the profession?
3. If the answer to the first question is yes, what consequences would arise from respecting the professional secrecy with respect to the damage the referenced crimes could cause to society?
7. BIBLIOGRAPHY


Pérez Valera, Víctor Manuel, Deontología Jurídica, México, Oxford University Press,