

PROSECUTOR'S LEGAL ETHICS MANUAL

INTRODUCTION

This manual is presented as a series of commentaries to the Ethics Code. The commentaries include materials from around the world, from the Palestinian Prosecutor's Criminal Procedures Manual, from Palestinian Judicial Rules and from the comments and suggestions presented by Palestinian prosecutors. The rules of the Palestinian Prosecutor's Criminal Procedures Manual have been emphasized because violations of these rules will lead to discipline under the Prosecution Rules of Ethics.

Rules of professional ethics for the members of the General Prosecution in Palestine

General instructions regarding the rules of ethics

Chief Judge of the High Court
Zouhair Al Sorani

The general prosecution is the state's representative and agent for the general case and the legitimate superintendent for the duties and actions of the state in the criminal field, as stated in the Palestinian Criminal Procedures law (3-2001). This law gives the general prosecution the authority to charge. In this process it has the primary authority, and right, to carry on the central investigation of a crime and to supervise the execution of criminal judgments. As well, the general prosecution is the party responsible for the supervision of prisons.

The law gives the general prosecution members the characteristics of judicial officers, going even beyond this by vesting the general prosecution with the authority of making judgments and, in some cases withdrawing charges, and/or making decisions not to charge for lack of evidence, or other reasons, through case evaluations. This singular decision in this matter is considered as a judgment of innocence that would be declared by a responsible court. However, this decision can also be attacked before the responsible court

The general prosecution is involved in criminal procedures as the public authority having the responsibility for bringing charges. However, its duty in this is controlled by considerations of the public interest, not as an adversary against the accused or an adversary who has some special interest. Its aim is not merely to convict but to seek justice and with the primary consideration of being the defender of society.

The main goal of investigations made by the general prosecution is to seek truth. In this process it must be sure to charge only those offenses that have a strong foundation in reality and law, thereby allowing us to meet both our public and personal interests.

The general prosecution practices its authority through its member "prosecutors" who must perform their important duties through principles that lead to sustaining their respect for the basics of equity in front of the law, the presumption of innocence, and the right of a public trial in front of an independent and honest court. These prosecution practices must contribute in the establishment of a fair criminal justice process that most

effectively protects the people from criminal activity.

When prosecutors perform their duties they deal with many relationships. These include relationships with their superiors, their colleagues, subordinates, judicial officials, the accused and their attorneys, victims, witnesses, civil claimants and others. To clarify these relationships it is necessary to obey the following instructions. These instructions establish principles of conduct, which require a commitment when performing prosecution duties, both in and out of court while members of the general prosecution.

Comments.

Palestinian prosecutors are fortunate to have a Code of Ethics tailored to the duties and responsibilities of prosecutors. In many legal systems all attorneys, whether lawyers or prosecutors, are governed by the same Code of Ethics. A separate Code of Ethics for prosecutors recognizes that there are profound differences between prosecutors and other attorneys. Most jurisdictions realize that the responsibility of a public prosecutor differs from that of the usual advocate. Charles W. Wolfram in his treatise, *Modern Legal Ethics* states that the “most striking difference between a prosecutor and a defense lawyer . . . is that a prosecutor is much more constrained as an advocate.” The constraints on a prosecutor are greater in the Palestinian legal system than in many other jurisdictions because Palestinian prosecutors are primarily responsible for the investigation of crimes as well as the trials of the defendants (Palestinian Prosecutor’s Procedure Manual Chapter 3, Judge Abdel-khaleq Jaradah, *hereafter referred to as “PPM”*.) Napoleon once commented that the most powerful men in France were the investigative magistrates. In Palestine the general prosecution has the primary responsibility for the investigation of crime. This prosecution power is one of the great trusts in the entire judicial system. This power must not be misused. If it is misused the entire fabric of society may come apart. Because of this, with this power comes the responsibility to obey the rules of ethics.

Having a Prosecutor’s Code of Ethics also gives the Attorney General the primary responsibility for their enforcement. Discussions among prosecutors strongly suggests that if the Attorney General finds that a complaint of misconduct under these ethical rules warranted further action he would appoint a committee of prosecutors to look into the matter. Note: Serious consideration should be given to creating a standing committee on ethics. This committee could then be consulted by prosecutors with ethical questions, even before a prosecutor acts in a case. Advice from the committee would prevent many ethical lapses from occurring. Other jurisdictions around the world have standing committees that answer ethical questions from prosecutors and that review allegations of prosecutorial misconduct.

Duties of the Prosecutors; Acts that are Prohibited

Section (1)

The Duties of Prosecutors

1. *As a significant part of the process of forwarding justice, prosecutors must always maintain the dignity and honor of their profession.*

Comments:

Many of the following specific rules touch on this theme. The prosecutor "is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he/she is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. These sentiments were expressed by a prominent international jurist; however they are similar to the perceptions of most criminal law practitioners throughout the world, and have been expressed, over and over, by Palestinian jurists, prosecutors and lawyers.

A prosecutor has the same duty to act with honor and dignity, as do all court representatives. As a public official, the position carries additional responsibilities, most of them flowing from the duty to seek justice, not merely convictions. As a public official, a prosecutor has the responsibility to promote confidence in the law and the judicial system. In professional conduct, a prosecutor should avoid not only improprieties, but also even the appearance of impropriety. A prosecutor should not offer evidence that the prosecutor knows or reasonably believes is faulty. A prosecutor's relationship with the court, defense bar and all others who participate in the judicial system should be characterized by professionalism, respect and integrity. Prosecutors should treat court personnel with courtesy and respect, and act to insure their professional integrity.

A prosecutor should support the authority of the court in the dignity of the courtroom restricting their court presentation to the rules of the court and courtroom procedures. A prosecutor should adhere not only to the letter of procedural rules, but to their spirit as well, and not make statements or ask questions based on matters irrelevant or inadmissible in a case or any other way attempt to subvert the defendant's right to a fair trial.

Under all circumstances, a prosecutor should seek to maintain the independence of the office. A prosecutor represents the people of the state he serves not the police and not to the victim or victims involved in any particular case except insofar as they are included among *all of the people*. A prosecutor should strive to keep the office free of any pressures or considerations that might affect the independence of the prosecution function.

The fact that the duty to uphold the honor and integrity of the general prosecution takes place in the context of pursuing prosecutions against the very worst elements of society makes this task for more difficult than it might otherwise seem. As stated in PPM No. (51) "The G. P. investigator has to realize that he/she is in a continual struggle with the perpetrator of the crime: the investigator seeking the truth and the perpetrator's working hard to support injustice and hide defects. The investigation is not only questions asked and answers written down but is an art. His (hers) is also a struggle between truth and fiction. Improper investigation might lead to the escape of a true criminal or the conviction of an innocent one."

Nonetheless PPM rule No. (52) states, "the G. P. investigator has to be patient, determined, alert, decent, self confident, and have the ability to draw information out, overcome obstacles and be able to assess results." PPM rule No. (53) states "the G. P.

investigator has to believe that he/she is a messenger of a great message and the more he/she believes in the message the more he/she has the motivation to work harder to pursue the general interests over his/her own ones." PPM rule No. (72) states "the G. P. investigators should realize the importance and sensitivity of their work and that people scrutinize their conduct. Therefore, they should set an example for their employees to look up to." PPM rule No. (73) states "the G. P. investigators should stay away from suspicious appearing conduct and should appreciate human feelings and treat people in a good manner. They should be moral in their personal life."

2. When first appointed each prosecutor should submit a financial report clarifying his personal property according to the law of judicial authority (article 28 second paragraph). As well, the prosecutor should submit a new report immediately in the event of any change in his personal financial position. This report must clarify those changes. Further, the prosecutor must submit a financial report any time upon the attorney general's request.

Comments:

While this rule is more of a personnel policy than a rule of ethics, it benefits the prosecutor. By submitting a financial report the prosecutor establishes that no part of his property was obtained by misuse of his/her position. Occasionally a false allegation of acceptance of a bribe or other improper acceptance of property is made against a prosecutor. A record of a prosecutor's property can aid in establishing that the prosecutor's assets are not derived from any illegal or improper source.

3. Prosecutors are the public's representatives and in accordance with the law they are responsible for the supervision of law enforcement officials. They represent the general prosecution in front of all courts, so they must maintain a good appearance that compliments their duty.

Comments:

This rule emphasizes the role of the prosecutor as the "public's representative." The quotation in the commentary to Rule 1 is just as instructive here. The prosecutor is in a position to command the cooperation of all the law enforcement authorities in his or her jurisdiction. Note: Special duties concerning human safety may arise when peace officers ask prosecutors for advice in emergency circumstances.

The prosecutor's duties are divided into two broad categories, supervision of law enforcement and presentation of cases before the courts. Responsibility for the supervision of law enforcement officials is especially true of Palestinian prosecutors. The second chapter of the PPM is devoted to the duties of policemen and other judicial officers. PPM rule No. (6) states, "members of the general prosecution shall assume the duties of the judicial (law enforcement/justice system) investigation and shall supervise the work of judicial officers (law enforcement officers) in their areas jurisdiction." Rule No. (7) states "the Attorney General has overall supervisory powers over the judicial officers (law enforcement officers) and they are under his/her control while carrying out their official duties. The Attorney General has the right to ask the competent authorities to take the appropriate disciplinary actions against any judicial (law enforcement) officer who does not fulfill his/her duties and this does not preclude the existence of any criminal

responsibility."

The prosecutor's role as the supervisor of law enforcement officials is especially important in cases of police corruption. From time to time, in other jurisdictions, segments of the police forces have been guilty of crimes.

Recently, in another jurisdiction, segments of the local police force charged with investigating and prosecuting crimes by street criminals were found to be committing crimes themselves. Evidence was routinely planted on suspects in order to make an arrest. A gun was planted on a gang member who had been shot by the police and he had been charged with assaulting the police. The police had stolen drugs and money from the gang members. Although the prosecution office diligently pursued the investigation of the police very few cases were filed because the police officers maintained silence to protect their fellow police officers even though those officers had committed crimes. The prosecution and the judiciary, as well as the police department, were criticized for not discovering these police abuses sooner. This abuse of power must never occur under our jurisdiction, which is one of the primary reasons for the establishment of ethical rules. If they are followed, crime in the police, prosecution, or any other part of the government, will be limited.

The role of the prosecutor as the supervisor of judicial (law enforcement) officers is emphasized in Rules 47 through 50 of the PPM. This vital duty is emphasized further in Ethics Rules 32 and 33.

The prosecutor's duties before the courts are the subject of many of the following rules. Within this rule, the prosecutor's appearance is emphasized. Appearance is one aspect of decorum. It also informs the public and the courts, through our appearance, how seriously we take the matters before us, and how seriously we regard our duties. We are professionals, and must maintain the professional's appearance.

4. Prosecutors must be impartial in all actions taken by them while practicing their duty in representing the public interest, and in protecting legitimacy and the confirmation of the sovereignty of law.

Comments:

Capital punishment, adultery, prostitution and drug use are examples of public controversies about which a prosecutor may hold personal opinions contrary to the state of the law. A prosecutor, however, is charged with the enforcement of all valid statutes. A prosecutor must set personal opinions aside and strive to exercise discretion with the same view to fairness and consistency as in matters where there is little public controversy.

Since criminal justice resources are limited, the Attorney General may set priorities for prosecutions and may decide that certain criminal violations will be allocated fewer resources than others. Prosecutors, who have personal beliefs so strong that the sense of professional obligation is overwhelmed in a particular case, should disclose such beliefs to supervisors and discuss all available options. It then becomes the responsibility of the supervisor to deal with the issue in such a way that the policies of the Attorney General and the GP are maintained, and that the people of Palestine continue to be represented in

a positive manner. Such an occasion might arise, for example, if a prosecutor understands the argument to be advanced for a particular legal position, but is not personally convinced of its merits and finds it so personally distasteful that he/she cannot advance the argument. Hence, the need to inform the supervisor of the personal problem that may threaten a strong representation of the case.

In addition to the legal responsibility of all citizens to obey the law, a prosecutor has a higher duty as a member of the law enforcement community to obey and respect the law. In general, this includes the duty to obey laws with which a prosecutor may disagree. Also prosecutors must be concerned with the circumstances under which they may have a responsibility to report violations of the law and ethical improprieties observed at work, social gathering's or other non-work related functions. No prosecutor can ignore criminal violations that he/she observes.

Since the Palestinian prosecutor is considered a member of the judicial branch, he or she has less of an advocacy role than prosecutors in many other civil or common law countries.

Since members of the General Prosecution have the power to offer reconciliation in misdemeanors punishable by a fine without bringing the accused before a court (PPM, rule 44), the prosecutor's impartiality must be beyond reproach. The prosecutor may also decide to inactivate a case (PPM Rule 50). Although the prosecutor must seek the concurrence of a senior prosecutor and the Attorney General in order to inactivate a case, his or her recommendations must be based on an impartial review of the evidence.

Likewise, the procedural rules governing the preliminary investigation phase, Chapter 3 of the PPM, require the requisite impartiality. (PPM of rules 54, 55, and 56.)

Rule number (54): The GP investigator has to insulate him/her self from any effects on his emotions or personal beliefs that that might arise from the crime. He/she should investigate the crime without any pre-existing convictions or stands regarding it.

Rule number (55): When beginning an investigation the GP investigator has to have control over him/her self and not to be angered or provoked. The investigator should be patient in drawing conclusions regarding any evidence and the weight of such evidence.

Rule number (56): The GP investigator has to start the investigation with out any pre-conceptions or beliefs regarding the incident and he/she is not allowed to hear anything about it outside the investigation sessions. He/she should not be affected by what the media is publishing regarding the incident in question.

For example, murders are violent, and disturbing. The prosecutor, not the police, conducts the interrogation of a murder suspect. (PPM Rule (75). The prosecutor also goes to the murder scene and sees the carnage that the suspect is accused of. The prosecutor must interrogate the accused within 24 hours of the referral from the police. (PPM Rule 76.) When women or children are the victims of murder it is often very difficult to remain calm and professional during the investigation and interrogation. However, the law and the rules of the office are explicit in this regard. Professionalism must be maintained on all occasions.

5. Prosecutors must make all needed effort for the cases they investigate. Prosecutors

must respect the freedom of people in any action taken by them, and they must be careful to correctly apply the law in their actions. They must be certain that the action they take is suitable for establishing the truth, using the evidence available for the maintenance of the duty they are to carry out.

Comments:

This rule deals primarily with competence during the Preliminary Investigation phase of a criminal prosecution described in Chapter 3 of the PPM. This rule stresses the need for competence and putting out every effort in obtaining all the evidence. Prosecutors must not rely too heavily on the police to investigate their cases. For example: Prosecutors must never give the police a blank, but signed arrest-warrant or detention warrant. This is a dereliction of the prosecutor's duty and the signal sign that a prosecutor is either negligent in the pursuit of his duties, inept or simply lazy. These actions alone would constitute misconduct under this rule. Generally, prosecutors who study and obey the PPM rules for conducting the Preliminary Investigation Phase will not violate this rule.

A prosecutor shall interrogate witnesses with due regard for the dignity and legitimate right to privacy of those witnesses, and without intimidating or humiliating anyone unnecessarily. Prosecutor may not use the examination process for improper purposes such as to disclose evidence that should remain private, or to imply, or apply, the existence of prejudicial facts that cannot be proved.

PPM 75 states "The prosecutor should conduct the interrogation of the accused in all felonies and in those misdemeanors the prosecutor deems appropriate to conduct the interrogation by him/herself." The interrogation must be done during the first 24 hours starting from the time the accused was referred to the prosecutor who has the power to order the accused into detention release." The failure to begin the interrogation within 24 hours, especially where the accused is in custody, could be a violation of this rule.

The prosecution member must enable the accused to defend him/her self and enable him/her to produce the evidence that proves his/her innocence. If he/she gives the name of his/her attorney the latter should be called in order to attend the interrogation and should be enabled to observe the investigation. The failure to call the lawyer is a serious ethical violation. Of course if the prosecutor arrives at the crime scene shortly after the crime has been committed he/he may interrogate the accused in order to obtain information necessary to protect the safety of others.

Acting in an overbearing or threatening manner is also not suitable for establishing the truth. The interrogator cannot use emotional or material effects in order to guarantee a confession. He/she cannot use tricks and lies to reach the truth because such actions would affect the free will of the accused. The accused, as any witness, should be treated with dignity.

6. The prosecutors should perform their duties with impartiality, in accordance to the law, in coordination with all responsible parties, as quickly as possible. They must respect and protect human dignity and human rights, which will contribute to the safety of the procedures that they perform as well as their other duties in the social justice system.

Comments:

This rule is almost identical to Ethics Rule 4. However, it does govern the necessary coordination with other parties. For example, the prosecutor must make sure that only persons the law permits are present at interrogations. The accused has the right to have a lawyer present and to obtain a twenty-four hour delay in interrogations to obtain a lawyer. (PPM Rule 151.) However, if the accused is caught in the act or in an emergency, such as the need to find other suspects immediately, or to locate a victim who has sustained an injury, the prosecutor may interrogate the accused without a lawyer present. (PM Rule 152.) The failure to follow these and other PPM Rules concerning coordination with other responsible parties can result in a violation of this Ethics Rule. PPM Rule 142 also requires that the prosecutor preserve the dignity of the accused. This rule explicitly states that the failure to do so will result in criminal, civil and disciplinary liability. Note: PPM Rules that follow Rule 142 set forth numerous duties that prosecutors must assume in order to protect human dignity.

The accused should be regarded as innocent until proved guilty by a final judicial verdict. The accused is not obligated to provide any evidence in regarding his/her innocence because the burden of proof is on the prosecution authority. The accused has the right to remain silent and his/her silence should not be interpreted as evidence of his/her guilt. Question: What if the suspect has told the police that he wishes to remain silent and to have his lawyer present before any interrogation...and then the prosecution member approaches the suspect *knowing* that the suspect has told the police that he wishes to remain silent and to have his lawyer present? May the prosecutor ignore the suspect's request and begin an interrogation anew? May a prosecutor called the suspects lawyer but continued to talk to the suspect before the lawyer arrives? The answer: The accused has the right to delay the interrogation for 24 hours to secure the attendance of his/her lawyer. If the lawyer fails to attend or he/he waives such right than the interrogation can start immediately. The failure to give accused is 24-hour delay would be an ethical violation as well as legal violation under this rule.

7. While performing their duties the prosecutors have to be impartial and must avoid any kind of discrimination for any reason, such as those that are socially motivated, political, religious, cultural or racial - or any other kind of discrimination.

Comments:

Discrimination affects both workplace issues such as case assignment and promotions and prosecution issues such as a propensity to investigate cases against a disfavored group or class. With regard to workplace issues, it is noteworthy that the current rule makes no provision for gender bias. Yet, females now make up a small, but definable proportion of the prosecution. However, it is clear that women should not only be better represented in the number of prosecutors they must also be given an equal chance at advancement.

One further factor: Even with the current conflict, and the tensions and bad feelings it brings, it is imperative that the Palestinian prosecutors keep of their long-standing process of non-discrimination when dealing with criminal defendants. The law must be applied impartially to all, or it fails.

Issues such as selective prosecution and invidious prosecution are addressed by this rule. Selective prosecution involves the unequal prosecution of cognizable groups or individuals for specific crimes. For example in another jurisdiction the highest court held that defendants could obtain discovery of prosecution documents in order to attempt to establish that the prosecution had illegally targeted the members of a labor organization for prosecution under several penal code sections not because they had committed crimes but in order to harass and discourage them from obtaining better working conditions. An example of vindictive prosecution was found where a prosecutor after having a case dismissed for insufficient evidence by the court proceeded to re-investigate the case and added many new charges in an attempt to disproportionately punish the defendant. Charges should never be piled on or exaggerated because of any personal antipathy toward said accused.

Question: What is the impropriety of a prosecutor filing additional charges later in the case. Does this fact, by itself, show some type of discrimination that falls under this rule? No. An initial decision should not freeze future conduct because the initial charges filed by a prosecutor may not reflect the extent to which an individual is legitimately subject to prosecution

Vindictiveness is not presumed. A defendant must present evidence showing that the prosecutor's charging decision was motivated by a desire to punish the defendant for doing something the law plainly allows him (the prosecutor) to do.

If an accused does produce such evidence and convinces the court of the truth of such an allegation he/she may be entitled to a new trial on lesser charges or to a dismissal of charges. The prosecutor would also be subject to discipline for having discriminated against the accused.

8. Prosecutors should make a complete separation between their personal interest and public interest and they should avoid being involved in conflicts of interest. Any conflict of interest will have a dangerous effect on their objectives and will affect the people's attitude on the processes of general prosecution.

Comments:

A prosecutor may be restricted or prohibited by the law of his/her jurisdiction or the policy of the Attorney General from engaging in the private practice of law. The prosecutor is prohibited from representing any person accused of a crime. The prosecutor may not serve as counsel for any private plaintiff in any action or proceeding. Under the Palestinian rules of ethics of a prosecutor may not act as an arbitrator except for cases where the client is a close relative. Ethics rule number 42. Prosecutors can also be precluded from or restricted in additional employment. Even if there is no ethical restriction upon engaging in outside employment, if such employment involves law enforcement responsibilities it is in conflict with the prosecution function. For example, a prosecutor who is also employed in a law enforcement capacity as a reserve police officer or security guard may encounter a possible conflict of interest if subpoenaed to testify as a witness. One jurisdiction held that a prosecutor may not be employed as a store security guard where participation in arrests of persons suspected of shoplifting could lead to an appearance as a witness in cases prosecuted by the same office.

A prosecutor may also be precluded from involvement in outside business interests that require his expertise in the law. Ethics Rule number 56. Prosecutors, like other officials and employees, are prohibited from making, participating in or in any way attempting to use their official positions to influence governmental decisions in which they know, or have reason to know, that they may have a financial interest. A prosecutor may, on occasion, be required to disclose financial interest that could be affected by official duties. The requirement that prosecutors disclose all of their financial interests, Ethics Rule number 2, prevents this type of conflict of interest by identifying such a conflict at the beginning of a prosecutor's employment.

Outside teaching, writing and media appearances can also create conflicts of interest and are therefore regulated by Ethics Rules 47, 51, and 57.

Community and political activities can result in conflicts of interest. Ethics rules Nos. 46, 47, 48, 49, and 52 regulate the community and political activities of Palestinian prosecutors. (In other jurisdictions prosecutors may generally engage in community activities provided they disassociate their individual participation from professional responsibilities and are not engage in activities that create or appear to constitute a conflict of interest. However, that is not the case under GP rules)

A very central issue of conflict of interest arises where a prosecutor has a personal interest in a prosecution case that could affect his/her impartiality. For example a prosecutor may not pursue a case against an accused if the prosecutor is in civil litigation with the accused. If a prosecutor is the victim of a crime his immediate office should not have that case. It should be transferred to another geographic part of the Attorney General's office. If there is a close business or personal relationship between the accused and the prosecutor, that prosecutor should not handle the case. This is particularly an issue in cases involving close relatives.

Prosecutors may also wish to exercise caution within discover themselves involved in case where the opposing counsel is a close friend or the victim is a close friend. If independence and integrity of performance appear to be compromised, the prosecutor may wish to withdraw from the case.

Conflicts of interest can be avoided. If a standing committee on ethics is created in the office questions often asked by prosecutors whether they would face a conflict if they proceed in a particular case can be quickly answered. For example, if a prosecutor was formerly a defense lawyer, he or she may not prosecute a former client. In addition the general prosecution must take precautions to prevent that prosecutor from having any contact with a case against his former client. Other common conflicts involve cases where a prosecutor is the victim of a crime; cases where the victim or the defendant is a close relative of a prosecutor; and cases where a prosecutor shares property with a victim, the defendant or a witness. In many legal systems, the defense can bring a motion to recuse the individual prosecutor or the entire prosecution office based on a conflict of interest. Since recusal motions are not available in Palestine, (PPM 574) the Attorney General must be very sensitive and vigilant in dealing with actual and potential conflicts of interest. The PPM rules on the recusal of judges offer further examples of conflicts of interest. (PPM 572 & 573.)

9. The prosecutors must inform the attorney general at once when they face a problem with a conflict of interest, whether real or potential, so the Attorney General can make the suitable decision with relationship to that conflict.

Comments:

The words “at once” may cause considerable debate. Prosecutors do not want to be perceived as informing on each other. However, nothing in this rule prevents one prosecutor from discussing a real or potential conflict with another prosecutor who is the subject of the conflict and suggesting that the subject of the conflict report the matter himself or herself to the Attorney General. This rule actually suggests that it is the prosecutor who faces such a conflict who must report the problem to the Attorney General. Of course if a Standing Committee on Ethics was created the Attorney General could refer the matter immediately to the committee for investigation. Since the Attorney General’s office excusing itself is not an option it is important that the Attorney general be informed of any real or potential conflicts of interest immediately so that damage to the cases and to the reputation of the general prosecution can be minimized.

10. Prosecutors should respect their duties and must be punctual to set a good example for their subordinates.

Comments:

Punctuality is one aspect of decorum. The failure to attend court on time is especially disrespectful. The court can take action for failure to appear. If violations of the hearing session order are committed by a court official disciplinary action can be imposed on him/her according to the law. In this instance that action would be a referral to the Attorney General for disciplinary review

11. Prosecutors should not leave work without previous permission from their superiors, and those supervisors must inform the Attorney General of their observations concerning this matter.

Comments:

The process of being forthright and honest with the public begins in the office. If a prosecutor leaves without reporting his/her absence they are essentially not telling the truth. Further, they will be getting paid for their time in the office when they are actually not in the office and not working. Essentially, this may be perceived as a theft of public money for taking that portion of their salary under false pretenses: the pretense of working.

12. When the prosecutors are off duty and they have to leave their residences they should leave notice where they will be in order to make it easy to contact them in case of emergency.

Comments:

Prosecutors are perceived as ethically bound to serve the public by “serving” their cases. If something occurs which affects their cases they must be reachable to serve that case

because they are the individuals who know that case best. They will be able to suggest the most effective solution to the problem, whether it is witness problems, evidence problems, etc. As well, if other prosecutors on a current or potential case are involved in their capacity, or on vacation, or ill, this makes it imperative that the office has access to other, available prosecutor's services if emergency demands are to be met. Remember, prosecutors must cooperate with each other in order to best serve the office as a whole. This is part of that cooperation.

13. Prosecutors must be committed to their own good conduct and must keep themselves away from potentially compromising situations or disputes, and to maintain the dignity of their profession. In order to maintain the good reputation of judicial officials and to gain the public trust they must not use their profession as a means to suppress people.

Comments:

Prosecutors have enormous power in the justice system. Professionalism, as a human being and a prosecutor, is your most important quality. Police officers, victims, witnesses, attorneys, and judges will make critical decisions based upon their observations of your candor, honor and integrity. Prosecutors have a duty to uphold the law.

Note: A prosecutor who becomes entangled with lawbreakers has violated a fundamental duty and has abused the office of the public prosecutor.

Here is an example of a possibly "compromising situation": In one case that was filed in a foreign jurisdiction, manufacturers of computer programs that are the subject of illegal duplication sought preferential treatment from prosecutors. Large entertainment and technology corporations have been known to offer financial and expert assistance directly to prosecutors in order to facilitate the bringing of charges against video and software pirates. Convictions have been overturned and prosecutors have been admonished for bringing cases that were privately financed by the victims themselves. Prosecutors have been especially chastised for diverting resources that could be used to prosecute crimes of violence to privately financed property crime violations.

Let us discuss discriminatory or selective prosecution of members of minority groups. This is a means of suppression. Although referred to for convenience as a "defense," a defendant's claim of discriminatory prosecution goes not to the nature of the charged offense, but to a defect of an ethical dimension in the initiation of the prosecution. The defect lies in the denial of equal protection to persons who are singled out for a prosecution that is deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.

Unequal treatment that results from a non-arbitrary basis for selective enforcement of a statute does not deny equal protection and is not constitutionally prohibited nor is it discriminatory enforcement. However, the unlawful administration by state officers of a state statute that is fair on its face, which results in unequal application to persons who are entitled to be treated alike, denies equal protection if it is the product of intentional or purposeful discrimination.

In order to establish a claim of discriminatory enforcement a defendant must demonstrate

that he has been deliberately singled out for prosecution on the basis of some invidious criterion. Because the particular defendant, unlike similarly situated individuals, suffers prosecution simply as the subject of intentional discrimination, such defendant is very much the direct victim of a discriminatory enforcement practice. Under these circumstances, discriminatory prosecution becomes a compelling ground for dismissal of the criminal charge, since the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities.

Such a misuse of power is clearly an ethical violation subject to discipline by the Attorney General or the courts.

14. Prosecutors should have self-respect, strong personalities and maintain a good appearance and good manners in order to obtain their adversaries, and the whole community's, respect and trust - and to strengthen the trust in those procedures which prosecutors initiate.

Comments:

This rule upholds proper decorum. Especially in dealing with a court, a prosecutor must observe rules of decorum. The prosecutor must always speak to the court not opposing counsel when court is in session. The prosecutor must never disparage opposing counsel. Abuse of this nature may constitute prosecutorial misconduct. One court from another jurisdiction stated, "Lapses of behavior by defense counsel do not excuse professional misconduct by a prosecutor. The prosecutor's misconduct cannot be justified on the ground the defense counsel 'started it' with similar improprieties." Prosecutors must be candid and truthful in all dealings with the court and defense counsel because prosecutors have a special obligation to promote justice and the ascertainment of truth. Candor means to act by means consistent with truth, never to seek to mislead the judge or any judicial officer by an artifice or false statement of factual law.

PPM number 52 states, "The GP investigator has to be patient, determined, alert, decent, self confident, and have the ability to draw information out, overcome obstacles and be able to assess results." PPM number 53 states "The GP investigator has to believe that he/she is the messenger of a great message and the more he/he believes in the message the more he/he has a motivation to work hard and to pursue the general interest over his/her own ones."

15. The prosecutor should not be affected by any external element when handling a case and he/she should not be affected by media coverage of any case.

Comments:

An "external element" is often a victim or third party who is seeking to influence the prosecutor. A prosecutor may have a conflict if he/she is linked too closely to a private party, for example a victim, who in turn has a personal interest in the defendant's prosecution and conviction. A prosecutor is not disinterested if he has, or is under the influence of others who have a personal reason to punish a defendant. A prohibited tie that binds the prosecutor to an interested person does not derive from a prosecutor's institutional objectives or obligations.

A public prosecutor must not be in a position of attempting at once to serve two masters: the People at large and a private person or entity with its own particular interests in the prosecution. Private influence, exercised through control over the prosecutor's personal *or* institutional concern, is a conflict of interest if it creates a reasonable possibility the prosecutor may not act in an evenhanded manner.

In dealing with the media, a prosecutor must be very circumspect. While the media may be given information in order to assist the prosecutor in apprehending a suspect or in locating a witness, the media must not be given investigative information that is deemed secret and must not be given information that would prejudice the defense case. PPM 346 specifically allows a prosecutor to use the media to publicize an arrest warrant for a suspect out of custody.

16. Prosecutors should maintain calm and not surrender to anger. They must be patient while carrying out their prosecution duties.

Comments:

This aspect of decorum has been sanctioned in many jurisdictions through contempt of court. A display of anger in court which is not immediately followed by an apology and that escalates into disrespect for both the court and counsel is certainly actionable under PPM 539 and 541.

Note: The maintenance of order and the management of the hearing sessions in is the duty of the chief judge of the court if it is a first instance or appellate or cassation court. The conciliation judge has duty to maintain the order during the hearing sessions.

Rule number 541: if the violation of the hearing session's order was committed by a court official then the court's chief judge can impose on such a person during the hearing session the disciplinary action/s which can be imposed on him/her according to the law.

In other jurisdictions a judge can hold a prosecutor in contempt for any outburst of anger in the courtroom. It is also no defense that the prosecutor expressed his/her anger in response to insults or angry words from the opposing lawyer. It is the prosecutor's duty to assist the court in maintaining proper decorum no matter what the provocation might be.

A prosecutor must also keep anger in check when conducting a preliminary investigation. It is often difficult not to react to the cruelty and callousness of criminals, especially violent criminals, with anger. But a display of anger at a public crime scene can cast doubt on the impartiality and reasonableness of a prosecutor. PPM rules 54 and 55 also counsel against the effects of emotion in investigating crime.

Rule number (54): The GP investigator has to insulate him/her self from any effects on his emotions or personal beliefs that that might arise from the crime. He/she should investigate the crime without any pre-existing convictions or stand regarding it.

Rule number (55): When beginning an investigation the GP investigator has to have control over him/her self and not to be angered or provoked. The investigator should be patient in drawing conclusions regarding any evidence and the weight of such evidence.

An inappropriate display of anger at any stage of the proceedings will be dealt with by the Attorney General, most likely with a warning; however, there might be an even greater sanction given depending upon the extent and severity of the display of anger. See Ethics Rule 59.

17. Prosecutors should observe strict and ethical limitations in their relations with others in order to maintain the public's trust in their objectivity.

Comments:

This rule does not put the prosecutor on notice as to any specific subject of potential wrongdoing. The language "relations with others" is vague. Potential subjects of this rule are covered in less vague and overbroad language in Ethics Rules 45, 46 and 47. While this rule generally seeks to protect the general prosecution from conflicts of interest based on inappropriate relationships and incompatible relationships the more specific rules accomplish the same function while at the same time putting the prosecutor on notice as to just what relationships might violate the rules of ethics. For example a relationship with a known felon would be inappropriate. A relationship with a political party would be incompatible under Palestinian ethics rules 46 and 49.

18. Prosecutors should maintain good relations with their colleagues and their relationships with their superiors should be based on mutual respect. They must follow their superior's instructions and to ask them for advice, when needed, to get the benefit of their s experience in solving problems they face at work. Senior prosecutors should deal with their juniors in a manner, which makes their juniors gain their respect. They must cooperate together to perform their important duties for the sake of justice. In cases of the delegation of a prosecutor to work in another area he should completely perform all needed duties during the period of delegation.

Comments:

Intra-office relations are an important part of the life of a prosecutor, but they are matters of personnel policy rather than ethics. Nonetheless, this rule does emphasize that prosecutors in Palestine, like prosecutors in other jurisdictions, must always act professionally and with decorum. Other jurisdictions do have a general rule of ethics that requires prosecutors to always act with honor and dignity. As part of the duty to act with honor and duty a prosecutor as a public official has responsibility to promote confidence in the law and the judicial system. In professional conduct, a prosecutor should avoid not only impropriety, but also even the appearance of impropriety. The appearance of impropriety can be as damaging as an actual impropriety.

As part of this duty in prosecutors' relationship with the court, defense bar, and all others who participate in the judicial system, should be characterized by professionalism, respect and integrity. Prosecutors should treat court personnel with courtesy and respect, and act to insure their professional integrity. Under all circumstances a prosecutor should seek to maintain the independence of the office. A prosecutor should strive to keep the office free of any pressures or considerations that might affect the independence of the prosecution function. Similarly, Palestinian prosecutors should maintain proper deportment and professionalism within their own offices, both in their relationships with their superiors and with their staffs.

19. The prosecutor should have a relation of trust and respect with his or her superiors at the Attorney General's office The prosecutor should always say what he or she deems the just thing without any regard to any other factors.

Comments:

This rule deals with integrity. The defense that "I was just following orders," will never absolve a prosecutor of misconduct. Each prosecutor is an individual guardian of justice and if he or she fundamentally disagrees with a superior concerning the guilt of a defendant or the propriety of proceeding with a case in the face of a conflict of interest that prosecutor must make his or her position known to that superior.

Example: In a case from a foreign jurisdiction, the prosecutor's office accepted financial assistance from the victim of a computer software fraud. The court found that the undisputed facts supported the trial court's conclusion that a conflict did exist in this case. The trial court concluded that these circumstances evidenced a reasonable possibility the prosecutor might not exercise his discretionary functions in an evenhanded manner.

The Chief Prosecutor was not aware that accepting the assistance was a conflict of interest. If a deputy prosecutor had been aware of the law on conflicts of interest he or she would have had the duty to inform the Chief Prosecutor that the financial assistance could not be accepted. If the deputy prosecutor who knew the law and knew the situation failed to inform the Chief Prosecutor he or she would actually be more culpable under the rules of ethics than the unknowing Chief Prosecutor.

20. The spirit of understanding and mutual respect should govern the performance of the general prosecution while dealing with all members of the office. Prosecutors should deal

with firmness when needed for the supervision of work, and its efficiency.

Comments:

Under the concept of maintaining honor and integrity in pursuing justice it is certainly appropriate for the general prosecution to meticulously supervise all of the work of the prosecution office. A prosecutor must write pleadings and legal memoranda carefully because the duty of candor requires prosecutors to cite controlling legal authorities with meticulous accuracy, including in these citations the adverse authority which defense counsel has not cited. Prosecutors typically do not type these documents themselves. They must insure that their staffs do not make errors in these documents.

Palestinian prosecutors for example are responsible for producing a complete and accurate interrogation report PPM rules 114, 115, 116, and 117.

Rule number (114): the interrogation report must be written with a clear handwriting and it must not contain any scratch outs. The pages of the report must be given serial numbers. Scratch outs in the report could harm the value of the report and raise suspicions about its integrity.

Rule of law (115): the prosecution reporter must write down the questions directed to the accused as it is without any omission or addition under the direct supervision of the prosecution member. This would have a good impact on the accused knowing that what is being written is only what has been said.

Rule number (116): the report should be a clean and neat report written in Arabic language. If the report is written in a language other than Arabic then it is considered to be null and void.

Rule number (117): it is allowable to use a typewriter or a computer to produce the report and it is allowable to use forms that have preprinted information on it.

The prosecutor is responsible for the preparation of this report and if necessary must deal firmly with staff members to accomplish this task.

21. Prosecutors should always seek the truth and must take the necessary measures to reveal it even if this leads to not charging the accused. It is the duty of the prosecutor to seek justice not merely to convict.

Comments:

The admonition to seek justice and not merely to convict is the heart and soul of the prosecutor's duty. The importance of this goal is reflected in the PPM. If a prosecutor does not believe that a case presented to him by the police should go forward, he or she must inactivate the case by writing a memo to the Attorney General expressing his or her doubts about the case. (PPM Rule 50.) PPM rules 481 through 497 deal with the procedures to be followed in order to call a halt to investigative proceedings. If these rules are studied and followed justice will prevail.

In order to seek the truth a prosecutor must be prepared to both seek and deliver evidence

to the defense that potentially illustrates the defendant's innocence. The nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. This includes the defendant and his family and those who care about him. It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name. Thus the prosecutor is expected to exercise his or her discretionary functions in the interests of the People at large.

In another jurisdiction an appellate court stated, "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." There is a duty to disclose such evidence even though there has been no request by the accused, and that duty encompasses impeachment evidence as well as exculpatory evidence. Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Moreover, the rule encompasses evidence "known to police investigators but not to the prosecutor." In order to comply, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in this case, including the police."

These cases, together with those cases condemning the knowing use of perjured testimony, illustrate the special role played by the prosecutor in the search for truth in criminal trials. The prosecutor is the representative not of an ordinary party to a controversy, but a government whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

This special status explains both the basis for the prosecution's broad duty of disclosure and the conclusion that not every violation of that duty *necessarily establishes* that the outcome was unjust. After the verdict, then, if the prosecutor realizes unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict he should inform his superiors, and the court. There are three components of a violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must be suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.

The willful suppression of evidence favorable to the accused is clearly an ethical violation.

22. The prosecutor should preserve the dignity and humanity of the accused. Therefore the prosecutor is not allowed to pursue methods that violate the dignity of the defendant and cannot use any kind of force to obtain the confession of an accused.

Comments:

The use of coercion and force in obtaining statements from the accused is a universal problem for prosecutors. In many jurisdictions involuntary confessions are not admissible at trial. Palestinian law also precludes the use of coerced confessions. PPM Rule 556. Since Palestinian prosecutors are responsible for the actual interrogation of the accused any lapses in the treatment of the accused can result in disciplinary proceedings. PPM Rules 87, 88, and 142 also put the prosecutor on notice that insulting language,

trickery, and force are not allowed in the interrogation of the accused.

23. Prosecutors should not threaten the accused and they are not allowed to promise the accused anything, such as sentence reduction, in order to get his confession.

Comments:

PPM rule 174 states "threatening the accused is one of the most important forms of emotional abuse and constitutes a pressure on the person's will in order to make him/her do a certain act by threatening him/her of committing evil acts against his/or family or against him/her personally if he/she did not confess to the charges. Threats can take many forms such as arresting one of the accused's family or jailing the accused in odd places or threatening the accused of depriving him/her from his/her basic needs as an inmate." Such emotional abuse is forbidden. PPM rule 88.

Plea-bargaining, promising an accused a lower sentence or a reduction of charges in exchange for a guilty plea, is very common in other jurisdictions. However, such tactics are forbidden in Palestine. PPM Rule 172. A confession obtained through an illegal promise is void even if it was true. PPM Rule 173. Threats can be just as coercive as promises and are prohibited. PPM Rule 174. Justice is defeated when a guilty man or woman is allowed to escape punishment because a prosecutor has illegally procured even a true confession. It is appropriate that a prosecutor face disciplinary action for violating the rules against plea bargaining and obtaining confessions through threats.

24. The prosecutor should respect the rights of victims and protect them from any threats or harm that a defendant may do them. Prosecutors must inform victims about the investigation stage and instruct victims, when needed, to go to those other agencies that might give them special assistance.

Comments:

The rights of victims to compensation and support are discussed under this rule. The ethical duty to protect victims from harm is discussed along with the duty to protect witnesses.

Victim's rights are in the forefront of modern jurisprudence. The victims' rights movement has been ongoing throughout the world for the past two decades. While programs that compensate and support victims are universally lauded, rules that pit the rights of victims against those of the defendants in the courtroom threaten to upset the balance of criminal trials and might place prosecutors in an ethical quandary.

There is little in the way of funding or programs for the compensation and support of victims available in Palestine. However, the accused must supply restitution if the victim or another party injured as a result of the crime brings a civil claim. PPM Chapter Four, Second Section: the civil lawsuit, Rules 585-609. The criminal court that heard the case has jurisdiction to adjudicate the civil claim stemming from the conviction. PPM Rule 514. Prosecutors have the legal and ethical duty to assist a victim with his or her request for a civil claim. PPM Rule 590. The prosecutor also has a duty to request the appointment of a legal representative to assist an incapacitated or injured victim who has no one to represent him or her in the civil claim. PPM Rule 601. The failure to attend to these duties

can result in discipline.

25. The prosecutor should respect witnesses, and should avoid showing disbelief in what he/she is saying. The prosecutor should not say or imply anything that would make any witness afraid to give his/her testimony.

Comments:

This rule speaks to the duty of professionalism. PPM Rule 263 states that a prosecutor has a duty to respect the witness and to treat him or her in a good manner and not to undermine the witness in a manner that may result in a refusal to testify. PPM Rules 262-304 discuss the questioning of prosecution and defense witnesses. Complaints by witnesses of unethical treatment made to either the judiciary or the Attorney General can result in discipline.

PPM rule 263 states "The prosecution member has to respect the witness treating him/her in a good manner and not undermine him/her and resulting in the witness refusing to testify and thus harming judicial justice. PPM rule No. 274 indicates that the prosecution member should not show his/her suspicions regarding the witness's testimony through remarks that would influence the witness and prevent him/her from telling the truth. PPM rule 275 indicates the prosecution member should avoid the presence of the public or the police members being present during the hearing of the witness's testimony to ensure they do not affect the witness's will by their presence. PPM rule No. 276 indicates that the prosecution member has to have a strong sense of perception in observing the witnesses' conduct. If the prosecution member notices that the witness would be affected by the presence of one of the adversaries or the police members, he/she must order such a person to leave and must give the witness the needed assurances that whatever he/she says shall remain in the case file.

26. The prosecutor has the power to hear any witness he or she deems necessary to hear. The prosecutor should respect the witnesses and should avoid intimidation, declaration or pressure that might induce them not tell the truth and harm justice. The prosecutor should make the effort needed to protect witnesses and their families during all investigation and trial stages

Comments:

This comment shall discuss the need to protect witnesses, victims and their families. In other jurisdictions this is also a large and growing problem. One preliminary step, if allowed by the court is to rule, upon the prosecution request, that the identities of witnesses and victims who have been threatened with harm may be withheld until the victim or witness actually comes to court to testify. Palestinian law may have to be changed in this regard to allow the court's to do this under appropriate situations (because of the rule that the defense must have access to the file before the witnesses actually come to court in Palestinian jurisprudence). Funds are also generally not available for the relocation and or guarding of witnesses. How then can a prosecutor comply with his or

her duty to protect these people? Prosecutors have to be creative in protecting these people. In some instances victims or other witnesses have been sent to stay in their home villages under the protection of the local sheiks until called to testify. Sometimes arrangements have been made with the police to provide armed protection. This is a very difficult problem. If every reasonable attempt is made to protect victims and witnesses, prosecutors will not be disciplined if a determined criminal harms a witness or the victim.

Palestinian law gives the prosecutor both the power to summon any witness and the duty to treat witnesses with respect. Rule number (262): the prosecution member has the power to call summon all the persons he/she deems that their statements might be helpful in revealing the truth. This can be done regardless if the names of the persons summoned were mentioned in the complaints or not. The prosecution member also has the power to hear the testimony of any witness who volunteers to testify without being summoned provided that this is documented in the investigation report. However, in this process, Rule number (263) is extremely important: the prosecution member has to respect the witness and treat him/her in a good manner and not to undermine him/her so he/she would refuse to testify and thus harm the judicial justice. The failure to treat the witnesses with respect can lead to discipline.

Please also see discussion of victim's rights previously discussed.

27. The prosecutors must support the authority and the respect of the judiciary through their commitment to the principles of ethical conduct during trial and by showing the respect needed toward judges, lawyers, witnesses and others.

Comments:

This rule speaks to professionalism. This is one of the areas where prosecutors are sometimes subject to discipline. Heated debate often occurs in the courtroom, and at times a prosecutor will act in an unprofessional manner in the presence of the judge. Such lapses are often the subject of contempt proceedings in other jurisdictions. In these jurisdictions this process can result in a jail sentence, but which most commonly results in a fine.

Many of the rules of procedure in the PPM discuss the relationship between the prosecutor, judges, lawyers and witnesses. PPM rule 539 gives the Chief Judge the duty to maintain order. Rule 541 allows the Chief Judge to impose discipline on a court official such as a prosecutor according to law. Prosecutors are disciplined under the same laws applicable to judges. Art. 71, title 3, Duties of Public Prosecutors "The provisions of chapter three -- title three of this law (duties of judges) shall apply to members of the public prosecution office." Art. 72 title 3 Discipline of Public Prosecution Members, "The provisions of Title four (disciplinary inquiry of judges), shall apply to members of the public prosecution's office. Disciplinary action shall be instituted against them by the public prosecutor on his own initiative, or at the request of the minister of justice". The disciplinary claim may be filed by the Attorney General based on a request from the Minister of Justice, the Chief Justice of the Supreme Court, or from the presiding judge of the court to which the judge belongs. Art. 49- Art. 50 requires that a disciplinary claim be initiated by a petition which includes a charge or charges reached through investigation. Art. 55 sets forth the disciplinary penalties that may be imposed by the judge on a prosecutor: warning, reprimand or dismissal.

28. *The prosecutors must behave with high proficiency and must always be prepared and well organized during trial.*

Comments:

It does not appear that discipline as contemplated by the articles discussed above would be meted out for failing to be prepared or organized during trial. However, this does not prevent the Attorney General from meting out discipline within his own function as the employer of the public prosecutor. PPM rule 762 discusses at length the duty of a prosecutor who argues before a court including the duty to study the case file with great care and to be prepared.

Rule number (762): The general prosecution member's mission is to defend society's rights. Such a mission requires him/her to have many special characteristics such as being having a wide vision, logical reasoning and the use of wisdom and mind in order to reach correct conclusions. He/she should be aware of both society's and the people's affairs in addition to the social norms. He/she has to have courage in order to face certain situations.

The prosecution member (prosecuting attorney) has many obligations and duties, including:

- a) Unquestionable belief in the case he/she is prosecuting: If the prosecuting attorney is not completely convinced of the case he/she is prosecuting and the sufficiency of the evidence against the accused, then he/she will not be able to perform his/her duty.
- b) The prosecuting attorney has to study the case file with great care, in great detail and with close attention, before the date of the hearing session, in order to know the different facts and circumstances of the case. Therefore article (4) of the Attorney General's instructions for 1994 states, " it is understood that prosecuting a case comes after a full study of the case file and all the procedures that have been taken in the case".
- c) To respect the position of the courts' judges the prosecutor is prohibited from showing disrespect to the judge or to be seen as an educator to him/her, regardless of the degree of your knowledge and seniority, because he/she is the judge and he/she is in control and should be respected as such.
- d) To preserve his/her objectivity and preserve the integrity of what he/she says during court arguments: The French say, "*position* obligates". This means what might be allowable for private attorneys and other individuals may be completely prohibited for general prosecution members.
- e) To care for appearance and to wear the litigating robe the judicial profession has many practices and customs that should be preserved, such as wearing the suitable outfit when prosecuting a case before the court.

Rules 763 through 767 set forth numerous requirements that the prosecutor must follow in the conviction phase of the trial. Rule 763 is of particular importance in relation to this rule of ethics since it is designed to preserve the prosecutor's performance for review by his/her superiors.

Rule number (763): The prosecution member who is appearing before the first instance court has to prepare written arguments in the cases he/she is prosecuting. Such written

arguments should be kept in special files so they can serve in evaluating the prosecution member when his/her work comes under inspection. Such written arguments would aid the prosecution's supervising member if they were under his/her supervision. However, while prosecuting the case the prosecutor should not simply read from the written argument.

Rule 768 sets forth numerous rules that the prosecutor must follow in arguing the sentencing phase of the trial. A gross failure to follow these rules will support discipline by the Attorney General. Of course, nothing would prevent a judge from reporting a repeated failure to follow these rules to the prosecutor's Chief Deputy or to the Attorney General's office. The PPM puts the prosecutor on notice as to the specific meaning of proficiency.

29. The prosecutors must respect the legitimate right of an accused to a defense that is granted by the constitution and law. The relations between a prosecutor and defense attorney must be based on their mutual respect.

Comments:

The tension between a prosecutor's duty to convict and his or her duty to respect the rights of the accused, sometimes lead to ethical violations. .

Numerous rules of the PPM govern the same types of interactions between prosecutors and the accused. Rules 141 through 181 govern the treatment of the accused. Rules 182 through 261 cover the search of persons and property, including obtaining a search warrant. The failure to follow these numerous rules can result in discipline by the Attorney General or by the courts at the request of the Attorney General.

PPM Rule number (141): the accused has the right to say what ever he/she want to say away from any elements that might affect his/her will wither these elements were material or emotional ones. Annulment of the interrogation would be the result if the accused was subjected to any elements that affects his/her free will wither it was administrated by the investigative authority or any other party.

Rule number (144): the accused has the right to remain silent and his/her silence should not be interpreted as evidence of his/her guilt.

The accused must be allowed to have his/her attorney present during interrogation.

PPM Rule number (89): The prosecution member must enable the accused to defend him/her self and enable him/her to produce the evidence that proves his/her innocence If he/she gives the name of his/her lawyer the later should be called in order to attend the interrogation and should be enabled to observe the investigation.

The accused may request a delay of 24 hours in order to have his/her attorney present. Rule number (151): the accused has the right to delay the interrogation for a period of twenty-four hours to secure the attendance of his/her lawyer. If the lawyer does not attend he/she has waived such a right and the interrogation can start immediately.

The only exception arises in cases that allow for secrecy such as the protection of informants in drug dealing investigations. Rule number (158): if the general prosecution saw that it should take any secret procedures without the knowledge of the accused then it

is not obligated to notify his/her attorney.

PPM Rules 159 through 171 are extremely specific concerning the rights of a defendant's attorney to access and assistance.

Rule number (159): the attorney cannot answer on behalf of the accused or tell him/her when to talk and when to keep silent instead the attorney has the right to request the prosecution member to ask certain questions, he/she also has the right to make some comments and object to some of the prosecution's questions and document this in the interrogation report. The attorney has also the right to request the summoning of some witnesses and the calling of some experts.

Rule number (160): the attorney has the right to observe the integrity of what the reporter is noting down in the report in order to make sure that it is the same as what is being said. The attorney has to refrain from affecting the interrogating by directing questions that might bring the accused attention to certain points that could benefit his/her status in the interrogation. The attorney should not interrupt the prosecution member while he/she is talking and should wait for him/her finish his/her talk and then ask to be allowed to present his/her comments. The accused attorney should not be allowed to make a legal presentation during the interrogation because this only could be done in the courtroom.

Rule number (161): during the interrogation the attorney cannot talk without the permission of the prosecution member and if the later did not gave him/her permission then this should be noted in the interrogation report.

Rule number (162): the attorney has the right to review the investigation procedures that where taken before the interrogation of the accused. Such a right is a basic defense right written into many human rights conventions and laws based on the fact that if the defense were not able to review the case file, then the accused would be helpless in proving his/her innocence.

Rule number (163): the attorney has the right to submit to the prosecutor a memo that contains his/her views and notes regarding the case the prosecutor is investigating.

Rule number (164): the accused, the victim, and the plaintiff in the civil case all have the right to request on their own expense copies of the investigation documents and reports.

Rule number (165): the prosecution member is obligated to allow the attorney to review the whole case file including any procedures that were taken without the presence of the accused. The attorney should be allowed to photocopy and reproduce the existing documents. Not giving the attorney free and full access to the case file means that the general prosecution has more privileges than the attorney in the case, and this is not allowed.

Rule number (166): the case file includes all the documents related to the case, the investigation reports, evidence, and every thing that has to do with the procedures and actions taken regardless of who takes them, and if they are secret or not. It is not relevant if the accused or his/her attorney knew about such procedures and actions or if it was taken in their presence or not.

Rule number (167): the investigator cannot exclude any paper or document from the case file and the file must contain all the papers and documents it had before the start of the interrogation process. The prosecution member cannot claim that the document/s withheld are not of importance or irrelevant or there is a fear it is going to be lost or that the documents contain secrets.

Rule number (168): if the prosecution member, after permitting the attorney to review the case file, conducts a certain investigation or received certain documents related to the case such as an expert's report, he/she is obligated to make such documents available to the attorney before starting the interrogation or he/she cannot refer to such documents in the interrogation or ask any questions regarding it unless the attorney waived his/her right to review it.

Rule number (169): permitting the attorney to review the case file is to permit him/her personally to do so and he/she has the right to waive such right unless the accused objected to such waiver.

Rule number (170): the prosecution member has to mention and note down in the investigation report that the case file was made available to the attorney and such a note is an evidence that the formal procedures required by the law have been fulfilled.

Rule number (171): the prosecution member is under the duty to assist and help the attorneys in defending their clients; thus he/she should answer their requests within what limits the law permits, provided that such assistance will not hinder the investigation.

A prosecutor's failure to abide by these rules can subject him/her to discipline. Remember it is easier to convict than to do justice. It is easy to turn over evidence to the defense that you believe is exculpatory. It is more difficult to turn over evidence that the defense would believe is exculpatory but that you do not trust. Nonetheless in many other jurisdictions, and under the rules of the PPM, a prosecutor must turn over such information, especially at the request of the defense.

30. The prosecutor should enable the defense attorneys to carry out their duties and to answer all requests that are made according to law within those limits that do not affect investigation or cause delay.

Comments:

PPM rule 89 states that if an accused gives the name of his or her lawyer prior to interrogation, the prosecutor should call that lawyer and allow him or her to attend the interrogation and to observe the investigation. Rule 150 states that a prosecutor must inform the accused prior to interrogation that anything he says will be used against him or her at trial. Rule 151 states that the accused has the right to delay the interrogation for 24 hours in order to secure the attendance of his or her lawyer. If the lawyer then fails to attend, or he or she waives the right to have the lawyer present, the interrogation may start. However, rule 152 states that a prosecutor may interrogate an accused without the attendance of his or her lawyer in the case of an emergency or if the accused was caught while committing the criminal act, in order to prevent evidence from being lost. The reasons for taking such action should be documented. The failure to document these reasons, alone, could lead to disciplinary action. Rationale: An accused could complain to

the court, or directly to the Attorney General, that there was no documentation because there was no emergency. Generally, the requirements relating to the documentation of an action protect the prosecutor. Rules 153 through 174 also discuss the duties of a prosecutor toward the attorney for the accused. They should be studied in order to prevent ethical lapses from occurring.

The failure to carry out these duties is a violation of this ethics rule. Since Palestinian prosecutors must advise the accused of these rights they not the police are ethically responsible for carrying out these duties.

31. The relationship between a prosecutor and different experts has to be based on cooperation and mutual respect.

Comments:

PPM rules 373 through 397 cover the use of experts by prosecutors. They should be studied. Rules 374, 377, 380, 383 and 385 are of particular importance in the context of this ethics rule.

Rule number (374): the competent prosecutor has to seek the assistance of the concerned physician and other needed experts in order to prove the status of the crime committed. The authorized physician and the other experts have to conduct their work under the supervision of the investigation authority and the investigator has the right to be present while the experts are conducting their duties if he/she deems that the interest of the investigation requires him/her to be present.

The failure to be present when required would be a violation of this rule. For example, if the expert must go to the crime scene to collect evidence such as blood, tissue, fingerprints, documents to be examined, etc., the prosecutor may need to be present in order to preserve the chain of custody of these items. Rationale: An expert may or may not be cognizant of the legal rules relevant to the preservation of the chain of custody of evidence.

Rule number (377): the accused has the right to seek the assistance of a consulting expert and he/she also has the right to ask to view the documents and papers provided that such a request does not delay the investigation procedures.

The prosecutor not the expert has the duty to see to it that this rule is complied with. The failure to provide the documentation could be a violation of this ethics rule.

Rule number (380): the prosecution member has the power to replace the expert if the latter did not fulfill his/her duties or did not submit his/her report during the specified period.

It is up to the prosecutor to choose an expert in the first place who will fulfill the task. It is also the prosecutor who must let the expert know what the time deadlines are for filing a report. Any failure on the part of the prosecutor that leads to the need to replace the expert and that damages the prosecution case may be a violation of this rule.

Rule number (383): the adversary has the right to request the dismissal of the expert if

there are serious reasons for it. The request of dismissal must be submitted to the investigation prosecutor and it has to be reasoned. The prosecutor has to refer the request to the Attorney General or one of his/her deputies in order to take a decision regarding it within three days from its submission. The expert cannot proceed in his/her work when a request for dismissal is submitted, unless it was decided other wise through a reasoned decision.

This rule along with Rule 380 gives both sides the opportunity to replace experts who may be less than competent or biased before the case comes to court. If an expert were found by the prosecution to be biased even in his/her favor, this ethics rule would require the prosecutor to join in the defense request for dismissal.

Rule number (385): if the expert refused to do the job he/she was designated to do then the general prosecution has to notify the body or institution he/she works for in order to take the necessary disciplinary measures against him/her.

The failure to so notify the body or institution would be an ethical violation by the prosecutor.

Often, prosecutors will call upon an expert without first attempting to understand in even a limited way the science of the expert's profession. Likewise, prosecutors sometimes examine experts without explaining to the expert the forensic significance of his or her testimony and the rules of law or procedure that apply to his or her testimony. In other jurisdictions organizations of prosecutors and experts exist to facilitate mutual understanding and cooperation. For example a Forensic Sciences Committee can be formed to foster communication between prosecutors and scientists concerning the knowledge and intricacies of their respective fields. Whether through a formal committee, or through independent study, a prosecutor will be well advised to understand the needs and concerns of the experts that they utilize. Note: experts can train a prosecutor in the presentation of complex evidence.

32. The prosecutors have to supervise the duties of law enforcement officials and to direct them with courtesy - and to appreciate their efforts. Relations with them must be based on respect and good understanding - without developing any special relationship with them that could affect the investigation process or that may make affect the prosecutor to that degree in the offense that is being investigated which could cause harm to the justice system or convict an innocent.

Comments:

The danger for a prosecutor in this ethical rule lies in fostering too close a relationship with police officers. One specific caution as to a "sometime" practice, which is an example of the type of relationship that is prohibited. Police officers have, on occasion, been given blank, signed arrest or detention warrants. This can never be done.

PPM rules 6 through 46 discuss generally the powers of judicial officers. Rule 6 states that the prosecutor has the duty to supervise the work of judicial officers. Rules 7 states that the Attorney General has the right to ask competent authorities to take disciplinary actions against judicial officers who fail to fulfill their duties.

33. The prosecutors must deal with all agencies and associations involved in the criminal justice system, in an effective way, with a positive attitude. Prosecutors have to be punctual and have to respect hearing dates and time constraints of the law and the courts.

Comments:

This rule is self-explanatory. A prosecutor's relationship with the court, defense bar and all others who participate in the judicial system should be characterized by professionalism, respect and integrity. The prosecution should treat court personnel with courtesy and respect, and act to ensure their professional integrity. The prosecutor must adhere not only to the letter of procedural rules, but to their spirit as well, and not make statements or ask questions based on matters irrelevant to or inadmissible in a case or in any other way attempt to thwart the defendant's right to a fair trial. Under all circumstances, a prosecutor shall seek to maintain the independence of the prosecution office. The duty to attend court in a timely manner has been discussed previously.

34. Prosecutors must deal with the public in a professional way, with respect, and by showing the interest and attention needed in what the public demands. Prosecutors must also be sure that the other staff members in the prosecution offices are dealing with lawyers, adversaries, witnesses and the general public in an appropriate manner, reflecting the important role which general prosecution has in public service and in protecting society.

Comments:

Professionalism as a human being and a prosecutor is your most important quality. Police officers, victims, witnesses, attorneys, and judges will make critical decisions based upon their observations of your candor, honor, and integrity. This applies to staff members as well.

Citizens often seek advice from prosecutors about the law. The prosecutor has specific authorization to represent the interests of society as a party to an action but not as individuals. Thus a prosecutor has no official obligation to advise citizens in their individual capacities, and the prosecutor's involvement in a private civil dispute is fraught with potential problems. Further, prosecutors' advice to a law enforcement agency concerning the application of criminal law and procedures is to be distinguished from the legal opinions rendered by the agency's counsel.

Of course, a prosecutor may recommend consultation with a private attorney and also warn that the proposed course of action may constitute a violation of law. Advice that may be construed as recommending methods for circumvention of the law, or compliance with the law, should be avoided. Moreover, consideration should be given to the ethical principles that govern the rendering of legal advice.

Private citizens who have incurred damages as victims of violent crimes are entitled to a prosecutor's advice and assistance in applying for relief pursuant to any programs for indemnification of victims and advice concerning the filing of a civil claim. The prosecutor may also advise a victim on how to seek the return of property recovered by law enforcement agencies. In providing such assistance, a prosecutor may provide official and emotional support for witnesses and victims, which will reduce the level of public

apathy and skepticism toward the administration of criminal justice.

35. Prosecutors should direct people to those appropriate areas that can help them in those needs, which do not relate to general prosecution duties.

Comments:

Please see discussion of victim's rights, previously detailed.

36. Each prosecutor should inform the Attorney General immediately if he becomes aware of any prosecutor who has violated the code of ethical conduct and/or if that prosecutor performs any act that can affect the reputation of the general prosecution and its role in society.

Comments:

The word "immediately" may create problems in this situation. How soon is "immediately". Does this mean at the exact moment of discovery of the violation? Nothing in this rule prevents the prosecutor from first discussing the violation with the prosecutor involved. If a standing committee on ethics was created, this rule might be amended to allow the prosecutor to make a report to that committee. The rule might also be amended to allow the prosecutor to discuss the ethical violation in the first instance with his or her Chief prosecutor and the offending prosecutor. If the Chief prosecutor felt that the violation could not easily be corrected by him or her or was of sufficient seriousness, the Chief prosecutor would inform the Attorney General.

37. Prosecutors should study foreign languages to upgrade their legal education. They should contact international judicial agencies to cooperate in mutual interests, and which may give them the chance to work with those international and foreign agencies.

Comments:

PPM rule 71 also states that a prosecutor should master English or French in order to contact international legal treaties. A recent decision of the World Court, demonstrates the utility of this rule. The International Court of Justice of the World Court on July 9, 2004, condemned the security fence being built by Israel because it separated students from their schools, patients from their hospitals, and farmers from their fields. The ability to interact with bodies like the World Court is important.

This rule advances a prosecutor's duty to keep abreast of the law and to improve the administration of criminal justice. Prosecutors have the duty to make constant efforts to maintain and improve the criminal justice system. This includes the duty to see that the rule of law is just, understandable, and responsive to society. As a public official daily involved in the administration of criminal justice, a prosecutor is in the position to influence improvement of the law. When a prosecutor identifies substantive or procedural deficiency in the law, consideration should be given to whether these deficiencies should be remedied by legislative proposals or other legal means. Similarly, a prosecutor should strive constantly to identify and correct deficiencies in the operation of the prosecution office. One way to accomplish these goals is to compare the laws and procedures of your

country with those of other countries.

38. Prosecutors should work for the development of law when gaps in laws appear. They have to bridge these gaps - and they have a big role in reforming the laws through their participation in legislative efforts in these matters.

Comments:

A prosecutor's duty to maintain and improve the legal system is fundamental. This includes the duty to see that rules of law are just, understandable, and responsive to the needs of society. A prosecutor, involved in the administration of criminal justice is in a position to influence improvement of the law. When substantive or procedural deficiencies in the law are identified, a prosecutor should consider whether to cure them by legislative proposals or other legal means. Note: This duty may conflict with Palestinian ethical rule 46 that precludes a prosecutor from openly declaring his or her political views and from participating in political parties. The ability to pass legislation that would correct the law often requires participation in political parties. This rule seems to say that prosecutors may appear before legislative bodies in order to advocate for laws that affect the criminal justice system so long as they do not attempt to elicit the support of individual legislators based upon mutual political goals like party membership and the advancement of the legislator's career or the prosecutor's own political ambitions. Prosecutors under this rule may also propose legislation that would positively reform criminal justice.

Section 2

Duties and Acts Prosecutors are Prohibited From Engaging In:

39. Prosecutors are not allowed to declare their professional title with ostentation, inordinate pride or to threaten others. They are directed not to put themselves in situations that could negatively affect the honorable duty they are carrying out. A declaration of professional title should only be made in those situations needed to perform professional tasks and in those areas that contribute to the public respect of the judiciary.

Comments:

The abuse of power causes disrespect for the entire general prosecution. An abuse of power can be as small as telling a police officer that you are a prosecutor in order to avoid getting a traffic citation. Prosecutors have the duty of upholding the law. The prosecutor who becomes entangled with law-breakers has violated a fundamental duty and has abused the office of public prosecutor. A prosecutor should also not use official stationery that identifies his or her position for personal objectives. Abuse of power is a serious ethical violation that in severe cases could lead to dismissal.

In one jurisdiction a prosecutor became enamored of a defendant's wife. He indicated to the woman that he would go easy on the defendant, and, in fact, save him from going to prison if the woman would do him "favors." He, of course, was dismissed from office and sent to jail for the abuse of his position when the truth came out.

40. Prosecutors are not allowed to reveal the secrets of cases they are investigating and they should not allow any individual not involved, by law, to examine their case files,

except for those persons who are allowed to do so by that law or special instructions.

Comments:

PPM rules 67 and 68 require that the prosecutor keep every investigation secret. Rule 157 allows only the defense attorney and others allowed by law to attend the investigation. Otherwise a prosecutor must keep the investigative file secret. PPM rule 90 requires that no unauthorized persons be allowed to view the investigative file.

Likewise the failure to maintain the secrecy of the investigative file would subject a prosecutor to discipline for misconduct.

41 .The prosecutors are not allowed to interfere in any cases or investigations being worked on by their colleagues for the benefit of any other party or adversary.

Comments:

This is essentially a prohibition against conflicts of interest. The prosecutor may not seek to help a friend or relative who has been accused of a crime by interceding with a colleague who has been assigned the case. This is a serious violation. This type of violation could lead to dismissal.

In another jurisdiction a prosecutor was fired from the GP and then was suspended from practicing any type of legal activity for one year, by the state body responsible for ethical violations, for interceding on the side of a famous music producer in a case. He obtained probation for the music producer as a part of a plea bargain while the prosecutor originally assigned to the case was on vacation. When the music producer violated the conditions of his probation the same prosecutor sought to intercede to prevent the music producer from going to prison. It was also revealed that the prosecutor had rented a home he owned to the music producer at a very high rent and had obtained a singing contract for his daughter from the producer.

42. Prosecutors are not allowed, without the AG's permission, to work as arbitrators, even without salary and even if the dispute is not submitted to the judiciary. However, they can do so, without permission, if one party of the adversaries is one of their relatives up to the fourth stage.

Comments:

This is a very strict rule, but it certainly prevents conflicts of interest. In other jurisdictions prosecutors are allowed to work as arbitrators without salary. They are also allowed to practice the civil law in some jurisdictions provided that the cases do not conflict with any of their criminal cases. In most jurisdictions however a prosecutor may not represent a client in the civil matter if the client is also a defendant in an unrelated criminal matter. As well, if a prosecutor becomes aware of facts that create a suspicion that a potential civil client may become the subject of a criminal prosecution he/she could not represent him.

It seems far better to simply preclude a prosecutor from practicing law in any other context than his job as a prosecutor.

Note: If the appearance of impropriety exists, in *any* private work or employment, the proposed employment should be refused.

43. Prosecutors are not allowed to erase, obliterate or change any decision made by them unless they prove there is a reason to change their mind.

Comments:

Justice depends upon the decisions of prosecutors. It should never be made to appear that a prosecutor has buried a mistake in order to absolve himself or herself of error, wrongdoing, or negligence. Only a complete record can satisfy the public that prosecutors always do their duty.

In most jurisdictions changes may be made and new documents filed with the court only with the permission of the court. Altering court papers is a criminal offense in most jurisdictions. Criminal offenses committed by prosecutors are always ethical violations

44. Prosecutors are not allowed to accept any present or gifts from witnesses or any person involved in any case that they are investigating or who is present, in front of the general prosecution, for any reason.

Comments:

This is self-explanatory and is a universal rule for prosecutors around the world. By accepting gratuities, a prosecutor may raise an expectation or create an appearance that a donor is entitled to special consideration or that the prosecutor is officially obliged to the donor. Victims and witnesses may like and appreciate your work. Refuse to accept gifts from them and politely tell them why you are doing so. Beware of free lunches. You may have a long acquaintance with a defense attorney; but this does not mean that you allow him or her to buy you lunch or give you gifts. If you accept lunches and gifts from the defense attorney, he or she may communicate to other lawyers or to their clients that he or she has a special relationship with you. That would mean the end of your reputation, and would demean the office.

In other jurisdictions prosecutors are often given commercial discounts on goods or services. A prosecutor should accept only those commercial discounts, which are available to members of the general public.

45. Prosecutors are not allowed to talk in an audible voice about issues concerning their work in public places or public transportation.

Comments:

This concept simply follows the admonition that requires prosecutors to keep the file secret from all who are not legally entitled to know the contents of an investigative file. PPM rule 90.

46. Prosecutors are not allowed to openly declare their political points of view and they are not allowed to participate in political parties or to attend their meetings.

Comments:

This rule prevents certain conflicts of interest from arising. However, this rule may conflict with the prosecutor's duty to change and update the law in order to better the justice system. In addition, prosecutors often rise to positions of political influence and standing in government. Problem: If you prevent prosecutors from declaring their beliefs or participating in political parties, you remove a group of people dedicated to justice and order from the pool of potential leaders. It is often not practical to require a prosecutor to resign his or her post in order to participate in the political process. Furthermore, by using this rule, prosecutors are effectively prevented from participating in a process that every other citizen is allowed to participate in, effectively giving him fewer rights than other people. Hence, this rule may have to be revisited.

However, it must be pointed out, that this has been enacted as a rule of ethics that must be followed by every attorney member of the prosecution. If it is not followed, it will result in disciplinary action, as it should. No prosecutor has the right to independently decide that he/she shall violate any rule of the office, as they have no right to decide that any singular law should not apply to them (for whatever reason) and just decide that they have the right to violate it.

47. Without written consent from the Attorney General prosecutors are not allowed to make frequent visits to foreign centers and agencies and they are not to give lectures at those places without the mentioned consent and after presenting the proposed lecture to the A.G for examination.

Comments:

The unique situation and experience of Palestinian prosecutors requires this rule. This rule however would seem strange to prosecutors in other jurisdiction. The right to travel is seen as a fundamental right in other jurisdictions. The right to lecture carries considerations of free speech. Again, this does not mean the ethical rule can be ignored. It must be followed, until officially changed. No single prosecutor has the right to ignore any of the ethical rules that have been established within the office. Note: assume that a prosecutor receives an invitation to lecture in a foreign center, and that it appears to him/her that this opportunity would benefit the general prosecution. The decision to accept the invitation cannot be made unilaterally. The Attorney General must be consulted, and must approve the appearance. Failure to obtain such approval would subject a prosecutor to discipline.

48. Prosecutors are prohibited from interfering in collecting subscriptions for any project, or operating as chiefs or members of these committees collecting money for benevolent or general purposes, and they must keep away from any work that might affect the integrity of their duty.

Comments:

Again this rule prevents conflicts of interest. It is very strict. Does it prevent prosecutors from doing charitable work? As we know, such work enhances the reputation of people. However, the reason for the prohibition is apparent. A prosecutor is cloaked with the garb

of authority, an individual that those people who are solicited might be afraid to refuse for fear of some type of reprisal. As well, what if the charity, or people working for the charity are suspected of wrongdoing. Does this mean the prosecutor would be faced with a conflict of interest in investigating or trying a case with which the charity, or people working for the charity, might be charged. He/she might even be suspected of participating in the criminal activity, bringing public suspicion on the office itself.

49. Prosecutors are not allowed to work in politics and they are not allowed to be nominated to the legislative council or private agencies or organizations involved in the political process or political parties except after they resign from the Attorney General's office.

Comments:

This too is a very strict rule. Many prosecutors' offices follow the same rule. In other jurisdictions prosecutors may belong to a political party, but they may not run for office without resigning their post. They also may not campaign for a candidate. However, they may discuss their political views as long as they are not campaigning for them. Note: Government property, including telephones and facsimile machines, must never be used for political campaigns.

In other jurisdictions statutes preclude a prosecutor from using his/her office authority or influence to help or hurt another individual in obtaining a change in position or compensation in exchange for the individual's vote or other political favor, so Palestine is not alone in this prohibition. Other statutes in other jurisdictions also prohibit public employee from soliciting political funds or contributions from other public employees of the same political subdivision. Other statutes also prohibit political participation during working hours and/or after job sites.

The reasons for these rules are self-explanatory. The prosecutor comes clothed with authority by the simple virtue of the position he/she holds as a prosecutor. This can result in an influence on issues that are far out of proportion to what the individual would be able to bring to the issue if he/she were not a prosecutor. In that sense, it can become an abuse of office that should be avoided.

50. Prosecutors are not allowed, except in emergency situations, to be absent from work except by written consent by the attorney general. If any prosecutor violates this instruction he will be subjected to the consequences off the law of judicial authority 1 / 2002.

Comments:

This rule is self-explanatory. Since Palestinian prosecutors must be available at a moment's notice to go to a crime scene the rule is understandable. As well, being absent from work without consent or without supervisory approval can result in the payment of public funds to the prosecutor that are paid, or will be paid to the prosecutor, without the required work for such funds being performed. That is, by itself, a breach of trust, and should clearly subject the violator to sanctions.

51. Prosecutors are not allowed, except by written consent given by the attorney general,

to participate in radio or TV programs or to give any speech to the press concerning their work. This is necessary to maintain the honorable image of judicial officials and to prevent any possibility of error that might cause harm to that image.

Comments:

Since the investigative files are confidential and secret under Palestinian law there should be no opportunity for a Palestinian prosecutor to brief the media on the case, with the exception of publicizing the identity of a fugitive. However, a prosecutor may discuss his/her life and work in general without reference to a case currently under investigation with the permission of his or her superiors.

52. Prosecutors should not address and contact local and foreign agencies and ministries without respecting the official hierarchy of the general prosecution.

Comments:

Prosecutors may not have such contacts in their official position as prosecutors. Even if they are not acting as prosecutors, they must make this perfectly clear to everyone concerned, including the management of the general prosecution. Rationale: Even though they make it clear to all parties concerned there is the perception that the prosecutor is clothed with the authority of his office, and acting in that capacity simply because he “is what he is.” Note: further clarification of this rule may be required, particularly in those situations where it is clear that the individual may be seeking something so necessary and/or private to him/her, such as a travel document or visa that it should not come under this rule. However, as with the other rules of ethics, it must be obeyed. Failure to conform to the rule may result in sanctions being imposed.

53. When participating in local clubs a prosecutor is not allowed to be director of that club or one of its administrative members.

Comments:

This rule is aimed at preventing conflicts of interest. Once an officer of that club or an administrator of that club they are clothed with a double authority, that of the officer, and that of the prosecutor. In fact, they would be perceived so by members of the club, and by the public that they as officer of the club came in contact with while doing their duties as officers or administrators of the club. Taking the situation one step backward, in obtaining the office the prosecutor can be accused of using his authority in an improper way to obtain that office; or, he/she could be perceived as being elected to that office in the club, by the other members of the club, just so the prosecutor could use that authority that the position of prosecutor gives him/her, thereby enabling him/her to obtain advantages for the club that no other member could obtain.

54. All requests to the Attorney General should be written and submitted to his office. Prosecutors are not allowed to come to the Attorney General's office except for an important reason which relates to their judicial duty and then only after informing their direct superior.

Comments:

This is policy that is established to assure that the chain of command within the office is followed. Supervisors cannot be by-passed in office processes. To allow this to occur would be to invite disorganization, and the perception that all supervisors may be ignored, no matter what the issue. It would also make unreasonable demands upon the attorney general. His work is at least as important as that of any prosecutor (and, it might be argued, even more important). The AG must be allowed to carry forward with his/her work without unnecessary interruptions, particularly with relationship to issues that should be settled further down the chain of command.

55. Prosecutors are not allowed to receive any cases and/or to pursue or investigate cases assigned to other colleagues except in accordance with the approved schedule or according to the Attorney General's request.

Comments:

This rule is designed to prevent conflicts of interest. Under this rule, a prosecutor could not solicit a case involving a friend or relative from a colleague. As well, the process, if allowed would result in confusion among all the parties involved as to the responsibilities of actions and/or what needed to be done in any case, and/or who was responsible for the case's orderly processing through the criminal justice system.

56. Prosecutors are not allowed to participate in any commercial work or any work that might affect the independence and dignity of the general prosecution.

Comments:

Clearly, the rationale previously given on potential conflicts of interest apply to this rule. The prosecutor is a public official. He/she must be perceived by the public as not being involved in monetary pursuits, but solely in the pursuit of justice. As well, as in other commentary discussed in relation to previously analyzed rules, it is clear that the public might perceive the prosecutor as using his/her authority in advancing himself/herself in a private venture through the influence of his/her position; or even worse, advancing the business enterprise for personal profit by misusing his/her position.

57. Prosecutors are prohibited from doing extra work outside the Attorney General's office, with or without salary, except by consent from the Attorney General and in a manner that does not affect the independence of the prosecution.

Comments:

Failure to obtain consent would lead to discipline of the prosecutor.

58. Prosecutors are not allowed to leave their work places without getting permission for an urgent or regular or external vacation or sick leave in accordance to law and the instructions declared by the attorney general, Direct supervisors are required to be sure that those instructions are being respected and that supervisor has to report any violation

of these instructions.

Comments:

Again, obeying the chain of command is required for the efficient running of any large office. The need for these permissions has been discussed previously. However, it is important to note that the supervisor is obligated to report violations. No supervisor can be blamed for following these reportage requirements. And no subordinate should attempt to convince or persuade that supervisor from completing his duty to report on the absence. All responsibilities, both up and down the chain, are to be respected.

59. The Attorney General or his assistant should orally warn any prosecutor for violations of any of their duties and the requirement of their jobs, and if these violations continue the violator shall be subjected to the procedures and sanctions stated in the code of judicial authority.

Comments:

This rule states that a first offense for violation of these rules will generally be dealt with by an oral warning from the Attorney General or his assistant. However continued violations would be dealt with under the code of judicial authority as discussed.