


**Advocate – Client
Confidentiality in Poland**

adwokat Jakub Biernacki



NATALIA OŁOWSKA-CZAJKA
KONSULTINGOWA

Legal grounds

- Advocate's Bill (Prawo o adwokaturze – 29 May 1982)
- Ethical Rules (Zbiór Zasad Etyki Adwokackiej i Godności Zawodu 10 October 1998)
- Code of Civil Proceedings
- Code of Administrative Proceedings
- Code of Criminal Proceedings

Law on Advocacy – art. 6

legal definition

- All info gathered when providing legal assistance
- Unlimited in time
- Cannot be waived

*exception: *money laundering and financing of terrorism*

Ethics

- All info obtained while fulfilling professional duties
 - Documents on files
 - Messages, notes and any other info from client or others
 - Employees and associates – duty to maintain confidentiality
 - Software – ensuring security of data and transfer
 - Duty to inform client about the risk connected with data transfer

Ethics

- Unlimited in time
 - Consultation itself
- *invoices are not covered

Prohibition to evoke advocate's testimony as evidence – aiming at revealing knowledge within the professional duties

Civil Procedure – art. 261 §2 Administrative Proceedings – art. 83 §2

- Obligation to testify
- Right to refuse answers to particular questions
- * crucial professional info

Criminal Procedure

Two types of rules:

- **counsel for the defense** in criminal case
 - art. 178 ABSOLUTE = like confession
- **other**
 - art. 180 § 2

Confidentiality in criminal case – defending attorney

- All Info / facts – in criminal case
- Cannot be waived by anyone
 - * art. 73 – Prosecutor’s decision
 - Temporary arrested
 - Strongly justified case
 - **Dobro postępowania przygotowawczego – preliminary (prosecutor’s) proceedings**
 - Contact in prosecutor’s presence
 - Correspondence control
 - 14 days

180 §2 Criminal Proceedings

- If info is:
 - Necessary for the „interest (good) of justice”
 - Facts cannot be established in any other way
- Supreme Court – 16 June 1994, I KZP 5/94 (7)
- Polish Bar Council’s resolution – 18 June 1994 no I/VIII/94
- Polish Constitution – art. 175 pasage I

"Owner / Master" of the confidentiality clause

- Advocate
 - POA
 - Trust
- Client
 - Has no power to relase Advocate' from his professional confidentiality obligations

Liability

- Disciplinary
- Compensative
- Penal – art. 266 § 1 Criminal Code: fine, restriction of freedom, imprisonment up to 2 years

Thank you