



# Professional Secrecy / Attorney-Client Privilege in Swiss Law

Sanctions for violation

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# Legal Basis

## Criminal Offense

- Article 321 of the Swiss Criminal Code (SCC)

Any person who in his capacity as a lawyer discloses confidential information that has been confided to him in his professional capacity or which has come to his knowledge in the practice of his profession shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

# Legal Basis

## Administrative Law Protection

- Article 13 of the Federal Act on the Free Movement of Lawyers (FMLA)

<sup>1</sup> Lawyers shall be bound by professional confidentiality that is unlimited in time and applies to dealings with any person in relation to anything entrusted to them by their clients in the course of their professional activities. Release from this obligation does not require the lawyers to disclose anything entrusted to them.

<sup>2</sup> They shall ensure that their auxiliary staff preserve professional confidentiality.

# Purpose and Scope

- Protects client privacy
- Ensures freedom of communication
- Applies indefinitely
- Triple interests of the professional secrecy:
  - Public interest: guarantee to have an efficient defense with the assistance of a lawyer
  - Private interest of the client: be able to confide in a lawyer without fear
  - Interest of the lawyer: to be fully informed

# Sanctions for Breach

- **Criminal:** Monetary Penalty or up to 3 years imprisonment (Art. 321 SCC)
- **Disciplinary** (Art. 17 FMLA):
  - Warning
  - Reprimand
  - Fine not exceeding CHF 20'000.-
  - Suspension up to two years
  - Disbarment (Cantonal Authority)
- **Civil liability:** Potential lawsuits for damages
  - + Administrative consequences of a Criminal penalty

# Case law

## Federal Supreme Court decision 6B\_545/2016 of 6 February 2017

- Breach of professional secrecy related to the recovery of unpaid fees
- Possible consequences related to administrative measures.
- See Art. 8 FMLA
  - <sup>1</sup> To be entered on the roll, the lawyer must satisfy the following personal requirements:
    - b. they must not have any criminal conviction for offences incompatible with the profession of being a lawyer, unless this conviction no longer appears on a standard private extract in accordance with Article 41 of the Criminal Records Register Act of 17 June 2024



Thank you for your attention.