

UNCA

**“LA CARPA: A QUALITY APPROACH  
TO THE LEGAL PROFESSION**

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**I – INTRODUCTION**

The concern for quality observed in the law profession is time-honored and structural. It is inherent, both individually and collectively, in the very essence of our profession;

In his professional practice, the lawyer, in an individual capacity, risks his reputation every time he accepts a case.

On a global level, the French Bar Association, through the local bar associations and institutions, ensures the respect of a code of ethics, a fundamental guarantee for the person involved in a litigation.

When the first “*Caisse de Règlements Pécuniaires des Avocats – Carpa*” (Fund for Lawyers’ Pecuniary Settlements) was created in 1957, by a handful of members of the Paris Bar Association, although it had not yet become a “quality endeavor”, it was with this in mind that this innovating initiative was taken.

What indeed was it?

Up until 1954, funds were handled by attorneys, a task denied lawyers, to free the latter of all accounting concerns and to enable them to devote all their efforts to the defense entrusted to them.

Post-war constraints and an evolution toward eliminating compulsory legal representation in certain courts have exposed lawyers to increasingly frequent requests on the part of their clients to handle funds as an accessory to their operations.

However, this activity, pursued for the account of others, requires procedures, rules, the taking out of insurance policies and the implementation of accounting audits with which lawyers were unfamiliar.

The enactment of April 10, 1954 lay the groundwork for the lawyer’s handling of funds.

The enactment of November 30, 1956 entrusted to the President of the Bar Association the task of checking and auditing accounts of funds handled, and the District Attorney was the recipient of the results of the checks performed.

*Article 48 thereof stipulated that “the internal regulations (of the Bar Association) may authorize lawyers, when they represent the parties legally without the intervention of a court-appointed Attorney, to make only the pecuniary settlements which are directly linked to the proceedings for which they have been retained...”*

*The enactment, in the last paragraph of this same article –specified: “a lawyer availing himself of the authorization granted by the internal regulations, must have a bank or postal account opened and reserved exclusively for his professional operations.”*

These provisions have led several members of the Paris Bar Association to devise a system allowing lawyers to implement this provision, while:

- representing the funds with respect to the party to the litigation,
- avoiding any additional constraint for lawyers,
- implementing services for one person or a group of persons involved in litigation.

The goal of our fellow lawyers was to facilitate the accounting and individualization of these operations, to hold the beneficiaries, or lawyers’ clients, harmless by taking out specific insurance, implementing a remuneration system for the mass created.

By isolating these deposits from the attorney’s personal or professional accounts, our fellow-lawyers, the forerunners, sought, on the one hand, to achieve the total security of these funds and on the other, an absolute representation.

An additional guarantee was provided to their clients; the foundations had been laid down;

The law of December 31, 1971 merging the professions of lawyers and public attorneys at the District Courts, brought about an acceleration in the creation of the Carpa and, in 1986, due to the pressure exerted by the Union Nationale des Carpa on the public authorities, the depositing of client funds, accessories to a legal or judiciary act, in our coffers, became mandatory;

Since then, the law of December 31, 1990 has amended the law of December 31, 1971, creating a new law profession, born of the professions of lawyer and legal advisor.

Its enactment of November 27, 1991 was amended, with respect to the Carpa. On July 5, 1996, a decree of the same date supplemented this enactment.

Thus the Carpa Control Commission was created, and an *ad’hoc* mission was defined and entrusted to the Statutory Auditors.

Desired by lawyers, the Carpa system has always been improved by the profession itself, which has succeeded in deriving lessons from its experience.

Today, what is the situation of this quality system adopted by the law profession?

## **II – THE CARPA TODAY: ITS CHARACTERISTICS**

### **2.1. – A nation-wide architecture guarantees the secure handling of lawyers’ funds**

The Carpa's handling of third parties' funds is an obligation, as per Article 240 of the enactment of November 27, 1991, amended, i.e.: *“The funds, chattels or values mentioned in Article 53-9° of the law of December 31, 1971, received by the lawyers, are deposited into an account opened in the name of the Lawyers' Pecuniary Settlement Fund, in the books of a bank or of the Deposit & Consignment Office.”*

However, certain ambiguities can arise. It must be said that the Carpa is not a bank, but that it relies upon the banking system and functions under the responsibility of each local Bar Association;

Thus, the 181 local Bar Associations of France or France's overseas territories, (125 of which count fewer than 100 lawyers), function with general practices which have been harmonized for their Carpa.

The Harmonized Internal Regulations, published by the National Council of Bar Associations, refers to the standard internal regulations recommended by the Unca for operations involving the handling of funds.

The National Carpa Union (UNCA) came into being in 1975 due to the desire on the part of the Carpa to be represented with the Public Authorities, to permit them to carry out exchanges and acquire a structure. In recent years, its dimension has changed with respect to the actions it conducts in favor of the various funds, particularly in terms of data processing and assistance. The Unca is a force which proposes solutions.

Thanks to the Unca, and the computer, technical and human means at its disposal, all the funds are able to provide the same quality in terms of service, audits and security.

The Unca develops, for the law profession, in conjunction with the Ministry of Justice, computer tools intended for the Carpa.

The Unca also maintains over 1,000 software programs which it circulates to the funds.

The Unca assists and trains the personnel employed by the funds.

The Unca acts as technical intermediary between the funds and the Ministry of Justice.

The Unca provides regular training to the funds' presidents and directors, sends them guides outlining the main supervision procedures for facilitating and harmonizing the funds' practices, in addition to computer aids.

In the same endeavor to provide increasingly better service, the Carpa have been asked to group together to make economies of scale and to enhance the role they play.

For the handling of client funds within the accounting system of each Carpa, each professional law structure has an individualized account, divided into as many sub-accounts as there are cases.

The sub-accounts for cases shall in no event be overdrawn or set-off against each other. This is an intangible principle of security & control.

The Unca has created a national insurance policy for the handling of funds. Thus, each lawyer is guaranteed annually up to Euros 6,100,000 for representing funds, to which is to be added an additional guarantee of € 9,000,000 on the national level; certain bar associations wanted greater coverage, in an individual capacity.

## **2.2 – The Advantages – Carpa Service:**

### **2.2.1 – Access to the Court System**

The Carpa play a very important role in the functioning of access to the court for our less fortunate fellow citizens.

Under law n°. 91-647 of July 10, 1991, the Ministry of Justice entrusted the management of State funds for legal aid, applicable since January 1<sup>st</sup>, 1992, to the [Carpa] funds.

This delegation of power reflects the quality and reliability of the funds.

It enables the Bar Associations to compensate, under strict, supervised, controlled conditions, the lawyers who take on civil, criminal or administrative defense missions in favor of the less fortunate, as well as legal consultations .

In providing this social service, the funds, local Bar Associations and lawyers all play a role in another aspect of the qualitative approach to the law profession: that of lasting development.

### **2.2.2 – Management of third-party funds**

From the time they are deposited to that of their withdrawal, the Carpa handles the management, monitoring and auditing of third-party funds in accordance with the provisions of Article 8 of the decree of July 5, 1996, i.e. *“the fund for lawyers’ pecuniary settlements must be able to audit the following elements, in particular during the operations mentioned in Article 241 of November 27, 1991:*

- 1° - The banking & accounting situation of case sub-accounts;*
- 2° - The description and nature of the cases;*
- 3° - The source of the funds deposited on the case sub-accounts;*
- 4° -The identity of the beneficiaries of the payments;*
- 5° - The cases for which the amount credited exceeds the limit on the insurance guaranteeing the representation of the funds;*
- 6° - proof of the link between the pecuniary settlements made by the lawyers and the legal acts or court actions performed by them in the framework of their professional service.*
- 7° - the absence of movement in the case sub-accounts.”*

A fund must be able to state at all times:

- Why these funds are being handled;
- For whom they are being handled
- How they are being handled.

The Carpa contributes to the proper execution of the judgements: the deposit into the fund halts the accruing of interest, it guarantees the protection of the funds, which it has not been possible to pay the beneficiaries, for 30 years. It guarantees for the party involved in the court action the representation of the funds which can be disbursed only in favor of the recipient indicated in the decision or agreement, aware that in the event of embezzlement, the party involved in the litigation is aware that the fund is insured.

Moreover, the control of the origin of the funds is an instrument for combating money laundering, a guarantee for democracy and a token of professionalism; a heightened mark of the quality of the service provided by the lawyer, a quality label, an additional security;

The Carpas' role in holding up funds of questionable origin is one of the major arguments put forth by the law profession to avoid being subject, as are other professionals, to the obligation to notify, at the time of the transposition to national law of the European guideline for the fight against money laundering: traceability is absolute.

The manner in which the funds operate permits the questioning of any funds of suspicious origin.

The members of the profession have unanimously demonstrated to the national and European authorities that they were equipped with technical and deontological tools enabling them to preserve the confidentiality of cases, with the same concern for quality and trust in their relations with their clients.

Under the responsibility of the local Bar Associations, the Carpa guarantees clients the confidentiality of operations. Police & financial investigations can be carried out only pursuant to letters rogatory, i.e. in the event of an offence or violation, limited to the operation at issue.

The Carpa provides to lawyers and their clients services which are complementary to their activities, for complex operations such as:

- sales by the court (public auctions)
- conventional or judicial custody (*pendente lite*)

### **III – CARPA CHECKS TO ENSURE SECURITY**

The Carpa is checked.

3.1 – By the Carpa Control Commission, a joint organization composed of the major organizations in the profession, which can issue opinions or recommendations intended for the funds; have the funds checked by a representative body of lawyers.

This same Control Commission issues standards which the Carpa is required to respect, in addition to the provisions of law and the regulations. For example, it recommends a threshold beyond which the documents accompanying all movements of funds exceeding € 40,000 are to be checked, spot checks for all sums below this amount and a systematic check of all movements of funds to or from a foreign country.

In doing this, this joint organization sees to it that each Carpa is in a position to meet all its obligations.

If these measures fail, the Commission disposes of means of coercion.

### **3.2. – Audits**

3.2.1. – For the handling of funds, each Carpa has an auditor who hands in an annual report on its operations to the District Attorney, designed to reveal dysfunctions or failures.

3.2.2. – For State funds, two auditors' reports are required covering procedures and management.

### **3.3. – Certification**

We note that the funds are turning toward ISO certification.

The Nantes Carpa was the first to obtain certification. Others are taking the same road.

This certification incorporates into the standard the checks created by the Bar Council and the Carpa.

The result of all these efforts has borne fruit: claims dropped significantly and approached level zero in 2003.

Thus, in ten years contingencies were reduced by 96%.

## **IV – THE FUTURE OF CARPAS**

The original concept implemented by the French Bar Association is being adopted by an increasing number of European countries.

Thanks to the control mechanisms, it constitutes an efficient tool for preventing the circulation of illegal funds, a crucial concern for modern economies.

Thus, Belgium, where a system resembling the Carpa system exists, is planning on developing it.

In Italy, the most dynamic bar associations are on the verge, based on France's experience, of creating funds.

If three European countries created Carpas, a European recommendation could be required for the handling of funds by attorneys.

Other regulated professions are interested in creating funds. One of them has already derived inspiration from the system, and others are actively contemplating it.

On the European level, the Afnor supports and recommends the Carpa system;

It works in conjunction with the French Bar Association to achieve the recognition of this solution in its standards.

It is important, therefore, that the public be familiar with these funds and that it understand that the proper functioning of these funds is its guarantee of secure, strictly regulated payments.

The time required for performing controls should not be perceived as a delaying or impeding factor.

It's better to receive definite payment after the several days required for the Carpa's controls, than to run the risk of collecting nothing at all or of being involved in a suspicious operation!

In order to reinforce Carpa message to all those involved in litigations, the Unca will set up a uniform graphic charter for checking all funds, regardless of their bank;

This visual format will further personalize the attorney's signature and the identification of the Carpa by private individuals.

Thus, not only do lawyers have the ethical obligation to deposit all their pecuniary payments with the Carpa, but their clients must know that a payment made out to the order of the CARPA or by the CARPA is an absolute guarantee of integrity.

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