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English text

Regulations for Advocates *(with comments to all chapters apart from 9 and 10 due to recent amendments)*

Chapter 1

The duty of advocates and others giving legal assistance to keep the Supervisory Council for Advocate Affairs informed about their professional activity, etc.

§ 1-1 Duty to give notice of commencement and termination of practice.

A person who will practice law as an advocate under his own name or provide legal assistance in accordance with the Courts of Law Act § 218 second paragraph No. 1, or in accordance with permission granted in accordance with the Courts of Law Act, § 218, second paragraph Nos. 3 and 5, shall give notice in writing to this effect to the Supervisory Council for Advocate Affairs.

Anyone who will practice law in accordance with the Courts of Law Act, § 218, second paragraph No. 1, must prove that he has obtained a law degree. The person in question must also present a police certificate that must not be older than three months. When the conditions have been fulfilled, the Supervisory Council will issue a statement to the effect that the person in question is entitled to practice law as mentioned in § 218, second paragraph No. 1 of the Courts of Law Act.

An advocate or another person giving legal assistance shall also report to the Supervisory Council when the practice is wound up.

Comments:

The Supervisory Council will have the only updated register of the country's advocates and other practising law, both those who carry on practice and those who hold a «sleeping» licence or permission. The duties following from § 1-1 apply only to those that are about to or have «activated» their licences or permissions.

In the case of persons giving legal assistance with a permission in accordance with § 218, first paragraph No. 1 of the Courts of Law Act, § 1-1 corresponds to previous provisions concerning «reporting duties» in Regulations No. 857 of 20 November 1992 concerning reporting duties etc. for law graduates who wish to practice law.

The Supervisory Council should be given notice both when the practice is initiated and when it is wound up. Persons will be registered by the Supervisory Council as «practising», until the Supervisory Council receives notice in writing that this is no longer the case.

§ 1-2 Duty to report a change of office address

A person who practises law as an advocate under his own name and persons providing legal assistance law in accordance with § 218, second paragraph No. 1 of the Courts of Law Act, or in accordance with a permission to practice law in accordance with § 218, second paragraph Nos. 3 and 5, shall at all times keep the Supervisory Council informed about their office address for the professional activities.

Comments:

The provisions are applicable to advocates, persons entitled to provide legal assistance in accordance with § 218, second paragraph Nos. 3 and 5 of the Courts of Law Act and persons who have given notice of start-up of a law practice in accordance with § 218, second paragraph No. 1 of the Courts of Law Act.

Formerly, the Courts of Law Act, § 221, only established a duty to report a change of address in connection with a move from one municipality to another, and, consequently, did not apply to a change of address within the same municipality. The Supervisory Council's need to have correct address of everyone concerned at all times is independent of the municipal borders, however. The regulations, § 1-2, therefore contains a requirement that also changes of address within the same municipality should be reported.

§ 1-3 Announcement of advocate practice and other legal practice

The Supervisory Council for Advocate Affairs will take care of the required announcement of start-up and termination of the legal practice of advocates and others giving legal advice. The Supervisory Council may also announce other information of importance for the public in search of legal assistance.

Comments:

Publication as mentioned in the regulations replaces the practice of the county governors today with regards to notice about start-up and termination of a practice to the courts, the public prosecutor, etc. At the same time that the notification is submitted, the Supervisory Council may evaluate whether special notice of start-up and termination of a practice etc. should be mentioned to others concerned by this.

From the wording, the opportunity to announce other information in accordance with the second paragraph seems to be very wide. The clause must, however, be understood in accordance with its purpose, which is to give the Supervisory Council an opportunity to announce a decision that the practice of an advocate will be administered or wound up by another advocate. It is assumed that there is a need for such a notice, for instance, when an

advocate dies. An opportunity has thus been provided of letting the clients of the person in question know who they may turn to in order to be informed of the further treatment of a matter, and, if this is the case, where they apply to have case file documents etc. returned to them.

In connection with a practice as an advocate being put under administration, it should be emphasised that the opportunity to give notice should be used with care, since the legal practice may in some cases be considered for being returned to the advocate for continued activities after the administration has been completed.

§ 1-4 Legal opinions by persons employed at a university

When employed by a University, advocates and persons giving legal assistance in accordance with a permission issued under § 218, second paragraph No. 1, are not subject to the provisions of these regulations concerning security to be provided, duty to make contributions and accounting, if the professional activities consist exclusively in providing legal opinions in writing.

Comments:

In Odelsting Recommendation No. 50 (1990-90), the Justice Committee of the Storting has stated that persons providing legal assistance who are employed by a University, and whose practice is limited to issuing legal opinions in writing, should be excluded from the duty to provide security. A logical consequence of this is that the same must apply to university employees with a licence as an advocate. As a consequence of this, the Ministry has found it best to also exclude university employees from the provisions concerning duty to make contributions and accounting.

Chapter 2

Security

I. The duty of advocates to provide security

Comments

Following amendments by Act No. 44 of 4 July 1991, § 222 ofthe Courts of Law Act specifies that a person who will practise as an advocate under his own name must provide security covering the liabilities that he may incur is his legal practice. Pursuant to the second paragraph, the King may issue further regulations concerning the security to be provided. The rules correspond to a large extent with the provisions concerning security to be provided by real estate brokers and debt collectors.

§ 2-1 The duty of advocates to provide security

An advocate who wishes to practise law as an advocate under his own name must make sure that security is provided in accordance with the provisions of these regulations before the professional activities have been started and for as long as they are carried on.

Increased security for assistant advocates must be provided in accordance with § 2-5, second paragraph before the assistant advocate is authorised.

Advocates who are employed by the state or by municipalities, and who only undertake assignments for their employer, are not obliged to provide security.

Comments:

It is emphasised in § 2-1 that the advocate must ensure that the security has been provided in accordance with the regulations before the law practice is started, and that the security should be kept in force for as long as the practice is continued. The same applies when an assistant advocate is authorised, cf. § 2-5, second paragraph concerning increase of the amount of the security for advocates who have an assistant advocate.

The duty to provide security rests with the individual advocate who practises law as an advocate under his own name. A person who has a licence as an advocate, but his is employed as an authorised assistant advocate, will not be practising law under his own name, and will thus be under no obligation to provide security. The principal, however, is obliged to increase the security by at least 3,000,000 Kroner when the person in question has one or more assistant advocates authorised under his name, cf. § 2-5, second paragraph. The duty to provide security also comprises advocates who are in permanent employment. When a company carries on legal practice, it is the company's individual advocates who are obliged to provide the security, and not the company. The provisions of the Courts of Law Act, § 232 second to fourth paragraph about the personal liability of the individual advocate, will therefore also decide which advocate's security will be responsible for liability to pay compensation incurred in the legal.

Pursuant to the Courts of Law Act, § 222, second paragraph second sentence, the King may be regulations exempt advocates employed by the state or by municipalities, who only work for their employer, from the duty to provide security. Such an exemption is made in the third paragraph, since the necessary security in this instance will be with the responsibility of the state and the municipalities as employers. If the advocate employed in civil or municipal service wishes to undertake some assignments for others than the employer, the duty to provide security will enter into force.

§ 2-2 The form of the security

The security is provided by filing a statement with the Supervisory Council for Advocate Affairs from a Norwegian accident insurance company or another Norwegian company as mentioned in § 1-4, first paragraph Nos. 1 or 3 of the Act concerning professional financing activities and finance institutions, or from a similar company domiciled in, and authorised to conduct business in, and subject to governmental inspection of another state which is comprised by EEA area (the security company). In the statement, the security company must undertake to be liable for the fulfilment of the liabilities of the advocate in accordance with

these regulations. The statement shall express that the security company undertakes a guarantee for the liability with a specific amount or within the scope that will at any time follow from § 2-5, limited, if applicable, to an amount to be further specified.

The Supervisory Council for Advocate Affairs may deny approval of the statement if there is doubt as to whether it satisfies the requirements in the first paragraph.

Comments:

In accordance with § 2-2, first paragraph, the security is provided through the obligation assumed by the security company, cf. below, to be responsible for the advocate's liability in accordance with the regulations, i.e. the responsibility which the security shall cover, cf. § 2-3, within a sufficient amount, cf. § 2-5, on conditions that are further described, cf. § 2-6. The security is only provided through deposition with the Supervisory Council for Advocate Affairs of a statement by the security company to the effect that it assumes such an obligation. In the statement, in stead of a stipulated amount as a limit, it may be stated that the security company will be responsible within the limit that follows from § 2-5 at any time, with a possible maximum limit at a fixed amount. The latter possibility may be relevant in that the requirements for the amount of the security pursuant to § 2-5 may vary with time because of the scope of debt collection activities, etc.

The regulations do not deal with the underlying relationship between the security company and the advocate, such as the question of how the premium will be calculated, the period of responsibility and right of recourse. The statement from the security company cannot contain limitations with reference to the underlying conditions. For instance, the statement cannot contain reservations concerning time limitation. The possibilities of the security company to limit his responsibility in time have been exhaustively regulated by § 2-6, third paragraph.

A Norwegian company with a right to carry on financing activities in accordance with the Act concerning financing activities and finance institutions, § 1-4, first paragraph, may be used as a security company, or a similar company domiciled in another state comprised by the European Economical Co-operation Area (EEA), or with approval to carry on business in such as state and under its public supervision. Since it has previously been expressed doubt as to whether accident insurance companies may provide the security, a wording has been selected which expressly mentions accident insurance companies. The security shall cover the advocate's liability to pay compensation. As a point of departure, this is a form of liability insurance which under the Insurance Act, § 1-1, second paragraph, is a form of accident insurance. This also has the effect that the Insurance Agreement Act, Part A, will be applicable when the security has been provided by an accidentinsurance company. On the other hand, if may follow from other rules than the provisions herein that some of the other institutions which have been mentioned in Financing Activities Act, § 1-4, will not be able to provide security in accordance with these regulations. This is question which these regulations do not decide.

The Insurance Agreement Act, Part A, will not be applicable when the security is provided by someone other than an accident insurance company. The provisions of these regulations, which correspond to the provisions of the Insurance Agreement Act, will therefore by themselves be of importance when the security company is not an accident insurance company.

The statement from the security company shall not leave any doubt that the security satisfies the conditions of the regulations. In accordance with the second paragraph, the Supervisory Council can therefore refuse to accept the statement if there is doubt as to whether it satisfies the conditions. It may, for instance, be a question of refusing acceptance of a statement which contains, or which makes reference to, a number of the conditions in the contract between the security company and the advocate.

The statement from the security company may cover several advocates, if it appears from the statement or from an appendix thereto which lawyers it comprises. It should be taken into consideration that increased security is required for advocates who have an assistant advocate, or who carries on debt collection business of a certain scope, cf. § 2-5, second and third paragraph, cf. also the fourth paragraph concerning increasing the security in other instances. If the main statement does not cover the increase which may be relevant, a special statement must be filed for the increase.

§ 2-3 The coverage of the security

The security shall cover the liability to pay compensation which the advocate may incur in the exercise of his legal practice.

The security shall not cover his liability as participant in an unlimited company for liability to pay compensation which the company may incur in its legal practice, when at least one of the company's partners is jointly and severally liable with the company in pursuance of § 232, first to fourth paragraphs, of the Courts of Law Act.

The security shall not cover liability for which the advocate has provided separate security in accordance with other legislation.

Comments:

The security shall cover the liability incurred in the legal practice. This means, among other things, that liabilities incurred in connection with other activities in which the advocate may be involved, and liabilities which in a general manner arises from the fact that business is being carried on, or in connection with board of directors functions of the advocate, will not be covered.

The safety covers both contractual liabilities and liabilities outside of contract. It covers both damage caused by negligence and wilful damage, and in principle, also no-fault liability. When security is provided as liability insurance, it follows from the Insurance Agreement Act, § 7-7, second paragraph, that the security company cannot assert towards the injured party that the damage has been caused wilfully. The same appears from these regulations, § 2-6, second paragraph. When the advocate has caused damage wilfully, however, the security company will usually have recourse to the advocate.

The second paragraph is a reflection of the interpretation of § 222 of the Courts of Law Act which the Ministry has used as a basis. According to § 222, the security will be applicable to «the liability to pay damages which the person in question may incur during the exercise of his legal practice». In the view of the Ministry, the natural interpretation of this is that

responsibility as a participant in an unlimited company as mentioned in the Courts of Law Act, § 232, fifth paragraph, will not be covered. Pursuant to § 232, fifth paragraph it may be agreed that the participants in the company shall not be responsible as participants for such liabilities, when at least one of the company's advocates is jointly and severally liable together with the company in accordance with the first to fourth paragraph. It would not be logical to extent the security of an advocate to cover his responsibility as a participant in the company, when one of the company's other advocates has triggered the liability of the company and is jointly and severally responsible along with the company, when the only reason to extent the liability as mentioned is the fact that an agreement concerning freedom from liability in these instances has not been concluded. When an advocate has engaged the liability of the company on his own, this is not a responsibility incurred in the partner's exercise of his legal practice.

The point of departure is that the security will be available for the liability to pay compensation which the advocate incurs in his legal practice. An exception has been made in the case of liabilities for which the advocate has provided other security in accordance with legislation or regulations in pursuance thereof. This also follows directly from the Courts of Law Act, § 222, first paragraph third sentence. As an example, real estate broker business may be mentioned. The condition is that the advocate has fulfilled the duty to provide such other security. If this has not been done, the basic security will cover such liabilities.

The security does not cover liabilities that are time-barred. Whether the liabilities of the advocate are time-barred, depends on the general statute of limitations.

§ 2-4 Which security company will be responsible

The security company which the advocate has engaged when the injured party presents his claim for damages, is liable towards the injured party. This applies even if the loss was caused when another security company was engaged by the advocate.

A claim for damages is regarded as having been presented at the earliest of the following events:

a) the time when the advocate or his security company first received notice of the loss with a claim for damages, or

b) the time when the advocate or his security company received notice in writing for the first time from the person secured or the injured party concerning circumstances which may be expected to lead to a claim being raised against the person secured.

If the advocate has not engaged a security company at the time when the claim is raised, the last security company engaged by him will be responsible.

The security company engaged by the advocate when the loss was caused, will also be responsible towards the injured party, however,this company has full right of recovery from the security company responsible in accordance with the first or third paragraph.

Comments:

The section regulates the recovery principles to be used, including which security company will be liable if the advocate has engaged different security companies through the time. The provisions are based, as a point of departure, on the «claims presented» («claims made») principle, cf. the first paragraph.

The second paragraph clarifies the meaning of when a claim is «presented».

According to the third paragraph, the advocate's most recent security company will be responsible if the advocate did not have a security company at the time when the claim is made. This also comprises instances where the person in question has lost his licence. The provisions do not have the effect that the security company will be responsible for losses which have been caused after the expiration of the three months period which will run from the notice of termination or the lapsing of the security according to § 2-6, third paragraph.

The fourth paragraph has the effect that security company at the time of the action which gave rise to responsibility will be jointly and severally liable with the security company at the time when the claim is made. The words «full right of recovery» has been used to make it clear that the division rule in the Insurance Agreement Act, § 6-3, second paragraph, will not be applicable.

§ 2-5 The amount of the security

The amount of the security shall be at least 5,000,000 Kroner.

In the case of advocates with one or more authorised assistant advocates, there is an addition to the amount of the security of 3,000,000 Kroner.

In the case of an advocate who is also exercising professional debt collection activities, the security shall additionally be at least equal to 1/40 of the stock of claims which the advocate was responsible for collecting at the end of the last accounting year, and at least twice the amount of the sum of the funds collected, but not yet paid to the client and other funds entrusted to the advocate in his debt collection activities at the end of the accounting year. If the requirements in the first sentence have not been satisfied at the end of a calendar year, the security must be brought in line with the requirement by the time that the auditor's statement for the accounting year shall be submitted to the Supervisory Council for Advocate Affairs, cf. § 3-10. The amount of the claims for collection and the sum of the funds collected, but not yet paid to the client, and other funds entrusted to the advocate in the debt collection business, shall appear from the auditor's statement.

The Supervisory Council for Advocate Affairs may in specific cases decide that a higher amount of security than that required according to the first to third paragraphs must be provided. The Supervisory Council may also in specific cases stipulate a shorter or longer period than that mentioned in the third paragraph for bringing the security in accordance with the requirements herein.

The liability for each assignment and for each suffering party may be limited by contract by the security company, but not in an amount of less than 2,000,000 Kroner.

If payment from the security company has the effect that the security will no longer satisfy the requirements in the first to fourth paragraphs, the advocate is responsible for bringing the security in line with the requirements in the first to fourth paragraphs within one month from the time when the security did not satisfy the said requirements. The Supervisory Council for Advocate Affairs may in individual instances stipulate a longer or shorter period.

Comments:

All advocates must provide a security of at least 5,000,000 Kroner, regardless of the amount of the turnover.

The amount is applicable for the whole period for which the security has been provided. For this reason, there will not be 5,000,000 Kroner available for claims presented or arising in each calendar year or another time unit as further defined. However, there are provisions in § 2-5 sixth paragraph concerning topping up of the security if payments from the security company have the effect that the security falls below the required amount.

There is no opening in the law allowing assistant advocates to provide their own security. Such a system would moreover lead to problems with regards to whether a loss should be covered under the advocate's or the assistant advocate's security. However, there is a requirement for additional security pursuant to §§ 2-5 second paragraph in an amount of 3,000,000 Kroner for an advocate with one or more authorised assistant advocates. This should normally be sufficient to provide the general public with a reasonable degree of protection against losses caused by acts leading to liability to pay compensation. A requirement for additional security in an amount of 3,000,000 Kroner means that an advocate with one or more assistant advocates must provide a security of 8,000,000 Kroner. In accordance with § 2-5, fourth paragraph of the regulations, the Supervisory Council for Advocate Affairs may in individual cases decide that security shall be provided at a higher amount than required under the general rules. This may be relevant if the number of assistant advocates is disproportionately high by comparison with the number of advocates for whom they have been authorised. The scope of the business and the risk may in such instances become large in relation to the security provided.

As concerns an advocate engaged in debt collection business of a certain scope, the provisions of § 2-5, third paragraph have the effect that the security will be at the same level as the requirement for security in accordance with the Debt Collection Regulations, which are not applicable to advocates. Information about the amount of the accounts receivable which the advocate holds for debt collection, may most conveniently be included in the auditor's statement.

When a law firm is engaged in debt collection business, the company shall appoint a responsible advocate for each debt collection assignment, cf. the Courts of Law Act, § 232, first paragraph, cf. § 231, first paragraph. The accounts receivable assigned to the company for collection, must in this way be divided on the advocates of the company. It is the part which has been assigned to the individual advocate which is decisive for the question of whether the advocate has a duty to provide security at an increased amount.

The requirement concerning the amount of the security may vary with time, cf. § 2-5, third paragraph. If the security should at one time failto satisfy the requirements in the third

paragraph, the advocate must ensure that the amount is increased. For practical reasons, the duty to ensure that the amount of security satisfies the requirements of § 2-5, third paragraph first sentence, is tied to the accounts receivable and entrusted funds at the end of the calendar year. Year-end information shall appear from the auditor's statement. According to the third paragraph, first sentence, the time limit to bring the security in line with the requirements, in the case that it turns out at the end of the year that the requirements have not been satisfied, is the same as the time limit for filing the auditor's statement, cf. § 3-10.

Pursuant to the fourth paragraph, the Supervisory Council for Advocate Affairs has the possibility in individual cases to decide that a higher amount of security should be provided than the amount following from the provisions of the first to the third paragraph. Increased security may be relevant, among other things, when it is known that the advocate has a unstable financial situation, or a particularly large potential for damage.

Pursuant to § 2-5, fifth paragraph, the responsibility of the security company may be limited for each assignment and for each injured party, but not in an amount of less than 2,000,000 Kroner. The provisions only regulate the responsibility of the security company towards the injured party. they do not regulate the opportunity of an advocate to agree limitations of liability with the individual clients. If the advocate has validly limited his liability towards the injured party by agreement, the agreed limitation of liability may also be brought to bear by the security company, cf. § 2-6, second paragraph.

The security company is liable with the amount indicated in the statement deposited with the Supervisory Council for Advocate Affairs. If the security company pays compensation to an injured party, the responsibility towards other injured parties will be correspondingly reduced if the security company gives notice to the Supervisory Council for Advocate Affairs about the payment, cf. § 2-6, fourth paragraph. This may have the effect that the security will no longer satisfy the requirements of § 2-5, first to fourth paragraphs. In this case, the advocate is obliged to ensure that the security is again brought in accordance with the requirements of the regulations, cf. § 2-5, sixth paragraph. The regulations do not order the security company to fill up the security, but this may follow from the underlying circumstances. A time limit of one month has been stipulated for bringing the security in accordance with the requirements following a payment from the security company that has reduced the security. The time limit is calculated from the time of notification, cf. above, i.e. from the time when the security did no longer satisfy the requirements. The Supervisory Council has the opportunity under § 2-5, third paragraph last sentence, to stipulate a shorter or longer time period.

If the security is not sufficient to cover all claims for compensation, the security company must undertake a proportionate allocation between the injured parties. Reference is made to the discussion of this problem in Norwegian Public Report, NOU 1987:24, Act concerning agreements for accident insurance, page 150.

§ 2-6 Further requirements concerning the security

The suffering party may claim compensation directly from the security company without first presenting a claim to the advocate.

The security company cannot assert other reservations towards the suffering party than the reservations which advocate himself could have asserted in the relationship with the suffering party.

Notice of termination of the security or other lapsing of the security will not be effective in relation to the suffering party before three months after receipt of notice of the termination by the Supervisory Council for Advocate Affairs. If new security is provided before the end of this period, the termination of the security will become effective from the time that new security has been provided.

In relation to the suffering party, the security company cannot argue that payments have been made under the security unless the Supervisory Council for Advocate Affairs has been notified of the payment no later than the time at which the payment was made.

If the security company makes reference to the amount of the security in relation to several suffering parties, the highest applicable amount of the security will be decisive in relation to all suffering parties.

Comments:

The clause stipulates the further requirements which the security must satisfy. Pursuant to the first paragraph, suffering parties shall have an opportunity to present a claim directly to the security company, without first having directed a claim towards the advocate.

It follows from the second paragraph that the security company shall not be able assert reservations from the underlying relationship between the security company and the advocate, such as default in payment of premium.

Furthermore, the security company will not be in the position to contend that notice of termination has been given for the security or that it has lapsed in other ways before three months have passed from the time when the Supervisory Council for Advocate Affairs was notified of this, cf. the third paragraph. The security company will thus be responsible for liabilities which the advocate may incur all the time until the end of the three month period. These provisions make it possible for the Supervisory Council to ensure that the advocate will arrange new security, or that he winds up his affairs before the earlier security ceases to be valid. If the advocate does ensure that new security is provided before the end of the three month period, the notice of termination or the lapsing of the previous security will become effective from the time when the new security has been provided, with the effect that there will be no double coverage up to the expiration of the three month period.

It is laid down in the fourth paragraph that the security company cannot assert towards the suffering party that payments have been made unless the Supervisory Council for Advocate Affairs has been notified of the payment at least at the same time than it was made. The provisions will ensure that the Supervisory Council for Advocate Affairs will be notified in the instances when it must supervise that new security is provided by the advocate in accordance with the regulations, cf. § 2-5, sixth paragraph.

The amount of the security may vary with time, cf. § 2-5. In relation to each individual suffering party, the point ofdeparture will be that the amount of the security at the time when

the party in question presents his claim will be decisive, if the security does not give full coverage. § 2-6, last paragraph, regulates the situation when the security company asserts the monetary limit of the security towards several suffering parties. Reference is made in this connection to the comments to the Debt Collection Regulations, § 3-5, in the annotations to the Debt Collection Regulations, where a similar question has been discussed in greater depth. The annotations have been included in the Ministry's circular G-106/89 concerning the Dept Collection Ac and the Debt Collection Regulations.

II. The duty of others than advocates to provide security

Comments

The provisions in Chapter II contain rules about security to be provided by persons who exercise on behalf of law firms such professional activities as the licence as an advocate would entitle them to undertake, when the basis is something other than a licence as an advocate (§ 2-7), and security to be provided by others than advocates who are entitled to engage in certain forms of legal assistance activities (§ 2-8). In the outset, the provisions of §§ 2-1 to 2-6 will apply correspondingly to the extent that they are suitable.

§ 2-7 Duty to provide security of others than those exercising professional activities on behalf of a law firm.

A person who wishes to exercise such professional activities as set out in the Courts of Law Act, § 231, firth paragraph second sentence, on behalf of a law firm, must provide a security of at least 5,000,000 Kroner.

The person in question does not have to provide security independently according to this section if accepted security has been provided for at least the same amount, provided that this security covers the liability to pay compensation which the person in question may incur in the exercise of professional activities on behalf of the law firm, on conditions as mentioned in § 2-6.

In the case of security in accordance with this section, § 2-1, first paragraph, § 2-2, § 2-3, § 2-4, § 2-5, fourth, fifth and sixth paragraphs and § 2-6 will apply correspondingly.

Comments:

The Courts of Law Act, §§ 231 to 233 contains provisions about the organisation of the legal practice of advocates. Legal practice of advocates is defined in § 231, first paragraph second sentence, as the practice which advocates are entitled to carry on by virtue of the licence. An exception is made for the practice which is carried on in pursuance of something other than a licence as an advocate, cf. the third sentence. As an example, legal assistance in the field of tax law provided by state-authorised and registered auditors may be mentioned, cf. the Courts of Law Act, the new § 218, second paragraph No. 2. In accordance with § 231, fifth paragraph first sentence, only advocates may carry on such a practice as mentioned in the first paragraph, second sentence (i.e. a practice which the advocates are entitled to carry on

by virtue of the licence) on behalf of law firms.

In accordance with the fifth paragraph, second sentence, however, such work that the licence as an advocate would otherwise have giver a right to undertake, may be exercised on behalf of the company also by another person if the person in question is entitled to undertake the work in question in accordance with something other than a licence as an advocate. A condition for this is that the person in question as provided security for the liability that he may incur pursuant to § 232 seventh cf. second paragraph. If the person in question has been designated as responsible for an assignment, he will be jointly and severally responsible together with the company for liability to pay compensation incurred by the company in connection with the assignment.

It has been stipulated in § 231 fifth paragraph third sentence that the King may issue further provisions about the security to be provided. Rules about the security to be provided in accordance with this have been stipulated in § 2-7. The person in question shall provide security in accordance with the same rules as for advocates. The security should be in an amount of at least 5,000,000 Kroner. In order to avoid a double requirement of security where sufficient security has already been provided in accordance with other provisions stipulated by legislation, the person in question does not have to provide security on his own pursuant to these provisions, when he has already provided security in accordance with other legislation, provided that this security will cover claims for compensation which he may incur in his practice on behalf of the law firm. A condition for this is that the security is in an amount of at least 5,000,000 Kroner, and that it satisfied the requirements stipulated in § 2-6.

§ 2-8 Duty of providing security of others than advocates that provide professional legal assistance

A person who wishes to provide professional legal assistance in accordance with the Courts of Law Act, § 218 second paragraph Nos. 1 or 4, or in accordance with special permission pursuant to Nos. 3 or 5 must provide a security of at least 3,000,000 Kroner.

In relation to security under this section, § 2-1 first paragraph, § 2-2, § 2-3, first and third paragraphs, § 2-4, § 2-5 fourth, fifth and sixth paragraphs and § 2-6 apply correspondingly.

Comments:

In accordance with the Courts of Law Act, § 219, first paragraph first sentence, the King may decide that anyone who wishes to provide legal assistance in accordance with § 218, second paragraph Nos. 1, 3, 4 and 5, shall provide security for liabilities to pay compensation which the person in question may incur in his legal practice. The groups that this comprise are law graduates without a licence as an advocate, persons with satisfactory education within special legal fields, sheriffs and foreign advocates with individual permission to provide legal assistance in foreign law or private international law in Norway. As concerns the legal advice provided by sheriffs, it is only the extracurricular practice which is covered by the regulations, not the legal services provided by the sheriffs as part of their office.

The Justice Committee of the Storting has stated in Odelsting Recommendation No. 50 (1990-91), page 5, that the same conditions concerning security must be stipulated for persons who provide legal advice of a certain scope as in the case of advocates. According to § 219 second paragraph, the King will issue further rules concerning such security. Pursuant to § 2-8, persons who will engage in such activities must provide security inaccordance with the same provisions that are applicable to advocates, however, the amount of the security is limited to a minimum of 3,000,000 Kroner.

Also in the case of security to be provided in accordance with § 2-8, the Supervisory Council for Advocate Affairs will take care of the administration.

§ 2-9 Duty of lower court lawyers to provide security

A person who wishes to exercise professional activities in accordance with Act Nos. 2 of 4 December 1964, item XVII No. 4, shall provide security in accordance with the same rules as are applicable to advocates.

Comments:

By Act No. 2 of 4 December 1964 concerning changes in the Civil Disputes Act and other legislation, the system of licences for lawyers in lower courts and statements for lawyers at appeal courts was replaced by the system of licensing of advocates. Lawyers in appeal courts were permitted to call themselves advocates. Lower court lawyers where given a right under the transitory provisions of the Civil Disputes Act to «carry on legal practice and professional activities as agents and appear before the courts in accordance with the same rules that have applied to date».

In the view of the Ministry, lower court lawyers are obliged to provide security, cf. the Courts of Law Act, § 222 concerning security to be provided for advocates, when seen in conjunction with the transitory provisions. A special clause has therefore been given in § 2-9 to clarify the requirements which are applicable to the security to be provided by lower court lawyers. Lower court lawyers shall provide security in accordance under the same rules and in the same amount as advocates, since lower court lawyers may carry on legal practice, practise as debt collectors and may appear before rural and city courts.

III. The security company's duty to give information to the Supervisory Council

Comments

Part III regulates the duty of the security company to give information, and the right of the Supervisory Council to seek information from the security company. The provisions are new in relation to previous regulations concerning how security should be provided for advocates, etc.

§ 2-10 The security company's duty to give information

The security company is obliged, as soon as possible and no later than one month after receipt of the claim, to give the Supervisory Council for Advocate Affairs information about claims for compensation which are made towards security provided for an advocate or another person who provides professional legal assistance, if the security company has reasons to believe that the information relates to professional discipline or supervision.

Comments:

It is of the utmost importance that the Supervisory Council may as quickly as possible be made aware of circumstances of disciplinary character or relating to the supervision. Nevertheless, it is not considered necessary to make the security company subject to a rule that an instance of damage should be reported already at the time when the statement of claim is received by the company - unless it may already at this time be discerned that the matter is of such a character that the Supervisory Council should be informed.

The duty of information only comprises instances of damage which are dealt with under the security provided for someone. It is not decisive in these instances whether a possible payment will reduce the amount of the security or not. What is decisive is whether the matter falls under the purview of the security provided.

§ 2-11 The right of the Supervisory Council to solicit information

When a matter that relates to professional discipline or supervision has occurred, the Supervisory Council is entitled to solicit information from the security company concerning claims for compensation which have been made under the security provided for an advocate or a person who provides professional legal assistance.

Comments:

The knowledge of the Supervisory Council and of the security company of the affairs of advocates and others providing legal services may be very different. The Supervisory Council must therefore be able to solicit information from the security company, cf. the Courts of Law Act, § 219, first paragraph, and § 222, third paragraph.

As concerns the underlying reasons why the Supervisory Council may only require information «when a matter that relates to professional discipline or supervision has occurred», reference is made to Odelsting Recommendation, No. 64, page 5, where this is said:

«The Committee is of the opinion that it should be a requirement that circumstances relating to professional discipline or supervision has occurred before supplemental information is solicited from the security company. The protection of the interests of advocates under the law must be taken into account in the regulations, so that a concrete incidence must be present before information shall be given. In the view of the Committee, the number of incidents giving rise to damage, and the reasons for the damage, must be decisive for the question of when additional information may be solicited».

The Supervisory Council's duty of confidentiality will normally make it impossible for the reasons for the request of the Supervisory Council to be given. Requests to the security company can therefore be presented without any cause being given by the Supervisory Council.

Chapter 3

Accounts, and how entrusted funds should be dealt with.

I. The accounts of advocates, and how entrusted funds should be dealt with

Comments:

The main part of Chapter 3 of these regulations are partly in accordance with previous regulations concerning how advocates should deal with entrusted funds, and about the supervision of the affairs of advocates. Certain changes have, however, been made because of the amendments to the legislation of 1 September 1995 No. 60 as well as the preparation of comprehensive regulations for advocates.

§ 3-1 The duty of advocates to keep accounts and to prepare annual statements

All advocates who practise law under their own name are obliged to keep accounts and to prepare annual statements in accordance with Act No. 35 of 13 May 1977 concerning duty to keep accounts, etc.

The provisions for advocates are also applicable to companies which carry on legal practice that differs from that mentioned in § 233, first paragraph letter a, of the Courts of Law Act.

As concerns accounts for specialpurposes, the provisions of these regulations will be applicable, unless other provisions have been laid down by or in pursuance of legislation.

As concerns practice as a real estate agent exercised by an advocate in pursuance of Act No. 53 of 16 June 1989 concerning real estate agents, § 1-2, first paragraph No. 2, the provisions of the Real Estate Agents' Act or in pursuance thereof will be applicable in addition to these regulations.

Comments:

All advocates who practise law under his own name are obliged to keep accounts and to prepare annual statements in accordance with Act No. 35 of 13 May 1977 concerning duty to keep accounts, etc. The provisions are thus not applicable to persons with a licensed as an advocate who do not practise law. A person who is employed as an assistant advocate (regardless of whether the person in question has a licence as an advocate) do not practise law as an advocate «under his own name». The work of an assistant advocate is part of the practice of the principal, and the provisions about entrusted funds etc. will of course be applicable, also in relation to assignments which are mainly taken care of by the assistant

advocate. mainly takes care of. Reference is also made in this connection to the Courts of Law Act, § 232, concerning the designation of a responsible advocate for the individual assignments. The provisions concerning accounts and handling of entrusted funds are also applicable to advocates in permanent employment, cf. nevertheless § 3-13 concerning the possibility of release from the obligation to submit the auditor's statement, etc.

In order to gain a proper picture of the operating profit or loss and the balance sheet of the advocate's practice, the accounts of the legal practice should only cover this practice, and not the private economic affairs of the advocate. The Ministry assumes that this follows directly from the Accounting Act. The Accounting Act only creates a duty to keep accounts for the professional activities. It is assumed that the accounts will not comprise private finances.

Situations may arise, however, in which it is important that the Supervisory Council will gain an overview over the advocate's total economic situation. For this reason, there should be an opportunity to gain insight also into the private finances of an advocate, cf. § 4-6 second paragraph.

The rules which have been stipulated in the regulations for advocates are not only applicable to the individual advocate, but also to companies that practise law. An exception applies to companies which are only involved in such legal practice as mentioned in the Courts of Law Act, § 233 first paragraph, letter a, i.e. legal practice carried on by an advocate in full employment, who mainly undertakes assignments for his employer or for other companies which belong to the same group of companies. This limitation may be related to the similar limitation in the Courts of Law Act, § 224, third paragraph.

The third paragraph comprises in a general manner accounts for which the advocate is responsible.

In the case of practice as a real estate agent, the provisions given in or in pursuance of the Real Estate Agents Act, cf. the fourth paragraph, are applicable. Real estate agencies which are operating in separate companies with a licence pursuant to the Real Estate Agents Act, § 2-1, first paragraph Nos. 2 or 3, are not subject to these regulations, even if the professional manager for the enterprise is an advocate. When the practice as the real estate agent is carried on in accordance with something other than a licence as an advocate, the activity is not considered to be legal practice as an advocate. It is nevertheless considered that it is necessary to have insight into such affairs since there are frequently balancing accounts etc. between a real estate agency owned by an advocate and his normal legal practice, cf. § 4-6.

When an advocate practices as a real estate agent in accordance with a license as an advocate, cf. the Real Estate Agents Act, § 1-2 first paragraph No. 2, the regulations here are applicable in addition to the rules of the Real Estate Agents Act and provisions issued in accordance with the act. Accounting, handling of entrusted funds, etc. in such a combined activity must thus satisfy both the rules applicable to real estate agent practice and the rules applicable to law practice as an advocate. Reference is made also to the Real Estate Agent Act, § 2-7 third paragraph, which emphasises that both the provisions of the act and the provisions in or in pursuance of the Courts of Law Act concerning supervision and control will be applicable to real estate agent activities which are part of a normal law practice as an advocate. In the case that the provisions for real estate agent activities and practice as an advocate are incompatible, the provision concerning real estate agent activities must have prior recognition as a more specific legislation. As an example can be mentioned that an

advocate who undertakes assignments as real estate agent together with the usual practice as an advocate, must comply with the Real Estate Agents Regulations, § 3-4 second paragraph, to the effect that accrued interest on clients' accounts must be credited to clients in their entirety, whilst the provisions for practice as an advocate makes an exception for small amounts, § 3-7 first paragraph second sentence.

§ 3-2 Accounts for liabilities towards clients and funds belonging to clients

Separate accounts should be established for liabilities towards clients and funds belonging to clients, showing at all times the manner in which entrusted funds have been managed. Clients' funds from professional activities as real estate agent, from professional activities as debt collector and from other legal practice should be kept separate in the accounts.

Funds belonging to clients should be shown separately in the annual statement as secluded funds. Liabilities towards clients should also be shown separately in the annual statement. Additional information should be given in annotations to the annual statement concerning the relationship between secluded client funds and liabilities towards clients.

Comments:

The clause maintains the express rule that there shall be separate accounts in the accounting system for client funds and liabilities towards clients.

Even if securities and other funds which do not consist of money are considered as entrusted funds (clients' funds) pursuant to § 3-5, it is not assumed that such funds should be included into the accounts.

The accounting should be organised in such a manner that clients' funds from real estate agent business, clients' funds from debt collectionactivities and clients' funds from the rest of the advocate's practice are kept separate.

It follows from the second paragraph that clients' funds and liabilities towards clients should be shown separately in the annual statement. These should be shown on a separate line. Additional information should be given in notes to the annual statement about the relationship between clients' escrow funds and liabilities towards clients, so that those perusing the annual accounts will have access to such important information.

It follows from good accounting practices that accounts should be kept showing the balance with each individual client.

§ 3-3 List of accounts kept by the advocate

An updated list should be kept of all accounts kept by the advocate, even if these are not related the legal practice, cf. § 3-11, second and third paragraphs.

Comments:

The special accounts kept by the advocate may for instance be accounts for estates under the administration of the advocate and accounts for clients, for instance a company owning and leasing a building. A list should be kept over all special accounts, and this list shall also contain information about the name of the estate, the client, etc., which books are being kept, where the books are located at any time, and the name of the auditor. It is assumed that the list will be stored in the same safe manner as other accounting documentation.

§ 3-4 Summary of the total amount of claims which the advocate has received for collection on behalf of others

A summary should be kept of the total amount of claims at all times which the advocate has received for collection on behalf of others as part of debt collection activities, cf. § 2-5, third paragraph third sentence.

Comments:

The clause is related to the provisions about the security to be provided by advocates. According to § 2-5, the amount of the security which the advocate is obliged to provide pursuant to the Courts of Law Act, § 222, may vary with the scope of the debt collection activity of the advocate, which can be further defined as the aggregate balance of accounts receivable which the advocate has received for collection. For this reason, a special entry should be made in the auditor's statement form concerning information about accounts receivable for collection at the end of the year, cf. § 2-5, third paragraph. It is stipulated in § 3-4 that a summary must be kept of accounts receivable for collection. In companies that carry on legal practice, a summary must be made for each advocate, or the joint summary must show the accounts receivable for which each advocate is responsible.

§ 3-5 Custody and administration of entrusted funds

An advocate is obliged to keep entrusted funds (clients' funds) separate from his own funds and other funds which do not belong to clients. Clients' funds are taken to comprise all money entrusted to the advocate, including advance payments for expenses and for the advocate's fee. Entrusted funds are taken to comprise securities of any kind, including share certificates, debentures, mortgage documents, bank deposit books and debt documents which the advocate has received for keeping or administration.

Client funds may only be paid or turned over to the client in question or for his account.

Comments:

Clients' funds should be kept separate from other means in the practice, and from the means of the practice. § 3-5 furthermore provides a summary of which funds are considered as clients' funds.

§ 3-6 Clients' account

If an advocate receives money for the account of others, the advocate should either settle the amount immediately, or deposit the amount owing to the client in a special bank account with interest accrual, called the «klientkonto» (clients' account).

A clients' account may only be opened in a bank which has undertaken in writing that it will not make any deduction for any claim which the company might have towards the advocate.

A joint account for clients shall be established under the name of the advocate. A special account for individual clients shall carry the name of the client and may be controlled by the advocate alone or jointly with someone else.

Client funds in connection with real estate agent activities must not be mixed with other client funds, but should be credited to a special account or a joint account for such funds.

Authority to make transactions with the clients' account should only be vested in the advocate, or someone with power of attorney in writing from the advocate. The advocate is responsible for all transactions with client funds.

If client funds are kept in a joint clients' account, the balance of the account should be checked at least every half year against the balance of the accounts with the individual clients. The checklist should be retained as an accounting document.

Withdrawals from a clients' account can only be made for amounts paid to the client or for the account of the client, and for amounts due to the advocate from the client in question, where deduction is allowed. If the amount comprises the professional fee of the advocate, the client should at the same time receive a bill for the fee or corresponding notice to the effect that deduction has been made.

Amounts withdrawn from the account of a client must not exceed the funds in the account of the client in question.

Bank statements covering clients' funds shall be kept as accounting documentation.

Comments:

Client funds should be deposited in a bank account. The funds may be deposited in a savings bank or a commerce bank, cf. the Savings Bank Act of 24 May 1961 No. 1 and the Commercial Bank Act of 24 May 1961 No. 2, or in Norway's Post Office Bank, cf. Act No. 51 of 5 June 1992 concerning Norway's Post Office Bank. The possibilities of depositing have been limited to banks, with a view to securing for the clients' funds the protection laid down in the banking legislation, including the Protection Fund for Banks.

If a client expressly requires that funds should be deposited in another manner than in a bank, the case will be outside § 3-6. This must be considered as an agreement between the advocate and the client about the administration of such funds. Such an agreement should be made in writing.

Both bank accounts for a specific client and bank accounts which are general for several clients should be denominated as «client's account».

According to the fourth paragraph, client funds in connection with real estateactivities should not be confounded with other client means. This leads to better opportunities for supervision, among other things.

The contents of the rest of § 3-6 partly correspond with earlier provisions about the advocates' handling of entrusted funds, and partly the provisions of Regulations of 20 Mars 1990 concerning real estate agents and the Debt Collection regulations, Chapter 4.

§ 3-7 Interest on clients' accounts

Interest accrued on a clients' account shall be credited to the clients, unless something else has been expressly agreed. However, the advocate is not obliged to account for interest amounts that do not exceed the unitary justice fee.

The interest should be paid to the client when the accounts of the case are settled. However, the client may not ask for payment of accrued interest before this has been credited to the account.

Comments:

The clause contains a limitation as to which interest amounts may be retained, since there are practical advantages for the advocate if he can be exempted from having to pay minor amounts to clients. The determining amount is tied to the unitary justice fee. In the case of real estate transactions as an agent which an advocate may exercise, however, the provisions of the Real Estate Agent Regulations will be applicable, cf. § 3-1, fourth paragraph. As mentioned in the comments to § 3-1, fourth paragraph, above, the rules or a real estate agent must in these instances have precedence, being the more specific rules.

§ 3-8 Securities as client funds

In the case of securities that have not been registered with the Central Register for Securities, a record should be maintained, where receipt and return of securities for clients are registered continually.

Securities belonging to clients should be kept in a safe manner, preferably in a bank. In any case they must be kept locked up and protected from fire.

Unless something else has been agreed, sale and purchase of securities belonging to clients must not take place unless the sale or purchase has been approved in advance by the client. This also applies to renewal of mortgage documents.

The client should be advised of sale or purchase of securities as soon as possible, with accurate information about the nature of the security, the due date, interest, numbers and other information necessary for the identification of the security.

Comments:

Many securities are registered in the Central Register for Securities. It is only in the case of securities which have not been registered in the Central Register for Securities that it is necessary to instruct advocates to keep a register of receipt and return of securities for clients are registered.

The second paragraph only applies to securities which have not been registered in the Central Register for Securities.

As concerns the third paragraph, it should be mentioned at «active management service» against a fee is reserved for security broker companies with special licence for this, cf. Act No. 61 of 14 June 1985 concerning trade in securities § 59,cf. § 2, letter j.

§ 3-9 Information about client funds in the annual statement

In connection with the annual statement, the client should receive a transcript of the client liability account. A transcript of the client's account in the record of securities which should be kept in accordance with § 3-8, first paragraph should also be supplied. Along with the transcripts, an explanation should also be given of how the client funds have been managed in the past year.

Comments:

According to the second paragraph, the annual reporting duty to the client is not triggered by advance payments received by the client for fees and costs. The reporting duty is related to the annual statement.

§ 3-10 Duty to appoint an auditor

All advocates have a duty to appoint an auditor, who shall conduct an audit in accordance with Act No. 2 of 14 March 1964 concerning audits and auditors, and who shall make sure that the provisions of this chapter are adhered to. The advocate is obliged to give notice to the Supervisory Council about the name of the auditor at all times. The auditor shall be state-authorised or registered.

The advocate is obliged to ensure that the auditor makes a statement to the Supervisory Council at least once a year. The contents of the statement will be decided by the Supervisory Council. No later than 1 April each year, the advocate shall send the auditor's statement, the annual statement of accounts and the auditor's report to the Supervisory Council. In case of delays, twice the amount of the contribution to the Supervisory Council should be paid, cf. § 4-3, second paragraph third sentence.

The auditor is obliged to inform the Supervisory Council forthwith in writing if he withdraws from the auditing assignment for the advocate.

Comments:

The clause assumes that advocates are under a general duty to be audited. As of today, however, there is no general auditing duty in the case advocates who carries on practice in a one-man firm with an annual turnover of less than 5,000,000 Kroner.

The auditor shall undertake the audit in accordance with Act No. 2 of 14 March 1964 concerning auditing and auditors, with related Regulations of 19 September 1990 No. 766 concerning auditing and auditors, as well as good auditing practices.

Regardless of the size of the advocate's legal practice, the auditor should make at least two visits each year with the advocate, i.e. at least one visit in addition to the days when the annual statement of accounts is prepared. Good auditing practices may indicate that more visits should be made, particularly to larger law firms.

The advocates who do not have a general auditing duty today nevertheless have a duty to appoint an auditor to check all that is necessary to make the auditor's statement. The auditor's statement and the annual statement of accounts shall be submitted to the Supervisory Council within the time limit stipulated for this, cf. the second paragraph.

According to the second paragraph, the auditor's report and the annual statement of accounts shall routinely be enclosed with the auditor's statement when this is submitted to the Supervisory Council. It is considered that there is a need for the overview which the annual report provides.

It is emphasised that it is the duty of the advocate to make sure that the material is sent within the time limit. In accordance with the second paragraph, the advocatewill be instructed to pay twice the amount of contribution in case of failure to comply with the time limit. The sanction will be applicable, not only if the auditor's statement is not supplied within the time limit, but also if the annual statement of accounts and the auditor's report are not enclosed with the auditor's statement. Reference is also made to the Courts of Law Act § 230, first paragraph No. 3, according to which the licence as an advocate be withdrawn if the advocate neglects his duties according to provisions given in or in accordance with § 224, third paragraph or § 225, sixth paragraph.

According to the third paragraph, the auditor shall make a report in writing to the Supervisory Council if he resigns from the assignment. Reference is otherwise made to Regulations of 19 September 1990 No. 766, § 3-1, concerning termination and change of auditing assignments.

§ 3-11 The auditor's review of the advocate's accounting documentation

The advocate is obliged to present to his auditor the documents necessary for the auditor's review, including proof that the client funds are present. The auditor shall have access to all the accounts of the advocate, even if they are not related to the legal practice, and regardless of whether they are subject to separate audit in connection with administration of estates, administration of buildings, etc. The same applies accounts for real estate agencies for which the advocate has professional responsibility.

The auditor shall investigate whether a special audit is undertaken in relation to special accounts, and if reports are issued when accounts are made up or by other reporting to the

division court, committees of creditors, heirs or someone who has been appointed a special auditor.

If a special auditor has not been appointed in the case of special accounts for which the advocate is responsible, the auditor of the advocate shall check and confirm that the administration of entrusted funds is satisfactory.

Comments:

The clause provides a summary of the advocate's duties in relation to his auditor, and the duties of the auditor. The auditors right to receive information also follows from the Auditors Act, § 7, see also § 3-12 concerning the auditors duties in these regulations. Reference is otherwise made to the Auditors Act, the Auditing Regulations and good auditing practices.

The auditor shall made certain investigations also in relation to special accounts, cf. the second paragraph. This also applies to a separate real estate agency business for which the advocate is the professional manager, cf. the comments to § 4-6.

In the cases when special auditing is not undertaken, the advocate's auditor shall issue a confirmation in writing in relation to the management of entrusted funds in connection with the special accounts. This only represents duty to issue a confirmation in writing, and not a duty to issue a separate auditing report for the special accounts.

§ 3-12 The auditor's duty to give instructions in case of errors and deficiencies

If the provisions of this chapter or other accounting rules which the advocate is obliged to adhere to are not complied with, the advocate's auditor shall issue an instruction to the advocate to the effect that errors or deficiencies shall be corrected, to the extent that there are errors and deficiencies which may be corrected. The auditor shall stipulate a time limit for the correction. The auditor shall verify that the instructions are complied with. The auditor's minutes of work shall contain a statement concerning the circumstances which led to instructions to correct the errors or deficiencies, cf. the Auditors' Act, § 8, fourth paragraph, concerning correspondence with the client.

If instructions as mentioned in the first paragraph have not been complied with before the end of the time limit, or if there are errors or deficiencies which cannot be corrected, the auditor must comply with the provisions of § 8, second and third paragraphs of the Auditors' Act concerning reservations and additional information in the auditing statement.

Comments:

The clause confirms that when errors or deficiencies are discovered, the auditor not only can, but shall issue instructions about correction of the errors or deficiencies. A time limit should be given for correction, and the auditor shall follow up the matter and ensure that the errors or deficiencies are corrected. Reference is otherwise made to the Auditors Act, § 8.

§ 3-13 Exemption from the duty to send auditor's statement, annual statement of accounts and the auditor's report to the Supervisory Council

The board of the Supervisory Council may for a limited period or until further notice exempt advocates in full employment from sending the auditor's statement, the annual statement of accounts and the auditor's report to the Supervisory Council when they have no funds to be managed for clients and when they receive no fees from the same. The advocate in question must issue a statement, the contents of which are determined by the board of the Supervisory Council.

The board of the Supervisory Council may also in other instances make exemptions as mentioned in the first paragraph if this is considered to give rise to no concern.

Comments:

The Supervisory Council can only relieve advocates from the duty to send the auditor's statement, annual accounts and the auditor's report to the Council. The Council is not authorised make exemptions from possible obligations according to the Accounting Act and the Auditors Act.

§ 3-14 Exemption from auditing obligations

The duty in accordance with § 3-10 to undertake a full audit does not apply to advocates who are exempt from the duty of auditing in accordance with Act No. 2 of 14 March 1964 concerning auditing and auditors. The same applies to the requirement that the auditor's statement should always be enclosed with the auditor's confirmation. In other respects, § 3-10 will apply also in the case of an advocate as mentioned.

Comments:

The provisions contain the necessary limitations that are a consequence of the fact that advocates are not, at present, subject to full auditing requirements.

II. The accounts and the administration of entrusted funds in the case of others that provide legal assistance

§ 3-15 Handling of entrusted funds in the case of persons offering legal assistance

In the case of persons offering legal assistance in accordance with the Courts of Law Act,§ 218, second paragraph No. 1, or in accordance with a permit issued in compliance with the Courts of Law Act, § 218, second paragraph No. 3 first sentence, and No. 5, §§ 3-1, 3-2, 3-3, 3-5, 3-7, 3-8, 3-9, 3-10, 3-11, 3-12, 3-13 second paragraph and 3-14 will apply correspondingly. Such persons offering legal assistance have accounting and auditing duties to the extent that this follows from the Accounting Act and the Auditing Act.

Comments:

Persons offering legal assistance will, in the same way as advocates, in many instances be in a position where clients' funds are managed. Reference is made, among other things, to the Bankruptcy Act, § 83, which specifies that «The board of the estate shall consist of an estate administrator, usually an advocate...» The provisions are not excluding that also persons offering legal assistance may be appointed as administrators of the estate.

Persons offering legal assistance are also obliged to keep accounts, cf. the Accounts Act, § 1 first paragraph. The auditing duty of persons offering legal assistance should thus be corresponding to that of advocates. Under the rules that apply today, advocates do not have «full auditing duties» in the meaning of the Auditors Act.

Even if persons offering legal assistance are very limited in number for the time being, this may not by itself be considered as an argument against also regulating their management of entrusted funds. The need for such provisions, both from the point of view of persons offering legal assistance, and from the point of view of the clients, must be considered to be the same as in the case of advocates and their clients. It must furthermore be assumed that the number of persons offering legal assistance will increase with time.

Permission for special initiatives to provide legal assistance pursuant to the Courts of Law Act, § 218, second paragraph No. 3 second sentence, has so far been given to organisations and associations which carry on their affairs for idealistic reasons. It is therefore not considered necessary for such special initiatives to provide legal assistance to submit an auditor's statement.

Chapter 4

The Supervisory Council for Advocate Affairs

Comments:

By amendment of 4 July 1991 No. 44, the Supervisory Council for Advocate Affairs replaced the Advocates' Compensation Fund as concerns supervision of professional activities of advocates. The rules about administration of the Fund and its operation have therefore been replaced by generally similar provisions about the Supervisory Council. The Supervisory Council also has been given tasks in connection with the security which advocates must provide. This system has replaced the system of payment of compensation by the Fund. The Fund will continue to exist, however, alongside the Supervisory Council for a transitional period. The provisions about administration of the Fund and the rules about handling of applications for compensation will therefore be applicable in parallel with the new provisions until the Fund is wound up.

§ 4-1 Organisation of the Supervisory Council

The board of the Supervisory Council consists of three members with personal deputies; a practising advocate as chairman, as well as two board members, whereof one state-authorised auditor, cf. the Courts of Law Act § 225 second paragraph.

The members and deputy members of the board are appointed by the King for a period of 2 years, with the possibility of reappointment, each time for a further 2 years. The remuneration for members and deputy members is stipulated by the Ministry of Justice and will be covered by the Supervisory Council.

The Supervisory Council for Advocate Affairs shall have its own administration with an independent manager who is responsible towards the board of the Supervisory Council, and with its own employees.

Comments:

The clause partly corresponds to § 10 of regulations of 18 December 1992 No. 1091, as this was previously worded. In accordance with the statements in Proposition to the Odelsting No. 39 (1994-95), page 16, special qualification requirements have been stipulated for two of the three members of the Supervisory Council, cf. the Courts of Law Act, § 225 second paragraph. In case of the third board member, it appears from the proposition that it is a sufficient condition for his appointment that he is recognised for this integrity. In the appointment of the third member of the Supervisory Council, it may also be given weight whether the person in question has taken an interest in advocate affairs and legal aid in a social perspective.

The third paragraph releases the secretariat of the Supervisory Council from the Norwegian Advocates' Association, while providing at the same time that the secretariat shall also take care of the secretariat function for the Advocate Licence Committee and be responsible for the collection of contributions to the Disciplinary Committee for Advocates. It will be a special duty for the general secretary of the Supervisory Council to make sure that the finances of the Supervisory Council are adequately managed.

§ 4-2 The affairs of the Supervisory Council

The Public Administration Act and the Freedom of Information Act are applicable to the affairs of the Supervisory Council. The Supervisory Council may issue further guidelines for its affairs.

Comments:

The provisions of the Public Administration Act and the Freedom of Information Act will be applicable to the affairs of the Supervisory Council, however, in the sense that the Courts of Law Act, § 225, fourth paragraph, expressly regulates which of the decisions of the Supervisory Council which may be made subject of appeal.

§ 4-3 Financing of the Supervisory Council

Advocates who practice law under their own name and persons offering legal assistance in accordance with the Courts of Law Act, § 218, second paragraph No. 1, No. 3 first sentence and No. 5, are obliged to pay annual contributions to the Supervisory Council. The Supervisory Council may decide that payment of contribution shall also be made by companies engaged in other legal practice than mentioned in § 233, first paragraph letter a, shall pay contributions. The amount of the contribution will be stipulated by the Ministry of Justice in consultation with the board of the Supervisory Council.

If the legal practice has been carried on for less than 6 months during a calendar year, the contribution should be stipulated at one half. The contributions should be paid for each year within 1 April, or no later than the day whenthe legal practice was started. If the contribution has not been paid or if the auditor's confirmation etc. pursuant to § 3-10 has not been submitted by the 1st of April each year, the amount of the contribution will be doubled.

The affairs of the Supervisory Council are financed by:

a) annual contributions as mentioned in the first paragraph, and

b) the profit on the funds of the Supervisory Council.

The Supervisory Council will be responsible for the administration of its funds. The board decides which part of the council's capital should be kept at all times in cash or on deposit in a bank for covering payments likely to occur. The rest of the capital should be placed by the board in a sound manner.

Comments:

The activities of the Supervisory Council will be finances by contributions from the practising advocates, cf. the Courts of Law Act, § 225, fifth paragraph, and § 4-3 of these regulations. The clause concerns the duty to pay contributions to the Supervisory Council and the financing of the activities of the Supervisory Council. The contents of the clause are based on regulations of 18 December 1992 No. 1091, §§ 11, 12 and 13.

The first paragraph places advocates and persons providing legal assistance who are subject to the supervision of the Supervisory Council under a duty to pay annual contributions to the Supervisory Council. The clause furthermore authorises the Supervisory Council to decide that also companies that are conducting a legal practice different from that mentioned in the Courts of Law Act § 233, first paragraph letter a, shall pay contributions. The clause does not represent a substantive change in comparison with today's Regulations for advocates, § 12, second paragraph. What is new in the clause is that the authority is vested with the Supervisory Council, in stead of the Ministry of Justice. The Ministry assumes, however, that at this time, there will not be a need for the Supervisory Council to make use of this authority. The provisions concerning a duty to pay contributions on the part of persons providing legal assistance are new. The tasks of the Supervisory Council in relation to persons offering legal assistance have so far been limited to supervision of the security provided by them. It is assumed that this will be significantly changed. For example, the Supervisory Council will in the future deal with applications for the right to offer legal assistance in accordance with the Courts of Law Act, § 218, second paragraph Nos. 3 and 5, as well as to receive reports from law graduates in connection with initiation of practice with legal advice, cf. § 218, second

paragraph No. 1. Reference is also made to the possible duty of persons giving legal assistance to submit auditor's statements, etc. to the Supervisory Council and the Supervisory Council's examination and supervision of these. It would not be reasonable for the Supervisory Council's supervision and control of persons providing legal assistance to be paid also in the future by the practising advocates of this country, and it is therefore proposed that an obligation to pay contributions should also be introduced for the said group.

The sanction in cases that the time limits are not respected, included in the second paragraph, last sentence, is maintained as today. This is considered to be a necessary instrument for making it possible for the Supervisory Council to maintain an efficient level of adherence to the stipulated time limits. It is necessary for the time limits to be respected, also with a view to the need for the Supervisory Council to be able to undertake the examination of the auditor's statements with enclosures assumed by the provisions in a sound manner.

§ 4-4 The supervision by the Supervisory Council of security provided by advocates and others providing professional legal assistance.

The Supervisory Council will supervise the security provided by advocates in accordance with the provisions in and issued in accordance with § 222 of the Courts of Law Act. The same applies the security provided by others providing professional legal assistance in accordance with the provisions in or in accordance with § 219 of the Courts of Law Act and § 231, first paragraph, of the Courts of Law Act.

If the Supervisory Council should become aware of circumstances concerning the duty to provide security as mentioned in the first paragraph which may be a basis for administrative or penal measures against an advocate or others with a duty to provide such security, the Advocate Licence Committee should be informed.

Comments:

The Supervisory Council shall have supervision functions in connection with the security to be provided by advocates in accordance with the Courts of Law Act § 225, cf. Chapter 2 of these regulations. The security statements shall be deposited with the Council, which shall check that they fulfil the requirements. The Council shall also be informed about notice of termination of the security, about payments from the security, etc., and shall ensure that the advocate takes care of satisfying the conditions again if payment or increase in the accounts receivable to be collected have had the effect that the security no longer satisfies the requirements. The council will also have authority to increase the requirement for security and to prolong or shorten time limits to bring the security into accordance with the requirements, cf. § 2-5, sixth paragraph.

The Supervisory Council will have similar tasks also in connection with the security to be provided by other persons giving legal assistance in accordance with the Courts of Law Act, § 291, and security to be provided in accordance with the Courts of Law Act, § 231, fifth paragraph, cf. §§ 2-7 to 2-9 of these regulations.

Pursuant to the second paragraph, the Supervisory Council shall advise the Advocate Licence Committee about circumstances in connection with the duty to provide security which may

give reason for administrative or penal measures against an advocate or other persons giving legal assistance who have a duty to provide security. Failure to satisfy the duty to provide security may lead to withdrawal of the licence as an advocate, cf. the Courts of Law Act, § 230, first paragraph No. 2 and to penal measures, § 234, second paragraph letter a. In the case of other persons providing legal assistance in accordance with the Courts of Law Act, § 219 first paragraph, failure to provide security in pursuance of the Courts of Law Act, § 219, first paragraph, may lead to prohibition against practising law in accordance with the Courts of Law Act, § 218, second paragraph No. 1, or revocation of a permission pursuant to § 218, second paragraph Nos. 2 and 5, cf. § 219, third paragraph.The penal provisions in § 234 also comprise violations against the provisions concerning security to be provided in accordance with § 219, first paragraph.

§ 4-5 The supervision of the Supervisory Council of advocates

The Supervisory Council for Advocate Affairs is authorised to control that the affairs of advocates are undertaken in accordance with the provisions of these regulations, other provisions in or in accordance with legislation and in accordance with rules of professional conduct of advocates.

All advocates are obliged to give the information necessary for the control of the Supervisory Council without being limited by duty of confidentiality.

Comments:

The supervision of practice carried on by advocates has been delegated to the Supervisory Council. In order that the Supervisory Council shall be able to perform its tasks, all advocates are obliged to provide the information which is necessary for the Supervisory Council.

§ 4-6 The authority of the Supervisory Council's auditor

The Supervisory Council's auditor may require the presentation of information and documents which are necessary for the control of legal practice of the advocate, including proof that the clients' funds are present. The auditor of the council shall furthermore have access to all the accounts of the auditor, even if these are not associated with the legal practice as an advocate, and regardless of whether these are subject to separate auditing in connection with the administration of estates, etc. This also applies to accounts for real estate agencies for which the advocate is professional manager.

The advocate is obliged to present, upon request, the information about his private finances which are necessary for the control of the council.

If the provisions of these regulations or other accounting regulations which the advocate is obliged to comply with have not been adhered to, the auditor of the council may issue instructions about correction of the deficiencies.

Comments:

The first and third paragraph partly correspond with the provisions that previously applied in this area, but they have been changed to the effect that it is now clear that the Supervisory Council's auditor may require information, even when no decision made about formal review of the accounts.

In addition to the accounts for the advocate's legal practice, the Council's auditor shall also have the right to look at other accounts kept by the advocate. This also applies to accounts for real estate agent business for which the advocate is the professional manager. The background for these rules is that access only to the accounts for the legal practice of the advocate would not provide a satisfactory perception of the total situation. In some instances, there will be a close connection between the legal practice of the advocate and a real estate agent business for which the advocate is the professional manager.

In the second paragraph, a requirement has also been included concerning insight into the advocate's private economic affairs. As mentioned in the comments to § 3-1, the advocate's private economic affairs shall be excluded from the accounts of the business. However, the advocate's private economic affairs may be interest for the total situation. Nevertheless, it is only in exceptional cases that it may be relevant to investigate the economic affairs of advocates in their entirety.

§ 4-7 The Supervisory Council's right to have the books examined

The Supervisory Council may arrange to have the books examined.

When it is considered necessary to verify that instructions in accordance § 4-6, last paragraph have been complied with, one or more consecutive examinations of the books may be arranged.

The Supervisory Council may require that the advocate in question shall cover the costs of examination of the book if the costs are caused by failure on the part of the advocate to comply with the rules as set out in § 4-5, first paragraph.

Comments:

The clause regulates the cases of review of the books, and gives rules about how the costs incurred in connection with review of the books should be covered.

§ 4-8 Reporting of circumstances in relation to the professional activities of an advocate

If the Supervisory Council should become aware of circumstances which may give a basis for administrative or penal measures against an advocate, the Advocate Licence Committee shall be informed.

If the Supervisory Council should become aware of circumstances which obviously may give a basis for administrative or penal measures against an auditor, the Credit Supervision Administration should be informed.

If the Supervisory Council should become aware in pursuance of examination of books of the affairs of an advocate of circumstances which may provide a basis for administrative or penal measures against an advocate in relation to his assignment as administrator of an estate, the division court concerned should be notified.

In other instance, the Supervisory Council may also inform the Advocate Licence Committee and the Disciplinary Committee for Advocate Affairs if it receives information which may be of importance for the exercise of the tasks assigned to these supervisory bodies.

Comments:

The first paragraph has been changed in connection with present regulations so that the Supervisory Council will report to the Advocate Licence Committee in the future.

Pursuant to the second paragraph, the Credit Supervision Authority shall be informed about circumstances concerning an auditor which obviously may give reasons for administrative of penal measures against the auditor.

The third paragraph is new compared with present regulations. An opportunity is provided to inform the relevant Property Division Court about circumstances which may lead to administrative or penal measures against an advocate in connection with his functions as administrator of an estate.

A new fourth paragraph makes clear the possibility of the Supervisory Council to give necessary information to the Supervisory Council and the Advocate Licence Committee.

§ 4-9 The Advocate Licence Committee's entitlement to information from the Supervisory Council

When there is a suspicion that an advocate has done something for which he could be reproached, The Advocate Licence Committee may ask for information about the reports made to the Supervisory Council. When special grounds are present, the AdvocateLicence Committee may also ask for copies of the auditor's statements, with enclosures, or may arrange to have the books examined.

Comments:

The clause corresponds to present regulations. The second sentence of the clause makes it clear that the Advocate Licence Committee may ask for copies of the enclosures which are part of the auditor's statement.

§ 5-1 The Disciplinary Committee's organisation

The Disciplinary Committee consists of five members with personal deputies; one judge as chairman as well as two advocates and two members which are not advocates or judges, cf. the Courts of Law Act, § 227, first paragraph.

The members and deputy members are appointed by the King for 2 years, with a possibility of reappointment, each time for a further 2 years. In the case of the two members being advocates, a proposal from the Norwegian Advocate Association (the Advocate Association) should be solicited. The remuneration of members and deputy members is stipulated by the Ministry of Justice and will be covered by the Disciplinary Committee.

The Civil Administration Act, §§ 13-13 e will be applicable to the affairs of the Disciplinary Committee.

The secretariat function for the Disciplinary Committee will be taken care of by the Advocate Association. Accounts and statements concerning the affairs of the committee should be sent each year to the Ministry of Justice.

Comments:

The first paragraph applies to the organisation and composition of the Disciplinary Committee. The clause corresponds to the Courts of Law Act, § 227, first paragraph, and is included in the regulations to facilitate the overview.

The chairman of the Disciplinary Committee should be a judge who satisfies the requirements for a supreme court judge or appeals court justice, cf. the Courts of Law Act, § 54, first paragraph. Since the committee shall also deal with complaints between advocates, the chairman of the committee should also, if possible, have experience as an advocate. As concerns the members of the committee who are advocates, a recommendation from the Advocate Association should be solicited. Also the two other members should be law graduates, cf. Recommendation to the Odelsting No. 64 (1994-95), page 3, in which the Justice Committee states that it «would like to point out that it would be an advantage if the Disciplinary Committee's two representatives from the consumer and the commercial sectors respectively could have legal education». Similar requirements should be made to all the personal deputies. The Disciplinary Committee's members and deputy members will be appointed by the King.

The period of office of the members and deputy members has been fixed at 2 years, with a possibility of reappointment, each time for a further two years. The remuneration is paid by the Disciplinary Committee's own funds.

As concerns the duty of confidentiality of the members or the board and others who perform work or services for the Committee, the Public Administration Act, §§ 13 - 13e apply accordingly. The fact that reference is made in the Courts of Law Act, § 227, second paragraph, to only § 13 of the Public Administration Act, must be caused by a slip of the pen.

The secretariat function of the Committee should be taken care of by the Advocate Association. The Association will thus keep the accounts of the Disciplinary Committee, as well as the drafting and presentation of the Committee's annual report and accounts to the Ministry.

The secretariat of the Supervisory Council shall take care of the collection of contributions to the Disciplinary Committee.

§ 5-2 Financing of the Disciplinary Committee

The Disciplinary Committee will be financed by annual contributions by advocates who practice law under their own name. The amount of the contribution will be stipulated by the Ministry of Justice in co-operation with the Disciplinary Committee.

If the legal practice has been carried on for less than 6 months during a calendar year, the contribution should be stipulated at one half. The contributions should be paid within 1 April each year, or no later than the day when the professional activities are started. If the contribution has not been paid within the time limit, the amount of the contribution will be doubled.

The contribution is collected by the Supervisory Council for Advocate Affairs.

Comments:

The Disciplinary Committee shall be financed through payment of contributions from all the practising advocates in the country, cf. the Courts of Law Act § 227 sixth paragraph. This also comprises the portion of the contribution which will be paid to the Advocate Association for its secretariat function. The secretariat of the Supervisory Council will take care of the collection of the contributions.

§ 5-3 The tasks of the Disciplinary Committee

The Disciplinary Committee deals with complaints asserting that advocates have behaved in violation of rules of professional conduct, the Courts of Law Act or other legislation, including whether an advocate has claimed too high a fee, cf. § 227, third paragraph of the Courts of Law Act.

Complaints against advocates that are members of the Advocate Association which the associations' regional disciplinary panels are competent to deal with under the bylaws of the association, cannot be brought before the Disciplinary Committee before the procedure involving the complaint has been finished or before it has dismissed from the regional disciplinary panel. If the complaint has not been decided or dismissed from the regional disciplinary panel within 6 months from the time when it was presented to the panel, the complaint may nevertheless be brought before the Disciplinary Committee. This does not apply if the long period used for dealing with the complaint is caused by the person who has made the complaint, or if the matter requires a particularly long period for consideration because of its nature.

The second paragraph applies correspondingly to complaints made against advocates who are not members of the Advocate Association, if the advocate has a wish to see the matter dealt with by the regional disciplinary panel in accordance with the bylaws of the association, and declares that he accepts the jurisdiction of the panel. In the case of complaints made to the Disciplinary Committee, a statement to this effect must at the latest be made in the advocate's first plea in the matter.

A party or someone else with sufficient legal reason to appeal may bring adecision made by one of the Advocate Association's disciplinary panels before the Disciplinary Committee.

Matters which have been brought before a court, cannot be dealt with by the Disciplinary Committee to the extent that the same questions would the also be subject of evaluation by the Disciplinary Committee

Comments:

The Disciplinary Committee is a free, independent and central body for the administration of complaints against all advocates. The first paragraph corresponds to the Courts of Law Act, § 227, third paragraph, cf. also the fourth paragraph, if applicable.

Pursuant to the second paragraph, the Disciplinary Committee shall demand that complaints against an advocate who is a member of the Norwegian Advocate Association shall first be dealt with by the Advocate Association's regional disciplinary panel, cf. the Courts of Law Act § 227 fifth paragraph. If the treatment of the complaint has not been finished within 6 months, and if this is not caused by the circumstances relating to the person who has brought the complaint, the person who has brought the complaint may require that the complaint shall be dealt with directly by the Disciplinary Committee.

An advocate who is not a member of the Advocate Association may on his own volition let a complaint against the said person be dealt with by the Advocate Association's regional complaint body in the same manner as the Advocate Association's own members. If the advocate does not want the matter to be dealt with by the Advocate Association's regional body, the complaint must be presented to the Disciplinary Committee in the first, and only, instance.

The clause draws the line concerning the possibility to make a complaint against cases where the same question as raised by the complaint has also been brought before the courts. The limitation in the opportunity to make a complaint pursuant to § 5-3 does not stop the Disciplinary Committee from taking such matters under consideration on its own initiative.

Decisions by the Advocate Association's regional disciplinary panels may be brought before the Disciplinary Committee. If the Disciplinary Committee makes a new decision in the matter, the decision by the Advocate Association's regional disciplinary panel will become eliminated to the extent that his is provided for by the bylaws of the association. The Disciplinary Committee will thus, in reality, represent an instance of appeal from decisions made by the Advocate Association's regional disciplinary panel.

§ 5-4 Formal requirements

A complaint to the Disciplinary Committee must be presented in writing.

Decisions by the Advocate Association's regional disciplinary panels must be brought before the Disciplinary Committee not later than 3 weeks after the party in question was made aware of the decision. Other complaints must be brought before the Disciplinary Committee no later than 6 months after the party in question became aware or should have become aware of the circumstances on which the complaint have been based.

Even if the party that has brought the complaint has exceeded the time limit, the Disciplinary Committee may accept to deal with the complaint, if the said party or somebody acting for him cannot be blamed for the fact that the time limit has been exceeded or for waiting too long after this time before the complaint is presented, or when there are special reasons present which make it reasonable to deal with the complaint.

When 3 years have passed from the time when the party became aware of the decision or became aware of or should have become aware of the circumstances on which the complaint is based, a complaint may no longer be presented.

Comments:

The clause regulates the formal requirements in connection with complaints to the Disciplinary Committee. Complaints against an advocate must be presented in writing, within time limits as further specified. Different time limits have been stipulated, based on whether this is a complaint brought directly before the Disciplinary Committee or a whether the matter concerns a complaint over a decision from the Advocate Association's regional disciplinary committee. The latter time limit corresponds to the general time limit for complaints in the Public Administration Act.

The last time limit for a complaint to be brought before the Disciplinary Committee is 3 years after the party should have become aware of the decision which it is desired to present, or became aware of or should have become aware of the factual circumstances on which the complaint is based.

§ 5-5 The Chairman's authority to decide on cases, the independence of members, etc.

Decisions which conclude a matter shall be made by the full committee in a meeting or through passing around a draft decision. The chairman of the Disciplinary Committee may nevertheless by himself dismiss complaints pursuant to § 5-3 or § 5-4, and may decide complaints which are obviously without foundation.

The Disciplinary Committee will by itself decide whether a member shall step down because of potential prejudice. A member may not take part in the decision of whether he should step down. The chairman of the committee may summon a deputy member to take part in the decision of the question of potential prejudice. In the case of equal votes, the vote of the chairman shall be decisive. The decision of the committee may not be appealed.

Comments:

As a main rule, the full committee shall make the decisions which bring a case to an end. The committee will decide for itself whether the decision should be made in a meeting in which all committee members are present, or by circulating the case. The committee should probably base its work on draft decisions being worded by the members in turn. This should be kept in mind when the appointments are made.

Cases which may be dismissed pursuant to §§ 5-3 or 5-4 and complaints which obviously are without foundation may be decided by the chairman of the committee on his own. In particular as concerns complaints against the advocate of the adversary in a dispute; it is a fact of life that a party will frequently be in disagreement or be displeased with the way in which he has accomplished the assignment. This is a consequence of the contradictory position between parties, and the fact that the person making the complaint will frequently have misunderstood the obligation of advocate to take care of the interests of his own party. If it is obvious that the party has performed a task within the scope of normal consideration for the interests of his own party, a complaint against the advocate may be dismissed by thechairman of the committee.

The provisions of the Courts of Law Act, §§ 106 and 108, concerning freedom from prejudice will be applicable to the members of the committee in the individual case, cf. § 227, second paragraph of the Courts of Law Act. Decisions on the competence of the members under the provisions concerning freedom from prejudice are make by the committee.

§ 5-6 Information about the case

The committee shall give the parties an opportunity to clarify the case and to rebut the arguments of the other party. When indicated by the nature of the case or other circumstances, the committee may arrange a meeting with the parties for oral arguments and presentation of evidence.

When requested by the Disciplinary Committee, an advocate is obliged to give a satisfactory explanation for circumstances of relevance to the case which relate to the professional activities of the advocate in question.

Comments:

The committee will by itself decide to which extent further preparation of the case is necessary, and will by itself decide the time limits to be stipulated for the parties to respond to correspondence and to produce information, etc. The committee has the right to establish internal rules concerning solicitation of information and how cases concerning complaints should be dealt with. The committee decides for itself to which extent its chairman, one of its members or the secretariat shall take care of preparation of the case.

It should be emphasised that the main rule is that the case should be prepared in writing, however, in the first paragraph second sentence, an opening has been created for the committee to decide that a meeting should be held with the parties for oral preparation and presentation of evidence if this is indicated by the nature of the mater or other circumstances. There are limits to how comprehensive the committee will allow the preparation of the case to be. There may therefore be instances in which the committee must decide the matter on the

basis that is available, possibly by making reference underlying considerations concerning burden of proof.

In most instances, it will be an assumption for the clarification of the case that the advocate who is targeted by the complaint will make available the information about his legal practice which is considered necessary by the Disciplinary Committee in connection with the handling of a complaint against the advocate. Failure to give information upon the request of the Disciplinary Committee may lead to a report being made to the Advocate Licence Committee, cf. the Courts of Law Act, § 230, first paragraph No. 4. The clause provides a basis for revocation of an advocate's licence if the advocate in question fails to give a satisfactory explanation of circumstances which relate to the legal practice when the advocate in question has been asked to give such an explanation.

§ 5-7 The form of the conclusion

A ruling which concludes a case should be made in the form of a decision. A decision shall clearly indicate whether the advocate is criticised, and, in this case, whether it represents an admonishment or warning, cf. § 227, third paragraph of the Courts of Law Act. A decision which enjoins the advocate to repay fees or to pay the costs of the case, shall in a precise manner specify what the advocate shall pay, so that it may be suitable for enforcement in the way of attachment, cf. § 227, fourth paragraph of the Courts of Law Act.

Comments:

The clause lays down rules about the format of the decision. If the Disciplinary Committee makes a decision in which a reaction is notified to the advocate, it should clearly appear whether the advocate is admonished or given a warning, cf. the Courts of Law Act, § 227, third paragraph. If the advocate is ordered to repay a fee which is stipulated at too high an amount or to pay the costs incurred before the committee by the party that has made the complaint, not only the amount should appear from the decision in a clear manner, but also the due date and possible clauses about interest, including the rate of interest and the time from which interest should be calculated, with a view to make the decision a suitable basis for attachment, cf. the Courts of Law Act § 227, fourth paragraph.

§ 5-8 Reopening

The Disciplinary Committee may decide to reopen a case in accordance with a request from a party if it is demonstrated as most probable that the circumstances on which the request is based had not previously been known by the said party.

A request for reopening must be presented within 3 months from the time when the party has received or ought to have received knowledge of the circumstances that are used as a basis.

When 5 years have passed since the decision was made, a request for reopening may no longer be made.

Comments:

In this instance, the regulations create an opportunity for reopening of cases that have been finally decided if the request is based on information which has not formerly been known by the parties. The time limit for such a request is 3 months after the party became aware of or should have become aware of the information to which reference is made. When 5 years have passed since the decision was made, a request for reopening can no longer be presented.

§ 5-9 The Disciplinary Committee's reporting duties

The Supervisory Council is obliged to make a report to the Supervisory Council for Advocate Affairs if suspicion appears in a specific case of reproachable circumstances concerning the way in which an advocate has dealt with entrusted funds, the security that has been provided or other circumstances which are under the purview of the Supervisory Council and which are connected to the handling of a case.

The Disciplinary Committee may inform the Supervisory Council also in other instances if it receives information which may be of importance for the exercise of the tasks which have been given to the Supervisory Council.

If the committee finds that measures in accordance with § 230 of the Courts of Law Act should be taken, a proposal to this effect may be presented to the Advocate Licence Committee.

Comments:

In order that the supervisory bodies shall be able to carry out the tasks that have been delegated to them, it is assumed that they exchange to a certain extent. Among other things, this clause gives provisions about when the Disciplinary Committee is obliged to give information to the other supervisory bodies.

The Public Administration Act's provisions about duty ofconfidentiality will be applicable to the members of the Disciplinary Committee and others who assist the Disciplinary Committee, cf. the Courts of Law Act § 227 second paragraph second sentence. Provided, however, that the clause shall not impede the promulgation of rules concerning reporting duties to the Supervisory Council, cf. § 227 fifth paragraph third sentence.

§ 5-10 Publication of the Disciplinary Committee's decisions

The duty of confidentiality in accordance with the Courts of Law Act, § 227, second paragraph second sentence, cf. § 13 of the Public Administration Act, shall not bar publication of the decisions of the Disciplinary Committee in an anonymous manner in the Advocate Association's publication of selected decisions on complaints or in similar publications.

Comments:

The clause makes it clear that the Public Administration Act § 13 concerning duty of confidentiality will not impede the publication in an anonymous manner of decisions in the publications of the Advocate Association or in similar publications It will be a natural part of the work of the committee to contribute to the publication by preparing anonymous and possibly abbreviated versions of those of their decisions which should be considered for publication.

Chapter 6

The advocate licence committee.

§ 6-1 The Advocate Licence Committee's organisation

The Advocate Licence Committee consists of three members with personal deputies; a judge as chairman as well as the chairman of the board of the Supervisory Council for Advocate Affairs and the chairman of the Disciplinary Committee for Advocates.

The chairman and his personal deputy shall be appointed by the King for two years with an opportunity of reappointment, each time for a further two years. The compensation to the members and their deputy members will be decided by the Ministry of Justice, and will be covered by the Supervisory Council.

The secretariat function for the committee will be carried out by the Supervisory Council. Accounts and a statement concerning the affairs of the committee will be sent each year to the Ministry of Justice.

Comments:

The first paragraph stipulates the composition of the committee. The clause corresponds to the Courts of Law Act § 226, first paragraph and is included for purposes of facilitating the overall perception.

The Chairman of the Advocate Licence Committee should be a judge. The person in question should fulfil the requirements stipulated for a supreme court judge or an appeals court justice, cf. the Courts of Law Act § 54 first paragraph. Similar requirements are stipulated for the chairman's personal deputy. The chairman, with deputy, is appointed by the King. The other members are the chairman of the board of the Supervisory Council and the chairman of the Disciplinary Committee. This will facilitate the necessary co-ordination between the separate supervisory bodies. These members will not be considered to be prejudiced in the handling/decision by the Advocate Licence Committee of a case or its decision of a case, simply because they have taken part in the handling or decision of the case by the Supervisory Council or the Disciplinary Committee for Advocates. Reference is otherwise made to Proposition No. 39 (1994-95) to the Odelsting, page 19, where this is said:

«The Ministry proposes that the chairman of the Disciplinary Committee and the chairman of the Supervisory Council should be members of the Advocate Licence Committee. This will secure the necessary co-ordination between the separate supervisory bodies. These members

will not be considered to have a prejudice in relation to the handling and decision by the Advocate Licence Committee of a matter, simply because they have taken part in the handling/decision of the matter in the Supervisory Council or the Disciplinary Committee. In this instance, the Ministry fails to see reason in public or private law why they should not be able to take part in view of their offices as chairmen. A decisive element in this connection is that it has been proposed that in addition, a judge will be appointed as chairman of the committee.»

A personal deputy will be appointed for each of the members from the Supervisory Council and the Disciplinary Committee. It will be natural to appoint the already functioning deputy members of the two supervisory bodies. In the appointment of deputy members for the chairman of the Supervisory Council and the chairman of the Disciplinary Committee, respectively, the aim should be to give the Advocate Licence Committee the same type of composition as when the main members give presence.

It appears from § 6-1, second paragraph, that the term of office of the members and their deputy members will be two years with an opportunity of reappointment, each time for a further two years.

The secretariat function of the committee will be undertaken by the Supervisory Council, cf. the third paragraph first sentence. Accounts and a report concerning the affairs of the committee should each year be presented to the Ministry of Justice.

§ 6-2 The Advocate Licence Committee's affairs and authority

The Advocate Licence Committee decides on appeals concerning decisions made by the Supervisory Council as mentioned in § 225, fourth paragraph of the Courts of Law Act.

The Advocate Licence Committee decides in the first instance in matters upon proposal from the Supervisory Council or the Disciplinary Committee as mentioned in the Courts of Law Act, § 219 third paragraph, and § 230, cf. § 226, second paragraph.

The committee will by itself decide whether a member shall step down because of potential prejudice. A member may not take part in the decision of whether he should step down. The chairman of the committee may summon a deputy member to take part in the decision of the question of potential prejudice. In the case of equal votes, the vote of the chairman shall be decisive. A decision which rules on the question of potential prejudice may not be made subject of appeal.

With the limitations which follow from § 226 of the Courts of Law Act, the Public Administration Act and the Freedom of Information Act applies to the work of the Advocate Licence Committee. The Advocate Licence Committee will lay down guidelines for its affairs.

Comments:

The committee will be the appellate body for decisions made by the Supervisory Council as mentioned in the Courts of Law Act § 225 fourth paragraph, cf. § 226 second paragraph third

sentence, which are an impediment for the persons against whom it is directed. This applies tothe following decisions:

a. issuing of a licence as an advocate

b. issuing of a statements concerning the Supreme Court's evaluation,

c. authorisation of an assistant advocate,

d. permission for special organisation of practice as an advocate,

e. administration of the law practice of an advocate,

f. permission to others than advocates to provide legal assistance, including issuing of a statement to a law graduate who wants to give legal assistance,

g. issuing of a licence as an advocate on the basis of similar entitlement abroad, and

h. permission granted in accordance with Chapter 10 of these regulations, cf. the Courts of Law Act § 235 second paragraph.

The committee will decide matters as mentioned in the Courts of Law Act § 219 third paragraph and § 230 in the first instance upon proposal by the Supervisory Council for Advocate Affairs or the Disciplinary Committee, cf. § 226 second paragraph first sentences. This applies to decisions concerning

a. revocation of a licence as an advocate or authorisation of an assistant advocate,

b. prohibition against legal advice being given by a law graduate,

c. revocation of a permission to provide legal assistance in special fields of law, permission to special measures for legal advice, permission to foreign advocates,

d. dealing with applications concerning a right to practice as an advocate even it the estate of the advocate is dealt with as a bankrupt estate,

e. instances when a court case should be brought in the case of an advocate's insanity or impaired mental state, and a decision that the licence as an advocate should temporarily be suspended in instances when such a case is brought,

f. temporary suspension of the licence to practice as an advocate or the authorisation of an assistant advocate in case for formal suspicion concerning a crime or misdemeanour which may lead to the loss of the licence or authorisation.

If other disciplinary bodies, such as the Advocate Association's regional disciplinary panels, wish to present a proposal as mentioned in the Courts of Law Act § 219, third paragraph, or § 230, these must first be submitted to the Supervisory Council, which has the duty to present a proposal to the committee if it finds that a decision as mentioned in the previous paragraph should be made.

It is furthermore up to the Advocate Licence Committee to decide whether a former advocate who has been subject to revocation of the licence as an advocate may be granted a new licence. Such a licence is issued by the Supervisory Council.

The provisions of the Courts of Law Act concerning prejudice is applicable to the members of the committee in each individual case, cf. the Courts of Law Act § 226 third paragraph first sentence. § 6-2 also gives further rules concerning decisions of questions of prejudice.

§ 6-3 Handling of appeals

The committee should make sure that appeals have been sufficiently clarified. When indicated by the nature of the case or other circumstances, the committee may arrange a meeting with the parties for oral arguments and presentation of evidence.

When requested by the Advocate Licence Committee, an advocate is obliged to give a satisfactory explanation for circumstances of relevance to the case which relates to the legal practice of the advocate in question.

Decisions which conclude a matter shall be made by the full committee in a meeting or through circulation of a draft decision.

The decisions of the committee may not be made subject of appeal, cf. § 226, second paragraph fourth sentence, of the Courts of Law Act.

Comments:

Provisions have been stipulated in § 6-3 concerning the handling of cases internally in the committee. In other respects, the provisions of the Public Administration Act will be applicable.

The first paragraph lays down rules for the handling of cases involving appeals in the committee. If the complaint is taken under consideration, the committee decides to which extent further preparations of the case should be initiated. It may also be relevant to arrange an oral hearing and presentation of evidence with the participation of the parties.

In most cases, it will be an assumption for the clarification of the case that the advocate who is targeted by the appeal gives further information about his law practice to the extent that the Advocate Licence Committee finds this necessary. Failure to give information as requested by the Advocate Licence Committee may be a basis for revocation of the advocate's licence, cf. the Courts of Law Act, § 230, first paragraph No. 4.

The third paragraph lays down provisions concerning the handling of the committee when the preparation of the case has been completed. The handling of the case shall take place in a meeting or through making the case subject to decision in writing based on circulation of the documents.

The decision of the committee cannot be appealed, cf. the Courts of Law Act § 226 second paragraph fourth sentence.

§ 6-4 Handling of cases upon proposal from the Supervisory Council or the Disciplinary Committee

The committee will decide in the first instance on matters pursuant to the Courts of Law Act § 219, third paragraph, or § 230, upon proposal from the Supervisory Council or the Disciplinary Committee. If the proposal is moved for formal evaluation, the parties should be given an opportunity to present their views. § 6-3 applies correspondingly.

If the committee does not follow the proposal from the Supervisory Council or the Disciplinary Committee, it may instead issue an admonishment or warning the to person concerned.

Decisions made by the committee in pursuance of the Courts of Law Act, § 230, first paragraph first sentence, may be brought before a court which may rule on all aspects of the case, cf. § 230 first paragraph second sentence.

Comments:

Rules have been established in § 6-4 about the handling of cases in the first instance upon proposal by the Supervisory Council or the Disciplinary Committee.

The first paragraph makes reference to the Courts of Law Act, § 219, third paragraph, and § 230. The reference is included in the regulations for the purposes of facilitating the perception. Reference is further made to the procedural provisions in § 6-3.

The second paragraph corresponds with the Courts of Law Act, § 230 first paragraph second sentence.

The third paragraph providesthe indication that the Advocate Licence Committee may admonish the person in question or give him a warning in stead of complying with the proposal made by the Supervisory Council or the Disciplinary Committee, cf. the Courts of Law Act, § 226, second paragraph second sentence.

Chapter 7

Administration system for an Advocate's legal practice

§ 7-1 Appointment of administrator for advocate affairs

If the conditions in § 228 first paragraph of the Courts of Law Act are present, the Supervisory Council for Advocate Affairs may appoint an advocate as administrator of the legal practice of another advocate.

The decision by the Supervisory Council about appointment of an administrator may be made subject of appeal by the person involved to the Advocate Licence Committee in accordance with the provisions of the Public Administration Act.

Unless an auditor has already been appointed for the legal practice under administration, the Supervisory Council shall appoint an auditor with a view to undertake an audit of the accounts and the way in which the business has been carried on, as well to prepare an auditor's statement concerning the legal practice under administration.

Comments:

The clause corresponds with the Courts of Law Act, § 228, first paragraph, and has been included for the purposes of overall perception.

The first paragraph concerns the appointment of an administrator for the legal practice of an advocate. The administrator to be appointed should be an advocate in private practice. Only an advocate who accepts the assignment can be appointed as an administrator. In the selection of the administrator, account should be taken of the possibility of conflicts of interests because of the connection between the administrator's own work and the cases which the administrator will gain insight into as administrator. An advocate who is asked to assume the function of administrator, must take into account the possibilities for different conflicts of interests and must, as the case may be, abstain from accepting the assignment or make the Supervisory Council aware of the problem.

According to the second paragraph, the Supervisory Council's decision to appoint an administrator may be made subject of appeal by the advocate to the Advocate Licence Committee, cf. the Courts of Law Act, § 225, fourth paragraph first sentence. The appeal period is 3 weeks, cf. the Public Administration Act § 29 first paragraph.

An auditor must have been appointed for the law practice under administration. If the auditor which already are handling the auditing of the practice does not want to continue to do so, for whatever reason, the Supervisory Council shall appoint a new auditor for the practice.

§ 7-2 The main tasks of the administrator

The administrator shall seek to establish an overview of the legal practice under administration, and shall initiate the necessary measures with a view to protect the interests of the clients, cf. § 228, second and fourth paragraphs of the Courts of Law Act.

Comments:

The administrator's tasks have been regulated by the Courts of Law Act, § 228, second and fourth paragraphs. The further provisions about the tasks of the administrator, the exercise of these as well as procedural rules have been included in these regulations.

The tasks of the administrator are to manage the law practice of the advocate in such a manner that damage and losses for the clients are avoided to the extent possible. The competence and contribution by the administrator should not be more extensive than that which follows from this. In the case of ongoing cases, if will be natural for the administrator to gain a perception of these cases and to notify the clients so that the assignment may be transferred to another advocate or referred back to the client. If it is necessary to prevent

damage or losses for the client, the administrator may appear on behalf of the client in the same manner as the advocate under administration. For instance, it may be necessary for the administrator to take care of aspects of litigation which cannot be postponed.

It should be commented that the administrator must, to a certain extent, also take care of the interests of the advocate. For example, documents should not be returned to the client as long as the advocate's claims for fees and expenses have not been covered, when the retaining of the documents does not cause a legal loss to the client, cf. Odelsting Proposition No. 39 (1994-95), page 24.

§ 7-3 The administrator's duty of confidentiality and of reporting

As concerns circumstances which are not comprised by the administrators duty of confidentiality as an advocate, the Public Administration Act, §§ 13-13 e apply correspondingly to the extent that they are suitable.

The administrator has a duty to inform the Supervisory Council if the administrator finds that there are circumstances which may indicate that measures of administrative or penal character should be considered against an advocate.

Comments:

The administrator will have a duty of confidentiality as an advocate pursuant to the Penal Code § 144. However, during the exercise of an assignment, the administrator will gain knowledge of a number of circumstances which are not covered by his duty of confidentiality as an advocate, typically personal circumstances relating to the advocate whose practice he is put in the position to administrate. It would be unfortunate if the administrator should not have the same duty of confidentiality in relation to such circumstances as the body which has appointed him, the Supervisory Council. It is likely that an interpretation of the Public Administration Act § 13 would have given the same result, even it the opposite is expressed by Odelsting Proposition No. 39 (1994-95) on page 34. In this instance, the intention has obviously been that the advocate's clients should not have a weaker protection because of the appointment of an administrator. The first paragraph of the clause has been included to avoid any doubt about this.

The second paragraph of the clause instructs the administrator that notice should be given to the Supervisory Council if he should discover circumstances which may indicate that measures of administrative or penal character should be considered against an advocate. However, it has not been expressed as a special duty of the administrator to clarify if such circumstances are present, cf. Odelsting Proposition No. 39 (1994-95), page 24.

§ 7-4 Theadministrator's duty to make a report to the Supervisory Council

No later than three months after his appointment, the administrator shall make a report to the Supervisory Council.

If the administrator has not completed his assignment within one year of the appointment, the administrator shall send to the Supervisory Council an statement concerning the administration as well as accounts for the advocate's legal practice. If an auditor has been appointed, the accounts shall be presented to him.

The Supervisory Council may otherwise at any time demand that the administrator shall give information about the administration.

No later than 6 months after assuming the administration assignment, the administrator shall send the auditor's statement, the annual statement of accounts and the auditor's report, if applicable, in relation to the legal practice under administration to the Supervisory Council.

Comments:

The Ministry assumes that there will be a need for the Supervisory Council to the kept informed by the administrator about the administration of the legal practice. The duties of information put on the administrator towards the Supervisory Council have been regulated by § 7-4. In the wording of the rules, the provisions applicable to liquidators in case of bankruptcy have been used as a basis. It is assumed that the administrator should make a report to the Supervisory Council as early as 3 months after the appointment, cf. the first paragraph. The administrator shall afterwards make reports as further decided by the Supervisory Council, cf. the third paragraph.

It cannot be excluded that some administration assignments will take some time. In view of this, a provision has been added to the effect that the administrator has a duty to make a special report if the administration assignment has not been completed within one year of the appointment of the administrator, cf. the second paragraph.

§ 7-5 Final accounts and final statement

When the legal practice of the advocate has been wound up or the assignment as administrator has been completed with the return of the legal practice to the advocate, the administrator shall present final accounts and make a final statement to the Supervisory Council. The accounts should be presented for verification by the auditor of the law practice under administration.

Comments:

It appears from § 7-5 that the administrator shall present final accounts and a final report to the Supervisory Council, both in the cases when the law practice has been wound up, and in the cases when the administration is terminated in other ways.

§ 7-6 Complaints concerning the decisions of the administrator

The decisions of the administrator may be made subject to complaint to the Supervisory Council in accordance with the provisions of the Public Administration Act. The opportunity

to make complaints does not cover individual decisions in connection with the ongoing work of administration.

Comments:

It appears from the first paragraph that the decisions of the administrator may be made subject of appeal to the Supervisory Council. The time limit for the appeal is 3 weeks, cf. the Public Administration Act, § 29, first paragraph.

It appears from the second sentence that the possibility of appeal does not extent to individual decisions made in the course of the day-to-day administration. If the opportunity to appeal was available in these instances, it would obstruct the progress of the administration and would impede the work of the administrator to try to limit the losses of the clients. Reference is otherwise made to the discussion in Odelsting Proposition No. 39 (1994-95) page 24.

§ 7-7 The advocate's duty to give information to the administrator

Following the appointment by the Supervisory Council of an administrator for the practice, The advocate is obliged to give the administrator the information necessary for the administration without limitation in the advocate's duty of confidentiality. The advocate is obliged to present to the auditor the documents which are necessary for the auditor's control. The advocate is also obliged to assist in finding documentation and otherwise to provide such assistance which is necessary to protect the interests of the clients.

Comments:

As a point of departure, § 7-7 corresponds to the Bankruptcy Act, § 101. The advocate's duty of confidentiality will not be applicable in relation to the administrator, cf. the Courts of Law Act, § 228, seventh paragraph second sentence. The administrator will, as an advocate, be subject to duty of confidentiality under the law, cf. the Penal Code § 144. § 7-7, second sentence deals with the advocate's relationship with the auditor of the legal practice. The duty to give the necessary assistance as mentioned in § 7-7, third paragraph also applies to the administrator's needs with regards to obtaining access to premises and files, etc.

§ 7-8 The administrator's access to letters in the mail, etc.

The administrator is entitled to demand delivery of letters and other items in the mail and telegrams which have been addressed to the advocate. The administrator may open all messages which are not obviously irrelevant for the administration. The advocate shall have an opportunity to be present during the opening.

The Supervisory Council or the administrator will inform the post office, telecommunication companies, etc. where the advocate is a customer to the effect that the practice of the advocate is under administration. The Supervisory Council or the administrator will also inform the Credit Supervision Administration if the practice under administration also covers affairs that are under the supervision of the Credit Supervision Administration.

Comments:

The provisions in § 7-8 correspond, as a point of departure, to the Bankruptcy Act, § 104.

In addition to the notification of the Post Office and telecommunication companies, also the Credit Supervision Authority should be notified if the advocate whose practice is under administration was also engaged in affairs which are under the supervision of the Credit Supervision Authority.

§ 7-9 Prohibition against disposal on the part of the advocate and his heirs

During the administration, the advocate and his heirs are not entitled to dispose of the property and documents etc. of the practice to the extent that this would prevent or complicate the proper exercise of the tasks of theadministrator, cf. § 228, third paragraph of the Courts of Law Act.

Comments:

§ 7-9 deals with the position of the advocate, and his heirs, as the case may be, during the administration. The provisions correspond to the Courts of Law Act, § 228, third paragraph, and are proposed to be introduced in the regulations for purposes of overall perception. It is a condition for an effective administration system that the owner or his heirs should lose the right to dispose of the assets, documents etc. of the practice to the extent that this would impede or obstruct the administrator's exercise of his functions. The clause thus protects the considerations which are underlying the system of administration of the law practice of an advocate, however, at the same time, the provisions do not go as far in relation to the advocate as to completely remove his freedom to make decisions.

§ 7-10 Retention and storage of the client files in the advocate's legal practice

When the law practice of an advocate is wound up in accordance with the provisions of the administration system, the Supervisory Council shall take care of satisfactory storage of the advocate's client files for 10 years. The Supervisory Council shall afterwards take care of satisfactory shredding of all or parts of the material. In other instances, the client files shall be returned to the advocate.

The costs of storage, shredding etc. in connection with the sound handling of the advocate's client files should be covered by the Supervisory Council.

Comments:

The Ministry considers it necessary to introduce provisions in the regulations concerning the access to the advocate's client files, including the storage of these.

If the administrator is appointed in a case as mentioned in the Courts of Law Act, § 228, first paragraph no 1, the legal practice of the advocate shall be wound up. Since the client files contain information of personal nature, the heirs of the advocate should not be given an opportunity to keep the client filed in such an instance. In cases as mentioned, therefore, the Supervisory Council should have a duty to secure sound storage of the client files for 10 years, cf. § 7-10 first sentence.

The provisions may have the effect that documents in the advocate's client files may be retained for far more than 10 years, for example when these are 7 years old when the Supervisory Council undertakes responsibility for the storage. Is such a case, the documents will be 17 years old when they are shredded. The rule about duty of storage for 10 years has been selected with a view to avoid difficult borderline questions and to have a clear rule. The shredding of the whole or parts of the client files must be undertaken with care that must be required in the treatment of such confidential documents which the client files of an advocate will frequently hold. The decision about shredding shall be taken by the Supervisory Council, if possible in consultation with the administrator. The cost of storage rental, shredding etc. should be covered by the Supervisory Council.

If the administrator is appointed in cases as mentioned in the Courts of Law Act, § 228, first paragraph Nos. 2 and 3, the advocate's legal practice will not, as a point of departure, be wound up, as the advocate may be able to resume the practice after some time. In such a case, the client files shall be turned over to the advocate again.

§ 7-11 The remuneration of the administrator and the auditor

The Supervisory Council will stipulate the remuneration of the administrator and the auditor, cf. § 228 fifth paragraph of the Courts of Law Act.

Comments:

The Supervisory Council will stipulate the remuneration of the administrator. The cost of administration or winding up of the advocate's law practice, including the remuneration of the administrator and auditor, should initially be covered by the Supervisory Council, cf. the Courts of Law Act, § 228, fifth paragraph. The Supervisory Council may claim recovery of the costs from the advocate or his estate. A possible claim for recovery cannot be presented as a claim for compensation under the security provided by the advocate, cf. Odelsting Proposition No. 39 (1994-95) page 34.

Chapter 8

Litigation experience and advocate course as conditions for being licenced as an advocate

Comments:

The Courts of Law Act, § 220, second and third paragraphs, authorise the King to lay down rules about litigation experience and the completion of a course in subjects of particular

importance to an advocate's legal practice («advocate course») as conditions for being licensed as an advocate.

§ 8-1 Litigation experience

In order that practice as mentioned in the Courts of Law Act, § 220, second paragraph No. 2 letter a, can be counted in an application for being licensed as an advocate, the applicant must prove litigation experience. The applicant must have taken care of the oral argument in main court meetings in at least three civil cases of a certain scope. Up to two of these may be replaced by the main hearing in criminal cases, however, in such a way that two criminal cases correspond to one civil case.

The first paragraph does not apply to applicants which have been in practice as mentioned in the Courts of Law Act, § 220, second paragraph No. 2 letter b or c, for at least one year.

Comments:

It is stipulated by § 8-1 that a person with practice as assistant advocate must have pleaded at least three main hearings in civil cases in order for the practice to count in an application for a licence as an advocate. Up to two of the civil cases may be replaced by oral arguments in criminal cases. Since criminal cases usually are more simple than civil cases, however, two criminal cases are required for each civil case. The cases must have been «of a certain scope» in order to qualify. An appraisal must be made of the cases which the applicant has pleaded. As examples of cases which have not provided litigation experience of significance and which should therefore not be accepted, simple cases concerning monetary claims (including cases involving promissory notes) and cases ending in default judgement for lack of presence of the adversary may be mentioned.

Practice as assistant judge, police lawyer, etc. will normally lead to a lot of experience with main hearing of cases. The applicants which in addition to practice as assistant advocate also have practice from positions as mentioned of a certain duration, should not have to document experience from oral pleading ofcases. The person in question must have held a position as mentioned for at least one year in order that the exemption from the requirement for oral pleading of cases shall be applicable.

§ 8-2 Mandatory Advocate Course

When applying for a licence as an advocate, the applicant must prove that he has completed a course in subjects of special importance for the practice as an advocate (the Advocate Course). The Ministry of Justice will issue further provisions concerning the contents and the execution of the course.

The Supervisory Council for Advocate Affairs may approve the completion of another course with similar contents as fulfilment of the requirement to have completed the Advocate Course.

Comments:

In the first paragraph, it is stipulated that completion of a course is subjects of special importance for the law practice as an advocate (the «Advocate Course») shall be a condition for being licensed as an advocate. The course is mandatory for everyone, and will not count as a reduction in the required practice period. The Ministry may stipulate further rules concerning the contents of the course and how it should be accomplished, cf. the second sentence.

Pursuant to the second paragraph, the completion of another course with a similar content and scope may be accepted in place of the completion of the Advocate Course.

Chapter 9

Approval of foreign legal education as a basis for being licensed as an advocate, etc.

I Definitions, etc.

§ 9-1 Definitions

An EEA advocate means a person entitled to practice with one of the following professional titles in his country of domicile:

Belgium:	Avocat - Advocaat
Denmark:	Advokat
Finland:	Asianajaja/ Advokat
Germany:	Rechtsanwalt
France:	Avocat
Greece:	dikhgros (DIKIGOROS)
Ireland:	Barrister
	Solicitor
Iceland:	Logmadur
Italy:	Avvocato
Liechtenstein:	Rechtsanwalt
Luxembourg:	Avocat-avoue
Netherlands:	Advocaat

Norway:	Advokat
Portugal:	Advogado
Spain:	Abogado
United Kingdom:	Advocate
	Barrister
	Solicitor
Sweden:	Advokat
Austria:	Rechtsanwalt

Member state of domicile means the member state where the advocate first attained the right to use one of the professional titles mentioned in the first paragraph.

Host member state means the member state where the advocate practices in pursuance of Chapter 9 and 10.

Professional title from the country of domicile means the professional title used in the member state where the advocate first attained the right to make use of the title before the person in question engages in practice as an advocate in the host member state.

The competent authority in Norway is the Supervisory Council for Advocate Affairs (the Supervisory Council).

§ 9-2 Exchange of information etc. between the Supervisory Council and the competent authority in the member state of domicile

The Supervisory Council is obliged to keep the competent authority in the member state of domicile informed in instances when action is considered and/or measures have been initiated in pursuance of § 225 third paragraph or § 226 second paragraph of the Court of Law Act.

Upon a decision by the competent authority in the member state of domicile of the person in question concerning suspension or permanent revocation of a license to practice as an advocate, the right of the person in question to practice under his professional title from the member state of domicile in the host member state is terminated.

In case the person in question has been licensed to practice as an advocate in Norway in pursuance of Section II, the Supervisory Council is obliged to inform the competent authority in the member state of domicile about the revocation of the Norwegian licence of the person in question to practice as an advocate.

II Further conditions for being licensed to practice as an advocate in Norway

§ 9-3 Education from another EEA state as a basis for being licensed to practice as an advocate in Norway.

A licence to practice as an advocate may be issued to a citizen of an EEA state even if the conditions of § 220 first to third paragraphs of the Courts of Law Act have not been fulfilled, if the applicant demonstrates a corresponding licence in another EEA state. A corresponding licence means a right to practice under one of the professional titles specified in § 9-1. The licence must not have been revoked, suspended or removed from the person in question in another manner.

In connection with an application for a licence to practice as an advocate in accordance with the first paragraph, it may be decided that the part of the professional education in the applicant's country of residence which consists of professional practice may wholly or partly be considered as having been accomplished through work as an authorised assistant advocate in Norway. It may be stipulated as a condition that requirements concerning oral pleadings pursuant to § 220 third paragraph of the Courts of Law Act must have been accomplished. It is a condition that the seminar as set out in § 220 fourth paragraph of the Courts of Law Act has been completed.

In order to be licensed as an advocate, an applicant from another EEA state must furthermore demonstrate:

1) that he has passed an examination in Norway which demonstrates that the person in question has sufficient knowledge of Norwegian law, or

2) that he has exercised actual and regular activities as an advocate in Norway for at least three years, assuming that the practice has mainly comprised Norwegian law, or also the law of the European Union, as the case may be, or

3) that he has exercised actual and regular activities as an advocate in Norway for at least three years, with a shorter period within Norwegian law, or also the law of the European Union, as the case may be, assuming that the person in question has attained sufficient knowledge of Norwegian law.

Concerning the accomplishment of an examination as mentioned in No. 1 above, the Ministry may issue further provisions concerning the scope of the examination and conditions for taking the examination. The Ministry may determine that a fee should be paid for the accomplishment of the examination, and may stipulate the amount of the fee. An application for a licence should be submitted to the Supervisory Council before an applicant may present himself at an examination as set out in No. 1. If the conditions have otherwise been fulfilled, the Supervisory Council will issue a confirmation to the effect that the applicant may present himself for the examination. The Supervisory Council may determine that the applicant should be relieved of the examination or that only certain parts of the examination as further specified should be accomplished.

In other respects, the provisions concerning education and other qualifications and the necessary documentation etc. of the EEA agreement are applicable, Appendix VII, Section 1, cf. Council Directive 21 December 1988 concerning a general system for approval of diplomas for higher education of at least three years' duration providing professional competence (89/48/EEU) in a form adapted to the EEA. In the case of applicants from Nordic countries, the requirements in a treaty of 24 October 1990 between Denmark, Finland, Island, Norway and Sweden concerning a Nordic labour market for persons with higher education of at least three years' durationproviding professional competence will apply alternatively.

§ 9-4 Authorisation of assistant advocates without a Norwegian law degree

Authorisation may be given to an assistant advocate without a Norwegian law degree if it is demonstrated that the assistant advocate has similar education from an EEA state and that he is a citizen of an EEA state.

The provisions of § 9-3, last paragraph, are applicable as to the extent that they are suitable.

§ 9-5 Approval of foreign legal education in instances when a law degree is a condition stipulated by legislation

In other instances when the Courts of Law Act or other legislation requires a law degree, legal education from another EEA state will be accepted to the extent and on the conditions which follow from the EEA agreement, Appendix VII, No. 1, cf. Council Directive of 21 December 1988 concerning a general system for approval of higher education providing professional competence of at least three years duration (89/48/EEC) adapted to the EEA, or the treaty of 24 October 1990 between Denmark, Finland, Iceland, Norway and Sweden concerning a Nordic labour market for persons with higher education of at least three years duration giving professional competence.

§ 9-6 Application procedures

Applications for a licence as an advocate pursuant to § 9-3, for authorisation of an assistant advocate pursuant to § 9-4 and for approval pursuant to § 9-5 will be decided by the Supervisory Council.

Applications and appendices which have not been issued in Norwegian, Danish or Swedish, shall be accompanied by a translation into Norwegian made by or confirmed by a state authorised translator.

Applications shall be decided on no later than four months after all the necessary documents have been presented. As concerns an application for a licence pursuant to § 9-3 third paragraph No. 1, this also applies to decisions concerning confirmation as mentioned in § 9-3 third paragraph.

The decisions of the Supervisory Council may be made subject of appeal to the Advocate Licence Committee. The period for complaint is three weeks, cf. § 29 of the Civil Administration Act.

§ 9-7 Approval of foreign legal education in countries outside of the EEA area as basis for a Norwegian licence as an advocate, etc.

In the instances as mentioned in § 235 second paragraph of the Courts of Law Act, which are not subject to the provisions of § 9-3 to 9-5, the provisions of § 235 first paragraph of the Courts of Law Act will apply correspondingly.

In the case of an application in accordance with this section, § 9-6 will apply correspondingly.

Chapter 10. The opportunity of foreign advocates to practice law in Norway.

I The opportunity of EEA advocates to practice law on a permanent basis in Norway.

§ 10-1 The opportunity to practice foreign law, private international law and Norwegian law

EEA advocates are entitled to practice foreign law, private international law and Norwegian law when the person in question has given notice pursuant to § 10-2. The person in question should use a professional title from his home country with an addition showing the nationality.

§ 10-2 Notice to the Supervisory Council

An EEA advocate who wishes to practice law on a permanent basis in Norway should give such notice to the Supervisory Council as set out in Chapter 1.

The Supervisory Council will undertake registration on the basis of the completed application form, as well as a certificate which demonstrates that the person in question is registered with the competent authority in his member state of domicile. It is required that this certificate has been issued during the last three months. The Supervisory Council should inform the competent authority in the member state of domicile about the registration.

Announcement is provided by the Supervisory Council in accordance with § 1-3.

§ 10-2 Security to be provided

Anyone wishing to practice law in accordance with a permission pursuant to § 10-1 shall ensure that security for liability to pay compensation which the person in question may incur has been provided in accordance with Chapter 2 of these regulations before the practice is started and for as long as the practice is carried on.

Chapters 3, 4, 5, 6 and 11 of the regulations will apply correspondingly to the extent that they are suitable. Chapter 12 of the regulations apply correspondingly.

§ 10-4 The opportunity of EEA advocates to appear in litigation, etc.

An EEA advocate may provide legal assistance in litigation and outside of litigation.

In cases when it is required that the counsel or defence attorney should be entitled to appear before the Supreme Court, the advocate must appear jointly with a Norwegian advocate entitled to appear before the Supreme Court.

If the advocate's command of the Norwegian language is not satisfactory, the person in question must appear jointly with a Norwegian advocate during litigation, unless the court gives its consent for the advocate to appear by himself. In other special instances, the court may stipulate as a condition for accepting that a foreign advocate may appear as counsel or defence attorney that the advocate shall appear jointly with a Norwegian advocate.

Legal assistance during litigation shall be exercised in accordance with the rules laid down for Norwegian advocate.

By interlocutory decision, the court may prohibit the use of a foreign advocate as a defence attorney or counsel if dictated by considerations relating to the security of the country.

§ 10-5 Revocation

The opportunity to provide legal assistance in accordance with § 10-1 may be revoked by the Advocate Licence Committee in accordance with § 219 third paragraph of the Courts of Law Act.

II Permission for an advocate from outside the EEA area to practice law on a permanent basis in Norway

§ 10-6 Permission to practice law

Foreign advocates may be given permission by the Supervisory Council for Advocate Affairs to practice foreign law or private international law. The person concerned should use the professional title from his home state and an addition showing the nationality.

Conditions and limitations may be stipulated in the permission.

§ 10-7 Opportunity of foreign advocates to appear during litigation,etc.

The provisions of § 10-4 will apply correspondingly to the extent that they are suitable.

§ 10-8 Security to be provided

Anyone wishing to practice law in accordance with a permission pursuant to § 10-6 shall ensure that security for liability which the person in question may incur has been provided in accordance with Chapter 2 of these regulations before the practice is started and for as long as the practice is carried on.

Notice should be given to the Supervisory Council before the practice is started and when the practice is moved or wound up, cf. §§ 1-1 and 1-2.

Chapters 3, 4, 5, 6 and 11 of these regulations will apply correspondingly to the extent that they are suitable. Chapter 12 of these regulations will apply correspondingly.

§ 10-9 Revocation

Permission to provide legal assistance in accordance with § 10-6 may be revoked by the Advocate Licensing Board in accordance § 219 third paragraph of the Courts of Law Act.

III Opportunity of foreign advocates to provide legal assistance and to appear during litigation in Norway

§ 10-10 The opportunity of foreign advocates to provide legal assistance in Norway.

Foreign advocates established in another state may provide legal assistance in Norway in accordance with the provisions of Section III.

§ 10-11 Professional title

A foreign advocate who provides legal assistance in Norway shall use his professional title in the language or one of the languages in the country where the practice of the person in question has been established, with indication of the professional organisation that he belongs to, or the courts of law before which he is entitled to appear under the legislation of the country in question.

§ 10-12 Documentation

Norwegian authorities and courts of law may require documentation to the effect that the person in question is entitled to conduct practice as a foreign advocate.

When such documentation has been required, the person in question is not entitled to provide legal assistance in Norway before satisfactory documentation has been presented, unless the relevant authority or court of law gives its consent.

§ 10-13 The opportunity of foreign lawyers to appear during litigation etc.

§ 10-4 of these regulations applies correspondingly for the right of foreign advocates to appear during litigation etc.

§ 10-14 Rules for professional conduct

In the case of services provided by EEA advocates in Norway, the rules of good professional conduct etc. in Council Directive of 22 March 1977 aiming to facilitate the actual opportunity to provide services (77/249/EEC) Article 4 No. 2 and 4 will apply, in EEA adapted form, cf. the EEA Agreement, Appendix VII item 2.

In the case of foreign advocates established in a state outside the EEA area, the rules of good professional conduct of advocates in Chapter 12 will be applicable.

§ 10-15 Prohibition, suspension and deprivation.

§ 230 of the Court of Law Act will apply correspondingly to the extent that it is suitable to the right of foreign advocates to provide legal assistance in Norway.

The Supervisory Council will inform the respective competent authority in the home country of the advocate about decisions pursuant to the first paragraph.

II Entry into force provisions

The amendments in the Advocate regulations, § 6-1, first and second paragraph will enter into force on 1 January 2001. Otherwise, the other amendments will enter into force on 1 July 2000.

Chapter 11. Civil service as a bar against law practice

§ 11-1 Civil service officials

Civil service officials who hold a licence to practice law as an advocate, and who come under § 229, first paragraph, of the Courts of Law Act, cannot practise as an advocate, unless the King gives special permission for this. This clause does not apply to officials in the military service.

Comments:

With some changes of wording, this section corresponds to regulations No. 3633 of 21 October 1927 concerning prohibition against civil service officials as private lawyers, which are now repealed, cf. § 14-1.

Chapter 12

Rules of conduct for advocates

(latest changes: 08.03.2002)

1 INTRODUCTION

1.1 Purpose of the rules

Rules of conduct for advocates aim at securing that professional activities as an advocate shall be conducted in accordance with the ethical principles which are the basis for the work of the advocate in all civilised jurisdictions. Violation against the rules are a basis for disciplinary consequences for the advocate.

1.2 The advocate's duty

It is the advocate's duty to promote justice and to prevent injustice.

It is the advocate's duty to promote the interests of his clients to the best of his ability within the scope of the law. This shall be done with no consideration of personal advantage or risk, political belief, race, religion or extraneous considerations.

The advocateshould not identify himself with the client, and he has the right to expect that he should not be identified with the points of view that he presents on behalf of his client and the interests of the client.

It is the advocate's duty to be both a councillor and spokesman for his client.

The advocate must himself decide whether he will undertake an assignment.

1.3 The advocate's conduct

The advocate must conduct himself professionally and correctly in his practice. The advocate must refrain from any conduct which is capable of harming the image of the bar and the profession.

2 GENERAL PRINCIPLES

2.1 Independence

2.1.1
In order to live up to the obligations assumed by an advocate, he must by necessity be independent so that his advice and his actions are not influenced by extraneous considerations. In particular, it is important that he should not be influenced by personal interests or external pressure. An advocate must avoid any weakening of his independence, and he must not compromise his professional standards in order to indulge his client, the court or a third party.

2.1.2
An advocate must not accept an assignment in which his personal economic interests could be in conflict with the interests of the client, or where they might influence his free and independent position as an advocate.

An advocate must not become economically interested in the outcome of a case through transfer of the client's claim or parts thereof. The advocate must not guarantee any loans to the client. An advocate who represents his own economic interests, partly or fully, is obliged to make contractual or otherwise interested parties aware of this.

2.1.3
An advocate must not organize his business in a manner which could prevent him from freely and independently advising and assisting his clients or in such a way that his independence is reduced in other manner.

2.2 Trust

In his practice, the advocate is dependent on trust which can only be attained when the advocate's honesty and integrity are beyond reproach.

2.3 Duty of confidentiality

2.3.1
When practising as an advocate, it is of fundamental importance that clients and others can entrust the advocate with information that the advocate is obliged not to disclose. The advocate's duty to treat information confidentially is a necessary prerequisite for confidence and is therefore a basic and cardinal right and obligation for the advocate.

The advocate's duty to observe confidentiality with regard to information he receives, serves to promote the administration of justice as well as the interests of the client and is therefore entitled to a high degree of protection by the government.

2.3.2
An attorney shall observe his legal duty of confidentiality. Information received by the advocate in his profession must be treated with discretion, also when the information is not encompassed by his legal duty of confidentiality. There is no time limit for duty of confidentiality.

2.3.3
The advocate shall require that associates, staff or persons engaged by the advocate in connection with his practice shall observe the same duty of confidentiality.

2.4 The advocate's advertising and relations with media

2.4.1
The advertising of an advocate should in form and content be to the point and factually correct and should thus not contain anything which is incorrect, misleading or deceiving.

It is allowed to emphasise one or several branches of the advocate's practice, provided the advocate has special knowledge and experience in the said field.

Advocates must contribute to disseminate objective information about their profession in such a way that it will benefit the body of advocates and the general public which seeks legal assistance.

2.4.2
An advocate is obliged in any discussion of litigation to take due account of the interests of the parties and the dignity of the court, and should in this connection prevent the possibility of influencing judges, jurors and witnesses. The advocateshould exercise particular restraint as concerns public discussion of upcoming or ongoing court cases in which he has himself been engaged.

In any case where the advocate makes statements in a case in which he has or has had assignments, this should be expressly mentioned.

3 RELATIONS WITH CLIENTS

3.1 Acceptance and completion of assignments

3.1.1
An advocate must not undertake an assignment other than upon direct request by the client, from another advocate on behalf of a client or from a competent body.

When an advocate undertakes an assignment in connection with a financial transaction, the advocate shall investigate the identity of the client or the intermediary on behalf of whom the advocate is undertaking the assignment.

3.1.2
An advocate shall give advice to the client and take care of his interests expeditiously, conscientiously and carefully. The advocate is personally responsible for accomplishment of

the assignments that he has undertaken. He shall keep the client informed about the progress of the case.

3.1.3
An advocate shall try to achieve amicable settlements to the extent that this is compatible with the interests of the client.

3.1.4
An advocate should not undertake an assignment when he knows or should know that he lacks the necessary competence. However, this does not apply if within a reasonable period the advocate can acquire the knowledge required or obtain the necessary competence to ensure a proper and professional performance of the assignment.

An advocate should not undertake new assignments if his other pressure of work has the effect that the cases will not be dealt with in a reasonably expeditious manner.

3.1.5
If the costs in connection with a case must be assumed to become disproportionately high in relation to the client's financial position or the interests involved in the matter, the advocate should in due time inform the client to this effect. Before the advocate engages another advocate, an expert or others in connection with an assignment, the client's consent should be obtained.

3.1.6
An advocate who has undertaken an assignment is obliged to carry it through in accordance with the wishes of his client, unless it should turn out

that the advocate has received erroneous or incomplete information

that the client does not want to adhere to the advocate's advice in the matter

that the client does not upon request pay an advance or provide security for the fee and the costs

that the client does not upon request pay an invoice for an amount on account for work performed and/or expenses incurred

that the client initiates or contributes to publication in contravention of a request by the advocate to refrain from such publication, or

that such events occur that it cannot reasonably be required that the advocate shall continue the assignment.

Before the advocate resigns from an assignment, he is obliged to take whatever steps are needed and which cannot be postponed without exposing the client to potential losses.

3.1.7
An advocate is entitled to refuse to hand over documents which he has in his possession in connection with an assignment as long as the client has not paid the amounts owing to the advocate for costs and fees from the assignment in question. This does not apply when, and to

the extent, that retention will expose the client to a potential loss. If the amount outstanding is disputed, the chairman of the Disciplinary Committee, or someone authorised by him, may determine how much of the amount outstanding shall be covered, and that the balance shall be deposited or secured on conditions stipulated by the person in question.

3.1.8
An advocate shall resign from an assignment if he suspects that the assignment encompasses a transaction involving the laundering of money and the client is not willing to refrain from implementing such transaction.

3.2 Conflicts of interest

3.2.1 (The main rule)
An advocate must refrain from undertaking an assignment if there could be a risk that the assignment could bring about breach of the advocate's duty of loyalty and confidentiality in relation to his clients or breach of the advocate's duty of independence.

3.2.2 (Double representation)
An advocate must notcounsel, represent or act on behalf of two or more clients if these clients have conflicting interests in the case or if there is a clear risk of this.

3.2.3 (Collision of client's interests)
An advocate may only accept an assignment on behalf of a client against one of the advocate's other clients if it is obvious that there is no reason for concern due to the different nature of the assignment or the nature of the client. The advocate shall inform both parties of the situation.

3.2.4 (Assignments against former clients)
An advocate must exercise care before accepting assignments against a former client.

The advocate must refrain from undertaking assignments against a former client if the advocate's knowledge of the former client's circumstances could be used in a prejudicial manner to the advantage of the new client or could result in harming the interests of the former client.

3.2.5 (The importance of the client's agreement)
If an advocate is prevented from performing actions or business on behalf of one or more clients pursuant to this section 3.2, this shall only apply to the extent the client or clients have not given their agreement that the actions or business can take place.

Even if the clients give their approval, the advocate will still be prevented from acting if his duty of loyalty or confidentiality in relation to a client or the advocate's duty of independence is thereby breached.

The approval of a client is only valid if it is given on the basis of an application from the advocate that provides the client with complete and correct information on the conflict of interest problem.

An advocate who with the express approval of the clients acts as conciliator or an arbitrator between two or more clients with conflicting interests, shall not be considered to have

infringed the rules in this section 3.2. If conciliation does not result in a solution of the dispute, the advocate may not represent any of the parties in the further processing of the dispute.

3.2.6 (Application of the rules to companies, shared facilities, etc.)
When an advocate practices law in a company, in a shared office or similar, the rules in 3.2.1 to 3.2.5 concerning conflicts of interest shall apply to the shared facility and to all its participants.

3.3 Calculation of fees

3.3.1
The client is entitled to be informed about how the advocate has stipulated his fee. The fee shall be reasonably related to the assignment and to the work performed by the advocate.

3.3.2
An advocate must not enter into an agreement with clients or others to the effect that he shall receive a fee on the basis of a percentage or share in relation to the outcome or subject of the case, regardless of whether this involves a sum of money or another form of remuneration.

Exceptions from this rule can only be made in the cases when legislation or public regulations authorise such a possibility.

3.3.3
An advocate must not enter into an agreement with clients or others to the effect that he shall receive his fee in the form of shares or other forms of participation in a company or partnership in which the value of the shares or the participations will be affected by the result of the case. Neither must any such agreement on this form of remuneration be agreed if this could influence the advocate's free and independent position during the performance of the assignment.

3.3.4
If an advocate requires payment of fees and/or disbursements in advance, such payment must not exceed an amount which could reasonably be expected to cover the fee and the disbursements.

3.4 Legal aid

An advocate is obliged to inform his client about existing possibilities of obtaining legal aid from the government or from legal aid insurance.

3.5 Clients' funds

Clients' funds shall be dealt with in accordance with Chapter 3 of these regulations concerning entrusted funds.

An advocate who is requested to administer funds, shall not receive or handle funds that do not have a named source.

3.6 Indemnity insurance

The advocate shall at all times have indemnity insurance covering claims for compensation which may directed against his professional practice with regard to the nature and scope of his activities.

4 THEADVOCATE'S RELATIONS WITH COURTS AND PUBLIC AUTHORITIES

4.1 Conduct before the courts

An advocate shall conduct himself correctly in relation to litigation legislation. An advocate shall show respect and act politely before the courts, but shall at the same time defend his client's interests honestly, fearlessly and without regard to own interests or the consequences for himself or others. The advocate has both a right and an obligation to criticize the court in a proper and decent manner.

4.2 Proper legal process

All cases shall be elucidated by open and professional presentation of evidence and arguments before the full court. The advocate must not in any way try to influence the members of the court informally.

An advocate must not intentionally give incorrect or misleading information to the court.

4.3 Active engagement

An advocate is obliged to familiarise himself thoroughly with the case and conduct the case with the care and promptness required by good professional litigation practice. Requests and recommendations from the court must be answered without undue delay.

4.4 Justifiable volume of assignments

The advocate must ensure that the volume of his assignments does not increase to an extent that could prevent him from satisfying reasonable requirements with regard to the pace of case preparation or from accepting the scheduling of court meetings in current cases.

4.5 Offers of amicable settlement

Without the consent of the adversary, an advocate must not during litigation cite settlement offers made by the adversary or his advocate, or make reference to the fact that they have stated willingness to solve the case by amicable settlement. This is applicable, regardless of whether the adversary or his advocate has stated such a reservation, or not.

An advocate may at any time make reference to settlement offers he has presented himself, unless something else has been agreed. It is assumed that the settlement offers made by him are presented in such a manner that possible settlement offers made by the adversary or his advocate are not disclosed.

4.6 Witnesses and experts, etc.

An advocate is entitled to contact any third party that might be able to give information of relevance to the case, regardless of whether the person concerned has already been named as a witness by the adversary. If it concerns witnesses with a special connection with the adversary, contact should not be made before the adversary's advocate has been notified in advance.

In litigation, contacts with an appointed expert should pass through the court. Direct contact should only take place if this cannot give rise to any concern, and if contact through the court

would be complicated. The court and the adversary must in this case be informed as soon as possible about the contact made, and they should also be made aware of the answer.

4.7 Cases in which the advocate may be called as a witness
An advocate must exercise care in accepting an assignment as counsel in a court case, if it must be considered probable in advance that he may be called as a witness in the case.

4.8 Arbitration and other conflict resolution bodies
The rules concerning the advocates' relationship with the courts from 4.1 to 4.6 shall apply similarly to the extent that they are suitable in respect of an arbitration court and other conflict resolution bodies.

5 RELATIONSHIP BETWEEN ADVOCATES

5.1 Mutual trust between colleagues
Trust and co-operation as colleagues are necessary between advocates, both in the interests of clients and to avoid unnecessary disputes.

An advocate shall always conduct himself with the consideration and openness that can be combined with the interests of the client.

5.2 Referral fee
An advocate must neither from other advocates nor other parties require or receive any form of fee or remuneration for referral or recommendation of a client. Neither must an advocate pay any form of fee or remuneration for having a client referred to him.

5.3 Contact with an adversary
An advocate must not contact an adversary directly when he is represented by an advocate in the question which the contact relates to, unless strong reasons support such a contact, and it has not been possible to contact the advocate, who should be informed about the contact and the reasons for this as soon as possible.

5.4 Disputes between advocates
If an advocate finds that a colleague has acted in contravention of rules of conduct for advocates, he shall inform his colleague accordingly. Criticism of the work of colleagues must be to the point and correct. Efforts should be made to solve disputes between advocates amicably. Court cases on matters mentioned above against a foreign colleague should not be commenced before the respective law organizations have been informed and have had the opportunity to contribute towards a settlement of the dispute.

5.5 Undue influence
An advocate must not raise questions of liability on the part of a colleague with a view to influence his proper maintenance of his client's interests.

5.6 Training
In order to maintain and strengthen the professional and ethical standard of the body of advocates, an advocate is obliged to ensure that his staff receives the necessary training and opportunities for development.

5.7 Associates
Between an advocate and an assistant who does not have his own licence as an advocate, there should be a genuine relationship of employment. The assistant shall work in the offices of the principal. A relationship based on a contract in writing must exist between them, according to which the assistant must among other things be secured a reasonable, fixed salary. The principal must supervise the work of the assistant, and must ensure that he receives sound guidance in his work.

5.8 Replacement of an advocate
An advocate who is engaged to represent a client as a substitute for another advocate in a certain case, must ensure that the client has informed the other advocate accordingly, or the advocate himself should provide such information. Should the client's interest require urgent action, such information must be given as soon as possible after the necessary action has been taken.

5.9 Responsibility for a foreign advocate's fees
Whenever an advocate does not merely recommend, or introduce another advocate to the client, but engages the services of a foreign advocate in respect of a certain case or seeks his advice, he is under personal obligation to pay the foreign advocate's fees and disbursements, even if the client is insolvent. However, at the start-up of such an engagement, advocates may make special agreements. Moreover, the advocate who has engaged another advocate may at any time limit his personal liability to the size of the fee and disbursements that have accrued up to the date he informs the other advocate that he no longer undertakes responsibility.

6. RULES FOR PRACTICING LAW IN OTHER COUNTRIES

6.1 The relationship to CCBE Code of Conduct
A Norwegian advocate practicing law in countries within EEA area is bound by the CCBE Code of Conduct, adopted by CCBE on the 24 November 1998 and accepted by the Norwegian Bar Association on 18 June 1999.

Chapter 13

Transitional provisions

Comments:

Matters which have been received prior to 1 January 1997, which have not been finalised by the Ministry or by the county governor, as the case may be, shall as a main rule be completed by the Ministry or the county governor in question. It will usually be most convenient that the body which has already commenced the treatment of the matter can finalise the same. However, it cannot be excluded that it may be more convenient to transfer a case to the new bodies. For this reason, an opportunity to transfer matters has been provided for in accordance with the last sentence of the provisions.

§ 13-1 Transitional provisions for the Ministry of Justice

Matters which have been received by the Ministry of Justice prior to 1 January 1997 shall be dealt with by the Ministry. If indicated by special circumstances, the matter may be

transferred to the new bodies even if the handling of the matter has not been completed by the Ministry.

§ 13-2 Transitional provisions for the county governors

Matters which have been received by the county governors prior to 1 January 1997 shall be dealt with by them. Complaints against decisions of the county governors will be dealt with by the Ministry. If indicated by special circumstances, the matter may be transferred to the new bodies even if the handlingof the mater has not been completed by the county governor.

§ 13-3 Transitional provisions for the Advocates' Indemnity Fund

Regulations of 1 December 1975 concerning the accounts of advocates, Chapter 4 concerning the Advocates' Indemnity Fund will be applicable until the Fund has been wound up.

The Advocates' Indemnity Fund will be wound up from the time determined by the Ministry. The Ministry of Justice may stipulate further provisions about how the winding up should be effected. The Ministry will decide how a possible profit may be used.

The staff of the Supervisory Council for Advocate Affairs will be secretariat for the Advocates' Indemnity Fund.

§ 16 third paragraph first sentence in Chapter 4 of regulations of 1 December 1975 concerning the accounting of advocates, is repealed. The second to fourth sentence will be new first to third sentence.

Comments:

In the first and second paragraph, the transitional provisions about the Advocates' Indemnity Fund, § 26 in Regulations of 18 December 1992 No. 1091 concerning advocates' administration of entrusted funds and concerning supervision of the affairs of advocates, etc., which are repealed in their entirety.

It is reasonable that the secretariat function for the fund should be performed by the Supervisory Council until the fund has been wound up, cf. the third paragraph. This requires a change in the present provisions in the regulations of 1975, cf. third paragraph.

Chapter 14

Final provisions

§ 14-1 Entry into force

These regulations enter into force on 1 January 1997.

From 1 January 1997, these regulations will be repealed:

1) Regulations of 21 October 1927 No. 3633,

2) Regulations of 20 November 1992 No. 853,

3) Regulations of 20 November 1992 No. 856,

4) Regulations of 20 November 1992 No. 857,

5) Regulations of 20 November 1992 No. 858,

6) Regulations of 18 December 1992 No. 1091,

7) Regulations of 10 December 1992 No. 1123,

8) Regulations of 19 September 1992 No. 896, and

9) Regulations of 27 January 1995 No. 106.
