

SEAFARER SUBJECT GUIDE

USING LAWYERS IN PANAMA

This Guide deals in general terms with using lawyers in Panama. It aims to help a seafarer understand the legal profession in Panama, and how to select, engage, and if need be, change his lawyer. This Guide does not, however, constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practise in Panama.

1. What is the structure of the legal profession?

- 1.1 In Panama, the legal profession is fused and lawyers can both give advice to clients, as well as appear in any court for their client.
- 1.2 In order to practice as a legal professional in Panama, a certificate of admission to the bar is required which is issued by the Supreme Court of Justice. The Supreme Court only issues certificates to Panamanian citizens who hold a professional diploma from the University of Panama, or a degree in law from a recognized University previously validated by the University of Panama. Many lawyers in Panama have been educated in the US and are also members of the American Bar Association.
- 1.3 In every court, there is a special registry kept in which the names of the persons authorized to practice law are registered.
- 1.4 Practice of the law, among other things, includes:
 - .1 Legal representation before courts in civil, criminal, labour, minor, electoral, administrative, maritime and any other matters which exist or which are created in the future.
 - .2 The provision of legal opinions in writing or verbally.
 - .3 The drafting of complaints, last wills and testaments, resolutions and applications addressed to any public servant.
 - .4 The preparation of legal documents relating to the incorporation, operation, dissolution and liquidation of a corporation.
 - .5 The drafting of any type of contract.
 - .6 The presentation of administrative applications.

Using Lawyers in Panama: This Guide reflects the law as at 01 February 2013.

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- .7 The filing of documents in the Public or Civil Registry and the application, recourse, and claims which may arise from their rejection and the amendment thereof.
 - .8 Accompanying any person in any application or hearing in which their services are requested.
 - .9 Being a registered agent according to Law 32 of 1927 (Panama Corporation Law).
 - .10 Any other activity or transaction not expressly included in this list for which the profession of law is required.
- 1.5 In order to represent a seafarer in court, the lawyer must have a power of attorney which the seafarer must sign in front of a public notary. If the seafarer is not in Panama, the power of attorney must be granted at a Panamanian Embassy or Consulate, or by public notary outside of Panama and in this last case the power of attorney must be legalized (by the Panamanian Embassy or Consulate or with the Hague Apostille).

2. How is the legal profession regulated?

- 2.1 Lawyers are regulated by the Supreme Court of Justice (website in Spanish at www.organojudicial.gob.pa) and the National Law Society (Colegio Nacional de Abogados, CAN; website in Spanish at - www.cnapanama.com). The CNA is the body responsible for regulating the practice of lawyers and ensuring the prestige of the profession.
- 2.2 All lawyers must comply with a detailed Code of Ethics and Professional Responsibility issued by the CNA. Failure to comply with these rules may result in disciplinary proceedings against the lawyer concerned.
- 2.3 Breach of the Code of Ethics or any legal provisions in effect regarding the practice of law and legal ethics can result in the following sanctions:
- .1 A private admonishment, which consists in the private reprimand which is made to the accused for the breach committed.
 - .2 A public admonishment, which consists in the public reprimand made to the accused for the breach committed.
 - .3 For first offences, a suspension of the license to practice law for a period of more than one (1) month and less than one (1) year.

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- .4 For non-first offenders, a suspension of the license to practice law for a minimum term of two (2) years.
- 2.4 The National Law Society will constitute an Honour Tribunal to investigate violations of ethics which are presented by interested parties or public servants of the Judicial Branch, the Prosecution or the Administrative Branch, which know of the case in which the breach took place.
- 3. How can a seafarer find a lawyer?**
- 3.1 General advice on appointing a lawyer is contained on the websites (in Spanish) of the Supreme Court of Justice (www.organojudicial.gob.pa) and the National Law Society, CNA (www.cnapanama.com).
- 3.2 Details of Panamanian lawyers are also available in two worldwide legal directories (in English) which are organized by country and practice area; Legal 500 (www.legal500.com) and Chambers and Partners (www.chambersandpartners.com).
- 3.3 If a seafarer has a claim or a dispute arising from his employment on his ship, or against his employer for unpaid wages, he should consider appointing a specialist maritime law firm. If the seafarer faces an investigation by the police or maritime authority concerning a marine accident or incident, he should appoint a criminal lawyer.
- 3.4 Many of the maritime law firms in Panama are engaged with ship registration and have shipowners as clients. Therefore they may not be willing to accept seafarers as clients due to a conflict of interest. Therefore often the best way to find a lawyer is by personal recommendation, or the recommendation of a local trade union or welfare agency.
- 4. On what terms can a seafarer engage a lawyer?**
- 4.1 When accepting instructions from a seafarer, lawyers set out their terms of engagement in a formal letter, commonly known as a lawyer-client representation and fee agreement, which may be accompanied by a set of standard conditions. Most legal practitioners in Panama do not charge for the first visit and if they are honest will be willing to inform the seafarer about what steps are to be followed and also provide the seafarer with a fee quotation.
- 4.2 The lawyer-client fee agreement includes the following important information:
- .1 details of the agreed scope of the work to be undertaken and the procedures for keeping the seafarer informed of progress;

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- .2 the name(s) and status (for example, a partner in the firm or an associate) of the lawyer(s) assigned to the case;
- .3 the basis on which the seafarer will be charged for the work to be undertaken and (where practicable) an estimate of the overall costs of matter;
- .4 any documents or information the professional requires or is relying on in order to provide the service;
- .5 what possible obstacles there are, and reason for possible delays; and
- .6 what these services will cost – in time, in fees, and details of any advance payment required from the seafarer, arrangements for rendering bills and payment terms.

5. How will a seafarer be charged fees by his lawyer?

- 5.1 In Panama, a lawyer can charge for his services using any of the following fee arrangements:
- .1 hourly charges, based on the number of hours that the lawyer spends dealing with the matter;
 - .2 a retainer fee, which is a fee paid in advance to the lawyer for services to be performed intended to ensure that the lawyer will represent the client and that the lawyer will be paid at least that amount. Further payments for services can be expected as the time spent on the legal matter increase.
 - .3 a fixed fee, which is an agreement to pay a certain amount. The agreement can ensure that the cost is certain and proportionate to the work involved; and
 - .4 a contingency fee, which is where the fee is payable only if there is a favourable result for the client in the legal dispute. Contingent fees are usually calculated as a percentage of the net amount recovered for the client. In order for contingency fee agreement to be valid they ought to be in writing and signed by the lawyer and the client.
- 5.2 The Rate of Minimum Professional Fees for Lawyers in the Republic of Panama issued by the Supreme Court of Justice sets out the minimum fees that lawyers charge. Many law firms try to stick to the rates listed by the Panamanian government. However, agreements between legal professionals and their clients which establish higher fees are

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valid. The fee might be higher depending on the complexity of the case nature, specialization or magnitude of the transaction or matter.

5.3 In order to estimate or determine fees different from those established in the Rate, lawyers should take into consideration:

- .1 The importance of the services;
- .2 The amount of the matter or transaction;
- .3 The economic or pecuniary result obtained and the admission of the complaint;
- .4 The novelty or difficulty of the legal problem dealt with;
- .5 The experience or specialization in the matter;
- .6 The possibility that the lawyer may be unable to represent other matters;
- .7 The known financial situation of the client;
- .8 If the services of the lawyer are for a limited time, a specific matter or of a permanent nature;
- .9 The contingencies which may present themselves to the lawyer in the treatment of the matter;
- .10 The time required by the representation;
- .11 The participation of the lawyer in the study and planning of the matter or proceedings;
- .12 If the lawyer has preceded their effort as adviser, consultant, counsellor or attorney in fact of the client;
- .12 If the rendering of services is in or outside of the domicile of the lawyer;
- .13 The form and duration of the payment of services rendered.

5.4 Rates in ordinary proceedings are:

- .1 Small claims 25% of the amount;
- .2 Regular claims
Up to \$20,000.00 25%

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From \$20,000 to \$100,000.00 20%

From \$100,000 to \$500,000.00 15%

From \$500,000 to \$1,000,000.00 10%

Above \$1,000,000.00 7.5%

- 5.5 In maritime proceedings, where possible, the rates approved for ordinary proceedings shall apply. In those judicial or out-of-court tasks in which professional services are required from the lawyer, an average rate of USD\$200.00-USD\$300.00 per hour shall apply.

6. Can a seafarer get legal aid in a criminal case?

- 6.1 Legal aid is available for all criminal cases and it covers all proceedings. It includes appeals and enforcement of judgments. Any arrested seafarer must be informed of the criminal charges. He has the right to designate a lawyer, the police inform he has right to free legal aid and it is at this stage that the application is made by the seafarer. It is the duty of the Court to appoint legal counsel to seafarers charged with any crime, this is a constitutional right.

7. Can a seafarer get legal aid in civil case?

- 7.1 There is currently in Panama no legal aid available for a civil case.

8. Can a seafarer get any other free legal advice?

- 8.1 Legal consultants do provide 'pro-bono' (for no charge) advice. Pro bono lawyers are lawyers who take cases for free. Pro bono lawyers take cases for clients who genuinely cannot afford to hire one. They can practice any type of law from administrative and civil law to criminal. The seafarer should feel comfortable with the attorney, as he will be sharing a lot of private information with him depending on the type of case it is.

9. Can a seafarer sue his lawyer?

- 9.1 A seafarer can sue his lawyer and also has the right to file a disciplinary complaint.

10. How can a seafarer complain about his lawyer?

- 10.1 The National Law Society shall create an Honour Tribunal to investigate violations of ethics which are presented by interested parties or public servants of the Judicial Branch,

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the Prosecution or the Administrative Branch, which know of the case in which the breach took place.

- 10.2 The breach of the rules in the Code of Ethics and Professional Responsibility of the National Law Society and any legal provision in effect with respect to a particular matter shall be a violation of ethics.
- 10.3 The sanction which applies to lawyers who breach the law which regulates the practice of law, and of the rules of the Code of Ethics and Professional Responsibility of the National Law Society or any legal provisions in effect regarding the practice of law and legal ethics, are the following:
- .1 A private admonishment, which consists in the private reprimand which is made to the accused for the breach committed.
 - .2 A public admonishment, which consists in the public reprimand made to the accused for the breach committed.
 - .3 For first offences, a suspension of the license to practice law for a period of more than one (1) month and less than one (1) year.
 - .4 Or non-first offenders, a suspension of the licence to practice law for a minimum term of two (2) years. (i.e. disbarred from practicing).

11. How can a seafarer change his lawyer?

- 11.1 If a seafarer is unsatisfied with his attorney's performance, he has the right to replace his attorney at any time. The only requirement is to issue a new power of attorney so the new lawyer can take an existing case.
- 11.2 The seafarer has to be sure to notify his attorney in writing that he wishes to discontinue his/hers services.
- 11.3 The seafarer has many ways of finding a new attorney is through in a local Bar Association's lawyer.

12. Is a foreign seafarer treated differently?

- 12.1 Any foreign seafarer who pursue claims or who face criminal prosecution in Panama Courts are not treated differently to national seafarers of Panama Republic.