

SEAFARER SUBJECT GUIDE

USING LAWYERS IN NORWAY

This Guide deals in general terms with using lawyers in Norway. It aims to help a seafarer understand the legal profession in Norway, 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 practice in Norway.

1. What is the structure of the legal profession?

- 1.1 Entry to the legal profession in Norway is exclusively through university education. Law studies usually take five years and result in a graduate degree in law. A law graduate must have a license to practice after finishing Norwegian law school to be a lawyer in terms of the Act relating to the courts of justice 'Lov om domstolene' of August 13th 1915 no. 5 chapter 11.
- 1.2 An independent public authority, the Supervisory Counsel for Legal Practice ('Tilsynsrådet'), issues the licence. To acquire a licence the candidate must have a clean record of conduct. The candidate must practice as an associate lawyer or as an assistant judge for two years after obtaining the law degree. The candidate must also try three cases before the courts, of which at least one must be a civil case. Finally, participation in a special course concerning issues relevant to an attorney is required, in terms of § 220 in the Act relating to the courts of justice Lov om domstolene of August 13th 1915 no. 5 chapter 8 and the regulations passed under the Act relating to the courts of justice.
- 1.3 A lawyer may be employed in a firm of attorneys (a law firm with several lawyers), or work alone as an independent lawyer. Small law firms and one-man firms are the most common organisational forms. According to the Courts of Law Act § 231 only people working in the law firm are allowed to hold ownership in the firm.
- 1.4 A licensed practising lawyer is called an 'advokat.' An advokat may render advice to clients within all fields of the law, including criminal and civil matters, and is also allowed to appear before all Norwegian courts in the first two instances. However, it requires a special licence to appear before the Supreme Court. To appear before the Supreme Court, additional qualifications are required. The lawyer must have practiced as a lawyer for at least one year, and prove suitability for Supreme Court litigation in an evaluation by the Supreme Court. The evaluation includes trying two cases before

SEAFARER SUBJECT GUIDE

the Supreme Court, of which at least one must be a civil case, see in this respect § 221 in the Courts of Law Act.

- 1.5 The legal system is influenced by continental traditions and civil law, rather than the English common law system. Civil Law, in contrast to common law, is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes.
- 1.6 There is no distinction in Norway between lawyers similar to the distinction between barristers and solicitors in some other countries.

2. How is the legal profession regulated?

- 2.1 More than 90 percent of all lawyers are members of the Norwegian Bar Association. This is however a voluntary membership.
- 2.2 All lawyers must follow the Rules for Proper Conduct for Attorneys. This code of conduct is prepared by the Norwegian Bar Association, and is entirely included in the legal regulation related to lawyers in chapter 12. The rules of conduct cover all lawyers working in Norway, regardless of whether the person is a member of the Bar Association or not. The rules are largely harmonised with the rules that the European legal organisation ('CCBE') has passed.
- 2.3 If these rules are not complied with, this may result in disciplinary action and the removal of the lawyers licence to practice law. In addition there are secondary laws and regulations concerning the practice of the legal profession. Further, the Act relating to the courts of justice Lov om domstolene of August 13th 1915 no. 5 has provisions in relation to rules of procedure in a court case, and requirements for practicing as a lawyer.

SEAFARER SUBJECT GUIDE

3. How can a seafarer find a lawyer?

- 3.1 When the need for legal assistance arises, contact with a lawyer may be made in different ways. The 'yellow pages' (www.gulesider.no) (website in Norwegian) in the telephone directory may provide useful information.
- 3.2 In addition, many law firms provide websites containing detailed information on the firm, its lawyers and the competence offered. Through a portal on the Norwegian Bar Association's website seafarers may search for a particular lawyer, or search for a lawyer by region or topic (www.advokatenhjelperdeg.no/finn-advokat/) (website in Norwegian).
- 3.3 Lawyers who specialize in maritime law and other fields can be found in Legal 500 (www.legal500.com) (website in English) and Chambers and Partners (www.chambersandpartners.com) (website in English).
- 3.4 Seafarers who have questions arising from their employment or who are contemplating a claim against their employer in relation to wages or other benefits should consider contacting a lawyer who specialises in maritime employment law.
- 3.5 A seafarer's trade union might also recommend a suitable lawyer. See the website of the Norwegian Seafarers Union: www.sjomannsforbundet.no/ (website in Norwegian).

4. On what terms can a seafarer engage a lawyer?

- 4.1 When a seafarer engages a lawyer, the lawyer will set out the terms of engagement in a formal letter, called a letter of engagement. The letter should contain terms and conditions with regard to the professional relationship between the seafarer and the lawyer. The Norwegian Bar Association requires that all the members of the Association prepare a letter of engagement.
- 4.2 The letter of engagement normally includes information concerning: (a) the agreed scope of work and assignment; (b) the name of the lawyer assigned to the case; (c) quality assurance and the procedures for handling any complaints if the seafarer should be of the opinion that the lawyer is in breach of the regulations pertaining to good legal practice or that the fees are not consistent with these rules; (d) the basis on which the seafarer will be charged for work to be undertaken; (e) details of any advance payment required from the seafarer; (f) arrangements for rendering bills; and (g) terms of payment.

SEAFARER SUBJECT GUIDE

4.3 An example of a standard letter of engagement may be found on the website of the Norwegian Bar Association.

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

5.1 Norwegian lawyers usually charge fees by the hour. The hourly rate may vary. The Norwegian Dispute Act does not include substantive rules on lawyers' fees. The Norwegian Bar Association has issued guidelines on legal fees.

5.2 Contingency fees are prohibited in the code of conduct adopted by the Norwegian Bar Association. Conditional fees are likely to be accepted as long as they are not unfair under the code of conduct. Fee arrangements with lawyers that are not members of the Bar Association are not regulated.

5.3 The hourly rates will be regulated in the letter of engagement. A number of factors will influence the rates charged, such as the seniority of the lawyer performing the work, the complexity of work, degree of specialty needed, the size and location of the law firm. In addition to time spent on the case, the lawyer will charge for any disbursements arising in connection to the case, such as court fees and other out of pocket expenses made on behalf of the seafarer.

5.4 It is also possible to agree on a fixed price which means that the seafarer will not be charged for the actual time spent on the case. This is generally agreed if the matter is relatively simple or clearly defined.

5.5 Sales tax (VAT) of 25 per cent will be added to fees and expenses if applicable according to statutory regulations. VAT may apply to seafarers resident in Norway but may not apply to seafarer's resident outside Norway.

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

6.1 Legal assistance is regarded as a fundamental right, irrespective of financial ability. See in this respect the Norwegian Criminal Procedure Act of 22 May 1981. In criminal cases the main rule is that the assistance of a defence lawyer is free of charge, regardless of the seafarer's nationality and income. The fees will be covered by the State. However, there are exceptions when it comes to some types of cases, among others, cases involving violations of some of the provisions in the Road Traffic Act and cases of less serious offences where fines are imposed. See in this respect the Norwegian Criminal Procedure Act of 22 May 1981 § 96.

SEAFARER SUBJECT GUIDE

- 6.2 If a seafarer in a criminal case has a right to a defense counsel, the seafarer is entitled to a defence counsel at each step of the case. During the main hearing, the seafarer shall have a defence counsel. The court may permit the defence to be conducted by several parties, which mainly applies to extremely labour intensive cases of a very special nature.
- 6.3 The choice of defence counsel is unfettered, and the seafarer himself may therefore choose the lawyer he wants to act as his defence counsel.

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

- 7.1 Free legal aid in civil cases may be awarded both in respect of out-of-court counseling and in litigation according to the Free Legal Aid Act 'Lov om fri rettshjelp' of 13 June 1980 no. 35.
- 7.2 Legal aid is limited according to the seafarer's income and net fortune and the type of case. See in this respect the Free Legal Aid Act, chapter 3. Legal aid can be fully or partly granted by the government as free legal advice, free conduct of the case, or exemption from legal fees.
- 7.3 The Free Legal Aid Act aims to support persons who do not have sufficient means themselves to pay for legal assistance. A basic condition for free legal aid is therefore that the seafarer has income and means below specified limits. The income limit for legal aid is NOK 246,000 for individuals, and NOK 369,000 for spouses and others who live together with shared economy. Fortune limit for legal aid is NOK 100 000.
- 7.4 Some cases, however, are by their nature regarded to be of such importance that free legal aid is given without any means test. Examples of such cases are related to child welfare, mental health care, and the entry of foreign nationals. See in this respect the Free Legal Aid Act chapter 3.
- 7.5 In addition to the means test, certain material conditions must also be met before free legal aid may be granted. The material conditions depend upon the nature of the case. When it is regarded as necessary and reasonable that the public authorities provide free legal aid, it is normally granted in cases concerning: (a) national insurance; (b) pensions; (c) personal injury; (d) loss of provider; (e) rent; and (f) employee protection.
- 7.6 Detailed information about the availability of the legal aid can be found on Legal Aid Norway's website: www.fri-rettshjelp.no/ (website in Norwegian).

SEAFARER SUBJECT GUIDE

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

- 8.1 Other kinds of free legal aid are offered as part of insurance cover by trade unions and similar organisations. There are also law student organisations that offer free legal aid.
- 8.2 There is no tradition of formal 'pro bono' (for no charge) work in the Norwegian bar. However, most legal firms provide some legal assistance with little or no payment, in one way or another to low-income clients. In addition, the Norwegian Bar Association organizes free legal aid service in 35 locations in Norway, where local lawyers offer a free first consultation (<http://www.advokatenhjelperdeg.no/spor-en-advokat/>) (website in Norwegian).

9. Can a seafarer sue his lawyer?

- 9.1 A seafarer may sue his lawyer. There are no specific rules on liability for lawyers. Liability cases must be based on breach of general rules for professional conduct. These rules, which also apply to lawyers, regulate responsibility for means (for example, accuracy and diligence) and not for results. Typical cases against lawyers are based, for example, on exceeding time limits and overlooking formal requirements. The rules concerning liability for lawyers exist in case law and the relevant sources are primarily Supreme Court decisions (see as an example Rt -2001, page 1702 and Rt 1997 page 1322).
- 9.2 The lawyer is responsible if he has been negligent in the execution of his assignment. This depends on a concrete overall assessment based on the principles laid down in the law of torts. The basis for the assessment will be the scope of work undertaken by the lawyer in the specific contractual relationship, including whether the lawyer has disclaimed his liability for damages or restricted his liability for damages in the letter of engagement. In addition to negligence, there must be economic loss, and the economic loss must have been caused by the negligence. The party who seeks compensation has the burden of proving all these elements: (a) that he has suffered an economic loss; (b) that the lawyer has been negligent; (c) and that the economic loss is caused by the negligence. The requirements for a lawyer's diligence are strict, and thus negligence will more often be stated in cases against lawyers (and other professionals) than in ordinary negligence cases.
- 9.3 It is generally permissible for a lawyer to limit his liability. This may in principle be done for all kinds of legal work. It is possible for a law practice to be organised as a limited liability partnership. This has to be registered in the Company Registry and as

SEAFARER SUBJECT GUIDE

a result financial liability is limited to the firm as such and to the lawyer(s) directly responsible for the acts or omissions that are basis for the claim.

- 9.4 The legal basis for limitation of liability is an agreement. It must be added that case law has deemed general limitation clauses not to be applicable when it comes to gross negligence. It must also be added that Norwegian statutory law has a general provision that agreements or clauses in agreements may be modified if it would be unreasonable or in breach of good business practice to plead them (see Norway's Contract Act of 1918 § 38). Especially in relation to private seafarers one might assume that this statute may easily be applied, but case law is limited.

10. How can a seafarer complain about his lawyer?

- 10.1 If a seafarer is of the opinion that his lawyer is in breach of the regulations pertaining to good legal practice, the seafarer may file a complaint with the Norwegian Bar Association in Oslo or the Supervisory Council for Legal Practice. A complaint must be filed without undue delay and no later than six months from the time when the seafarer as the client became aware of, or believed himself to be aware of, any breaches of ethical standards or other regulations. If these requirements are not met, the complaint may be rejected as having been filed too late (see § 225 in the Act relating to the courts of justice 'Lov om domstolene' of 13 August 1915 no. 5).
- 10.2 The procedures relating to the filing of a complaint will be described in the letter of engagement.

11. How can a seafarer change his lawyer?

- 11.1 A seafarer has the right to terminate the services of his lawyer at any time. However, the seafarer is obliged to pay the costs that have accrued. The costs will normally be based on time spent on the case. The lawyer will, with the seafarer's consent, instruct the new lawyer about the case.

12. Is a foreign seafarer treated differently?

- 12.1 In the court system a foreign seafarer is not treated differently to a Norwegian seafarer.
- 12.2 However, a defendant may require a foreign seafarer not domiciled in Norway to grant security for legal costs that may potentially be awarded to the defendant, provided however that such security may not be ordered by the court in violation of

SEAFARER SUBJECT GUIDE

Norwegian international non-discrimination obligations on domicile, or if such grant is deemed unwarranted under the circumstances by the court.

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