

SEAFARER SUBJECT GUIDE

USING LAWYERS IN THE PHILIPPINES

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

1. What is the structure of the legal profession?

- 1.1 All lawyers may act as counsellors and advocates. Lawyers may practice alone or in a firm of several attorneys, or may be employed by the government, non-government organizations (NGOs), academic institutions, or by private entities such as corporations, associations and foundations. The terms 'lawyer,' 'counsel,' and 'attorney' are synonymous. Lawyers' names are usually preceded by their professional title, as in Attorney Juan de la Cruz.
- 1.2 Seafarers seeking legal assistance may engage lawyers who specialise in workers' rights, in general, and seafarers' rights in particular. Specialist and non-specialist lawyers may assist any seafarer before regular courts, from the first level trial courts (Metropolitan Trial Courts and Regional Trial Courts) up to the Court of Appeals and to the Supreme Court, and in government agencies such as the Philippine Overseas Employment Administration. They can also assist seafarers facing internal investigation by their employers or claiming benefits from them.
- 1.3 The language of the law and the courts in the Philippines is English (American standard).

2. How is the legal profession regulated?

- 2.1 The practice of the legal profession is regulated by the Supreme Court of the Philippines (<http://sc.judiciary.gov.ph/>) (website in English) and the Integrated Bar of the Philippines ('IBP') (<http://www.ibp.ph/index2.html>) (website in English). The IBP is the official organisation of all Philippine lawyers whose names appear in the Roll of Attorneys of the Supreme Court. A lawyer who ceases to become a member of the IBP is removed from the Roll of Attorneys, stops being an attorney, and loses the privilege to practice law in the Philippines.

SEAFARER SUBJECT GUIDE

2.2 All attorneys are bound by the Code of Professional Responsibility, ('CPR') which contains the rules of conduct to which all lawyers must faithfully adhere, including their professional relationships with clients, the courts, other attorneys, and the public.

2.3 Violations of the CPR may result in proceedings for the disbarment, suspension or discipline of attorneys, which may be instituted by the Supreme Court on its own initiative or by the IBP upon the verified complaint of any person.

3. How can a seafarer find a lawyer?

3.1 As a matter of policy, lawyers in the Philippines are not allowed to do or permit to be done any act designed primarily to solicit legal business, that is, they are discouraged from engaging in self-advertising. According to the Supreme Court of the Philippines, a lawyer's best advertisement is a well-merited reputation for professional capacity and fidelity to trust based on character and conduct, for which reason he is only allowed to announce his services by publication in reputable law lists (such as Martindale.com or HG.org Global Legal Resources) or by the use of simple professional cards.

3.2 Apart from consulting websites and published lists of law firms and practitioners, a seafarer may also consult the POEA (<http://www.poea.gov.ph/>) (website in English), the local IBP Chapter in his current location (<http://www.ibp.ph/>) (website in English) or established seafarers' unions in the Philippines such as the Associated Marine Officers' and Seamen's Union of the Philippines or the Philippine Seafarers' Union, both of which are affiliated with the International Transport Workers' Federation. These organisations have a roster of active practitioners or accredited lawyers who specialise in seafarers' rights.

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

4.1 The terms and conditions of the engagement of a lawyer by the seafarer are usually contained in a letter of engagement or contract for legal services signed by both parties before or contemporaneous with the commencement of the contracted services. Such letter or contract generally includes: (a) the scope of contracted services; (b) the names, designations, and contact details of the legal team handling the engagement; (c) confirmation with respect to the absence of any conflict of interest; (d) the agreed fees and payment arrangement; (e) the manner of substantiating the work that is performed and apprising the client of the services rendered; and (f) the terms of disengagement by the counsel.

SEAFARER SUBJECT GUIDE

- 4.2 The attorney's specific authority to represent the seafarer in a particular matter will be governed by a special power of attorney, which defines the extent of his authority such as the power to settle any claims or to discharge it.

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

- 5.1 Rule 138, Section 24 of the Revised Rules of Court provides that:

'An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.'

- 5.2 The letter of engagement or contract for legal services shall control the amount of fees (whether on an hourly, per-phase, fixed, or contingency basis, among others) that the lawyer will charge the seafarer. The exception to this general rule is where the arrangement is judicially determined to be unconscionable or unreasonable.
- 5.3 Canon 20.1 of the CPR states that a lawyer may be guided by the following criteria in charging fair and reasonable fees: (a) the time spent and the extent of the services rendered or required; (b) the novelty and difficulty of the questions involved; (c) the importance of the subject matter; (d) the skill demanded; (e) the probability of losing other employment as a result of acceptance of the proffered case; (f) the customary charges for similar services and the schedule of fees of the IBP chapter to which the lawyer belongs; (g) the amount involved in the controversy and the benefits resulting to the client from the service; (h) the contingency or certainty of compensation; (i) the character of the employment, whether occasional or established; and (j) the professional standing of the lawyer.
- 5.4 The customary fee arrangement is an upfront acceptance retainer to cover the lawyer's initial services, a fixed monthly retainer fee or a fixed fee per hearing attended (called the 'appearance fee'), and a success fee of 30% of the amount recovered. Article 111 of the Philippine Labor Code allows a seafarer to recover 10% attorney's fees from the employer by way of actual damages. In meritorious cases, the court may award full cost in cases where actual fees exceed the 10% provided by law.

SEAFARER SUBJECT GUIDE

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

6.1 Section 11 of the Bill of Rights of the Philippine Constitution guarantees that 'free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.' Rule 138, Section 31 of the Revised Rules of Court states:

'A court may assign an attorney to render professional aid free of charge to any party in a case, if upon investigation it appears that the party is destitute and unable to employ an attorney, and that the services of counsel are necessary to secure the ends of justice and to protect the rights of the party. It shall be the duty of the attorney so assigned to render the required service, unless he is excused therefrom by the court for sufficient cause shown.'

6.2 Apart from cases where the court itself assigns a lawyer to provide *de officio* free legal aid to a destitute litigant, a seafarer who qualifies under both the Merit Test and the Indigency Test set out by the Public Attorney's Office in its Memorandum Circular No. 18 (2002) as well as PAO Memorandum Circular No. 2 (2010), respectively, may avail himself of free legal representation, assistance, and counseling in criminal, civil, labour, administrative and other cases by the PAO.

6.3 A seafarer may also approach the IBP National Committee on Legal Aid (<http://www.ibp.ph/ncla.html>) (website in English) or any of the local legal aid committees of the 83 nationwide chapters of the IBP for free legal counseling and representation if he qualifies under the Merit Test and the Means Test.

6.4 In addition, a seafarer may approach legal aid groups such as the Office of Legal Aid of the University of the Philippines, College of Law (http://law.upd.edu.ph/index.php?option=com_content&view=category&id=64:what-is-office-of-legal-aid-ola&Itemid=73&layout=default) (website in English), which provides free legal assistance to a litigant who is indigent or is involved in a public interest case. The Associated Marine Officers' and Seamen's Union of the Philippines or the Philippine Seafarers' Union also have legal assistance desks for seafarers.

SEAFARER SUBJECT GUIDE

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

7.1 Seafarers can get legal aid in civil cases. Their right to legal aid in civil cases is the same as their right to legal aid for criminal cases, which is set out above.

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

8.1 There is no other free legal advice available to seafarers in addition to that set out above.

9. Can a seafarer sue his lawyer?

9.1 Depending on the circumstances and causes of action, a seafarer may file a criminal, civil, or administrative case against his lawyer. In addition, the seafarer may discharge his attorney for any cause.

10. How can a seafarer complain about his lawyer?

10.1 At the first instance, a seafarer may demand that the lawyer to address and resolve the former's complaints or grievances. Should such attempts fail or result in further damage and prejudice, the seafarer may file a formal complaint against his lawyer.

10.2 Rule II, Section 1 of the Rules of Procedure of the Commission on Bar Discipline of the IBP states that a complaint for disbarment, suspension or discipline of attorneys may be commenced before the CBD by filing six copies of a verified complaint. The complaint may be likewise filed with the Supreme Court.

10.3 In proceedings before the IBP the procedure is as follows. The case shall be assigned by raffle to an Investigating Commissioner of the IBP or, when special circumstances so warrant, a panel of three investigators, to investigate the complaint and conduct the disciplinary proceedings (which shall include the presentation and reception of evidence; the holding of a mandatory conference and clarificatory hearings; and the filing of allowed pleadings), and thereafter submit the report and recommendation to the Board of Governors of the IBP.

10.4 The Board of Governors shall then review the report and recommendation of the Investigation Commissioner or panel, and thereafter transmit its decision to the Supreme Court for final disposition in cases of [i] imposition of suspension or disbarment, or [ii] exoneration from the charge or imposition of a penalty less than

SEAFARER SUBJECT GUIDE

suspension or disbarment where the complainant files a petition with the Supreme Court questioning the same.

- 10.5 The proceedings before the Supreme Court are as follows. In proceedings initiated at the Supreme Court's own initiative or in other proceedings when the interest of justice so requires, the Supreme Court may refer the case for investigation to the Solicitor General or to any officer of the Supreme Court, to a judge of a lower court, or to the IBP. The Supreme Court shall then review the report and recommendation of the investigation.

11. How can a seafarer change his lawyer?

- 11.1 Rule 138, Section 26 provides the procedure through which a seafarer may change his or her lawyer:

'An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.'

11.2 Thus, a seafarer need only inform the lawyer of his decision to terminate the legal services and the seafarer may then engage another counsel, subject to the right of the former counsel to payment of his fees in case of terminations without justifiable cause when the contract has been reduced into writing.

SEAFARER SUBJECT GUIDE

12. Is a foreign seafarer treated differently?

12.1 Philippine laws, rules, and regulations apply equally to Filipino and foreign seafarers alike.

01 October 2012