

Guidelines for Defence Attorneys

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In a meeting on **19/11/1999**, the Supervisory Board of The Norwegian Bar Association adopted the following guidelines for defence attorneys' practice. The guidelines are based on and an elaboration of the Rules of Conduct for Advocates. The Supervisory Board has found it necessary to form these guidelines due to questions regarding lawyers' attitudes in the special situations that defence attorneys may face.

In the meeting on **November 25, 2005**, the Supervisory Board of the Norwegian Bar Association adopted some amendments to the Guidelines for Defence Attorneys. The amendments tighten the rules and further define the conditions for change of attorney. The new item shall henceforth be point number 1.4 in the Guidelines for Defence Attorneys. The other items in the guidelines will be shifted accordingly.

These guidelines are not part of the Regulation for advocates (Advokatforskriften). Nevertheless, it is expected that the defence attorneys who are a member of The Norwegian Bar Association abide by them when performing their legal assignments.

1. Establishing an assignment.

1.1 It is the client who chooses the defence attorney (free choice of defence attorney).

1.2 A defence attorney must not undertake an assignment unless directly requested by the client, by another defence attorney on behalf of a client, or by others authorized by the client, unless stated otherwise in the Criminal Procedure Act.

1.3 Defence attorneys should not on their own initiative contact suspected/charged persons in order to acquire a defence assignment, and must not initiate acquisition of an assignment from another attorney.

1.4 When contacted by clients who are already represented by another attorney, caution must be exercised. When a client who is in custody applies for a new defence attorney, a written application signed by the client must be presented – unless this is impossible because of special circumstances – before the new defence attorney can contact the client. The same requirements for caution and written documentation are necessary when the communication with the new attorney is conducted through others than the client himself/herself.

If the client is already represented by another attorney, this attorney must immediately be informed about the change. The previous attorney must without delay send all the case documents to the new attorney. If the previous attorney was assigned by the court, the documents should be sent after a new attorney is appointed.

When an attorney is informed that the client has chosen a new defence attorney, the client can be contacted for details regarding the change of attorney. The previous attorney must not exercise any form of pressure on the client.

1.5 An attorney must not pay for a defence assignment.

1.6 Attorneys are free to decide whether they accept an assignment. They must not accept assignments that are in conflict with their clients' wishes. This does not include the permanent defence attorneys at the court in question, unless specific circumstances require that they decline the assignment.

1.7 The attorneys must not accept assignments in which there may be conflict of interests in the same case, or in different cases with the attorneys of other clients or in relation to the aggrieved party. The same applies to current clients of another attorney in the same office.

Attorneys must evaluate possible legal competence problems in accordance with the Criminal Procedure Act § 106.

Defence attorneys ought to be careful not to take on assignments if there is a possibility of being subpoenaed as witness in a case.

1.8 Defence attorneys ought to consider carefully before accepting assignments that have considerably delayed listing for hearing, particularly if there are several accused in the same case, the accused is in custody or the case is already set down for trial.

1.9 Defence attorneys must adequately inform the client about the rules of free choice of defence, assignment of a public defence attorney and the payments according to the Criminal Procedure Act § 107.

2. The defence attorney's duties and rights

2.1 The defence attorney has a duty to contribute in such a manner that the authorities such as the police, the courts, and the prison authorities, respect the clients' human rights and ensure that they are not treated in an inappropriate manner. The defence attorney must ensure that the clients are not unnecessarily deprived their liberty, that they are not subjected to inhuman or degrading treatment, and that their rights during the confinement are ensured and that they are given a fair trial.

2.2 The defence attorneys must not identify with their clients. The defence attorneys have a right not to be identified with the case they defend for their clients or the views and interests their clients have.

2.3 The defence attorneys must outwardly express the same views on the facts as the clients do, but must give the clients their evaluation of the case's evidence and if necessary advise them concerning question of guilt. A guilty plea is not necessarily binding for the attorney.

2.4 The defence attorneys must not urge or in any other way contribute to erroneous statements, false evidence or other forms of dishonesty.

2.5 Defence attorneys must immediately ensure that their clients when arrested are informed of the grounds for their arrest and the contents of the charges against them in a language they understand, and that the client if necessary will be assisted by an interpreter.

If the clients' interests necessitate it, the defence attorneys should personally have contact with clients who are remand in custody, particularly when the imprisonment is unduly demanding as a result of restrictions, social and medical circumstances, age, media coverage, etc. The defence attorneys must monitor the detainee's situation during the imprisonment.

The defence attorneys must also provide the accused other necessary, reasonable and natural help and support in connection with the case.

2.6 The defence assignment is personal. If required for the appropriate execution of the assignment, the defence attorney can be assisted by an authorized assistant lawyer or another attorney from the same office. Personal contact with the client can also be undertaken by others in the law office.

The same can be done in order to ensure necessary training and promotion opportunities, if the client explicitly consents and the proper handling of the assignment is ensured.

3. The defence attorney's role during the investigation

3.1 The defence attorneys should as far as possible keep themselves continually informed about the police investigations, and evaluate whether the clients' interests are sufficiently ensured. The defence attorneys should also hold the clients informed about the process of the case and ensure the clients' right to inspection of documents.

The defence attorneys must only accept inspection of documents with an order of client confidentiality cf. the Criminal Procedure Act § 242, if the client approves.

3.2 The defence attorney should give the clients advice on whether it is in their interests to give a statement to the police, and if so whether the defence attorney should be present during the interrogations.

Defence attorneys should generally not participate in police interrogations if they have not had prior access to the case documents and have had the opportunity to talk with their clients.

3.3 If it is in the interest of their clients, the defence attorneys should request further investigations, such as new witness inquiries and specialist investigations.

In special cases, the defence attorneys should himself/herself undertake investigations that may assist the client.

3.4 If during the investigation the defence attorneys discover information that can incriminate the client, they are not obligated to disclose these for the prosecuting authority or the court. In fact, they are not allowed to do so without the client's consent.

3.5 The defence attorneys have the right to contact anyone that can contribute to illuminate the case, regardless of whether the person has been examined by the police or is called as a witness for the Prosecution Authority.

When contacting witnesses the defence lawyers should conduct themselves with care and avoid unnecessary pressure.

Special care must be taken when contacting children under 18. Preferably, also their guardians must be contacted.

4. The defence attorney's duties in court

4.1 The defence attorneys must always arrive in court thoroughly prepared, both concerning the factual aspects of the case and the juridical aspects. Among others, they must prepare evidence, questions for the client, the witnesses and the experts, and the procedure.

4.2 The defence attorneys must behave respectfully towards the court and the participants, and boldly and independently ensure their clients' interests. They must make sure that their clients' procedural rights are looked after, and that the hearings are conducted objectively and in accordance with the contradictory principles.

4.3 The defence attorneys' statement concerning legal questions must be honest.

5. Relation to the media

5.1 The clients' consent must be acquired before the defence attorneys can comment the case, unless the clients' interests require that the attorney make comments without prior approval. The defence attorneys must respect the clients' wish to refrain from making comments to the media.

5.2 When making public statements about the case, the attorneys must always have the client's interest in mind, among them points 2.2 and 4.2 (first sentence) must be observed.

5.3 The defence attorneys should, even with the clients' approval, handle the information from the investigation and the case documents with caution. When considering what information that ought to be publicised, the focus can at times be on the correction or balancing of information that is already public. The documents must not be publicised without police consent cf. Prosecution Instructions, chapter 16.

6. Terminating a defence assignment

6.1 The defence attorneys have a duty to execute their assignment unless the client asks for their removal, or a situation comes up that prevents the attorney from handling the case appropriately.

If the client admits guilt only to the defence attorney, the attorney can withdraw from the assignment provided this does not harm the client's interests.

If the defense attorney withdraws from the assignment without the client's consent, the withdrawal must take place in a manner that does not harm the client.

6.2 An attorney is obligated to withdraw from the case if the client demands it, cf. pt.1.6, 3. pt.