

## Lawyer Status in Russian Federation: Legal Status and Acquisition

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**Abstract:** In the above article authors analyze laws of Russian Federation on rendering legal aid and regulation such activity, especially questions of lawyer status acquisition. Differences between the lawyer and jurist are described, in detail jurisdiction, status and other questions are discussed. Connection between bar chamber, bar association, law firm, advocate are discussed. Questions of legal profession self regulation are discussed, authors present opinion on the need of current law change to give more powers and protection to lawyers as well as a need to give more powers to bar associations and law associations and councils. Authors also present the idea of making it necessary for every graduate of law school, willing to have the right to practice law as lawyer to conduct examination in the field of knowledge they are willing to act in. Areas of practice should be licensed to practice in it. One that had not passed appropriate exam should not be allowed to practice law in the above field.

**Key words:** Law • Lawyer • Practice • Barrister • Solicitor • Advocate • Legal status • Acquisition • Russia • Russian Federation

### INTRODUCTION

According to the Black's Law Dictionary a lawyer is "a person learned in the law; as an attorney, counsel or solicitor; a person who is practicing law" [1]. The role of the lawyer varies significantly across legal jurisdictions and so it can be treated here in only the most general terms [2].

The legal profession is one of the major legal institutes of any modern civilized country [3]. It is urged to stand on protection of the fundamental rights and freedoms of the person and citizen, organizations and establishments (regardless of its owner), non-governmental organizations. Confidence of each citizen of the wellbeing, of success of business activity freedom and any other activity not forbidden by the law substantially depends from the institute of legal profession capability to carry out the functions assigned to it [4].

Of course this is a very broad definition. In Russian Federation system of law practitioners is very complex. On one hand any person that graduated in Russia or USSR as

a lawyer is one by diploma. There are currently no requirements for them to work in law firms and law departments at companies as long as they do not render legal services in criminal cases. On another hand in Russia there is an advocacy system.

**Research Methodology:** In the present article authors formulate the research problem, accumulate a good empirical base, this helps focus on the research process and draw conclusions reflecting the real world in the best possible way using: introduction – hypothesis, deduction – predictions, observation – test of predictions, etc.

### RESULTS AND DISCUSSION

In Russian Federation advocacy profession is open. Russian Federation is obliged to provide the right of everyone willing to access to this profession. But of course it doesn't mean that everyone who desires can automatically become an advocate. To make sure that only confident persons are entering this profession some qualification criteria are developed.

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In general such qualifications may be divided into two groups:

- Qualifications required for admission to qualified examination;
- Qualification exam (bar exam).

Advocacy in Russian Federation is currently regulated by the Federal law of May 31, 2002 No. 63-FZ "About advocacy activity and advocacy in Russian Federation" with amendments.

Current law establishes the following qualification requirements for the qualification examination admission: educational qualification, existence of legal experience, lack of a criminal record and full capacity.

In Russian Federation person who has the higher legal education got in educational institution having the state accreditation and license for higher education, or a scientific degree on legal specialty may be admitted for the qualification exam on the status of advocate. Specified person also has to have length of service on legal specialty not less than two years or pass training in lawyer education in the terms established by the Federal law [5]. It should be noted that length of service on legal specialty is estimated not earlier than from the moment of getting the degree in law.

According to the current legislation of Russian Federation length of service on following jobs is counted for the purpose of the needed experience to be admitted for the qualification exam:

- As a judge;
- At positions not requiring higher legal education in federal state authorities, state authorities of subjects of Russian Federation, other governmental bodies;
- At positions requiring higher legal education in existed before adoption of current Constitution of Russian Federation governmental bodies of USSR, RSFSR and Russian Federation, placed on the territory of modern Russian Federation;
- At municipal positions requiring higher legal education;
- At positions requiring higher legal education in bodies of the Judicial department of the Supreme Court of the Russian Federation;
- At positions requiring higher legal education in legal departments of organizations;
- At positions requiring higher legal education in research institutions;

- As a teacher of legal disciplines in the educational institutions of secondary professional education, higher professional and postgraduate professional education;
- As an advocate;
- As an advocate assistant;
- As a notary public [6].

According to the current legislation of Russian Federation has no right to apply for advocate status acquisition and conduct advocacy activity following persons:

- Recognized incapacitated or limited capable in an order established by the legislation of Russian Federation;
- Having outstanding or not removed a criminal record for commission of a deliberate crime.

Qualification exam is conducted by the qualification commission on the base of the subject of the Russian Federation bar chamber (further – the qualification commission). Members of this commission are representatives of bar chamber, Ministry of justice of the Russian Federation, regional parliament. Qualification commission makes the final decision.

Person, willing to become an advocate, besides theoretical knowledge, has to have practical experience in the field of legal profession. To the required experience two basic principals are applied. Above principles include two criteria: place and time. passing of practice.

Russian legislation gave a wide list of works on the legal specialty, counted for an experience set for acquisition of the advocate status. Above list was presented in the above article in full before. On the basis of the provided list it appears confident that the main idea of the legislator was to make sure that candidate for the advocate status would have not only good theoretical knowledge of law, but would also have a good practice and would be able to apply theoretical knowledge in practice.

In a case when the candidate corresponds to all shown qualifications, it is allowed for candidate to participate in the qualification examination. Purpose of conducting qualification examination is to make sure that future advocate has enough required professional knowledge.

The qualification examination is conducted in two stages – written part and oral interview.

The first part of examination can be conducted in two forms: written answers to questions or multiple choice questions. Multiple choice questions test may be conducted using the computer equipment. Qualification commission chooses a form of carrying out this part of examination. The choice depends on the number of applicants and other circumstances. It is required to make sure of the quality of examination and its appropriateness in terms of law and decisions of bar chamber.

The second part of examination passes in a form of oral interview (examination) using examination cards and consists of 4 questions from different areas of law and practice. Federal chamber of lawyers updates the list of questions annually. As a rule, these questions are divided into areas of practice: civil, criminal, procedural, etc. In detail above list for the year 2013 will be discussed later.

When carrying out oral interview (examination) applicant is given 45 minutes for preparation of answers, written on the examination card. During answers preparation applicant has no right to use any written sources (regulations, textbooks, laws, computer programs, Internet etc.). Examination is considered not handed over if at least on one of questions applicant showed unsatisfactory knowledge.

Advocate, as a person rendering qualified legal aid, is required to possess deep knowledge of the legal sphere. So the list of questions for the qualification exam (bar exam) for the year 2013 contains of 445 questions [7] on different topics and areas of law and practice:

- History the Russian advocacy – 7 questions;
- Principles advocate work. Advocacy as a public institute – 4 questions;
- Status of advocate. Advocacy bodies and law firms and other types of advocate association – 13 questions;
- Relations between advocate and principal – 5 questions;
- Advocate ethics – 5 questions;
- Advocate independence guarantees, advocate responsibility – 8 questions;
- Advocacy judicial techniques, including (General questions – 8 questions, Civil cases – 3 questions, Criminal cases – 10 questions);
- Civil law – 62 questions;
- Labor law – 15 questions;
- Housing law – 10 questions;

- Family law – 13 questions;
- Civil process – 68 questions;
- Arbitration process – 42 questions;
- Administrative process – 18 questions;
- Criminal law – 66 questions;
- Criminal trial – 61 questions;
- Advocate activity at a stage of sentence execution – 4 questions;
- Tax right – 3 questions;
- Proceedings in the Constitutional Court of Russian Federation – 6 questions;
- International law – 4 questions;
- Production in the European Court of Human Rights – 5 questions;
- Protection of separate constitutional rights of citizens – 7 questions;

In the case of negative result of examination, also in case of absence on examination without valid excuse, applicant has the right to reputedly participate in exam not earlier than in a year.

In the case of positive result of examination, candidate for the advocate status is required to give oath. Text of oath is written in article 13 of the Federal law of May 31, 2002 No. 63-FZ "About advocacy activity and advocacy in Russian Federation" with amendments – "Solemnly I swear honestly and in full to conduct duties of the advocate, to protect the rights, freedoms and interests of principals, being guided by the Constitution of Russian Federation, law and the code of professional ethics of the advocate". Only after providing above oath candidate for advocate status would be counted by law as an advocate. In many countries oath is used to make promise calling upon proper conduct [8].

If candidate passed all exams and all documents at the bar chamber are completed, documents are passed to the Department of Ministry of justice of the Russian Federation at the subject of Russian Federation, who has to register new advocate at the advocate registry and issue an advocate ID.

Under the law of Russian Federation advocate is not allowed to conduct practice independently. Advocate should become member of one of allowed forms of association (bar association, advocacy bureau, governmental legal consultation) or open independent advocate office, which should e registered in bar chamber, Department of Ministry of justice of the Russian Federation at the subject of Russian Federation and Federal Tax Service of the Russian Federation.

Independence and continuity is one of the basic principles of a advocacy profession. Advocate cannot always carry out activity on the basis of these principles due to different life situations. In such cases temporary stop of status is applied.

Current federal law forbids advocates to be on service in establishments, organizations or enterprises, as well as being elected as members of parliament, or work for government in any other way. This prohibition is explained by the fact that such services can negatively affect on quality of provided legal aid.

### CONCLUSION

Apparently advocacy institute in Russian Federation is an established, fully functioning institute, however there are a lot of things to be changed to fit modern reality. Author believe that current state guarantees to advocates are inappropriate. Advocate should feel state protection and defence. It is required to protect them not only theoretically, but practically. There are different mechanisms written in law, but sometimes it is unclear on how and who should adopt them, in another cases no clear responsibility for abusing rights of advocates is written. Questions of law firms taxation and rendering state and municipal property to advocates are not fully appropriate.

Currently advocate profession is jeopardized by a lot of firms who provide legal services and are not members of bar association. Courts are full of cases, a lot of which are dealt unprofessionally, many lawyers of such firms graduated in ex-USSR countries and some of them don't even know language well enough, "strength of an argument depends on: the clarity of reasoning; the quality of the evidence presented to support it; the lawyer's skill in using language to convey ideas" [9, 10].

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