

LAW FOR ORGANIZING
AFFAIRS OF DEFENSE ATTORNEYS

1 Hamal 1351

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CHAPTER ONE: GENERAL PROVISIONS

- ARTICLE 1: A defense attorney has the right to defend his deputor (i.e. the assigning party or his client) before all courts and before the Saranwali (Prosecutor's Office) in accordance with the provisions of this law and other laws.
- ARTICLE 2: Either of the parties to a suit has the right to assign a defense attorney for acting in his defense.
- ARTICLE 3: The Defense Counsel's Administration of the Ministry of Justice shall prepare a list of defense attorneys. Such list consists of the following details:
- a. List of defense-attorneys who shall have been admitted in pursuance of this law and can defend before the court.
 - b. List of defense-attorney candidates in the order of the request dates.
- ARTICLE 4: The control Committee of the Defense Attorneys shall be organized in the Ministry of Justice comprising the following persons:
- a. One representative of the Supreme Court designated by the Supreme Court.
 - b. One member of the University presidency elected by the High Council of the University from amongst the presidents of the College of Islamic Law or the College of Law.
 - c. One professional member of the Public Prosecutor's Administration selected by the Loya Saranwal (Attorney General).
 - d. Three persons from among the senior defense attorneys who are noted for their competency to be elected by the defense attorneys themselves for a term of three years. The Defense Attorneys Committee selects one of its members as its chairman for three years.
- The said committee has the duty to accept or reject the requests for engaging in the profession of defense attorney.

CHAPTER TWO:

CONDITIONS FOR ENGAGING IN THE PROFESSION OF DEFENCE ATTORNEY

- ARTICLE 5: A defense attorney must meet the following requirements:
- a. Shall be an Afghan national.
 - b. Shall be a graduate of the College of Islamic Studies (Sharasiat), or the College of Law or shall hold diploma from an official Sharia Madrassa, or the afore-mentioned Committee shall certify that the said person is competent to engage in the profession of defense attorney.

c. After Meezan 1343 (October first 1964), shall not have been subjected to deprivation of political rights by a courts' verdict.

d. Shall not be less than twenty five years of age.

ARTICLE 6: Persons who want to undertake the profession of defense attorney and have met the requirements set forth in article 5 submit their applications to the Defense Attorney Administration.

The applicant after the approval of the Central Committee of Defense Attorneys takes the following oath before the Committee as a defense attorney candidate:

In the Name of God, the Beneficent
and the Merciful

"In the name of God, the Great, I swear to fulfill my duties as a defense attorneys with honesty and dignity, to protect its secrets and do not betray my deputors, shall respect and observe the sacred principles of the religion of Islam and the values of the Constitution of the State of Afghanistan."

A permit to engage in the profession of defense attorney as a candidate shall be granted to the nominee on behalf of the Central Committee of Defense Attorneys signed by the President of the Central Committee of Defense Attorneys.

Persons who are not subject to the completion of a probationary-period, or who are engaged in the profession of defense attorneys prior to the enactment of this law shall, after the enactment of this law, take the-above-stated oath as well.

ARTICLE 7: The following persons can not undertake the profession of defense attorneys:

- a. Professional members of the judiciary.
- b. Officials (Civil Servants) and other employees of the State.
- c. Members of Shura (Parliament), and Provincial Councils.
- d. Persons who have been sentenced to be barred permanently from their official duties.
- e. The Mayor, Deputy-Mayor, and the Secretary of a Municipality.

ARTICLE 8: The defense attorney candidate shall be bound to pay two hundred Afghanis to obtain permission for undertaking the defense attorney profession.

Following the termination of the probationary-period, he shall be obligated to pay one thousand Afghanis per annum for each level of the Courts in which he intends to appear

- ARTICLE 9: Every person has the right to act in defending his rights personally or through the appointment of one of the following persons:
- a. By appointing a defense attorney possessing the qualifications set forth in this law.
 - b. By appointing a proxy (legal representative) from amongst one's following relatives; one's father, grandfather, lineal, descendants up to three steps removed, mother, grandmother, real and paternal brother and sister, husband, wife, paternal aunt, maternal aunt, paternal, and maternal uncle and their descendant, father of brother in-law. These persons can defend (or deputize) one another through a Wekalat Khat Sharai (Power of Attorney) without having the official (defense attorney) license.
 - c. In joint-cases which involve more than one person on one side or both sides of the dispute one person can represent his partners through the Wekalat Khat Sharai without having an official license.

- ARTICLE 10: Should the accused or any litigant be financially unable to appoint a defense attorney the person shall have a defense attorney appointed for him in the following manner:
- a. The judge of the court adjudicating the case, in criminal suits on the petition of the person and the proposal of the Saranwal (Public Prosecutor) and in civil suits on the petition of the person, and its own judgement, appoints a defense attorney for the destitute person from amongst the lawyers officially permitted to work as defense attorney.
 - b. The person for whom an attorney has been appointed reserves the right not to accept the appointed defense attorney and to defend himself in person.
 - c. The fees of the aforesaid attorney shall be paid from the State budget and its extent shall be fixed by regulation.

CHAPTER THREE: DEFENSE ATTORNEY CANDIDATES

- ARTICLE 11: Persons lacking a license to engage in the defense attorney profession shall first be admitted as defense attorney candidates.

Persons whose practical experience has been established by the Contract Committee of Defense Attorneys by the result of examination pursuant to article 4 of this law shall be exempted from the below mentioned probationary-period.

- ARTICLE 12: The candidate working with a defense attorney shall not run a law office of his own or defend cases in court during the period of candidacy.

ARTICLE 13: A contract shall be concluded between the defense attorney and the candidate regulating the amount of fees, and the terms of his work.

ARTICLE 14: The Minister of Justice has the right to send the Central Committee of Defense Attorneys to places other than the City of Kabul for the performance of their duties.

CHAPTER FOUR:

RIGHTS AND PRIVILEGES OF DEFENSE ATTORNEY

ARTICLE 15: Law Offices, like a person's residence, is inviolable against any interference or aggression.

ARTICLE 16: A certificate of engagement in the defense attorney profession shall be given to every defense attorney on behalf of the Central Attorneys Defense Committee signed by its president.

ARTICLE 17: A defense attorney shall be at liberty to accept or reject requests for defense made by clients.

A defense attorney has the right to receive fees for defending his client. Between the defense attorney and his client a written contract determining the amount of fees, and the conditions of defense shall be concluded. This contract shall be valid within the limits prescribed by the laws and shall ascertain the obligations of both sides therefore considered as the basis of their demands. The said contract shall be prepared in three copies - one copy to be kept by the client, one in the offices of the Central Committee of Defense Attorneys and another copy in the law offices of the defense attorney.

ARTICLE 18: Defense attorney income tax shall be collected on the basis of reports furnished by Courts in accordance with the provisions of the law.

ARTICLE 19: Disputes between defense attorneys and their clients shall be considered by the respective courts of general jurisdiction.

ARTICLE 20: Cases arising from conflicts between defense attorneys and clients which are brought after one year following the date of the issuance of the final decision shall not be heard if brought before the courts without legal or Sharai (excuse).

ARTICLE 21: Court defense attorney shall be bound to wear, during the court proceedings, the special clothes as arranged by the Ministry of Justice.

- ARTICLE 22: A defense attorney, on the presence of a reasonable excuse may after the conclusion of a contract, with the consent of his client, introduce him to another defense attorney to fulfill his obligation hereunder. Similarly, the client reserves the right to dismiss his defense attorney. In both instances, the matter shall be notified to the respective court.
- ARTICLE 23: The defense attorney shall be bound to give a receipt to his client when he obtains papers and documents from him, and upon the termination of the contract the said papers and documents should be returned to him and the receipt returned.
- ARTICLE 24: A defense attorney is required to inform the respective court at least twenty four hours prior to the commencement of the session in which he intends to present his defense.
- ARTICLE 25: Presence of the deputor shall be optional at the time of court proceedings. However, the court can demand his participation when considered necessary, and he, in such an instance, shall be required to appear at the court.
- ARTICLE 26: The defense attorney shall notify the Defense Attorney Administration prior to changing the location of his office.
- ARTICLE 27: In order to receive and hear the thoughts and opinions of his client who is detained or imprisoned, the defense attorney can contact him in jail or prison.
- ARTICLE 28: The Public Prosecutor (Saranwal) or his representative is required on the request of either of the parties of a suit or their defense attorneys to leave at their disposal under the supervision of the responsible official all documents and papers in the dossier relevant to the case inside the public prosecutor's office.
- ARTICLE 29: If in the course of trial, any of the parties requests the court to obtain an expert opinion, the request shall be accepted at once. On other occasions the judge holds the authority to reject or accept such requests.
- ARTICLE 30: The defence attorneys shall respect their profession and deem it as an important element of the administration of justice as well as for the ensurance of the right of individuals and the State.
- The defense attorneys shall avoid committing misdeeds and libel against one other.

- ARTICLE 31: The defense attorney shall protect all secrets obtained in the performance or in the course of his duties. No person including the State can force him to disclose such secrets.
- ARTICLE 32: The defense attorney can not bear witness in a case in which he is defending or providing legal advice.
- ARTICLE 33: The defense attorney shall avoid giving any help to the litigant-opponent of his client in relation to the dispute which he is defending or on other related matters even after the completion of his defense assignment.

CHAPTER FIVE:

DISCIPLINARY PROVISIONS RELATING TO DEFENSE ATTORNEYS

- ARTICLE 34: The defense attorney is required to observe provisions of this law and other laws in the discharge of his duty while making claims or presenting a defense.
- ARTICLE 35: The Central Committee of Defense Attorneys has the authority to take disciplinary measures against defense attorneys for negligence in the performance of their duties.
- ARTICLE 36: Complaints against defense attorneys shall be presented to the Saranwal of the respective province, and shall be considered by the respective Saranwal.
- When the defense attorney is considered subject to penalty as the result of violating the provisions of this law, the case shall be prosecuted in the court by the Saranwali, and the court shall consider his case.
- ARTICLE 37: Disciplinary orders of the Central Committee shall be notified to the defense attorney in writing.
- ARTICLE 38: Upon transgression of the provisions of this law the Central Committee of Defense Attorneys having considered the gravity or mildness of the offence shall subject the defense attorney to one of the following disciplinary punishments:
- a. Warning
 - b. Reprimand
 - c. Suspension of the institution (law office of the defense attorney) up to one year.
 - d. Deletion of the defender's name from the list of defenders for five years.
 - e. Permanent exclusion of the defense attorney from the list of defense attorneys.

ARTICLE 39: Provisions of this law shall be applicable to each judicial jurisdiction when at least five defense attorneys holding official permits have their offices in the said jurisdiction.

ARTICLE 40: The defense attorneys can make appeals against the orders of the Central Committee before the Supreme Court. The Supreme Court's order on the subject shall be final.

The Central Committee of Defense Attorneys shall prepare the Charter of the Defense Attorneys Union.

Whenever the Central Committee feels that the ground is prepared for the establishment of the Defense Attorneys Union or should the defense attorney aspire to establish the union, it shall be created in pursuance of the Charter; When necessary they may present proposals for the amendment of this law to the Ministry of Justice.

ARTICLE 41: This law shall be in force from the date it is published in the Official Gazette, and the provisions of other laws repugnant to this law shall be considered repealed.