

A Brief Talk on the Understanding of the Professional Ethics of Lawyers and Judges

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Abstract: *Under the background of comprehensively advancing the socialist rule of law, the legal profession is also facing challenges at the same time. The first is reflected in the two professions of lawyers and judges. Whether the basic requirements of the principle of fairness and justice can be realized is also irrelevant to the influence of legal professional ethics. Division, legal professional affects the legal literacy and professional ethics of legal professionals from beginning to end. As and judges are the high-profile roles in the legal profession, it is necessary to discuss their legal professional ethics.*

Keywords: *Lawyer; Judge; Professional ethics*

1. Introduction

Legal professional ethics is a social ethical phenomenon, which embodies and obeys the general provisions of ethics. It is a morally binding code of conduct that is formed spontaneously by the legal professional community in social activities. It is highly specialized and specialized. As a result, it is a professional standard that is oriented and conforms to the trend of social value.

2. Legal professional ethics of lawyers

2.1. The concept and content of lawyers' legal professional ethics

Lawyers attract attention because of their special status and role, which is reflected in the characteristics of law. Although the formal rationalization of law has many positive effects on the improvement of the legal system, it also has many positive effects. This inevitably leads to a gap between the legal system and the people. In reality, ordinary people need to communicate with the law through the group of lawyers, and the status of lawyers becomes more and more important.

Lawyers are the products of a society of equality, freedom and the rule of law. They are a way and a tool for citizens to defend their rights. Without equality, freedom, and the rule of law, there will be no lawyers. Judging from the current laws of our country, lawyers are practitioners who provide legal services to the society. ^[1]The newly revised law makes the professional nature and responsibilities of lawyers clearer.

For lawyers, the legal sources of legal professional ethics include not only laws and regulations, departmental rules, normative documents and judicial interpretations, but also industry rules formulated by relevant professional associations, and the "Code of Professional Conduct for Lawyers" formulated by the All-China Lawyers Association. According to the provisions of Article 2 of the Lawyers Law, the professional orientation of our country to lawyers at this stage is that lawyers are not only legal service providers who provide legal services to clients, but also guardians of social fairness and justice. It is understandable for lawyers to provide clients with legal services that maximize their interests through their professional knowledge and experience and to obtain remuneration accordingly. However, the mission entrusted by the profession determines that lawyers cannot put interests first, and they cannot use any means to win the outcome of the case. Loyalty not only to the client, but also to the law, and to fairness and justice. This is the passion of the lawyer's profession.

The content of lawyers' professional ethics involves the establishment, maintenance, protection, and termination of the relationship between lawyers and clients; lawyers' confidentiality; conflicts of interest; service charges and financial custody; lawyers' avoidance, etc. Each rule has more detailed content, such as the establishment of a lawyer's entrustment relationship: a person finds a lawyer, and

the two parties do not sign an entrustment agreement after negotiation. How to handle the relationship between lawyers and potential clients requires rules. To adjust, because the lawyer will learn about his secret matters in the process of communicating with the potential client, and the lawyer may be obliged to keep it confidential.

A qualified practicing lawyer should abide by the lawyer's professional ethics, firmly support the socialist rule of law construction concept of the Communist Party of China, practice for the people to protect the client's maximum legitimate rights and interests, set an example to safeguard the rule of law, be honest and trustworthy, and be diligent and responsible. , to pursue social fairness and justice as the ultimate practice goal. The lawyer's duty of loyalty is the primary duty.

Relevant laws and regulations of our country put forward some specific ethical requirements for lawyers' practice, which can be divided into three parts: non-mandatory moral requirements, mandatory disciplinary requirements and corresponding disciplinary provisions. Moral requirements are relatively abstract, and they are moral requirements for lawyers in general, so they lack specific measurement standards and are not maneuverable, so it is not appropriate to take coercive measures to protect them; mandatory disciplinary requirements are requirements for lawyers' practice behaviors. Once a lawyer violates the law, he will be punished, and the consequences are still relatively serious; the corresponding punishment provisions are to ensure the legitimacy of lawyers' practice and help to balance conflicts of interest. ^[2]In general, lawyers' professional ethics only provide a relatively large framework for regulating lawyers' professional behavior, and there is still much room for improvement in content and details.

Lawyers, judges, and prosecutors belong to the same legal profession. They have a common mission to ensure the correct implementation of laws and maintain social justice. Lawyers participate in the judicial process passively. They are entrusted by the parties or designated by relevant departments to participate in the case. This is not the same as saying that it is just a matter of routine, it is to be done with passion, as: saying that a lawyer does not require consecrated love is not the same as saying that a lawyer, judge, legislator, administrator, or citizen who obeys the law, is engaged in making or enforcing the law, There is often indifference to such feelings. Conscientious lawyers who are torn between duty to the client and duty to the court need to maintain the integrity of mind and heart. We should acknowledge the dedication of those sensitive lawyers who struggled to escape an intolerable mental predicament of which he was not of his own making.

It is a professional requirement for lawyers to assume corresponding social responsibilities, and it is also the expectation of the government and the people for lawyers.

2.2. Professional requirements for lawyers

As far as the general public is concerned, it is understandable to distinguish between good and bad parties and to treat them differently, but lawyers cannot.

On the one hand, as a legal professional, lawyers should have professional rationality that the general public does not have. This rationality requires lawyers to overcome the influence of personal values as much as possible and avoid, like the general public, make "good" and "" "bad" distinction, and apply the same professional ethical standards in matters of loyalty to the client. On the other hand, making a distinction between good and bad parties does not meet the requirements of the principle of presumption of innocence. In criminal proceedings, anyone is presumed innocent until he is convicted by a court, and it is the duty of a lawyer to defend the client wholeheartedly to the extent permitted by law and morals based on this presumption.

Moreover, if the parties are classified as good and bad as the general public does, the defendants in criminal proceedings are undoubtedly "bad people". The judgment of the general public is simple, how can it be "criminal" and become a defendant if it is not bad? If lawyers do not abide by the professional ethics of being loyal to their clients because of the "badness" of their clients, or even betray, betray or sacrifice their clients, the criminal defense system and the criminal justice policy that covers all criminal defenses will eventually collapse. ^[3]Therefore, there should be no double standards in the legal professional ethics of being loyal to the client. There are no "good guys" or "bad guys" in the eyes of lawyers, only clients.

If a lawyer refuses to provide professional help because he believes that the client's claim is unfair or unreasonable, then he is "doing what the judge and jury are supposed to do". If a lawyer is required to make a judgment on the "legality" of the rights and interests he claims when he accepts the client's

entrustment, it will make the lawyer bear the responsibility that he should not bear, and substantially hinder the lawyer from accepting the entrustment. Moreover, whether the rights and interests involved in many complex cases in judicial practice are legal, the presiding judge who exercises judicial duties in accordance with the law may not be able to make accurate judgments, let alone let lawyers make judgments when they accept the entrustment? From this, it can be seen that the provisions of Article 2 of the Lawyers Law on the "legitimate" rights and interests of the parties can only be understood as a value declaration, and it does not mean that lawyers are responsible for the legitimacy of their rights and interests before accepting the client's entrustment. Greater or more review obligations.

Lawyers should not exceptionally undertake the following three obligations:

The first is the duty of confidentiality, which requires lawyers to keep the client's secret information and not seek benefits for themselves or others by disclosing the client's secret information. The so-called secret information here refers to the parties' business secrets, personal privacy and other information that the parties are unwilling to disclose. Attorneys' conservation of relevant confidential information extends beyond non-disclosure or refusal to disclose, and does not include active concealment.

The second is the duty of diligence. In terms of semantics, the word "diligence" inherently excludes the illegality of ends or means. To provide services for the parties "for illegal purposes" or "by illegal means" cannot be said to be diligent no matter how hard they are. "diligent". The duty of diligence means that lawyers should make unremitting efforts to maximize the interests of their clients. In non-litigation business, lawyers should complete the entrusted affairs for the client according to the quality and quantity, and deliver the work results on time. In the litigation business, lawyers should provide enthusiastic and effective defense or representation for the parties. The "effectiveness" here is reflected in the outcome of the litigation, and the "enthusiasm" is reflected in the process of defense or representation.

The third is the obligation to support. The duty of support, like the duty of diligence, is a positive act of duty, which is different from the negative of the duty of confidentiality. The duty of support means that in the face of various disputes involving clients, lawyers can only and should be allowed to regard "loyalty to clients" as a minimum professional ethical norm, and they have an ethical obligation to "wholeheartedly maintain". The interests of the parties and to this end use their greatest talents and abilities". In accordance with the requirements of the duty of support, lawyers should not make unnecessary value judgments on the client, and cannot betray the client or betray the interests of the client. Instead, lawyers should do everything in their power to defend the client's claims, claims, or goals and maximize the client's benefit or likelihood of winning to the extent permitted by the conduct of representation.

3. The legal professional ethics of judges

3.1. The concept and content of judges' legal professional ethics

As a key figure in the trial of cases by the national judicial organs, judges directly affect the realization of fairness and justice in cases. At the same time, legal professional ethics also deeply affect the behavior of judges. The so-called professional ethics responsibility of judges refers to the responsibilities that judges have to bear for violating professional ethics norms, which can occur in the process of judges handling cases or in their spare time. The main regulation is the behavior of judges related to their own professional ethics. . Aristotle called ethics the philosophy of "right life" and "right action", then judge ethics should be understood as "right judge life and judge action". Correspondingly, the professional ethics of judges is the sum of a series of behavioral rules that have the functions of general restraint, guidance, education, reward and punishment for judges. It is externalized into various forms, such as laws, regulations, policies, disciplines and other normative documents. Wait. Professional ethics norms guide judges to consciously form the habit of abiding by professional ethics by regulating the professional behavior of judges, and professional ethics responsibility can ensure the realization of this role.

Fair adjudication is the most basic requirement for judges. Unjust adjudication will not only fail to quell disputes, but may even intensify conflicts and lead to social unrest, making the law lose its authority. Therefore, it is an important symbol of judicial civilization whether judges abide by professional ethics and judge cases in a neutral, fair and lawful manner. As the resolvers of disputes, judges' isolation from corruption is particularly important for the construction of the rule of law. In this

regard, Bacon once pointed out: "One unjust (judicial) judgment is more calamitous than many unjust actions. For these unjust actions only dirty the water, and the unjust judgment spoils the water source." But Bacon was also removed from the judge for taking bribes. Therefore, the practice of legal professional ethics is much more important than just arguing, and it needs to be restrained by external mechanisms. Judges must be "clean and honest, loyal to their duties, abide by discipline, and abide by professional ethics." "The core of a judge's professional ethics is fairness, integrity, and serving the people. The basic requirements are to be loyal to the judicial cause, to ensure judicial impartiality, to ensure judicial integrity, to adhere to the judiciary for the people, and to maintain the judicial image.

Although the judge's decision is neutral, if one can be sure in his heart that the rights of one party are indeed infringed, he should think about "if I were the party" in order to meet the urgency of the party. Mencius further concluded: "Without the heart of compassion, it is not human; without the heart of shame and hatred, it is not human; without the heart of resignation, it is not human; without the heart of right and wrong, it is not human." These "original" things, How can a judge be missing.

3.2. Professional requirements for judges

Judges as "law-observers" need to remind themselves at all times that judicial professional ethics cannot only be emphasized in public judicial professional activities, but must also emphasize self-respect and self-discipline in the field of private life. The group of judges should develop a prudent, restrained, self-disciplined, and appropriately conservative social psychology and role recognition. In the face of various social temptations and traps, keep in mind that "a gentleman is prudent and independent", the indulgence and degeneration outside the courtroom will inevitably extend into the courtroom, destroying them. Justice and legality, harming their own future.

"Frequent socializing or contact with lawyers" is the main symptom of a judge's disciplinary violation. Due to the strong concept of human relationships in my country, some judges have complex interactions with the outside world, and even contact the parties privately, accept food and even money from the parties, or have a bad attitude towards the parties during the trial. The initiation of accountability procedures for judges is often caused by external factors, such as retrial of cases, handling of complaints and petitions, requests from higher courts, intervention by political and legal committees, or pressure from public opinion.^[4]Especially in today's Internet age, judges' professional judgments are often subject to The influence of the Internet and public opinion.

The ethical responsibilities of judges should be higher than the ethical requirements of ordinary people. In addition to the ethical obligations of ordinary people, they must also abide by judicial ethics. The specific manifestations are: first, respect for the parties. This is the inevitable manifestation of the principle of humanitarianism in the judiciary, and it is the source of the judge's sense of service. Only by showing sufficient respect for the parties during the trial process, will they not be high above the crowd and separate from the masses, and can actively protect the parties in exercising their rights and truly achieve justice for the people; the second is the pursuit of justice. Judges must always be in awe of justice, treat all parties independently and equally, apply the law accurately, and strive to make the parties feel fair and just; the third is to uphold integrity. Judges must first perform their duties and obligations honestly, and have the spirit of dedication and work, so as to stop the dishonest behavior of the parties in time and protect the legitimate rights and interests of vulnerable groups; the fourth is self-control. Judges must have a spirit of humility and self-discipline, establish a correct view of material desires, friendship and taste, and consciously maintain their own sense of honor and the image of the team.

Under the circumstance that China's national conditions, world customs and people's hearts have undergone tremendous changes, the judicial team is bound to face some challenges and encounter some crises. "Judges are upright, courts are clean, and judiciary is clean" is not only a requirement for judicial professionals, but also a vision of the rule of law for the whole society. General Secretary Xi Jinping pointed out at the Central Political and Legal Work Conference: "We must adhere to professional conscience, enforce the law for the people, take strengthening impartiality and honesty professional ethics as a compulsory course, educate and guide the majority of police officers to consciously restrain themselves with professional ethics, and establish a policy of punishing evil and promoting good, and law enforcement. A mountain of arrogance and uprightness."

4. Lawyers and Judges

Once a lawyer accepts the client's entrustment, in addition to faithfully safeguarding his rights and

interests, he also needs to undertake a series of related loyalty obligations on this basis. How lawyers treat these obligations will more fully reflect their professional ethics.

One is how to deal with the wishes of the parties. The party-centrism point of view holds that it is necessary to recognize the subjectivity, independence and professionalism of lawyers, and also to respect the wishes of the parties, because litigation is the litigation of the parties, and the goal is the goal of the parties. As a manifestation of client-centrism, whether lawyers provide defense or representation for clients, they should formulate corresponding plans and communicate with clients on the facts, evidence or legal issues involved, and on this basis faithfully explain the options for various litigation options, consequences and corresponding risks. Therefore, a lawyer's arbitrary view that completely ignores the client's will or a lawyer's instrumental view that overemphasizes the client's will cannot be said to be a manifestation of loyalty to the client's professional ethics.

The second is how to deal with the feelings of the parties. A fact that has to be admitted is that the litigation objectives of many cases (although ultimately determined by judicial decisions) are doomed from the beginning to be unattainable or unattainable by lawyers in the short term. For those clients who may face or are being sentenced to liberty or life sentences, lawyers can give them necessary psychological counseling while actively defending or appealing in accordance with the law. For some unjust, false and wrongly convicted parties, the results are often difficult to meet the expectations of the parties. Moreover, the parties involved are still "bad people" who "deserved" in the eyes of the public, especially the victims, and lawyers must psychologically give the parties necessary consolation. It can be seen that the lawyer's loyalty to the client is not limited to being loyal to his interests, it also means, to a certain extent, taking his personal wishes seriously or patiently taking care of his personal psychology.

In China, this legal professional ethics needs to be treated rationally by people. People always worry that the lawyer's loyalty to the client may hinder the correct implementation of the law, and then irrationally opposes the legal professional ethics of loyalty to the client against the realization of judicial justice and the construction of the country's rule of law. If the client belongs to the "bad person" in the eyes of the public, because the lawyer's loyalty to the client is easily confused with the approval of the client's behavior or concept, insisting on this professional ethics may lead to greater criticism, or even siege from reality or the Internet.^[5] It can be seen that the question raised by Dershowitz in the book still needs to be enlightened or rationally treated in today's China.

5. Conclusion

Although morality is not coercive, it guides people's behavior by adjusting people's hearts; and this force sometimes affects people's behavior more than external coercive forces, such as laws. The degree of observance of professional ethics by legal professional groups not only directly affects the development of the legal profession, but also affects the public's view and cognition of the law, and has an impact on the public's own behavior. The observance of professional ethics by the legal professional community can also have an impact on the public outside the legal professional community, and can stimulate the construction of professional ethics and social morality in the entire society. In this way, legal professional ethics can improve the public's moral quality and legal awareness, thereby promoting the construction of the rule of law.

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