



Pro Bono Practices and Opportunities in Norway¹

INTRODUCTION

Norwegian legal culture has promoted free legal aid for centuries dating back to the Royal Decree of September 9, 1638, an act that encouraged the provision of legal aid to all those who could not afford it.² Although legal assistance in litigation was historically commonplace, it was not until the 1950s that free legal assistance outside the courtroom began to take hold.³ Due in large part to Norway's comprehensive state-subsidized legal aid system, pro bono work is not widespread or a significant part of the legal culture in Norway. Currently, the Norwegian legal aid system is based almost entirely on the work of individual private attorneys, as Norway does not have an established network of government-funded legal aid offices staffed with full-time attorneys.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

The Constitution and Governing Laws

The highest level of legal authority in Norway is the Constitution of Norway (*Kongeriget Norges Grundlov*), signed on May 17, 1814 (the "**Constitution**"). The Constitution was founded on the basic principles of sovereignty of the people, separations of powers, and a safeguarding of human rights. Similar to the American Constitution, The Constitution establishes a legislative branch, an executive branch, and a judicial branch of government. In addition to the Constitution, Norway has Statutory laws that are adopted pursuant to the Constitution, and subordinate to the Constitution. All statutory laws are enacted by the Norwegian parliament (*Stortinget*) and apply to the entire Norwegian state territory. Furthermore, Parliament has the authority to delegate limited legislative authority to the executive branch, by allowing the executive branch to implement regulations. These regulations have the same force as statutory laws.

The Courts

The court system in Norway consists of one Supreme Court sitting in Oslo (*Høyesterett*), six Courts of Appeal (*Lagmannsrett*), and a fluctuating number of district courts (*Tingrett*), depending on the year (currently, there are 66 District Courts, including the Oslo "*byfogdembete*," a court which predominantly deals with claims for interim measures and bankruptcy in Norway).

The six Courts of Appeals adjudicate appeals against decisions from the District Courts within their circuits. These courts hear both civil and criminal appeals. These courts are also supplemented by specialty courts that include the Labor Court (*Arbeidsrett*), sitting in Oslo, and the Land Consolidation Courts (*Jordskiftedomstolene*) which sit in numerous locations throughout Norway.

Additionally, the majority of civil claims are initially heard by Conciliation Boards (*Forliksråd*). In fact, according to section 6-2 of The Disputes Act, conducting initial proceedings in the Conciliation Boards is mandatory for all cases where the disputed amount exceeds NOK 125,000 kroner (approximately \$21,000), and both parties are represented by attorneys.⁴ These Conciliation Boards are found in every municipality and are run by lay employees who help mediate disputes with the intent that parties will reach a resolution before invoking more formal legal process in the District Courts. The Conciliation Boards are authorized to enter judgments in certain cases, including, if both parties consent, if one party

¹ This chapter was drafted with the generous support of Wiersholm.

² STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Norwegian Bar Association*, 315 (2010).

³ Jon T. Johnsen, *A New Scheme for Short Legal Advice in Norway*, (2011), at 4.

⁴ Act of June 17, 2005 No. 90 Relating to Mediation and Procedure in Civil Disputes, § 6-2.



is absent and the other party requests a judgment of absence, or if the disputed amount does not exceed NOK 125,000.⁵

As set out in Section 55 of the Court of Justice Act of 1915, the Judicial Appointments Board (the “**Board**”) nominates judges for appointment. The Government, exercising the executive power constitutionally vested in the King, appoints the members of the Board every four years, and members can be re-appointed for one additional period. Generally, the Board consists of three judges from among the Supreme Court, the Courts of Appeal, or the District Courts, one lawyer, one jurist employed by the public sector, and two members who are not jurists.

The King then officially selects judges based on the Board’s recommendation. The King may also appoint an applicant not recommended by the Board, but must first request a statement from the Board regarding the applicant. In order to be eligible for selection as a judge, an applicant must be a Norwegian citizen, who is trustworthy and has not been deprived of their right to vote in respect of public affairs. Furthermore, Supreme Court judges, Appellate Court judges, and District Court judges must all have earned a law degree before serving (see section c below). Supreme Court and Appellate Court Chief Judges must be at least 30 years of age, Appellate judges must be at least 25 years old, and District Court judges at least 21 years old. The King is meant to select judges from among lawyers who satisfy exacting requirements concerning both professional qualifications and personal characteristics, and are from a variety of professional backgrounds.

Unlike other court systems, Norwegian courts actively involve lay judges in their proceedings. Although, typically, District Courts only have one judge, the Courts of Justice Act allows proceedings to be held before one judge and two lay judges. Similarly, Court of Appeal proceedings may be heard in front of three judges and two lay judges. Furthermore, in criminal cases where the question of criminal liability is under appeal and the crime in question carries a prison sentence of six years or more, the Court of Appeal may be tried by a jury. However, the Supreme Court may never include lay judges or a jury. Lay judges are selected by municipal councils and are appointed for four-year terms. These civilian judges participate in civil and criminal cases in both the District and Appellate courts. To be selected as a lay judge, one must be between the ages of 21 and 70 with a clean criminal record and the ability to stand in municipal elections.

The Practice of Law

Section 218 of The Courts of Justice Act of 1915 grants attorneys the right to render legal assistance.⁶ To practice as an attorney and provide legal assistance under Section 218, an attorney must be licensed through the state.⁷ Historically, this mandate has been enforced in order to protect the public from unskilled legal advice and to help regulate the legal profession. The Supervisory Council for Legal Practice (*Tilsynsrådet*) is the regulatory body authorized to issue licenses.⁸

In order to obtain a license to practice as an attorney before courts, other than the Supreme Court, an applicant must have a degree in law from a Norwegian university. Additionally, the applicant must be at least 20 years of age and have demonstrated through their criminal record certificate that they have conducted themselves honestly. Furthermore, Section 220 requires that the applicant must have practiced for at least two years after earning a law degree as an associate, a deputy judge, a university lecturer in jurisprudence, or in any other position with prosecuting authority that involves a significant element of conducting legal proceedings. During their time as an associate, the applicant must have tried three civil cases before the courts, or one civil case and four criminal cases, or another applicable composition of cases. For deputy judges, it is sufficient that the applicant has practiced as a judge for two

⁵ Id at note 4, § 6-10.

⁶ Law of the Courts (Courts of Justice Act) § 218.

⁷ Id.

⁸ Working as a lawyer in Norway, ADVOKATFORENINGEN, available at <http://www.advokatforeningen.no/om/om-medlemskapet/english/working-as-a-lawyer-in-norway/> (last visited on September 4, 2015).



years. Finally, the applicant must participate in a special six-day course that addresses issues practicing attorneys must face.

Additionally, in order to appear as an attorney in front of the Supreme Court, Section 221 requires that the applicant meet certain additional requirements.

Currently a proposal for a new "Attorney's Act" is under review. The proposed bill was submitted for review in 2015, and seeks to implement substantial changes to this area of the law. Accordingly, the proposal has already sparked controversy within the legal profession. One of the most significant changes in this proposal is the change in the requirements necessary to earn a practice license. First, it has been proposed that the aforementioned requirement for an associate to lead cases in court be removed completely. In its place, the proposal states that the amount of time an attorney has to practice in order to be granted a license will be expanded from two to three years. Additionally, the proposal seeks to increase mandatory practice courses from approximately six days to up to six months. It has also been proposed to make membership in a bar association mandatory.

The Supervisory Council for Legal Practice may grant the right to render legal assistance to applicants who are not attorneys. According to Section 218 of the Courts of Justice Act, applicants who have a relevant law degree but are not licensed as an attorney or applicants who are certified as public accountants, may provide legal assistance. Additionally, other applicants may provide legal assistance if the Supervisory Council for Legal Practice finds it appropriate and gives special permission for such assistance. Special permission is often given to free legal aid organizations run by law students such as Juss Buss (Oslo), Jussformidlingen (Bergen), Jusshjelpa i Nord Norge (Tromsø), Jushjelpa i Midt-Norge (Trondheim) and Jurk (Legal Counseling in Oslo for Women). If approved by the Supervisory Council, foreign legal practitioners may also be granted the right to render legal assistance on certain terms set by the Ministry of Justice in Regulation of Attorney Practice (*Advokattforskriften*).

In order to practice as an attorney, it is necessary to provide security. This security payment covers liability that an attorney may incur during practice. Members of the Norwegian Bar Association (*Advokatforeningen*) (the "NBA") may either obtain insurance through the NBA, or take out individual insurance from an insurance company. Furthermore, the King may decide that certain individuals providing legal services that do not have a license to practice as an attorney have to pay security to cover any liability to pay compensation that the person concerned may incur during the provision of the legal services.

Coupled with the initial requirements to practice law, Norwegian attorneys must also undergo mandatory continuing training. However, there are no requirements for attorneys to complete a requisite amount of pro bono hours; pro bono services are provided on an entirely voluntary basis.

Today, more than 90% of all Norwegian attorneys are members of the NBA. According to the NBA, its membership has increased more than 50% over the last decade from 4,764 members in 2000 to 8146 in 2014. Of those members, 36% are women; a 1% decrease from 2013. Over 75% of attorneys in Norway work in the private sector, with 38% working at firms with more than 50 employees. The remaining majority in the private sector work as either sole practitioners or as one of two to four employees in small practices. Those attorneys who are not employed in private law firms either serve as in-house legal counsel for companies and organizations, or work in the public sector.⁹

Legal Regulation of Lawyers

All attorneys are subject to The Norwegian Code of Conduct for Lawyers, which was promulgated by the NBA and ratified as the Regulation of Attorney Practice by the Ministry of Justice. Disciplinary committees within the NBA are responsible for hearing all alleged violations by attorneys, both of the Code of Conduct and applicable Norwegian law. The NBA committee's decision may be appealed to a government-appointed disciplinary committee, of which the NBA committee acts as secretariat. The Supervisory Council also assists in disciplinary matters. Upon advice of the Supervisory Council or the disciplinary committees, the Lawyer License Committee (*Avokatbevillingsnemnden*) may revoke an attorney's license.

⁹ See <http://www.advokatforeningen.no/Global/RAPPORT%202014.pdf> (last visited on September 4, 2015).



LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Norway is one of the top countries in Europe in terms of legal aid funding per inhabitant. According to the 2012 report of the European Commission for the Efficiency of Justice, Norway allocates approximately €39.90 per inhabitant for legal aid, a rate ranked first in Europe. This is a significant increase compared to 2010.

In 2014, the Norwegian constitution was amended to include several of the human rights provisions from the European Convention on Human Rights (the "ECHR") and the International Covenant on Civil and Political Rights (the "ICCPR"). Among these new provisions, article 95 grants everyone the right to a fair trial within a reasonable period of time. While the human rights treaties and the rights and obligations arising under these treaties were incorporated into Norwegian law and took precedent over domestic law prior to these amendments, many of these rights themselves were not directly included in the Constitution. Now, through these amendments, the right to a fair trial arising from the ECHR and the ICCPR enjoys protection both under the Constitution and under the treaties as well.¹⁰

The culture of Norwegian legal aid is rooted in the belief that access to free legal aid is a welfare benefit that should be made available only for legal problems of great personal and welfare significance to the applicant.¹¹ Cases that involve serious interventions into an individual's integrity by the government or other citizens are of particular importance in this legal aid scheme.¹² These cases are of such importance that the government will provide free legal advice or representation to applicants regardless of their financial situation. Provision in these instances is based on the belief that anyone suffering loss of liberty or personal integrity should not have to pay for the legal costs inflicted as a result.¹³

In accordance with these foundational conventions, Norway has both a civil and criminal legislative scheme in place to provide free legal assistance. The Legal Aid Act of 1980 (the "LAA") (*Rettskjelpsloven*) provides for free legal advice and representation in civil cases, while the Criminal Procedure Act of 1981 (*Straffesprossessloven*) provides free representation for defendants and victims. Legal aid in Norway is largely publicly funded. However, in some cases, the use of legal aid insurance contributes to a reduction in federal funding, as the private companies and their policy holders pay the costs for legal assistance.

State-funded legal aid applications in Norway are administered by legal and administrative bodies. The LAA provides that legal aid may be granted by either the court or administrative body hearing the case, or the Ministry of Justice. Under the LAA, the Ministry may delegate approval authority to other parties. Often, County Governors are tasked with handling legal aid request applications.

While there may be specific underlying motivations for the provision of aid in Norway, the manner in which that aid is administered is often generalized. Instead of a comprehensive aid system that contemplates

¹⁰ Although these amendments have clearly made the obligations of the ECHR and ICCPR binding Norwegian law, the rights guaranteed by these conventions have always taken precedent over conflicting domestic legislation.

¹¹ Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 9.

¹² Specifically, cases that involve criminal charges that carry a prison sentence, involuntary expulsion from the country, public child custody, involuntary health treatment, conscientious objectors to military conscription, loss of legal competence, compensation for crime victims, sexual crimes, female circumcision and forced marriage fall into this category. (Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 14).

¹³ Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 14.



multiple forms of service in order to solve any given problem, Norway's aid system focuses largely on providing access to courts and funding to hire counsel.¹⁴

State-Subsidized Legal Aid Eligibility Criteria

The Legal Aid Act

Under the LAA, there are three different types of legal aid. First, there is free legal advice, which is legal aid outside of legal proceedings, including consultation on legal issues, and information about the law. Second, there is free legal representation, constituting free legal assistance in cases that proceed to court, with the exception of the conciliation board, and certain administrative agencies. Last, there is exemption from court fees, where the indigent party does not have to pay to get their case to court.

Both the LAA and the Criminal Procedure Act place a number of restrictions on the provision of aid. The LAA lists in detail the types of civil cases that are eligible for free legal advice or representation. For instance, according to Section 11, cases involving foreign nationals, child welfare, military conscription, violent crimes, and forced marriage, may be covered by the LAA without the need for meeting any financial requirements.

However, to receive legal aid under the LAA for cases involving marriage disputes, personal injury claims, and living/working conditions claims, the applicant must meet the financial requirements of the Legal Aid Regulation of 2005 (*Forskrift til lov om fri rettshjelp*). Under this regulation, an applicant is eligible for free legal aid if their gross income does not exceed NOK 246,000 (approximately \$41,000). For applicants who are married or living with someone else, their joint gross income must not exceed NOK 369,000 (approximately \$61,500).

In spite of these detailed specifications, the LAA also leaves room for discretion, permitting additional matters to be eligible for free legal aid if the applicant meets financial requirements and the case is objectively "pressing." Moreover, the Supreme Court is given complete discretion to authorize free legal representation in civil cases where application to enter the Supreme Court is accepted and where it is reasonable based on public importance.

Pursuant to Section 16 of the LAA, in civil cases individuals can be refused legal aid for lack of merit of the case. This occurs when it is considered unreasonable for the legal assistance to be paid out of public funds.

Section four of the LAA allows for both individuals and non-profit organizations to receive legal aid. However, in practice, it is usually only exceptional cases where an association or foundation will receive legal aid.

According to Section two of the LAA, free legal aid can be provided by both private law firms and public law offices. A practicing attorney able to provide free legal assistance, pursuant to the LAA, has an obligation to inform their clients about the possibility of applying for free legal aid, as long as it is reasonable that their client would be eligible for such assistance.

The King is in charge of prescribing the rules for compensating attorneys providing assistance under the LAA. For legal work that is paid out of public funds, the individual providing the legal aid is eligible to collect a contribution from the client. This amount will be based on the type of legal aid received, and is calculated on a base amount equivalent to the current fee rate for criminal cases and legal aid cases.

Barriers to Legal Aid

According to Section 9 of the LAA, some clients are required to pay "contributions" for the legal advice or representation they receive under the LAA. Cases where an applicant must meet certain financial requirements before receiving public aid are considered "means-tested" cases. Under the LAA, aid

¹⁴ Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 9. There are some provisions in the LAA that provide financial aid for research regarding broad reforms and policy initiatives, but such provisions are rarely used. *Id.* at 16.



recipients in means-tested cases must pay a contribution to their provider for the legal costs incurred.¹⁵ The amount of the contribution is calculated on a base amount equivalent to the fee rate for criminal cases in place at the time.

For subsidized legal advice, the client's contribution is equal to the base amount, which is NOK 970 (or \$120) as of January 1, 2015. For subsidized legal representation, the client's contribution is 25% of all the legal costs incurred, but cannot exceed five times the base amount.¹⁶

Client contributions are not required in cases where the applicant did not have to meet financial requirements in order to obtain aid. As a result, only applicants in financial need bear the burden of contribution.¹⁷ A client is not required to pay a value-added tax on top of the client's contribution.¹⁸ Despite being entitled to a contribution, an attorney may choose to waive the contribution requirement. However, if an attorney does not waive the contribution in cases where such a contribution is required, a client may be denied legal assistance if he is not able to pay the contribution.

Aside from the aforementioned contribution requirements, attorneys may not demand, or receive, any further compensation from their client. Furthermore, while expenses deriving from a client choosing a lawyer with an office outside the court's jurisdiction or not reasonably close to the client's residence cannot be paid out of public funds, the Ministry may, by regulation, issue exemptions to this rule.

Norway also has in place a "loser pays" statute where the loser must pay all of the costs and fees of the litigation. These costs include attorney's fees, court costs, and costs related to producing evidence (including compensation to witnesses). For losing parties that were granted legal aid, the LAA has provisions that allow these parties to apply to have the legal costs of the other party either partially or entirely covered by the state. However, it is not certain that such applications will be granted. If the parties settle their dispute, each party typically pays their own costs, though the parties are free to find other solutions as well.

Not every case in need of legal aid is covered by the existing legal aid system. The LAA specifically states that it is a subsidiary act that provides aid only when such aid will not be provided by other schemes.¹⁹ Additionally, the LAA only provides aid in specific types of cases, primarily those which demonstrate a bias to urban problems.²⁰ This same limited coverage exists in volunteer and membership organizations that operate separately from the LAA. As a result, there are problems requiring legal assistance that fall outside the scope of both the LAA and outside aid organizations.²¹ Therefore, attorneys interested in taking on these cases must do so at their own expense, without any outside assistance.

Furthermore, legal aid in Norway arguably lacks a sufficient quality assurance system. While all attorneys, regardless of their membership, are subject to the ethical standards and disciplinary boards of the NBA,

¹⁵ Legal Aid Act, ch. 1, § 9.

¹⁶ *Id.*

¹⁷ However, applicants with a gross annual income below NOK 100,000 (roughly \$16,600) are not required to pay a contribution. (Legal Aid Regulations, ch. 2, § 2-2).

¹⁸ *Id.* at ch. 2, §§ 2-3.

¹⁹ For instance, the LAA does not provide aid to help pay for counsel in criminal cases (since the provision of counsel is governed by the Criminal Procedure Act), in matters covered by private insurance, in cases under section 36 of the Public Administration Act, in matters assisted by public service and advisory offices, or in cases covered by funding through membership organizations. (Legal Aid Act, ch. 1, § 5).

²⁰ Jon T. Johnsen, *Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, (2009), at 11. (Examples of cases demonstrating an urban bias include: dissolution of marriage and cohabitation, compensation for personal injuries, loss of provider and crime injuries, job dismissal, rental termination and complaints over social security denials).

²¹ *Id.* at 10-11.



those standards have been deemed, by some, insufficient for legal aid purposes.²² Moreover, the NBA has repeatedly reported that the fee rate paid by the government to attorneys taking on legal aid cases is too low and therefore affects the quality of the work provided.²³ In its 2009 Parliamentary Policy Report, the Norwegian government proposed that a new set of standards be put in place to apply specifically to attorneys performing legal aid work.²⁴ The report further recommended the implementation of a system to approve permanent legal aid attorneys in order to encourage the specialization of legal aid work.²⁵ However, none of these recommendations have been implemented yet.²⁶ This same Parliamentary Policy Report published in 2009 attempted to supplement the existing system of legal aid providers as well as extend the reach of the LAA. The plan aimed to provide legal aid for a wider array of cases, liberalize financial requirements for applicants, and improve quality assurance measures. Roughly 24 municipalities participated in the plan, setting up Municipality Service Centers and contracting with local attorneys to provide legal advice for matters both inside and outside the court system.²⁷ However, this program was discontinued in 2012. Today, one of the central issues for the NBA continues to be the low hourly rate that attorneys are paid by the government when taking on legal aid cases.²⁸

Finally, the financial eligibility criteria ("means testing") for legal aid is regarded by some as too stringent, particularly in relation to the limitation on gross income. These limitations have not been adjusted to the economic development in Norway and are now regarded by many as unreasonably low, especially since they may even be surpassed by people who are predominantly relying on welfare benefits. Furthermore, the discretionary criteria for granting free legal aid in spite of not meeting the financial criteria is relatively strict and seldom applied. This is reflected in the decreasing number of approved applications for free legal aid. Although this issue is currently subject to heavy criticism and widespread debate, no measures have been implemented to remedy the issue.

The Criminal Procedure Act

The provision of legal aid in criminal matters is based on the Norwegian Criminal Procedure Act. The Act allows for free representation for both defendants and victims. However, like the LAA, the Criminal Procedure Act contains certain requirements for the provision of free aid. As a general rule, a criminal defendant is entitled to legal representation at every stage of the case. However, there are certain cases where the person charged is not entitled to counsel. This includes cases where the defendant has violated specific provisions of the Road Traffic Act, cases which give the option of a fine (pursuant to Section 268 of the Criminal Procedure Act), and cases only relating to confiscation. Additionally, if a defendant has confessed and waived his right to a trial and the maximum sentence allowable does not exceed six months, then counsel is not provided. Finally, based on the circumstances of the case, the court may determine that it is "unobjectionable" for the defendant to proceed without counsel.

For criminal cases, where a defendant is entitled to counsel, the court will appoint an official defense counsel for the defendant, unless the defendant elects to be assisted by private defense counsel which the defendant has engaged. If the defendant does not choose a counsel of their own, then a member of the permanent defense counsel will be appointed for them. The Ministry engages a sufficient number of attorneys entitled to conduct cases in each court to serve as permanent official defense counsel for these cases.

²² Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011), at 11.

²³ NORWEGIAN BAR ASSOCIATION, Annual Report 2010, 1 (2010).

²⁴ Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011), at 13.

²⁵ Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 11.

²⁶ As confirmed by the Norwegian Civil Affairs Authority.

[footnote reference no. 27 is missing text.]

²⁸ NORWEGIAN BAR ASSOCIATION, Annual Report 2014, 5 (2014). The fee rate was increased by 5 NOK, an increase so nominal it lead to protest by the NBA.



If a defendant is provided official defense counsel, this counsel will be compensated by the State. A permanent official defense counsel is not permitted to receive any compensation above that determined by the court. If the defendant chooses private counsel of their own, then the King may prescribe further rules concerning to what extent counsel will be compensated. For cases before the Supreme Court, the Court will decide what type of compensation private attorneys receive.

A victim of a criminal act will be entitled to representation under certain circumstances, including when there is reason to believe that they will suffer considerable bodily harm. The police are obligated to inform a victim of this right. Victims will have an attorney appointed for them by the State, unless they desire a particular attorney, in which case this attorney will be permitted to represent them as long as no exceptional circumstances are present. A victim's attorney will be compensated by the State. If the victim requests to be represented by an attorney outside of the court's jurisdiction, the King can prescribe further rules concerning the extent to which this attorney's compensation will be covered by the State.

Alternative Dispute Resolution

It is also possible for an individual to receive legal aid for mediation procedures. For example, the initial judicial procedure in family cases is based on mediation and the parties in family cases (child custody cases, for instance) are entitled to legal aid, as long as the general conditions for legal aid are met. Legal aid for mediation procedures is covered by the same legal aid scheme for litigated cases, as outlined above, and is also provided by the State.

The Parliamentary Ombudsman serves as a supervisor of public administration agencies. Supervision is carried out on the basis of complaints from citizens concerning any maladministration or injustice on the part of a public agency. The Parliamentary Ombudsman processes complaints that apply to government, municipal, or county administrations. Before the citizen files a complaint with the Ombudsman, he or she must have exhausted all local complaint procedures. Additionally, the Ombudsman may also address issues on his own initiative. Making a complaint to the Ombudsman does not incur any cost on the complainant. Nevertheless, the Parliamentary Ombudsman does not have the authority to adopt binding decisions or to reverse decisions made by the administration agency. Nor does he have the power to issue legally binding instructions to the authorities. In practice, however, the authorities comply with the requests and recommendations of the Ombudsman. If the Norwegian Parliamentary Ombudsman recommends that an individual pursue litigation, that party is provided free legal representation under the LAA.²⁹

PRO BONO ASSISTANCE

Pro Bono Opportunities

In spite of the free legal aid system, many individuals in need of legal help are still unable to obtain it through this State system. Therefore, though there is no tradition of formalized pro bono work in Norway, most legal firms provide some legal assistance with little or no payment to low-income clients. Historically, the NBA has organized free legal aid service in various locations in Norway, where local attorneys offer a free first consultation,³⁰ and approximately one-third of practicing attorneys in Norway have accepted legal aid clients.³¹ The majority of these attorneys work on a few cases per year.

The Supervisory Council for Legal Practice may grant applicants other than attorneys the right to render legal assistance, including matters both before the court and outside the court. However, this type of legal

²⁹ Legal Aid Act, ch. 3, § 16.

³⁰ STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, The Norwegian Bar Association, 318-19 (2010), <http://www.advokatenhjelperdeg.no/advokatvaktensok-advokatvaktensok/?sok=Advokatvaktensok> (last visited on September 4, 2015).

³¹ Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 11.



assistance is rarely utilized in place of classical legal assistance performed by authorized attorneys. As a result, private attorneys are the central providers of legal aid in Norway.³² To help facilitate attorney availability, the NBA has established short pro bono legal advice services at local bar associations. Depending on the location, the offices are staffed anywhere from once a month to once a week and receive drop-in clients for 30-minute consultations. The Oslo-based service reported that attorneys were able to solve approximately 70% of the problems they were presented with during the 30-minute consultation.³³ Additionally, there is a network of membership and volunteer organizations that also provide individuals with pro bono legal advice. Membership organizations for farmers, homeowners, tenants, car owners, taxpayers, consumers and unions offer liberal advice to their members and in some cases will even provide financing for private attorneys.³⁴ Volunteer organizations include student clinics and attorney's organizations. For example, student clinic intake centers are set up in prisons and immigrant reception camps, and a "street lawyer" program (*Gatejuristen*) seeks out drug and alcohol abusers to offer assistance.³⁵

Furthermore, individuals can receive free legal aid from Juss-Buss, a student run legal aid clinic based in Oslo. Juss-Buss is organized into four separate groups, each of which addresses different individuals' needs: INNVA works with cases related to the Immigration Act, FEG protects the rights of Norwegian prisoners and works with cases relating to tenancy, GOF works with cases related to family law and problems associated with debt, and SAF handles cases related to labor, pensions, and social welfare.

Current State of Pro Bono

As noted above, Norway's well developed and broad system of state-funded legal aid services limits the need for pro bono services, and therefore so are the opportunities. However, there are few barriers to pro bono work from a statutory perspective or under the Norwegian Code of Conduct for Lawyers; accordingly, there is room for Norwegian lawyers to continue to develop more initiatives to encourage participation in pro bono work outside of the state sponsored legal aid opportunities.

Laws and Regulations Impacting Pro Bono

In Norway, there are a few barriers affecting an attorney's ability to administer pro bono assistance, as well as a citizen's ability to obtain such aid. These barriers, however, are all related to practicing law in Norway in general, since the provision of pro bono services is unregulated altogether.

"Loser Pays" Statute

Norway has in place a "loser pays" statute where the loser must pay all of the costs and fees of the litigation. These costs include attorney's fees, court costs, and costs related to producing evidence (including compensation to witnesses).

Practice Restrictions on Foreign-Qualified Lawyer

Attorneys must have the right standing in order to be able to provide legal advice in cases that are likely to end up in the court system or are already in the courts. Specifically, the right standing means the attorney has obtained the necessary paperwork or certifications in order to practice legally within Norway.

Foreign attorneys practicing in countries outside the European Economic Area (the "EEA") that would like to set up a permanent practice in Norway must obtain a license from the Supervisory Council for Legal

³² Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011), at 22, confirmed by the Norwegian Civil Affairs Authority.

³³ Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 8, available at <http://www.advokatenhjelpdeg.no/advokatvaktten/> (last visited on September 4, 2015).

³⁴ Jon T. Johnsen, Might Norway Learn from Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland, (2009), at 7, 16.

³⁵ Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, (2011) at 21.



Practice, insurance for their practice, make a financial contribution to the Supervisory Council for Legal Practice and the Disciplinary Council for Attorneys, and provide a willingness declaration from a registered public accountant. However, these attorneys may only advise on matters related to foreign and international law, and therefore only provide pro bono services within these fields.³⁶

Foreign attorneys practicing within the EEA who wish to set up a permanent practice in Norway must submit notice to the Supervisory Council along with a completed application, obtain insurance (like every Norwegian attorney), and submit a certificate verifying attorney registration in their domiciliary state.³⁷ That attorney is then free to advise on matters in both foreign and international law as well as Norwegian law. Finally, foreign attorneys may also temporarily serve as “guest attorneys.” Guest attorneys are not required to obtain a license from the Supervisory Council, but may be required to submit documentation that certifies their ability to practice law abroad.³⁸ Guest attorneys are free to advise on matters of foreign, international and Norwegian law. To perform by oneself in court, all foreign attorneys must master the Norwegian language. If Norwegian language skills are not obtained by the foreign attorneys, the attorney must perform jointly with a Norwegian attorney, unless the court agrees to proceed otherwise.

Furthermore, though certain individuals without licenses (such as accountants and foreign attorneys) are permitted to provide legal services, this privilege may be revoked. Section 219 of the Courts of Justice Act grants the Lawyer Licensing Committee of the Norwegian Supervisory Council for Legal Practice the power to issue bans prohibiting anyone with a law degree, but no license, from carrying on legal aid practice if this individual is deemed unfit or unworthy to provide legal aid, or if this individual breaches certain provisions of the Courts of Justice Act. Similarly, the Council may revoke permits issued to foreign attorneys and other individuals whom were deemed to have sufficient qualifications to provide legal aid, if the Council believes that they are unfit or unworthy to provide legal aid, or breaches certain provisions of the Courts of Justice Act.

Socio-Cultural Attitudes towards Pro Bono or Participation in the Formal Legal System

Norwegians appear to have a generally positive view of pro bono and support the provision of free legal services. While some attorneys may be discouraged from participating in the current state-subsidized legal aid regime because of the low compensation provided by the government or the belief that many of those who marginally fail to fulfil the stringent financial requirements struggle to afford legal advice, there does not appear to be any socio-cultural barriers towards the provision of pro bono work outside of the legal aid system. In fact, a recent Supreme Court case³⁹ between the state of Norway and a recipient of pro bono legal services suggests that Norwegian courts are supportive of pro bono services and might be amenable to providing compensatory incentives in certain cases. In that case, the Supreme Court ruled in favour of the state of Norway, and therefore the majority did not address the question of whether or not the pro bono attorneys were entitled to have their legal costs covered by the other party. However, five judges ruled in favour of the party receiving pro bono services and, accordingly, addressed this question. The dissenting judges noted that the provision of pro bono services is done solely to benefit the recipient of the services and is not meant to benefit or harm the other party. Accordingly, these dissenting judges stated that the pro bono attorneys should be entitled to compensation for their legal costs if the case is won, regardless of the fact that the client does not have to pay the legal costs if the case is lost.

Pro Bono Resources

- NBA: <http://www.advokatforeningen.no/om/om-medlemskapet/english/the-norwegian-bar-association/> (last visited on September 4, 2015)

³⁶ Advokatforeningen, <http://www.advokatforeningen.no/om/om-medlemskapet/english/working-as-a-lawyer-in-norway/> (last visited on September 4, 2015).

³⁷ Regulations for Advocates, § 10-2.

³⁸ See <http://www.advokatforeningen.no/om/om-medlemskapet/english/working-as-a-lawyer-in-norway/> (last visited on September 4, 2015).

³⁹ Rt-2012-1985.



- Rights in Exile Program: <http://www.refugeelaidinformation.org/norway-pro-bono-directory> (last visited on September 4, 2015)
- Norwegian People's Aid⁴⁰: <http://www.npaid.org/> (last visited on September 4, 2015)
- Prospera Network: <http://prosperanetwork.org/no/> (last visited on September 4, 2015)
- Online attorney-matching program: <http://www.advokatenhjelperdeg.no/> (last visited on September 4, 2015)
- Student-run clinics⁴¹
- Juss-Buss: <http://foreninger.uio.no/jussbuss/english/about/> (last visited on September 4, 2015)
- Jussformidlingen : http://jussformidlingen.no/?page_id=89 (last visited on September 4, 2015)
- Jushjelpa i Midt-Norge: http://www.jushjelpa.no/publikasjoner/haandbok_eng.pdf (last visited on September 4, 2015); <http://www.jushjelpa.no/kontraktsrett.html> (last visited on September 4, 2015)

CONCLUSION

The provision of pro bono services in Norway is unregulated. Therefore, any legal practitioner is able to offer pro bono services as long as they have the necessary legal status. Foreign attorneys interested in pursuing legal aid or pro bono work in Norway should therefore first obtain the necessary legal status. It is also advisable to seek the assistance of the NBA before providing pro bono.

September 2015

Pro Bono Practices and Opportunities in Norway

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

⁴⁰ Norwegian People's Aid ("**NPA**") specializes in first aid and rescue services, as well as asylum and integration cases. The NPA works both domestically and internationally. NORWEGIAN PEOPLE'S FUND, available at <http://www.npaid.org/About-us> (last visited on September 4, 2015).

⁴¹ Juss-Buss specializes in cases involving the Immigration Act, Norwegian prisoners' rights, family law and debt cases, and labor, pensions and social welfare work, Jussformidlingen handles similar cases.