

A Brief Discussion on Lawyers' Reasonable Charges for Professional Ethics

-Taking Chongqing Pan Yabo's Lawsuit for Violation of Charges as an Example

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Abstract—A lawyer is a practitioner who obtains a lawyer's practice certificate according to law, accepts a commission or designation, and provides legal services to the client. The professional ethics of lawyers is the norm of behavior that should be observed in the process of lawyers' practice. The professional ethics and the professional skills of lawyers constitute the two major points of the sustainable development of the lawyer industry. However, according to the facts, violation of professional ethics, lack of dedication, and improper promotion of business methods occur frequently in the lawyer industry. From the official website of the Ministry of Justice, many lawyers have been subjected to administrative penalties for violating the charging regulations, and many of them have exposed their professional ethics problem. This article will analyze the existing lawsuits of lawyers in the professional ethics in accordance with the illegal fees charged by lawyer Pan Yabo in Chongqing, and put forward the author's suggestions based on the actual situation in China.

Keywords—Reasonable Charges; Violation of Charges; Professional Ethics; Lawyers

I. INTRODUCTION

In recent years, with the pursuit of people's improvement in material living standards, the number of cases in which the lawyer industry violates professional ethics has increased dramatically because of the pursuit of interests. Among them, the proportion of violations of charges is the highest. According to the survey, Beijing lawyers have been complained by the parties for nearly 200 cases due to irregular charges in the four years [1], accounting for 11.4% [1] of the total complaints. This article selects the 18-year case announced by the official website of the Ministry of Justice: Chongqing Huahua Law Firm lawyer Pan Yabo 2018 4 On the 16th of the month, he accepted the entrustment of Zhong, the son of the criminal suspect, to defend Zhong's case of seeking trouble. When Pan Yabo and the client Zhongmou signed the power of attorney and the agency contract, the contract was handwritten, without the official seal of the law firm, and the travel expenses were 5,000 yuan, and no bills were issued [2].

II. REASONABLE FEES ACCORDING TO LAW

A. Outline

A lawyer is a professional skill-based profession that receives a certain amount of compensation for providing legal services to the client. Therefore, reasonable fees for lawyers are an important part of the practice process. In general, lawyers' fees should be negotiated on an equal footing with the parties on the premise of complying with the requirements of the industry authorities and the bar associations. In this process, how to balance the relationship between government control and independent negotiation, as well as the conflict between the interests of lawyers and the interests of the parties, is crucial. At the same time, the charging process should also follow certain procedures.

B. Procedures to be followed by reasonable fees according to law

Many lawyers who violate professional ethics and violate fees and charges often do not follow the relevant regulations of the charging procedures and make articles on procedures to seek personal gain. Generally speaking, the procedures that should be followed in accordance with the lawful fees include four points: First, the right to reasonable charges should be attributed to the law firm rather than the lawyer himself. Many lawyers who are subject to administrative penalties receive a certain amount of interest by privately collecting the principal fee in the form of a blank power of attorney. Second, different provinces and municipalities directly under the jurisdiction can formulate local charging standards according to the actual situation of the region. Therefore, information such as the charging standards should be disclosed in accordance with the law, so that people can consult and know in advance. Third, the two parties should sign a fee contract or indicate the charge in the power of attorney to show the record. Fourth, the fee collection fee should be issued to the parties.

C. Basic charging methods

The charging standards vary from region to region and the charging methods vary. According to different billing methods, it can be divided into timing charges, piece rate charges and proportional charges. As the name implies, time-based charges are charged according to the time when the lawyer provides legal services, and all cases are applicable. This method of charging is relatively low compared to the other two. The proportional charge is charged according to a certain percentage of the subject matter of the property involved. This type of charge is only applicable to cases involving property relations. The piece rate charge is mainly applicable to cases that do not involve property relations.

According to whether the charge is related to the outcome of the case, it can be divided into fixed charges and risk agent charges. Risk agency fees are a type of charging method that links the two. Of course, even if the outcome of the case reaches the purpose agreed by the case, the law firm has a certain limit according to the risk agency fee. Article 13 (2) of the Measures for the Administration of Lawyer Service Charges stipulates: "The implementation of risk agency fees, the maximum charge amount shall not exceed the charge. The contract stipulates 30% of the target amount."

D. Prohibited fees

China's prohibition on the fees and charges of lawyers is stipulated in the Laws, Regulations and Regulations such as the Lawyers Law, the Law on the Administration of Lawyers, and the Measures for the Administration of Lawyer Service Charges. Including the corresponding provisions in the charging procedures, prohibiting private charges, prohibiting excessive charges, prohibiting certain cases of risk agent fees, prohibiting the use of legal services to seek the rights and interests of the parties, and prohibiting the handling of legal aid cases to charge recipients and other provisions.

III. ANALYZE THE PROBLEMS IN THIS CASE

In this case, the behavior of lawyer Pan Yabo clearly violated the professional ethics of lawyers and relevant legal provisions. First, when Pan Yabo and the client Zhongmou signed the power of attorney and the agency contract, the contract was handwritten and the official seal of the law firm was not added. This behavior first violated the provisions of Article 40, Paragraph 1, of the Law of the People's Republic of China on Lawyers. "The lawyer shall not engage in the following acts in his practice: (1) accepting the commission privately, collecting the fees, accepting the property or other interests of the client." It also violates the Ministry of Justice's Law on Punishment of Lawyers and Law Firms for Violations of Laws. The relevant provisions of the ten articles. Therefore, the Judicial Bureau of Rongchang District of Chongqing Municipality is in accordance with the provisions of Article 48 of the Law of the People's Republic of China on Lawyers: "Article 48 If a lawyer has one of the following acts, the judicial administrative department of the district people's government at the municipal or municipality directly under the Central Government. If a warning is given, a fine of less than 10,000 yuan may be imposed; if there is illegal income, the

illegal income shall be confiscated; if the circumstances are serious, the punishment for stopping the practice for three months or more and six months or less shall be given: (1) accepting the commission privately, collecting the fee, accepting The client's property or other interests." The police will be warned, fined 3,000 yuan, and confiscate the illegal income of 5,000 yuan.

In addition, the contract signed by the lawyer Pan Yabo and the client did not cover the official seal of the law firm. In the first part of this paper, the first article on the prohibition of reasonable fees according to law provides for the prohibition of private charges. In the procedure of reasonable fees according to law, the main body of the fee is the law firm. In this case, the contract signed by Mr. Pan did not cover the official seal of the law firm, and he also charged 5,000 yuan for travel expenses. This fee is owned by Pan Yabo and has not been submitted to Law firm.

IV. REASONS OF LAWYERS' ILLEGAL FEES IN THE ANALYSIS AND PRACTICE OF THIS CASE

A. Other performances that violate reasonable fees according to law

In this case, the lawyers appeared to be in violation of the regulations and charged privately. However, in practice, this is only one of the most important manifestations of the violation of the legal ethics of reasonable fees. Excess charges are also one of the most common forms of illegal charges. Relevant laws, regulations and rules clearly stipulate the scope of cases where government guidance prices and market adjustment prices are implemented separately. In practice, many lawyers will overcharge the government's guidance price and charge high service fees on the grounds that the parties lack professional legal knowledge. For example, lawyer Zhang Zhengpeng of Guangdong was sentenced to practice for 4 months and confiscate the illegal income of RMB 82,500 due to private overcharges; Guangdong Fan Chunlei was sentenced to three months of breach of fees and confiscation of illegal income of RMB 42,500. Even if the fees are charged according to the market-adjusted price standard, some lawyers will overcharge the excess fees, or in addition to the service fees, the parties will be required to pay the agency fees and other fees after the completion of the case.

Second, some lawyers will increase the source of the case by lowering the fees and compete viciously with other law firms. This kind of behavior is also contrary to professional ethics, and the case is handled at a price far below the industry standard. This kind of malicious behavior is not conducive to the benign competition and common development of the entire lawyer industry.

Third, many lawyers use the lack of legal expertise of the principals. In addition to collecting lawyers' fees for the lawyer services they provide, they also stipulate other charges such as handling fees and agency fees to deceive the parties. Or some parties even know the truth, but also want to please lawyers, and then promote lawyers to actively represent their own cases and choose to eat dumb.

B. Reasons

At present, the illegal charging of lawyers in China is reborn, which is extremely damaging to the judicial work and is not conducive to the stability and harmony of society. Taiwanese scholar Chen Changwen wrote in "Legal people, why don't you live up to expectations": "We should profoundly reflect on why the public has such negative comments on the lawyer industry? Which ones are derived from misunderstandings of lawyers, and What is it because we are not working hard enough?[3] What is the reason behind this increasingly chaotic situation?"

1) *Inadequate job security has brought great challenges to young lawyers.*

Since the reform and opening up, the resources of the lawyer industry have been monopolized by the state. The current development of the lawyer industry in China is not big enough, and the industry strength is not strong. Compared with other large industries, the competitiveness is weak, and this is often not conducive to the development of lawyers as individuals in the legal profession, especially young lawyers who are not involved or have insufficient experience. Because this is a profession with strong practical skills and strong professional skills, young lawyers do not have the skills and resources to compare with the old lawyers who have been in the industry for a certain period of time. The current lawyer industry presents a 28-year phenomenon[4]. Twenty percent of lawyers account for 80% of the lawyers' business, and 80% of lawyers compete fiercely for 20% of the market. [Wang Hui, "Research on Lawyer's Professional Ethics", Yunnan University of Finance and Economics, 2015.] Young lawyers belong to this 80% rank. In this fierce competition, often unable to make ends meet, coupled with the extremely imperfect security of lawyers, their basic life is a problem, so many choices change, of course, some have become an excellent one with their tenacious will and learning ability. Lawyers, but more are learning how to compromise with the dark side of society for life or benefit, how to exploit the legal loopholes, private charges, and opportunism, so it will breed many chaos such as illegal charges.

2) *Unbalanced development of the lawyer industry*

Due to the impact of economic globalization and the continuous deepening of reforms in China in recent years, the lawyer industry also needs to continue to innovate. However, the development of China's lawyer industry is very uneven, and the lawyer industry in the coastal areas is developing rapidly. The scale of the North-Guangzhou-Guangzhou law firm is also much larger than that of the inland areas. Excellent lawyers often gather in these places, plus globalization. Under the influence of the advanced knowledge of the West, the speed of innovation in the coastal areas is also relatively fast, so excellent lawyers are rushing to these areas. However, because lawyers work in these areas for a long time and develop their business, the progressive professional concept will also be affected by regional customs and so on. Moreover, the professional ethics in different regions will also be different, so the overall situation in China is very complicated.

3) *Misunderstanding of legal instrumentalism, commercialization of lawyers, and utilitarianism*

Berman once said: "The law must be believed, otherwise it will be ineffective." Only the public, especially the legal person, truly respects the law from the bottom of the heart, and the law will be effectively used in practice to maximize its use. The function that should be. In practice, however, many lawyers use the law as a tool, and as a means of making money themselves, legal instrumentalism makes these legal people a slave to the tool. Not only the legal person, but the public also has deep misunderstandings about the law. They simply do not respect the law. Instead, they think that the law is only a tool, a tool for class rule, a manifestation of the will of the state and the will of the ruling class. In such a context, it is obviously impossible to have a high-quality judiciary, and the behavior of lawyers using this wrong epistemological guidance in the application of the law must also be problematic. At the same time, because the professional attributes of lawyers are linked to certain interests, the problems of commercialization and utilitarianization of lawyers are becoming more and more serious.

4) *The lawyer industry gradually loses social credit, which promotes the phenomenon of illegal charges.*

The principle of good faith is the "emperor clause" of the current civil law, and it is also very important for other industries. Lawyers need to abide by the principle of honesty and credit, in order to gain the trust of the parties, to close the relationship with the parties, and to better handle the business. However, in practice, due to the lack of lawyers' own literacy and unfavorable supervision, lawyers infringement cases frequently occur. In the long run, the lawyer industry has gradually lost its public trust, which is not good for lawyers. The evaluation is not high, which has led to a certain degree. The lack of lawyers' sense of accomplishment and the gradual loss of strict faith have created a vicious circle.

5) *Inadequate legal supervision and imperfect reward and punishment mechanisms*

The current law on regulating the practice of lawyers in China is only the Law of the People's Republic of China on Lawyers. Although there are regulations, regulations and departmental rules of the lawyers association, their legal ranks are not enough, and the supervision is obviously lacking. the goal of. In contrast, the legislation of the Taiwan lawyer system is based on the Lawyers Law, and it also has the Rules for the Implementation of the Lawyers Law, the Lawyers Regulations, the Lawyers' Checking Measures, the Lawyers' Disciplinary Regulations, and the Lawyers' Registration. The Rules and the Laws of the Lawyers' Associations for the Supervision of Civilian Legal Assistance Matters are complete, the legislative system is complete, the content is extensive and complete, and the practicality is strong. It is an effective legal guarantee for the full implementation of legal work[5]. In contrast, the laws on the regulation of the lawyer industry in mainland China are not perfect, and the reward and punishment mechanism is not as good as the direct law of the "lawyers' reward and punishment system" in Taiwan. The reward and punishment mechanism in the mainland is the combination of judicial administrative punishment and lawyer association punishment. The yuan punishment mode, the distribution of punishment

power is unclear, and rewards and punishments are difficult to implement.

V. COUNTERMEASURES

In response to the above problems, suggestions for improvement are proposed. First of all, it is necessary to strengthen the education of professional ethics, because the behavior of illegal charges is largely due to insufficient professional ethics education, insufficient understanding of professional ethics norms, lack of understanding at the ideological level, and can be strengthened through the establishment of legal professional ethics courses or seminars for legal persons. education. Second, the state should adjust the management of lawyers, gradually improve the reward and punishment mechanism, and implement supervision. Third, in response to the problem of insufficient job security, the protection of lawyers with lower incomes should be strengthened in a targeted manner, and the rights of lawyers should be effectively guaranteed through the law. Fourth, improve the behavioral norms of lawyers' practice and regulate the specific behaviors in the practice of lawyers.

VI. CONCLUSION

The professional ethics of lawyers is of great significance for regulating the lawyer industry. However, the current phenomenon of illegal fees in the legal profession is endless, which has an adverse impact on the development of the entire legal profession and even the Chinese judicial system. Therefore, it is necessary to draw enough attention, analyze the problems existing in the current situation, and then give corresponding countermeasures for each problem.

REFERENCES

- [1] Article 2 of the Law of the People's Republic of China.
- [2] Ding Jianliang, "An Empirical Study of Beijing Lawyer's Disciplinary System", Master's Thesis of North China University of Technology, 2016(16).
- [3] The official website of the Ministry of Justice, http://www.moj.gov.cn/government_public/content/2018-12/03/1sl_43737.html.
- [4] Chen Changwen, Luo Deqiang, "Legal People: Why Don't You Be Evil-Reconstruction of Legal Morality and Ideals" Beijing: Law Press, 2007: 3-27.
- [5] Wang Hui, "Research on Lawyer's Professional Ethics", Yunnan University of Finance and Economics, 2015.
- [6] Sun Wenjun, "On the Construction of Lawyer's Professional Ethics System", Chinese Lawyer, 2017.11.