

Pro Bono Practices and Opportunities in Denmark

***Excerpt from: A Survey of Pro Bono Practices and
Opportunities in Selected Jurisdictions***

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There are not, as for instance in France and Germany, any civil codes in Denmark – rather specific civil law rules are found in specific legislation, or are established by practice. Cooperation between the Nordic countries has also played a key part in the development of Danish law.

I. *Legal Services and the Legal Profession in Denmark*

The provision of legal services in Denmark is governed by the Code of Conduct (*Advokatetiske regler*) for the Danish Bar and Law Society (*Advokatsamfundet*), which follows the provisions of the Code of Conduct for Lawyers in the European Union provided by the Council of Bars and Law Societies of the European Union (the “CCBE”). The General Council of the Danish Bar and Law Society supervises compliance with the Code of Conduct, and the Disciplinary Board (*Advokatnævnet*) hears complaints about attorneys pursuant to the provisions of the Administration of Justice Act. The Disciplinary Board is chaired by a Supreme Court Judge and the members are representatives of the public and the legal profession. The chairman and the vice-chairmen are appointed by the president of the Supreme Court. Complaints regarding fees charged by lawyers are handled by the local complaints boards of the 11 constituencies, the decisions of which may be appealed to the Disciplinary Board.

Attorneys in Denmark must at all times preserve absolute independence, comply with confidentiality rules, serve the client’s interests diligently, conscientiously and promptly, and cannot act in situations where a conflict of interest exists.

Attorneys’ fees must be “fair and reasonable” pursuant to Section 126(2) of the Administration of Justice Act, and attorneys must keep their clients informed of the basis for their fees, and respond promptly to any fee queries. In accordance with the CCBE Code of Conduct, attorneys cannot enter into a *pactum de quota litis*, or an arrangement in which the attorney’s fee is a share of whatever is to be recovered. Accordingly, payments for legal services rendered on a “no win no fee” basis are not permitted.

A. Legal Aid and Advice

In Denmark there are two types of legal aid: in court proceedings and outside court proceedings.

Free legal aid in court proceedings (*fri process*) covers court costs, an appointed attorney, costs of expert opinions and witnesses (if appropriate), and exemption from applying the legal fees of the opponent if the case is lost. Such legal aid for proceedings at the first instance level is granted upon application by the Civil Law Agency (*Civilstyrelsen*) under the Ministry of Justice. The decision can be appealed to the Board of Appeal Permission (*Procesbevillingsnævnet*), whose decision is final. Free legal aid for appeal proceedings is granted by the appeal court, whose decision can be appealed to the Supreme Court, subject to permittance by the Board of Appeal Permission. However, if a party submits a new claim under the appeal proceedings, legal aid for appeal proceedings is granted by the Civil Law Agency and the Board of Appeal Permission as the competent instance of recourse.

To be eligible for free legal aid in court proceedings, a party must be able to identify a reasonable cause for taking legal action. In addition, legal aid is only granted to a party whose annual gross income is below a certain limit (DKK 275,000 for unmarried individuals, DKK 350,000 for married couples, with an increase limited to DKK 48,000 per child under 18 years

ofage). Furthermore, an application for legal aid will only prove successful for a person who does not hold private legal costs insurance.

Legal aid is only exceptionally granted for libel actions, in cases arising from a party's independent commercial enterprises, and in cases concerning the enforcement of undisputed claims.

Legal advice outside court proceedings includes the legal aid clinics (mainly in Copenhagen and Aarhus – *Retshjaelpen*) where a person can receive verbal advice, and volunteer lawyers, will assist with basic written communications. The legal aid clinic in Copenhagen will assist persons with annual gross incomes below the limits that apply for legal aid in court proceedings (see above). By contrast, the legal aid clinic in Aarhus will assist all persons, regardless of domicile and levels of income.

The legal aid clinics in Copenhagen and Aarhus will not assist in matters arising out of a person's ongoing commercial enterprises, cases concerning the sale of real estate, or defendants in criminal cases. Moreover, in most towns (about 90 towns across Denmark), local lawyers have established free legal advisory clinics (*Advokatvagterne*), where people can receive verbal advice concerning ordinary legal matters, free of charge, and without regard to income.

Free legal advisory clinics are deemed to be "Step 1" in the legal aid regime established under Section 323(1) of the Administration of Justice Act, pursuant to which any person has the right to free legal aid. "Steps 2 and 3" are free access to basic oral counseling and counseling in regard to negotiation of disputes.

A number of lawyers are affiliated with each court, and are appointed in cases where free legal aid has been granted. A recipient of free legal aid can request the appointment of a specific lawyer to the case. Since a recent change in the Administration of Justice Act, trainee lawyers may count a proportion of their hours working for legal aid clinics towards their mandatory training commitments.

B. Ombudsman and Agencies

Citizens may also seek redress against acts of public authorities by having recourse to review by the Danish Ombudsman (*Folketingets Ombudsmand*). Access to Ombudsman review is free, and the review may result in a recommendation that legal aid be granted in a case under the auspices of the Ombudsman.

The Ombudsman was established by the Constitution of 1953, and the Parliamentary Ombudsman Act of 1996 articulates the Danish Ombudsman's activities. The Danish Parliament (*Folketinget*) elects the Ombudsman, and he may be freely dismissed by Parliament as well.

The Danish Ombudsman monitors the activities of national and municipal authorities. The Ombudsman can initiate actions based on complaints about the decisions of authorities or the treatment of citizens in specific cases. The Ombudsman can then decide himself whether he or she will conduct an investigation into that complaint. The Ombudsman can also initiate investigations himself, under circumstances when, although there may be no complaint from a citizen, the Ombudsman may identify a situation which requires closer investigation.

II. *Pro Bono Opportunities in Denmark*

The provision of *pro bono* legal services in Denmark is not as well-established or widespread, as is the case, for instance, in the United States and the United Kingdom.

The majority of *pro bono* work is done through the legal aid clinics described in 1.1 above. There has, however, been a decrease in the number of such cases in recent years, and apparently an increase in *pro bono* work for NGOs and similar organizations, as is more common in the United States and the United Kingdom. Sources indicate that this trend is particularly noticeable in the case of attorneys at large firms in larger cities.

In the Spring of 2010, the Minister of Justice established a study group to examine the reason for the decrease in legal aid cases. At present, there is a discussion at the level of the Bar as to whether the Danish Bar and Law Society should recommend or require lawyers and law firms, primarily, to provide free legal services through the existing system of legal aid clinics,¹ or law firms and lawyers should be free to direct their *pro bono* activities to NGOs and similar organizations. This debate is related to the future funding of the local Danish legal aid system and in particular, to the practical implementation of the right under Section 323(1) of the Administration of Justice Act, pursuant to which any person has the right to free legal aid.

III. *Conclusion*

In Denmark, legal aid and some limited free legal advice is available, but no established *pro bono* culture exists outside of (i) the encouragement of lawyers to contribute time to legal aid clinics; and (ii) some limited advice rendered to charitable organizations and other interest groups by certain law firms and some sole practitioners, whose practice area coincides with the focus of such organizations and groups.

The future of legal aid in Denmark is being discussed at the level of the Danish Bar and Law Society. The outcome of this debate is uncertain. We understand that there are views within the Danish Bar and Law Society that believe that *pro bono* activities should primarily be directed towards legal aid clinics and assistance to low income citizens. This may limit the development of *pro bono* activities of the type known in the United States and the United Kingdom.

¹

In a 2009 statement, the Danish Bar and Law Society expressed a preference for *pro bono* work being directed through the legal clinic work of individual attorneys. (*Advokatrådets retssikkerhedsprogram 2009*: “Advokatrådet er af den opfattelse, at såvel den enkelte advokat som professionen som sådan har pligt til at medvirke til at sikre borgernes adgang til juridisk rådgivning og hjælp til tvistløsning i såvel den offentlige forvaltning som i retsplejen. Advokaterne i Danmark løser denne opgave ved at give anonym og gratis retshjælp til tusindvis af mennesker om året i advokatvagterne. Hertil kommer, at mange enkeltadvokater vederlagsfrit giver en helt indledende rådgivning til personer, som søger deres råd.”)