

Pro Bono Practices and Opportunities in Sweden

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

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Prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**

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Sweden has never been forcibly subjected to the rule of a foreign power and therefore, “although deriving stimulation and ideas from other nations, has succeeded in carrying forward from its own distant past, the main thoughts, and basic tradition of its legal order.”¹ The legal systems in the Nordic countries are very similar and their governments have a strong tradition of cooperation in the larger areas of law, such as contract law, consumer protection law, and to a certain degree, judicial procedure. In light of this tradition, the rules of professional conduct for attorneys are very similar throughout the region.

I. Legal Services and the Legal Profession in Sweden

Under the Swedish Code of Judicial Procedure² (*Rättegångsbalken*), a lawyer is required to zealously perform any assignment given and in general to act honestly and in accordance with the rules governing good professional conduct (*Vägledande regler om god advokatsed*; hereinafter “Rules of Professional Conduct” or “Rules”). The Rules of Professional Conduct are a codification of the practices established by the board of the Swedish Bar Association (*Advokatsamfundet*) and the precedents of the Bar Association’s disciplinary committees (*Advokatsamfundets disciplinnämnd*). Although the Rules were originally intended to protect the public from unqualified and dishonest attorneys, they have over time become very important as guides for practicing attorneys.

Compensation to attorneys in Sweden is regulated by law and by the Rules of Professional Conduct. Under Section 25 of the Rules, an attorney “shall charge” clients a “reasonable fee” for work performed. The reasonableness of the fee is determined by the amount and quality of the work required, as well as the difficulty of the assignment and the type of claim involved. The main purpose of this rule is to avoid overcharging a client, not to prevent attorneys from working for free. In any case, there is no guidance on whether an attorney may waive the payment of the fee.

The Swedish Bar Association (together with all the national Bars and law societies of the European Union and the European Economic Area) is also a member of the Council of the Bars and Law Societies of the European Union (the “CCBE”). According to the Code of Conduct for Lawyers in the European Union issued by the CCBE, a lawyer shall not enter into a *pactum de quota litis*, an arrangement in which the lawyer’s fee is a share of whatever is to be recovered.³ Consequently, payments for legal services rendered pursuant to *de quota litis* and “no cure no pay” agreements are prohibited.

Sweden (together with the other Nordic countries), has a well-developed social welfare system, and legal services provided by the state are part of that system. Under the welfare system, State and municipal agencies provide general advice in matters relating both to private persons and public organizations. Most of the services provided by these agencies are available to *all* citizens or persons legally present in Sweden, not only to indigent individuals.

¹ Introduction to the *Swedish Code of Judicial Procedure*, part 24 of The American Series of Foreign Penal Codes, 1979, p. 2.

² Chapter 8, Section 4.

³ Code of Conduct for Lawyers in the European Union, Section 3.3.

A. Legal Aid and Advice

In Sweden, public legal advice and legal aid are provided by the State and are regulated by the Act of Legal Aid (*Rättshjälpslagen*) and the Ordinance Concerning Legal Aid (*Rättshjälpsförfordning*). The Swedish Constitution provides that foreign nationals sojourning in Sweden have the same rights as Swedish nationals to obtain legal aid.⁴

There are six statutory forms of public legal aid: (1) Advice (*Rådgivning*); (2) Public Defense Counsel (*Offentlig försvarare*), which is a distinct constitutional right and not considered “legal aid”; (3) Legal Aid (*Rättshjälp*); (4) Aggrieved Party Counsel (*Målsägandebiträde*); (5) Special Representatives for Children (*Särskild företrädare för barn*); and (6) Public Counsel (*Offentligt biträde*).

As in most European Union member states, the Public Defense Counsel is appointed by a court and must be made available if a person is suspected of committing a criminal offense. However, Public Defense Counsel is not provided for misdemeanor offenses.

The Legal Aid Authority (*Rättshjälpsmyndigheten*) is responsible for granting or refusing all legal aid with two exceptions: (1) family law matters, where the decision to grant legal aid is made by the lawyer consulted and (2) criminal proceedings, where the decision is made by the court. In order for aid to be granted, the Legal Aid Authority must find it reasonable for the State to contribute towards the cost of legal representation, and the applicant may not have an income exceeding approximately €27,750 per year. In addition to this income restriction, a person cannot obtain Legal Aid if a monetary value at issue is less than a certain amount.⁵ As a general rule, legal aid is also unavailable to individuals who possess insurance that covers legal representation. Currently, legal coverage is automatically included in almost all Swedish households, home, and vacation home insurance policies, and is typically included in car and boat policies as well. Legal aid is provided to private persons and estates of deceased individuals and consequently is not available to associations or other legal entities. Once it grants a request for aid, the Legal Aid Authority has no control over subsequent proceedings and it cannot recover any money from property retrieved in those proceedings, even where the victorious party was the recipient of legal aid funds.

Legal Aid is a provision of services for individuals unable to obtain legal assistance by any other means. In addition to criminal cases, Legal Aid cannot be granted in matters regarding taxes; customs duties; preparation of wills or marital property agreements; gift documents; estate inventories; or division of marital property because the State provides legal advice in such matters.

Legal advice is available to private persons, associations, or individuals given legal stay, is provided for a fixed low fee, and is limited to two hours. Advice usually covers matters such as the rules applicable to marriage or other forms of co-habitation; statutory rules in connection with divorce; inheritance and testamentary issues; and tenancy issues. While such advice is usually provided by lawyers at firms, this is not required under the Act of Legal Aid.

The Aggrieved Party Counsel protects the interests of crime victims. Its task is to provide support and assistance, which may include help in establishing the victim’s claim for damages

⁴ See Instrument of Government, Chapter 2, Section 22.

⁵ This amount was €2,150 in 2007.

related to a criminal case. According to the Act on Assistance to the Injured Person (*Lag om Målsägandebiträde*), these state-funded legal services are provided for victims of sexual offenses; assault; unlawful deprivation of liberty; robbery; or other offenses under the Penal Code (*Brottsbalken*) for which imprisonment may be imposed.

In cases where a guardian, or someone with whom the guardian has a close relationship, is suspected of an offense against a child, a *guardian ad litem* may be appointed by the court to protect the child's interests during the preliminary investigation and court proceedings. In accordance with the Act Regarding a *Guardian ad Litem* for a Child (*Lag om särskild företrädare för barn*) an attorney acting as a *guardian ad litem* is paid by the State, and the child does not bear any of the costs associated with the attorney's work.

Assistance by Public Counsel is a factor in cases regarding administrative courts or authorities. Under the Act Regarding Public Counsel (*Lag om offentligt biträde*), these attorneys are appointed by the agency administering the matter and paid for by the State. Typically, the recipients of this aid are individuals appealing administrative decisions or immigrants threatened with deportation.

B. Ombudsman and Agencies

The Swedish welfare system includes a distinct feature: the "Ombudsman." The Swedish government has established various Ombudsman offices where individuals can bring complaints against both private companies and state agencies. As with other government agencies, each Ombudsman office is independent and usually established to ensure compliance with specific laws or a general legal area. For example, the Equal Opportunities Ombudsman (*Jämställdhetsombudsmannen*) was established to ensure compliance with the Equal Opportunities Act (*Jämställdhetslagen*). The Children's Ombudsman (*Barnombudsmannen*) was established to monitor Sweden's implementation of the United Nations Convention on the Rights of the Child and to protect children's rights in general. The Ombudsman institution has also been adopted by some non-governmental organizations such as the Tenant's Association, where an aggrieved party may resolve its complaint against a landlord.

In addition to the various Ombudsman offices, the Swedish government has also established an agency empowered to settle disputes between consumers and vendors free of charge (*Allmänna reklamationsnämnden*). This agency covers disputes such as those arising from travel, purchases of household appliances, and services provided by banks and financial institutions. The agency does not have the authority of a court, but the recommendations it issues, though not binding on the parties, are usually followed. This remedy is an inexpensive option for aggrieved consumers. The agency's recommendations are considered important guidelines for vendors in their business conduct, and the agency also provides guidance to the courts as they interpret consumer protection laws.

II. *Pro Bono Opportunities in Sweden*

A distinguishing feature of the Swedish social model is its comprehensive range of publicly subsidized welfare services for everything from childcare to care of the elderly. With such a comprehensive system in place, there has been little need for lawyers to provide free legal services and consequently, there is no long tradition of providing *pro bono* services among commercial law firms.

In 1998, the Swedish Bar Association initiated the so-called *Advokatjouren* program, in which a person is afforded a fifteen minute meeting with a local lawyer. In this meeting, the lawyer identifies the legal issue and provides guidance on how to proceed.⁶ This service is free of charge and is intended to provide people who are ineligible for legal aid with an opportunity to see a lawyer. However, no legal advice is given during these meetings – only guidance on whether a legal issue exists and how the person should proceed. The program makes free advice available to individuals who otherwise would not seek help, but it also gives attorneys an opportunity to offer their services. The participation in *Advokatjouren* is voluntary for the lawyers. Although many practicing attorneys greeted the program with enthusiasm, participants mainly were lawyers from smaller law firms, usually practitioners in family law or related fields. The large commercial law firms have rarely made available their attorneys to this program.⁷

Nonetheless, *pro bono* work is gaining ground in Sweden even among the larger commercial law firms. However, in Sweden, it is more a question of sociopolitical commitment and image building rather than the intention to offer legal aid.

Hence, it is very common for Swedish law firms to provide services for the community in other ways. For example, some law firms help children with reading and studying, and some provide scholarships for talented students from immigrant families in order to promote more diversity in the field of law. Many law firms also act as sponsors for non-profit organizations, sports clubs or cultural events.

In 1998, a Swedish group of lawyers founded the non-profit organization “*Advokater utan Gränser*,” which administers several human rights projects all around the world. The organization is composed of lawyers with different backgrounds, but many of them are from the larger law firms.⁸

In the last few years some commercial law firms have also started to provide legal *pro bono* aid.⁹ This kind of *pro bono* work is certainly influenced by the practice in the U.S. and can also comprise ongoing advice in different areas, often corporate law for non-profit organizations, but can also cover advice in intellectual property, contracts or tax law.¹⁰

An impulse for this recent development might also have been the engagement of lawyers in Sweden’s largest legal *pro bono* project ever—a cooperation of lawyers offering legal aid for the victims of the Tsunami catastrophe in 2004 in Southeast Asia which affected Sweden very strongly. Immediately after the alarming dimensions of the catastrophe became publicly known (543 Swedish citizens died or were missing), the Swedish Bar Association decided to start a legal aid project to help the natural disaster’s victims and families. Law firms of all sizes participated in the project and spent many hours free of charge working on cases from many different fields of

⁶ See *Advokaten* 6/98, p. 16.

⁷ See *Advokaten* 9/99, p. 18.

⁸ See www.advokaterutanranser.se.

⁹ See *Svenska Dagbladet* on 3 august 2007; see also www.e24.se/bransch/bankfinans/artikel_47279.e24.

¹⁰ See www.delphi.se/?id=2255, www.mannheimerswartling.se/en/Career/Work-at-Mannheimer-Swartling/Pro-Bono/ and www.vinge.se/upload/broschyrrer/F%C3%B6retags%C3%B6vergripande/Vinge_business_review_2009_en.pdf.

law, such as foundation law; corporate law; family and estate law; and, to a great extent, insurance law.¹¹

III. *Conclusion*

In Sweden, legal advice and legal aid are largely provided by the state to all citizens as part of Sweden's comprehensive social welfare system. Although the underfunding of the welfare system suggests a gap between the supply and demand for *pro bono* legal services, experience with *Advokatjouren* and the fee requirement in the Rules of Professional Conduct has not yet promoted such a culture in Sweden. Swedish lawyers typically engage the community in other ways.

However, this might change in the future when more Swedish law firms discover that *pro bono* services are not only a question of humanity and responsibility but might also have positive effects on their public reputation. Some law firms have at least already established ongoing *pro bono* projects and will continue to do so.

¹¹ See *Sveriges Advokatsamfund Verksamhetsberättelse* 2005, p. 6/7.