

Code of Conduct of Russian Lawyers and Precluding Contingency Fees: A Comparative Study of Retainers with Law Firms

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Introduction

In the Russian Federation there is a framework for lawyers and their professional code under the Advokatura Act 2002 and the Professional Rules of Conduct 2003. The codes of conduct are stringent and they do not permit any conditional or contingency fee agreements. The emphasis is on legal privilege and certainty. By comparison the Model Rules of Professional Conduct framed by the American Bar Association set out the duty of good faith and due diligence for the attorney in the US. This has a particular impact in their fiduciary duty as the legal retainer may be governed by a contingency fee agreement. The Russian system does have any conditional free arrangement but there is potential in the commercial courts for lawyers to strike such agreements if the regulatory Bar Association is flexible. This paper considers the potential impact of such agreements by drawing on the example of the US and compares it with the centralised profession in Russia.

The civil procedure in the Russian Federation like its counterpart in the US places an emphasis on legal ethics and professional rules of conduct. The legal framework is still in development after the new Constitution of 1993 and the Bar Association is the regulated body that govern the profession. The lawyers are bound by legal privilege and ethics but the risk element in litigation is lacking and there are no contingency fee agreements allowed. This requires an analysis of the Russian framework and its potential for development by examining the reforms that can be furthered in Russia for the litigation lawyer to make agreements with the client that will depend on no win no fee basis. The Constitution of the Russian Federation of 1993 became the main legal basis for the introduction of the judicial reform. The Constitution inaugurated the Chapter "Judicial Power" according to which the state power in the Russian Federation should be exercised on the basis of its division into legislative, executive and judicial powers, and all these branches of power should be independent. The structure of the judicial system of the Russian Federation and the functions of its various parts are determined by the Constitution and federal constitutional laws (paragraph 3 Article 118 of the Constitution of the Russian Federation).

The judicial system of the Russian Federation consists of: - The Constitutional Court of the Russian Federation and constitutional courts of the republics and other subjects of the Russian Federation. The Constitutional Court of the Russian Federation considers cases relating to the compliance of the federal laws, normative acts of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation, constitutions of republics, charters and other normative acts of the subjects of Russian Federation with the Constitution of the Russian Federation (Article 125 of the Constitution); - four-tiered system of courts of general jurisdiction. Three-tiered system of the military courts is an integral part of it. The Supreme Court of the Russian Federation is the supreme judicial body of this branch three-level system of arbitration courts with the Higher Arbitration Court of the Russian Federation as a supreme judicial body competent to settle economic disputes and other cases considered by arbitration courts, exercise judicial supervision over their activities according to the federal law-envisaged procedural forms. The system of the arbitration courts comprises: arbitration courts of the subjects of the Russian Federation; courts of arbitration districts (10) and the Higher

Arbitration Court. The system of general jurisdiction courts has the following structure: The first tier comprises all general jurisdiction rayon (district) courts -city, inter-municipal and equal to them - acting on the territory of Russia. Middle tier of general jurisdiction courts includes the supreme courts of the republics, kray (regional), oblast (provincial) courts, city courts of Moscow and St.-Petersburg, courts of autonomous provinces and autonomous districts.

The Russian Federation can be distinguished from the US because it provides a contrast with its adoption of a civil law system. There is a twin court structure which is divided by the courts of general jurisdiction which adjudicate in civil matters and the arbitrazh courts that have jurisdiction over the commercial matters. The Russian Federation Civil Code that regulates civil procedure since 2002 is complemented by the Law of Advokatura that came into force at the same time and which creates a system of self-regulation consisting of federal "Chamber of Advocates" and subsidiary chambers in each of the branches in the country where officers are elected by membership.

The admission to the Advokatura and other matters of professional regulation are determined by the subject level chambers under the regulation promulgated by the federal chambers. The advocates must be members of both the federal and their regional chambers. In civil cases the litigation can be conducted by those who are admitted to the profession or by laymen and there is no requirement for a legal representative in a civil case to be a member of the Bar or to have a status of an attorney in general. There is a corresponding framework to the US Model Rules of Professional Conduct in the Russian Code of Professional Ethics of Lawyers. Article 1 states there are "mandatory rules of conduct in line with the moral criteria and traditions of the Bar, as well as international standards and rules of professional conduct, which all lawyers must comply with in the course of their professional activities. In executing their professional duties, lawyers may be guided by the rules and standards set forth in the Common Code of Conduct for European Lawyers insofar as such rules do not contravene the Law on Advocacy and the Bar or the provisions of this Code".

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