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Improvement of legal acts regulating representation on someone's behalf in civil proceedings

In modern society, the current century is associated with a new stage of development – the state's gaze is riveted to many areas, including the legal one, to which numerous changes and additions are being made. However, in addition to the intensive development of legal technologies, there are internal problems of regulating the sphere of professional legal assistance, including the conclusion of a contract between a representative and a representative, despite the active legal transformation of the activities of lawyers and legal consultants. Practitioners and theorists discuss the issues of paying well-deserved remuneration to a lawyer, a legal consultant under a contract for the provision of legal assistance. Particular attention is paid to a specific form of payment for legal services, called "success fee". In addition, the author of the study considers no less controversial the problem of ensuring professional secrecy, which requires additional regulation by the legislator, especially when traditional practices fade into the background, and society and business rely on IT technologies. Also, foreign legislative acts are studied to analyze the identified legal gaps, and based on this, a way to eliminate them is proposed to modernize the activities carried out by lawyers and legal consultants in the process of concluding a contract and providing legal assistance for representation in court.

Keywords: civil procedural law, civil proceedings, contractual representation, representation on behalf, legal assistance, judicial procedural representation, lawyer, legal consultant, contract of legal assistance, attorney-client privilege.

Introduction

Representatives of legal professions play an important role in the sustainable development of the economy, their services ensure justice for people in society and guarantee the functioning of vital functions in a democratic, social state [1] (Article 1 of the Constitution of the Republic of Kazakhstan). In addition, due to their existence, the rights of citizens to receive qualified legal assistance are realized, which is paramount and serves as the main purpose of the existence of these persons [1] (Article 13 of the Constitution of the Republic of Kazakhstan).

The work of a court representative begins from the very first meeting, when, based on information received from the client and other sources; the attorney begins to work on an effective defense strategy, which can be adjusted and improved in the future and can be changed depending on the circumstances that develop in the process of working on this case. Formally, a lawyer or legal consultant begins their professional activity from the moment of signing an agreement between them and the client. Based on this, it is impossible to overestimate the importance of the contract for the provision of legal assistance, which is the starting point in the upcoming activities, a guarantee of obtaining both: the specific result needed by the client and payment for the obligations that were accepted by the representative.

The current legal regulation of this type of contract for the provision of paid services is not enough. For example, there is no explanation of what criteria and in which civil cases should be guided when assigning the amount of remuneration due to a representative for their work [2]. Thus, it is possible to meet various price indicators – 10 000 tenge, 50 000 tenge, 300 000 tenge, etc. Often, due to the lack of understanding of the complexity of the case, the potential principal does not even know whether the representative's fee really corresponds to the request of the applicant, which was the reason for contacting a professional one. At the same time, the circumstances of each case are unique: the authorized representative, based on individual life, work and legal experience, builds a separate position, in this regard, it is impossible to foresee and clearly determine the cost of services.

Most representatives of the legal community believe that by working for additional remuneration, a powerful motivation is formed to get the result that the citizen or legal entity who applied expects, but in our

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country, there is a clear prohibition on remuneration depending on the outcome of the case. In this regard, it is advisable to study this issue more deeply and consider the possibility of making appropriate amendments to Article 47 of the Law of the Republic of Kazakhstan "On Advocacy and Legal Assistance".

The use of information technologies, to which we are forced to turn today, complicates the solution to the task of ensuring the secrecy entrusted to a professional representative. In this case, we are talking about an increase in the number of computer offenses from which no one is protected. Therefore, in the context of the urgency of the designated issue, it is necessary to take measures to attract specialists of the appropriate orientation.

Methods and materials

The methodological basis of the research was made up of general scientific methods of cognition, including both analysis and synthesis to decompose and combine the phenomenon under consideration into its component parts and into a single whole, induction and deduction – for the implementation of analytical reasoning from the general to the particular, analogy, which consists in the identity of the contract on legal assistance with other types of contract for the provision of services, and other methods. Along with general scientific methods of cognition, special legal methods were used, which made it possible to determine and clarify the special legal characteristics of the object of research. In particular, the formal legal method was used to establish definitions and to accurately follow the content of the conceptual and legal apparatus within the framework of the analysis; the comparative legal method was used to establish links with international practical and scientific embodiments of the studied problems in this institute of civil procedural law.

During the study, regulatory legal acts of the Republic of Kazakhstan and foreign countries regulating the activities of representatives were analyzed – the Constitution of the Republic of Kazakhstan, the Civil Procedure Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Advocacy and Legal Assistance", the Code of Professional Ethics of Lawyers of the Republic of Kazakhstan, the Rules of Lawyer Ethics of Ukraine, and the Code of Professional Ethics of a lawyer of the Russian Federation.

The scientific and theoretical provisions of the institute of representation in court are studied in the works of the following authors: D.A. Alekseeva, I.S. Tokmakov, M.Yu. Sharapov, A. Morozov, V.V. Momotov, A.N. Knyazev, D.V. Knyazev, Yu.I. Soloviev etc.

Results and Discussion

In accordance with Article 17 of the Law of the Republic of Kazakhstan dated July 5, 2018, No. 176-VI "On Advocacy and Legal Assistance", legal assistance is provided based on a written agreement on the provision of legal assistance between a person engaged in advocacy or a person engaged in the activities of a legal consultant and an individual or legal entity in need of such assistance [3].

A contract for the provision of legal assistance is a civil contract concluded in a simple written form between a representative and the represented, with the aim of providing legal assistance to the principal themselves or the person appointed by them. The contract that we are investigating is fully subject to the general norms of civil legislation unless otherwise provided by special norms of legislation on advocacy and legal assistance.

The provision of legal assistance without a written agreement is not provided for by law and may be regarded as a disciplinary offense or, in the worst case, may serve as an indirect confirmation of the dishonesty of a professional representative. If it does not contain or does not fully or incorrectly reflect the essential terms of the contract, then not only the principal but, above all, the representative himself is not legally protected [4].

Regarding the nature of the analyzed contract, discussions periodically flare up – some authors find signs of a contract of mandate, a contract agreement, while others find characteristics of a contract for the provision of paid services, a mixed contract, or even an unnamed contract. Indeed, many civil law contracts are similar in their content to each other, including a contract agreement and a contract for the provision of paid services, a contract of mandate, a commission contract, an agency contract, etc. However, these types of civil law contracts are independent; separate chapters of the Civil Code are devoted to their regulation. The same can be noted about the contract in question, due to the fact that the legislator singles it out as a separate type of civil law contract, within which only legal assistance can be carried out. Thus, it can be concluded that the contract for the provision of legal assistance is a mixed contract, including in its content the features of a contract for the provision of paid services, a contract of mandate etc.; it is also a separate independent type of civil contract. Unfortunately, this point of view has not been widely spread, preferring to refer to this

contract as one of the types of contract for the provision of paid services. This is motivated by the fact that legal services are intangible services, at the same time, having the ability to provide a material result, if it is provided for the preparation of relevant conclusions, statements, requests, etc.

It should be noted that the person providing legal assistance in the process of executing the client's order, often pursues the achievement of a certain intangible result of providing legal assistance, obtaining a certain benefit for the client (in general, not recognized as part of the material world by any science) (making a court decision on the award of property, the appointment of pensions or benefits).

I.S. Tokmakov explains that it is impossible to consider a specific result as a subject of legal assistance since the achievement of this result depends not only on the will and abilities of the lawyer; for example, the adjudication of a specific case is exclusively within the competence of the court. The author also agrees with A.V. Kligman's remark that the legal actions of a lawyer in the process of executing an assignment by himself do not create significant material and legal consequences [5; 25].

M.Yu. Sharapov believes that legal service is inseparable from the identity of the service provider themselves due to the fact that it is consumed by the customer in the process of providing it [6; 623] and refers to the opinion of A. Morozov: "trying to bring some clarity, courts often formulate the criterion in question differently: if there is no result, separable from the work process, it is a paid provision of services" [7].

The author agrees with those researchers who refute this point of view – persons providing legal assistance are not performers of a simple service. The legislator specifies in the Law of the Republic of Kazakhstan "On Advocacy and Legal Assistance" that these special entities provide legal assistance, which by its nature is not considered entrepreneurial. Moreover, lawyers are prohibited from engaging in entrepreneurial or other paid activities, except in some cases, otherwise, it may become grounds for suspension of the license [3].

The issue of remuneration for legal assistance seems to be perhaps the most difficult in the relationship between the representative and the represented. Discussion of this topic requires delicacy and has long caused a lot of controversies.

According to Paragraph 2 of Article 16 of the Code of Professional Ethics of a lawyer of the Russian Federation, the amount of the fee is determined by the agreement of the parties and may include the volume and complexity of the work, the length of time needed to perform it, the experience and qualifications of the lawyer, the timing, the degree of urgency of the work, and other circumstances [8].

Article 33 of the Rules of Lawyer Ethics of Ukraine contains a broader list of factors that should be taken into account when determining a reasonable fee:

1) the amount of time and work required for the proper execution of the task; the degree of complexity and novelty of legal issues related to the direct assignment; the need for experience for the successful implementation of the task;

2) the evidence that the obligations assumed will prevent the lawyer from accepting other obligations or that the presence of such obligations will complicate their fulfillment in the standard hourly mode;

3) the need for a business trip;

4) the importance of completing the task for the principal;

5) the role of the lawyer in achieving the hypothetical result desired by the client;

6) the positive result required by the represented person;

7) the special or additional requirements regarding the terms of execution of the order;

8) the nature and duration of the lawyer's professional relationship with the client;

9) the professional experience, scientific and theoretical training, reputation, and significant professional abilities of the representative [9].

Similar criteria are prescribed for lawyers who practice legal activity in the United States of America.

Under the provisions of the Code of Professional Ethics of Lawyers of the Republic of Kazakhstan, approved by the Second Republican Conference of Delegates of Bar Associations, the amount of payment for legal assistance provided by a lawyer and reimbursement of expenses related to defense and representation is determined by a written contract concluded in accordance with the procedure established by law on advocacy and legal assistance [10].

It can be seen that the current wording includes only the basic guidelines, which, on the one hand, has been successfully reflected in practice. Due to the lack of a single Code of Professional Ethics for Legal consultants, since each chamber develops and approves this document independently, it is difficult to exercise full control not only over the payment that is charged from the citizens or legal entities who applied but also over the activities of legal consultants in general.

The provisions of professional ethics need to establish a reasonable fee, which helps to strengthen the trust of that part of society that does not have the appropriate legal knowledge, and also, if there is an exact criterion, it will be possible to explain to the principal why the representative indicated this, and not another amount. Such details could favorably influence the choice in favor of a particular lawyer, if they have an advantage over another. In addition, the presence of concretization in the provision concerning payment can generally have a positive impact on the activity of persons who have just received a license to practice law or have passed certification to become a member of the Chamber of Legal Advisers. Thus, it can help them navigate their upcoming professional activities.

Article 47 of the Law "On Advocacy and Legal Assistance" establishes that contracts that make the amount of payment for legal assistance provided by lawyers dependent on the outcome of the case or the success of advocacy, or contracts under which the lawyer receives part of the amount awarded, are not allowed [3]. The legislator does not provide similar restriction, which is prescribed in the above-mentioned article, for legal consultants, and there is also no regulation regarding the payment of legal aid for these representatives of the legal profession.

The success fee is usually paid in addition to the main fee. Sometimes the initial payment is paid at the beginning of the case, and the success fee is paid upon completion of the commitment [11; 30].

This type of renumeration was prohibited for many years in the Russian Federation. However, the ban was eliminated in March 2020 by the introduction of relevant provisions in the Law "On lawyer activity and advocacy in the Russian Federation". Considering this experience adopted by Russia, such countries as Australia and Singapore removed a total ban on success fee relevantly recently. In some states, the success fee is limited, for example, twenty percent of the amount awarded by the court in Greece, twenty-five percent in Australia and the Czech Republic [12; 25]. The twelfth chapter of the Adli Muzaharet of the Republic of Turkey (Articles 176–181) also provides the possibility to negotiate with the client about the fee for success. At the same time, specific requirements must be complied: at least the minimum tariff for legal services established by law; no more than twenty percent of the amount of the claim [13; 19]. The largest percentage is collected in the USA, equal to one hundred percent of the base fee. The only limitation on the amount of remuneration depending on the outcome of the case in this country is paragraph "d" of Article 1.5 of the Code of Professional Ethics of a lawyer approved by the American Bar Association. In accordance with this regulatory legal act, it is prohibited to charge a "content fee" in cases of divorce, alimony recovery, as well as in criminal cases. Similar provisions are prescribed in the legislative acts of the United Kingdom [12; 25].

Thus, the above indicates that the legal order of foreign countries has come to a consensus on the analyzed issue: the fee for success is a sphere of private interests and should be determined by the mutual will of the parties to the contract for the provision of legal services [14; 51].

In the literature, there are both supporters and opponents of the existence of such a clause in the contract between the representative and the principal. Some of them are discussed below.

According to A.N. Knyazev, a lawyer, becoming a participant in a risky operation that only partially depends on the professionalism of this subject, and to a greater extent, depending on other circumstances, in fact, is engaged in entrepreneurial activity that is incompatible with their special human rights status [15; 100].

D.N. Azarov believes that the presence of a condition on the fee for success can negatively affect the relationship between the client and the lawyer. The principal, due to the connection of the representative's remuneration with the outcome of the trial, may begin to abuse this provision: if the case is not resolved in their favor, they may refuse to pay the fee both for the professional's time spent and for the work done.

A.G. Karpetov, supporting A.N. Knyazev, points out that a direct ban will lead to a violation of civil legislation, in particular, it will violate the most important principle of freedom of contract, according to which the parties independently establish the terms of the contract [16; 183].

H.M. Kritzer concluded that lawyers who work for the fee under study actually act as gatekeepers who sort out a significant number of potential clients on the grounds that their claims have no basis [17; 700; 18; 23].

The ban on remuneration in excess of the contract amount is an acute problem in the legal system of the Republic of Kazakhstan and remains one of the most controversial and discussed. Often, violation of this prohibition acts as a reason for clients to appeal to the disciplinary commission of the relevant bar association. It is possible that the categorical point of view of the legislator regarding the appointment of remuneration of a representative, depending on the successful outcome of the case, is connected with the fear of the possibility of abuse by the performers of their duties. In such cases, it is realistic that the representative will

seek to win the case at any cost, even resorting to illegal methods. Nevertheless, it has long been generally recognized that remuneration serves as one of the elements of the system of motivation and stimulation of work [19]. This method of calculation is beneficial to both parties: the representative is interested in providing the service in such a way that it best meets the interests of the person who applied for legal assistance.

The introduction of information technologies complicates the task of protecting the interests of citizens and the state: computer attacks on public and private information resources are increasingly carried out using the Internet. Since 2020, when the World Health Organization declared the COVID-19 outbreak an emergency of international importance, everyone had to switch to a new format of work, resorting to the exchange of information, documents, and other information through social networks. Mass access to remote work has made citizens and legal entities more vulnerable to security breaches on the Internet. It is believed that most resources maintain confidentiality, and they do not allow "leakage" of information, but such precedents have taken place. In these conditions, ensuring the confidentiality of the principal by the representative becomes a number of problematic issues that require detailed regulation.

The observance of professional secrecy is an absolute priority of the representative's activity; the period of secrecy is not limited in time. A lawyer or legal consultant is obliged to ensure the preservation of professional secrecy both during the provision of legal assistance and after the completion of the assumed obligations.

As mentioned earlier, a single regulatory act has not been developed for legal consultants, which could regulate in more detail their preservation of secrets that have become known within the framework of their professional activities. On this basis, they are limited anly by Article 77-2 of the Law "On Advocacy and Legal Assistance" and the Code of Professional Ethics, developed directly by the Chamber they joined. However, how much detail the chamber regulates the procedure for maintaining the confidentiality of the principal remains in question.

According to the Code of Professional Ethics of a Lawyer of the Republic of Kazakhstan, a lawyer cannot be relieved of the obligation to keep attorney's secrets by anyone other than the represented one, who expresses consent in writing in the presence of a lawyer in conditions that exclude influence on them from the representative and third parties.

The attorney-client privilege applies to:

1) the fact of concluding a contract with a lawyer;

2) the evidence and documents collected during the execution of the order;

3) the content of legal advice and documents intended for the principal;

4) the information about the principal, which became known to the attorney in the process of providing legal assistance or received by him from the principal;

5) the content of conversations with the client;

6) the legal proceedings in the case;

7) the terms of the agreement on the provision of legal assistance, including monetary settlements between the parties;

8) other information related to the provision of legal assistance [10].

The lawyer does not have the right to use for personal purposes the information received from the principal. However, it is difficult to reliably determine the line when the represented considers the disclosure of part of the information beneficial to themselves, if understanding some legal aspects may not be available to them.

To prevent unauthorized access by third parties to confidential information, representatives must take the necessary and sufficient measures to protect the confidential information entrusted to them by the principal. If paper documents can be hidden in a metal safe, then storing documents in a computer or other electronic device implies a special, individual order.

Information that constitutes a secret may be transmitted in unencrypted form and may accidentally (due to information illiteracy) or intentionally become available to third parties. As an example, we can consider the following situation when a representative received a letter with an advertising link containing some information. Let us say such a person received a message from a person offering to take advanced training courses, which is important and strictly regulated by law. Opening the link in the received email leads to the installation of malware on the computer. Programs penetrating into the device provide a third party with access to all files contained on the computer. Such actions can go unnoticed for a long time. By performing the above standard actions, the representative, without knowing it, violates both the terms of the contract that was concluded with the principal and the legislation.

To provide information support and protection against actions aimed at undermining confidence in the legal community, the Council of the Federal Chamber of Lawyers of the Russian Federation has developed Recommendations on Ensuring attorney-client Confidentiality and guarantees of attorney independence. The designated document contains the Appendix No. 2 entitled "Recommended practical measures for the protection of information constituting the subject of attorney-client privilege". This document includes useful and simple, but effective recommendations, for example, to avoid using a "speakerphone" during telephone conversations with a client [20; 53].

In addition to those items that are already included, other recommendations may be added. Their implementation would significantly reduce the likelihood of unauthorized access to electronic data, including encryption of electronic devices, enabling protection with a unique password (which does not contain personal information, is more than 10 characters long, includes uppercase and lowercase letters, as well as permissible special characters), etc.

The above recommendations are not difficult for young representatives of legal professions to use, but they also cannot know and observe these precautions, as well as lawyers and legal consultants of the older generation. On this basis, the Republican Bar Association and the Republican College of Legal Consultants, as organizations formed to represent and protect the interests of their members, coordinate their activities and ensure a high level of legal assistance, need to develop and approve uniform recommendations to ensure the secrecy that has become known within the framework of legal assistance. At the same time, it is important to have high-tech specialists involved in the development, who in the future could have their own department in these organizations to help ensure the preservation of professional secrecy.

Conclusions

To sum up, there are enough topical issues in the topic under discussion that require attention and regulation by the legislator.

The nature of the contract for the provision of legal assistance has been a subject of discussion for a long time, since the researchers find common features between the analyzed contract and other civil law contracts, such as the contract of mandate, the contract of commission, the contract of paid services, etc. The author of this article agrees with the opinion of researchers who refer to the studied contract as a mixed type – a contract that includes in its content the features of several contracts, however, at the same time, it is a separate independent type of civil contract regulated by a special regulatory legal act. A lawyer and a legal consultant provide legal assistance, not a service that could be of an entrepreneurial nature in its content. In addition, according to the Law "On Advocacy and Legal Assistance", lawyers are prohibited from engaging in entrepreneurial or other paid activities, otherwise, this may become grounds for suspension of the license.

The issue of the representative's fee, in particular the issue of remuneration, depending on the outcome of the case or the success of professional activity, is one of the most difficult in the relationship between the attorney and the principal.

The current professional ethics needs to add and specify a list of factors that should be taken into account when establishing a reasonable fee, as prescribed in the regulatory legal acts of the Russian Federation, Ukraine, and the USA. Such changes contribute to strengthening the trust of that part of society that does not have the relevant legal knowledge. The details could favorably influence the choice in favor of a particular lawyer if they have an advantage over another. Also, this innovation regarding payment can have a positive impact on the activities of young professionals, helping to orient themselves.

Article 47 of the Law "On Advocacy and Legal Assistance" establishes that contracts that make the amount of payment for legal assistance provided by lawyers dependent on the outcome of the case or the success of advocacy, or contracts under which the lawyer receives part of the amount awarded, are not allowed.

The categorical point of view of the legislator regarding the application of the success fee is reasonable. Thus, the civil process takes place according to the established principles, excluding the possible abuse of duties by representatives when they seek to achieve a positive result at any cost. However, at the same time, regardless of the type of court proceedings, a professional representative providing qualified legal assistance must ensure the most effective protection of the interests of their client, therefore the level of professionalism should not change depending on the amount and order of payment of remuneration, which can only serve as an additional incentive and motivation for providing high-quality legal assistance. The same point of view is held in the process of regulating the activities of a professional representative in the following countries: Greece, Australia, Turkey, the Czech Republic, the United States, the United Kingdom, Russian Federation.

On this basis, it is advisable to revise Article 47 of the Law "On Advocacy and Legal Assistance" and allow the parties to the contract for the provision of legal assistance to include a condition on the fee for success, if they agree on such remuneration.

In the age of rapidly developing digital technologies, there is an increasing need for modern approaches to the preservation of information that has become known within the framework of professional activity. Remote work has become part of everyday activities: court sessions using the ZOOM platform, WhatsApp, electronic filing of documents to government agencies, exchange of electronic documents by mail, etc. In such circumstances, ensuring the confidentiality of the data received from the principal by the representative becomes one of those issues that require close attention.

Republican collegiums, both lawyers and legal consultants, need to develop and approve uniform recommendations to ensure the secrecy that has become known to their members, since it is these organizations that protect their interests, coordinate their activities and, in general, are responsible for ensuring a high level of legal assistance. Due to the fact that such recommendations and their implementation imply the availability of special knowledge, specialists in the field of high technologies should be involved in the development process and in direct work with lawyers and legal consultants. The presence of a responsible department within the collegiums and chambers will allow one to promptly advise professional representatives in case of danger of data loss and help ensure the preservation of professional secrecy.

According to the author of the study, the implementation of the above proposals will have a positive impact on the professional activities of judicial representatives, which is important for the modernization of the legislation of our country.

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С. Жамбурбаева

Азаматтық процесте тапсырма бойынша өкілдікті реттейтін нормативтік-құқықтық актілерді жетілдіру

Қазіргі қоғамда ағымдағы ғасыр дамудың жаңа кезеңімен байланысты, яғни мемлекеттің көзқарасы көптеген салаларға, соның ішінде ондаған өзгерістер мен толықтыруларға ұшырайтын құқықтық салаға бағытталған. Алайда, құқықтық технологияларды қарқынды жетілдірумен қатар, адвокаттар мен заңгерлер кеңесшілері қызметінің белсенді құқықтық трансформациясына қарамастан, кәсіби заң көмегін көрсету саласын реттеудің ішкі проблемалары бар, оның ішіне өкіл мен сенім білдірушінің арасындағы келісім жасасу да кіреді. Тәжірибешілер мен теоретиктер заң көмегін көрсету туралы шарт бойынша адвокатқа, заң кеңесшісіне лайықты сыйақы төлеу мәселелерін талқылайды. «Табыс үшін төлем» деп аталатын заңды қызметтерге ақы төлеудің нақты түріне ерекше назар аударылған. Сонымен қатар, зерттеу авторы кәсіптік құпияны қамтамасыз ету мәселесін заң шығарушы қосымша реттеуді қажет еткенде, әсіресе дәстүрлі тәжірибелер екінші орынға түсіп, қоғам мен бизнес IT технологиясына сүйенген кезде даулы деп санайды. Осылайша, құқықтық олқылықтарды талдау мақсатында шетелдік заңнамалық актілер зерттелді және осы негізде келісімшарт жасасу және сотта өкілдік ету үшін заңгерлік көмек көрсету процесінде адвокаттар мен заң кеңесшілері жүзеге асыратын қызметті жаңарту үшін оларды жою әдісі ұсынылды.

Кілт сөздер: азаматтық іс жүргізу құқығы, азаматтық сот ісін жүргізу, шарттық өкілдік, тапсырма бойынша өкілдік, заң көмегі, сот-іс жүргізу өкілдігі, адвокат, заң консультанты, заң көмегін көрсету шарты, адвокаттық құпия.

С. Жамбурбаева

Совершенствование нормативно-правовых актов, регламентирующих представительство по поручению в гражданском процессе

В современном обществе нынешний век ассоциируется с новым этапом развития — взор государства прикован ко многим сферам, в том числе и к правовой, в которую вносятся многочисленные изменения и дополнения. Однако, помимо интенсивного совершенствования юридических технологий, существуют внутренние проблемы регулирования сферы профессиональной юридической помощи, в этом числе и заключение договора между представителем и представляемым, несмотря на активную правовую трансформацию деятельности адвокатов и юридических консультантов. Практики и теоретики обсуждают вопросы выплаты заслуженного вознаграждения адвокату, юридическому консультанту по договору об оказании юридической помощи. Особое внимание обращается на специфическую форму оплаты юридических услуг, именуемую «Гонорар за успех». Кроме того, автор исследования считает не менее спорным проблему обеспечения профессиональной тайны, которая требует дополнительного регулирования со стороны законодателя, особенно когда традиционные практики отходят на второй план, а общество и бизнес полагаются на IT-технологии. Также изучены зарубежные законодательные акты с целью анализа правовых пробелов, которые были выявлены, и на этом основании был предложен способ их устранения для модернизации деятельности, осуществляемой адвокатами и юридическими консультантами в процессе заключения договора и оказания юридической помощи по представительству в суде.

Ключевые слова: гражданское процессуальное право, гражданское судопроизводство, договорное представительство, представительство по поручению, юридическая помощь, судебно-процессуальное представительство, адвокат, юридический консультант, договор оказания юридической помощи, адвокатская тайна.

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