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PROVISION BY A LAWYER OF QUALIFIED LEGAL SERVICES IN CIVIL CASES AS A REPRESENTATIVE OF THE ATTORNEY

KARASSAYEVA Adiya Bagdatqyzy

master of Law, Senior Lecturer

Zhetysu University named after I. Zhansugurov

Taldykorgan, Republic of Kazakhstan

The article considers the legal aspects of the participation of lawyers in civil cases as a representative: the procedure and legal grounds for participation in the process the necessary documents and the level of education the issues of participation of a lawyer in court debates the conclusion of a representation contract and the specifics of issuing a power of attorney to conduct a case in the court of first instance. The main method of preparing this article is to analyze the law of the Republic of Kazakhstan «on advocacy and legal assistance» on issues of advocacy. Universal methods of scientific research were used, such as analysis, synthesis, induction, deduction, and the historical method. Some of the conclusions and results of the study were obtained using the official and legal method. The purpose of this article is to provide qualified legal services in civil cases as a representative of a lawyer – to reveal some of the problems of a lawyer when working with a client.

Key words: civil procedure, representation, lawyer, trial, court of first instance, evidentiary materials, legal norm, persons involved in the process.

Advocacy is carried out based on an agreement between a lawyer and a proxy. A lawyer shall participate in civil proceedings as a representative of an individual or legal entity based on a civil law contract authorizing him to provide legal assistance to himself or a person appointed by him. A lawyer representing the process may represent his client's interests in courts, all government agencies and public organizations, and law enforcement agencies. A lawyer participating in civil proceedings shall carry out his activity within the powers vested in him, in connection with which the concept of powers, their scope, and procedure for registration are of great practical importance.

Under paragraph 3 of Article 61 of the Code of Civil Procedure of the Republic of Kazakhstan, the powers of a lawyer to conduct a specific case, provided by the Law of the Republic of Kazakhstan «On Advocacy and Legal Assistance» are confirmed by a lawyer's certificate and a written statement of defense (representation). The power of attorney certifies the implementation of several procedural actions of the lawyer in civil proceedings. A power of attorney on behalf of a legal entity is issued on behalf of the head of the legal entity or a person authorized to issue such a power of attorney. A power of attorney issued on behalf of an organi-

zation shall be signed by the head of the organization or another person authorized to sign and the power of attorney shall be stamped by the organization. The fate of the representative's case is decided by how the representative participates in the trial. Let's mention the participation of a lawyer in various court proceedings. During the interrogation, the lawyer must listen and consider his witness properly.

The attentive attention of the lawyer to the testimony of the witness will also attract the attention of the judge. The lawyer must be sure that the judge has heard the witness's answers and that they have been recorded. The lawyer can repeat it for himself to focus on the most important answers. At the stage of preparation for the hearing of the case, the judge shall have the right to appoint an expert examination, taking into account the interests of the person involved in the case, if the presented evidence and case materials require it. In all cases where it is necessary to determine the mental state of the person at the time of committing a particular act in the circumstances of the case, it is necessary to appoint a forensic psychiatric examination. This is especially true of invalidating a transaction. The lawyer must prepare in advance the necessary questions to be resolved by the examination. He should also be aware that questions of a legal na-

ture (for example, legal capacity or incapacity of an individual) should not be asked of an expert, and questions should be asked in a specific area. To formulate these questions, you need:

1. Familiarity with the rules of law governing this type of legal relationship.

2. It is necessary to know that any question can be solved, that is, it will be answered.

A lawyer may, in the interests of his client, apply to the court for the appointment of an expert examination, the appointment of additional and repeated expert examinations by the provisions of civil procedure law. Since the procedural actions of court representatives are performed on behalf of the persons authorized by them, the scope of powers of the representative is determined by the procedural position of the principal (plaintiff, defendant, third party who does not file an independent claim). At the same time, the scope of powers of a court representative is determined by what the principal gives. Thus, the scope of powers of attorney depends on two factors: the scope of powers of the principal and what powers are delegated to the attorney by the principal. The powers of the representative are divided into general and special in content. General authority is a procedural action that any representative has the right to perform, regardless of whether it is specified in the power of attorney. These include: reviewing the case file, obtaining copies of the case file, objections, presentation of evidence, participation in the examination of evidence, and other actions related to the possibility of participation in the trial. Special powers are actions that can be performed only if specified in the power of attorney. One of such special powers is to initiate a civil case with a representative in court. A judge shall refuse to accept a claim if the claim is filed by a person who is not authorized to conduct the case [1].

Representation in court is permitted by procedural law in all civil courts and at all stages of civil proceedings. A lawyer must exercise all the rights provided by law, including the right to enter into a settlement agreement, by instructing the parties to consider a civil case in court. A lawyer may exercise these rights with representatives of other parties or with a person who is an interested counter-party. The responsibilities of a lawyer who has been instructed by a court to

conduct a civil case also include assisting the proxy in obtaining the necessary documents to prove his rights. Failure of a lawyer to perform these duties may result in disciplinary action. In the case of non-appearance of the parties, the consideration of the case will disrupt the proper conduct of the process. In the absence of the parties, the decision is often overturned by a court of the second instance. Therefore, the lawyer must know what to do in the absence of the parties or third parties, even if the law does not prohibit the consideration of the case in the absence of these persons, the consequences of the absence of the defendant, plaintiff, or third party, sometimes in the absence of witnesses. whether it can make the right decision, whether it can reveal the objective truth in the absence of any participant in the process – it is necessary to analyze them. Proper resolution of these issues by a lawyer is also necessary for his client. The lawyer must keep in mind that in the absence of the parties, the decision will not benefit the client, but will cause harm. But even the trustees do not pay much attention to it. They believe that the absence of any of the participants in the case will help them to resolve the case in their favor quickly, and eliminate the negative perceptions of the other party. The lawyer must explain to his client how wrong this notion is [2].

Representation on the assignment does not occur without the consent of the parties. The moral character of the legal profession is reflected in the consideration of public cases by the court of the first instance. The slightest deviation from the requirements of morality – a violation of court rules, rules of professional conduct, arrogance, reluctance – quickly attracts public attention, and damages the reputation of the bar and the reputation of the profession. That is why in a case where the case is open, the lawyer is required to be focused, enthusiastic, internal self-monitoring, and self-disciplined. The special significance of behavior in all stages of the proceedings in the first instance is reflected in its attitude to the assessment of factual and evidentiary materials, especially in the trial, the methods of research, and the order and timing of evidence. Judicial proceedings are a continuous stage of a properly conducted civil process, without which it is impossible to protect the legally protected interests and subjective rights of

institutions and citizens in court. Because the court representative is not his representative in the process participates in the process to satisfy the substantive legal interests of the employer, his legal interest in the proceedings is not material, but procedural. The procedural interest of a court representative means that, on behalf of the principal and in his interests, participating in the proceedings, he intends to achieve the following procedural goals – to make a decision on certain content, to terminate the proceedings, or leave the application without consideration [3].

The main stage of the civil process is the consideration of the case on the merits, the study of the evidence, the decision, and the definition of specific rights and obligations. Proper organization of it and consideration of each case following the laws of civil procedure is an important condition for making basic and legal decisions, crime prevention, and educating citizens in the spirit of strict observance of the law [4].

Relations arising from the contract of representation:

- civil law;
- civil procedure.

Civil legal relations between a lawyer-representative and a principal are formed based on a contract concluded with a legal consultant, bureau, or firm. Civil procedural relations are relations governed by the rules of procedural law with a lawyer who is a representative. Actions of the lawyer in court:

- rights and obligations of the parties, assistance in determining the specific circumstances of the case;
- make every effort to protect the legitimate interests and rights of the principal;
- to use all legal methods and approaches to substantiate its validity.

The head of the legal advice, the presidium of the collegium of advocates has the right to fully or partially exempt from payment for legal assistance provided by a lawyer, depending on the property status of the citizen. All rulings related to damages can be appealed or challenged individually [5]. Consideration of the case may be postponed at the request of the parties or the initiative of the court and in the absence of a lawyer or other representative of the parties at the hearing. Before sending a representative of the party to participate in the case, the court

checks his powers. Powers shall be formalized by an oral application of the principal or special power of attorney certified in the manner prescribed by law, which is included in the minutes of the court session. The following persons may not be representatives of the parties: 1. Minors under 18 years of age; 2. limited personal and public rights by a court decision; 3. wards; 4. persons expelled from the collegium of advocates; 5. Judges, members of courts, investigators, and prosecutors, except in cases when they are parents, adoptive parents, guardians, as well as a representative of the court or prosecutor's office. Witnesses, experts, translators, etc., if the court has the opportunity to continue the trial after resolving all issues related to the arrival of the prosecutor, the parties, third parties, and their persons. verifies the attendance, determines the reasons for the non-attendance of the absentee, and after hearing the conclusion of the prosecutor, the parties decide to hear the case or postpone it at this hearing [6].

Solving the problem of adding and dividing requirements is quite difficult. Following the APC of the RK, the court evaluates the evidence based on their internal convictions, based on a comprehensive, complete, and objective consideration in court. Therefore, the lawyer, arguing his position, contributes to the formation of judicial confidence. The main thing is that this influence is not harmful to the client, but useful to him. At this stage, the lawyer will have the opportunity to demonstrate his analytical talent, public speaking skills, and legal knowledge. The law does not provide for a mandatory structure of court speech. However, in practice, the structure of the court's statement is the justification of the actual situation of the case, the legal analysis of the evidence, and the expression of their views on the merits of the case. Judicial debate is an independent part of the case at the stage of consideration in court. The lawyer has two goals in the trial. First, to justify its legal position on the case; second, to convince the court that he is right. There are the following types of court speeches at civil hearings:

1. Speech of the civil plaintiff and the defendant.
2. Speech of the prosecutor and the lawyer in civil cases in the court of the first instance.
3. Speech of the prosecutor and the lawyer on

civil cases in the court of the second instance.

4. Speeches of representatives of public organizations and labor collectives on civil cases.

5. Replica as a special form of the word court. The words of the prosecutor and the lawyer have a special place in the court debate. We consider only the words of lawyers. Lawyers often say that judges do not listen to them in court. The established linguistic structure and clear composition of the text of the word help to draw the attention of the court, to increase the effectiveness of the psychological effect of the word. The basis of the integrity of speech in court is the logic of the main idea structure and subject-structural content. For all other public words, the court word is divided into three parts:

1. Introduction.

2. Basic.

3. Conclusion. Enthusiasm for the speech of the judge, the fact that the speaker established contact with the judiciary, etc. often depends. The introductory part is defined by the meaning of the word and is the basis for the study of the subsequent circumstances of the case, including issues that need to be addressed [7].

Trying to convince judges and maximizing the emotions and intelligence of citizens sitting in court requires knowledge of complex language tools. The latter would have affected the logical connection and the semantic connection of the word. An important means of logical connection between individual words and compositional parts are special tools that refer to the next development of thought, contradictory relationships, cause-and-effect relationships, the transition from one idea to another, conclusion, and summary [8].

The main task of the court debate is to prove its legal position, to refute the position of the other party based on the evidence studied and collected in court, and the effective use of legal materials. Opposition lawyers have some peculiarities. Objections may be as follows: A. Denial of the plaintiff's claim by proving any, but not all, facts; A. Criticism of the evidence that forms the position of the opponent; B. Substantiation of the counterparty's claims, etc. The instructions apply to representatives of both parties. After all the participants have spoken, they speak again according to what was said. The last word always belongs to the defendant and his

representative. It is not necessary to participate in the last word, ie the cue. In the course of the case, the lawyer has the right to decide from the last word whether the result is meaningful. Judicial litigation determines the truth in the event of a collision of two opposing functions, a dispute, an argument, an argument, each case is examined, and each piece of evidence is examined in terms of defense and accusation. The word court has a special place here [9].

Judicial speech is always the result of a creative process, which reflects the individuality of the author. By listening to two lawyers on the same case, you can see that they are different, even if they have the same legal position. Participation in court proceedings is one of the most important responsibilities of a lawyer in the court of the first instance. The court concludes the hearing on the merits of the case, in which the lawyer summarizes the merits of the case, gives a clear opinion on the facts, gives an assessment of the evidence examined by the court, the legal norm applicable to the dispute, the validity of the claim [10].

The results of the examination of the evidence and the study of the circumstances of the case are stated in the trial. Participants in the case share their views on the circumstances of the case and on what evidence, what arguments were correct, what circumstances were not supported by evidence, what law should have been applied, what is the content of the disputed legal relationship, and how to resolve the case? The procedure for speaking in court is strictly regulated by law. Conclusion: Taking into account the principle that «human rights are of the highest value», the authors of the article consider this institution of civil procedure as one of the most important in the civil process. It is this institution that promotes justice in civil cases and restores violated human rights. The institution of a lawyer's participation in court in civil cases is one of the most important institutions in civil proceedings, which contributes to the proper resolution of the case, and the restoration of violated human and civil rights. A representative lawyer is a professional lawyer who has sufficient knowledge and experience, who is responsible for the quality, timeliness, and efficiency of his procedural activities, and who exercises the constitutional right of a person to judicial protection and qualified legal assistance.

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ОКАЗАНИЕ АДВОКАТОМ КВАЛИФИЦИРОВАННОЙ ЮРИДИЧЕСКОЙ ПОМОЩИ ПО ГРАЖДАНСКИМ ДЕЛАМ В КАЧЕСТВЕ ПРЕДСТАВИТЕЛЯ ДОВЕРИТЕЛЯ

КАРАСАЕВА Адия Багдаткызы

магистр юридических наук, преподаватель-лектор
Жетысуский университет им. И. Жансугурова
г. Талдыкорган, Республика Казахстан

В статье рассмотрены правовые аспекты участия адвокатов в гражданских делах в качестве представителя: порядок и правовые основания участия в процессе необходимые документы и уровень образования вопросы участия адвоката в судебных прениях заключение договора представительства и особенности выдачи доверенность для ведения дела в суде первой инстанции. Основным методом при подготовке настоящей статьи является анализ Закона Республики Казахстан «Об адвокатской деятельности и правовой помощи» по вопросам адвокатской деятельности. Использовались такие универсальные методы научного исследования, как анализ, синтез, индукция, дедукция и исторический метод. Некоторые выводы и результаты исследования были получены с использованием официально-правового метода. Целью данной статьи является раскрытие квалифицированной юридической службы по гражданским делам как представителя доверителя-некоторых проблем адвоката при работе с клиентом.

Ключевые слова: гражданский процесс, представительство, адвокат, судебный процесс, суд первой инстанции, доказательственные материалы, правовая норма, лица, участвующие в процессе.