

Taking Measures to Raise the Quality of Legal Aid Lawyers (Taiwan)

By PING-CHENG LO
Esq.

I. Introduction: Scope and Methods of Investigation

1.1 The quality of legal aid lawyers is correlated with the degree of success of the legal aid service they provide. Given that legal aid is considered a basic human right, it is necessary not only to establish a sound “system guarantee” to properly implement and operate it, but also to ensure and improve the quality and effectiveness of such service under limited resources and conditions, with the aim of complying with international conventions, United Nations principles, and other standards relating to requirements for lawyer quality, so as to realize the goal of legal aid as a human right of excellent quality.

1.2 Taiwan is not a member of the United Nations, nor is it a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the International Covenant on Civil and Political Rights (ICCPR). But based on Taiwan’s obligations as a member of the international community and on the constitutional value of safeguarding human rights, the Legislative Yuan, on March 31, 2009, ratified and enacted this law to adopt the ICESCR and the ICCPR as the “law of the land” and give these two covenants an official position in law. Moreover, provisions in the UN’s Basic Principles on the Role of Lawyers and in Recommendation R(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer regarding legal education, pre-job and on-the-job training, and discipline system for lawyers are to be applied. Regarding general standards for ensuring lawyer quality, before implementing the ICESCR and ICCPR in Taiwan, it is necessary for an appropriately sound system governing the legal profession and ethics standards for lawyers to be put in place as an incentive to lawyers to meet basic requirements for service quality. And the issue of how to further improves the quality of legal aid lawyers and their effectiveness in handling cases is an important one in the continuing implementation of the legal aid system.

1.3 In Taiwan, there are two categories of lawyers taking part in legal aid cases.

The first category consists of staff lawyers working in the Legal Aid Foundation (henceforth called “the Foundation”); the second category is private lawyers. A total of 18 positions are budgeted in the former category (currently only 14 are actually serving), while those belonging to the latter (called “legal aid lawyers” in this paper) total 2,928 as of August 2014; this is about one third of the total number of lawyers in Taiwan. There is a considerable gap between these two figures. The quality of the staff lawyers is ensured by the Foundation’s overall management system, and they lie outside the scope of this paper. This paper primarily addresses the service quality of legal aid lawyers.

- 1.4 The relationship between Taiwan’s legal aid lawyers and the Foundation is not on a contract basis (as in the UK); instead, cases are assigned on a case-by-case basis via the Foundation’s “case assignment system.” The Foundation cannot and need not apply a bureaucratic management system like that of a large law firm to manage a nearly 3,000-strong force of legal aid lawyers; as such, there are specific strategic ideas and methods regarding how to boost the service quality of legal aid lawyers, and we will introduce Taiwan’s experience in this respect through empirical surveys and exposition on historical development.

II. Prior controls and entry mechanisms

2.1 Limitations on qualifications of legal aid lawyers

The Foundation’s rules, in principle, require a lawyer to have at least two years of professional experience to serve as a legal aid lawyer. Exceptions are made for a few types of cases, such as consumer debt settlement cases. For example, in 2011, legal aid lawyers with less than two years of experience accounted for 2.62% of the total; 18.6% had two to five years of experience; and 78.02% had six or more years of experience. It can be said that most legal aid lawyers are professionals with considerable experience.

2.2 Management of case assignments

In 2012, the Foundation revised particular case assignment rules in order to conduct fair case assignments and ensure case quality, clearly defining an upper limit of 24 cases annually that each legal aid lawyer can accept, in principle (such limit to be annulled with the approval of the Board of Directors in rural areas with fewer legal aid lawyers), to prevent excessive

caseloads from affecting quality of case work. And for the same reason, when a legal aid lawyer has accumulated 20 unfinished legal aid cases, case assignment shall be halted temporarily.

2.3 Legal aid lawyer specialization

2.3.1 On March 15, 2014, the Taiwan Bar Association (TBA) passed the Regulations Governing the Conferral of Professional Lawyer Licenses, planning to first establish a conferral system for granting professional lawyer licenses for seven categories: real estate law, family law, labor law, construction and engineering law, tax law, financial law, and intellectual property law. Because this new system has been ratified only recently, there are as yet no practicing lawyers who have obtained their professional lawyer licenses per these regulations.

2.3.2 Given the short time since the TBA passed the aforementioned regulations and the resulting lack of practicing lawyers who have obtained their lawyer licenses through this means, and given the nature of legal aid cases and their requirements, the Foundation's goals for formulating regulations are somewhat different from those of the TBA. As such, the Foundation was eager to establish a specialized system for legal aid lawyers. On September 26, 2014, the Foundation's Board of Directors passed the Specialty Case Assignment Pilot Program, first designating labor, family, and consumer debt settlement cases for specialty case assignments. Those who meet the qualifications according to these regulations shall apply to become specialty case assignment lawyers, and those specialty case assignment lawyers who are deemed by the Lawyer Review Committee to provide high quality case work may have increased numbers of cases assigned if they wish, unrestricted by the aforementioned limit of 24 cases a year. This two-year pilot program is set to begin on March 1, 2015.

2.4 On-the-job training:

In addition to the on-the-job training of lawyers conducted by the TBA, the Foundation or any of 21 branch offices shall independently or in conjunction with other NGOs carry out on-the-job training for lawyers annually. These training sessions, symposiums and seminars in areas such as

capital punishment defense, indigenous peoples' cases, debt settlement and ICESCR-related cases will be provided by experts, in order to elevate the professional quality of legal aid lawyers. Some categories (such as debt settlement cases) will be designated as propriety case assignments for on-the-job training, in order to encourage legal aid lawyers to continue studying while on the job.

III. Posterior controls and exiting mechanisms

3.1 Regular auditing to monitor case progress

The Foundation employs specialized software to monitor the progress of cases assigned to legal aid lawyers. If a legal aid lawyer has not claimed advance payment beyond two months following the case assignment, a though investigation will be made regarding the case to better understand the progress of the case handling.

3.2 Reporting concluded cases

When reporting concluded cases, legal aid lawyers shall provide written judgments and other documents involved in concluding the case as well as legal briefs and other documents involved in the case work, so that data on the quality of the case work may be compiled.

3.3 Complaints system

According to the Foundation's appeals processing rules, investigations of a legal aid lawyer may be initiated at any time in the event of a complaint. If it is determined that there has indeed been a violation of regulations, disciplinary action shall be applied forthwith (for example: advisement, verbal warning, written warning, or cessation of case assignment). In serious circumstances, the head of the chapter refer the case to the Foundation's Lawyer Review Committee for review (detailed below).

3.4 Lawyer review system

3.4.1 In order to elevate the service quality of legal aid lawyers, the Foundation passed and enacted a legal aid lawyer evaluation system on December 22, 2006. After five revisions, the Directions for Conducting Legal Aid Lawyer Reviews took effect; thus far it has been in place almost eight years.

3.4.2 General survey

Based on the aforementioned rules, the Foundation shall carry out surveys to rate the degree of satisfaction of the following three parties: 1) the legal aid recipient(s); 2) the presiding judge and prosecutor of the legal aid case; and 3) case referral groups. These will be used to rate the professionalism, diligence, and attitude of legal aid lawyers. The first telephone survey, carried out in 2007, successfully interviewed 3,228 legal aid recipients, and the average satisfaction rate for legal aid lawyers was 77.3%. In the second telephone survey, in 2009, the sample size was too low, so no data was available regarding satisfaction rates. In the third telephone survey, in 2012, of 1,783 successful responses, the average satisfaction rate was 86.37%.

Besides providing average satisfaction rates for legal aid lawyers, the results of these three surveys also provided information identifying outstanding lawyers and subpar lawyers according to relevant standards. The first survey identified 12 subpar lawyers, the second identified 31, and the third evaluation is still underway. To date, 8 subpar lawyers have been referred to the Lawyer Review Committee for evaluation. As a result of these reviews, 17 lawyers have been barred from legal aid work, 14 have had their case assignments halted for a set time, and 8 have had their caseloads reduced for a set time. 12 letters have been issued asking lawyers to improve the quality of their legal aid work, and 1 objection has been denied. On top of this, the number of lawyers referred to the Lawyer Discipline Committee totals 16.

3.4.3 Diversified lawyer evaluation channels

Lawyer evaluation methods to control the service quality of legal aid lawyers must be multipronged for there to be effective results. Besides evaluating lawyers through the aforementioned two channels (investigating case complaints and conducting a general survey), the Foundation this year (2014) received legal aid lawyer review data from the Judicial Yuan conducted between 2012 and 2013 by judges, regarding 3,274 criminal cases and 3,097 civil cases (total 6,371), as well evaluations of 71 criminal cases and 49 civil cases, for a total of

120 cases, carried out January through August, 2014. The Foundation will compile a list of “negative coded” legal aid lawyers, categorize them, and then through each of its branches conduct surveys and reports on results of case work, with the authority to launch inquiries into complaints. This innovative lawyer evaluation channel is conducted on a case-by-case basis on legal aid lawyers by special judges, and is compared to the already-compiled survey results from the legal aid recipients. The judges’ opinions on the case evaluations can provide a more accurate quantitative analysis. The results are still being awaited.

3.4.4 Deficiencies in the lawyer evaluation system

A lawyer evaluation system with overly strict control or which lays too much emphasis on evaluation can create anxiety among legal aid lawyer and cause them to turn down cases; moreover, the amount of human and physical resources expended in such a system are enormous. Regarding the efficiency of the Lawyer Review Committee in conducting such examinations, it has to deal with nearly 3,000 legal aid lawyers, and the means available for management are severely restricted (i.e., there is a lack of both carrots and sticks); as such, it is very difficult to effectively oversee the case work quality of each legal aid case. This is one of the reasons why the Foundation is eager to turn toward contract-based legal aid lawyers.

IV. Conclusion: quality, a perennial problem

No matter which kind of legal aid lawyer system is adopted, there will be different quality control problems. As to how to form a feasible strategy to address the issue under limited resources and conditions, different countries offer different thoughts and approaches. This is a perennial problem.

It must be said that the amount that legal aid lawyers are paid definitely affects the quality of their service. It is hard to attain high quality at low cost; after all, by the very nature of legal aid cases, it is difficult to completely apply the “rules of the market” to enhance their quality. Based on their mission to protect the vulnerable and fight for social justice, lawyers, in contrast, are a prime example of the saying, “You can’t have your cake and eat it too.” But by observing the reality of human

nature, there is indeed the concern that unreasonably low remuneration or rigid, pre-set fee calculation standards will damage and diminish the average quality of legal aid lawyers. To safeguard this basic human right effectively, it is necessary to apply more flexible and diverse strategies (reasonable adjustments to legal aid lawyer fees, different system of remuneration for huge cases, instilling a greater sense of honor among lawyers, etc.) to cater to different trends.