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## МАЙБУТНЄ УКРАЇНСЬКОЇ АДВОКАТУРИ: ПРОБЛЕМИ ТА ПЕРСПЕКТИВИ

### Анотація

У статті досліджено проблеми та перспективи реформи адвокатури в Україні. Автор показує, що конкуренція та ринок, діяльність юридичних фірм зобов'язують адвокатів з'єднатися навколо ідеї зберегання традицій адвокатури, її цінностей та фундаментальних принципів. Монополія адвокатури на представництво та захист у судах та вдосконалення самоврядування є напрямками реалізації цього колективного завдання. Провідна роль у процесі реформ належить Національній асоціації адвокатів України як професійній організації, яка об'єднує адвокатів. Досліджено значення реформи адвокатури та її відповідність міжнародним стандартам адвокатської професії.

**Ключові слова:** адвокатура, адвокат, асоціація адвокатів, професія адвоката, адвокатська діяльність.

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## БУДУЩЕЕ УКРАИНСКОГО АДВОКАТУРЫ: ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ

### Аннотация

В статье исследованы проблемы и перспективы реформы адвокатуры в Украине. Автор показывает, что конкуренция и рынок, деятельность юридических фирм обязывают адвокатов объединиться вокруг идеи сохранения традиций адвокатуры, ее ценностей и фундаментальных принципов. Монополия адвокатуры на представительство и защиту в судах и совершенствование самоуправления являются направлениями реализации этой коллективной задачи. Ведущая роль в процессе реформ принадлежит Национальной ассоциации адвокатов Украины как профессиональной организации, которая объединяет адвокатов. Исследовано значение реформы адвокатуры и ее соответствие международным стандартам.

**Ключевые слова:** адвокатура, адвокат, ассоциация адвокатов, профессия адвоката, адвокатская деятельность.

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## PERSONAL AND MORAL-ETHICAL QUALITIES AS ONE OF THE MAIN REQUIREMENTS FOR THE CANDIDATE ADVOCATES

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The article is devoted to the research and analysis of law, which includes the requirements for becoming an advocate and advocacy. Main attention is drawn to the fact that the selection of candidates advocates should be carried out not only by the criterion of theoretical knowledge and practical skills, but also on the personal and moral and ethical qualities, since all these features form a complete identity of the candidate, and create conditions for higher status of an advocate. The proposals for legal consolidation of professional and personal and moral and ethical requirements for applicants to lawyers are substantiated.

**Keywords:** acquiring the right to advocacy, requirements for acquiring the status of advocate, advocate's ethics, moral and ethical requirements.

**Formulation of the problem.** High morality and moral culture have a special importance for the advocate, because this profession imposes to society the ideas of such high moral and legal principles as the rule of law, justice, and humanity, impartiality, without which it is impossible to meet the challenges of building a democratic and humane society. The legislation on advocacy and legal practice, and advocacy in a whole must meet ethical requirements.

In continuation of this position it is necessary to refer to the personal and moral and ethical requirements for the person who wishes to practice advocacy.

**Condition of research.** The problems of organization and advocate's activity, implementing of ethical foundations of advocate's activity have been the subject of research of scientists and lawyers for a long time. In particular, the diverse as-

pects of the subject contained in scientific works of N. M. Bakayanova, E. V. Vaskovskyi, T. V. Varfolomeeva, Yu. M. Groshevyi, Ya. P. Zeykan, A. F. Koni, P. V. Makalynskiy, O. D. Svyatotskiy etc. Not reducing the theoretical significance of these scientific works, unfortunately, we must note the insufficient extent of modern research is the question of personal and ethical requirements for the person who intends to practice law.

The **purpose** of research is to identify the moral and ethical and personal requirements for candidate advocates in the light of legal analysis of ethical principles and rules of advocate's activity.

**The presentation of research.** The word "advocate" comes from the Latin root *advocatus*, which means "invited" that is invited to defend in court, to conduct a case [8, p. 167]. In turn, the word «*advocatus*» is derived from the Latin word *advocatio* – request the assistance. That this turns the essence of the profession of advocate, which is to use all the knowledge and practical skills of advocate for the implementation of the main social function of the legal profession – "ensuring the right to defence against accusation and providing legal assistance in deciding cases in courts and other state bodies" [1]. The Preamble of the Rules of advocate's ethics states that the vital importance of the advocacy's functions requires that advocates should follow high ethical standards of conduct. Advocates' compliance of specific deontological rules and requirements is considered by worldwide advocate's community as necessary precondition the full functioning of the legal profession, the fulfilment of its important social role in democratic society [4].

In view of this analysis it is necessary to apply to the requirements applicable to the candidate advocates. IT's claimed to practice advocacy according to the requirements of art. 6 of the Law of Ukraine "On the Bar and Legal Practice" from 05.07.2012 (hereinafter-Law), for becoming an advocate, a person must meet the following requirements: to have complete higher legal education gained in Ukraine, or complete higher legal education gained in foreign countries and recognized in Ukraine as prescribed by law; can speak the official language; have a minimum of two-year experience in the legal field, namely the experience in the specialty after the obtaining complete higher legal education. Also, a person who intends to become an advocate shall pass the qualification test; complete probationary training (except as prescribed by law); take the oath of the Ukrainian advocate and receive a certificate authorizing him for legal practice. At the same time a person cannot be an attorney if him: 1) has outstanding or unexpunged convictions for grave or especially grave crimes, or crimes of medium gravity punished by deprivation of freedom; 2) is deemed by court to be legally incapable or to have limited legal capacity; 3) was deprived of the right of legal practice – during two years after the resolution to deprive them of the right of legal practice; 4) was dismissed from the post of a judge, prosecutor, investigator, notary, from civil service or from service in the bodies of local self-government because of oath-breaking or corruption-related crimes – during three years after such dismissal [5].

At the same time, it is necessary to emphasize that while the legislative consolidation procedures and requirements for acquiring professional status of advocate is impossible to ignore claims to moral and ethical qualities of the candidates, because as Michel de Montaigne claimed "to be an advocate is a complex, elegant art. In addition to professional skills, you need knowledge to have innate personal qualities and to be called of God [2].

N. M. Bakayanova, investigating and analyzing the ethical foundations of activities of advocate-defender, draws attention to the fact that "advocacy related to the problems of morality. Solving these problems, of course, is based on moral ideals, principles and feelings of advocate. The role of the regulators of conduct in all cases is fulfilled by very specific, proven practices and traditionally provided requirements of legal ethics [7, c. 48]. However, the author classifies ethical requirements to advocate as follows: 1) the requirements contained in the rules of international law; 2) requirements, which are enshrined in national legislation; 3) claims recognized in documents that have no legal character; 4) requirements, which are not fixed in official documents.

However, a characteristic feature of such requirements is that they apply to the activities of a lawyer after his acquisition of the status of advocate. Thus, the deontological qualifying requirements to candidate advocates with educational and professional requirements would amount to a single system, are not established.

For these reasons, it appears appropriate to identify personal and moral and ethical requirements for these persons.

Under the personal and moral and ethical requirements is to be understood the complex requirements to the intellectual and general cultural level, personal and professional qualities, which a candidate advocate should have.

There is a state standard, which provides a list of the most important personal qualities of person who receives a state diploma in Law. In the qualifying characteristics of such graduate indicated that a lawyer must have civic maturity and high social activity, know the rules of professional ethics, have a high level of legal and psychological culture, deeply respect the rule of law and care for social values, honour and dignity of a citizen, be humane, have the appropriate level of moral consciousness, persistent moral beliefs, have a sense of duty, responsibility for the fate of people and assignments to be principled and independent while ensuring rights, rights, freedoms and lawful interests of the individual and his social protection, have the necessary will and perseverance in carrying out legal decisions taken, feelings of intolerance to any violation of the law in his own career. All lawyers regardless of the type of legal activity must meet these criteria [3].

In turn, there is quite a logical question: is it possible to identify all moral and ethical quality of a person before he independently begins to provide professional legal aid? And if so, how is it possible?

It is appropriate to note the following:

Firstly, one of the stages to identify the moral and personal qualities of the candidate are Qualification and Disciplinary Bar Commission inspection.

According to Art. 8 of the Law the person address the Qualification-Disciplinary Bar Commission in a residence with the application for admission to taking the qualification exam. In order to verify the completeness and reliability of information reported by the person who wishes to become a lawyer, and with the written consent of such person, qualification commission of the bar, qualifying chamber or its member may request the public authorities, local governments, their officers and officials, enterprises, institutions and organizations regardless of ownership and subordination, public associations, which are required within ten working days of receipt of the request to provide the necessary information. The refusal of the provision of information on the request, untimely or incomplete provision of information, untrue information, entails liability under the law. In case of failure by the person who wishes to become an advocate of the written consent to verify the completeness and accuracy of the information reported, the person is not allowed to qualifying examination;

Secondly, one of the entry requirements of professional status is probation. At this stage, finding himself face to face with the future profession, mastering all its aspects and difficulties candidate advocate the best way shows how his personal skills: analytical abilities, perseverance, determination, endurance, prudence and keeping peace integrity, diligence, independence, self-control, and both the moral qualities: honesty, integrity, discipline, diligence, responsibility, culture of behaviour, including tact, kindness, tolerance, courtesy. Exactly during probation is the formation of a person as an expert under the influence and supervision of an experienced advocate-manager, experience and morality of which is undoubtedly, laid his professional skills with the principles of legal ethics. It should be noted that individual psychological quality of person required achieving positive motivation of professional advocacy, its efficiency and effectiveness, formed throughout its life, particularly in learning, work, and entry of individual and general social skills. Question is not only about the set of special natural qualities, but also the outlook of man, his spiritual development. This component of professionalism is important

and is a criterion for determining a person's ability to master the profession of advocate and be them in fact, realize the social significance and importance of the work.

In light of the foregoing, it seems appropriate to propose to check the moral and ethical qualities of the applicant at the time of the last qualification exam, for example, in the form of an interview. Analysis of rules governing the procedure, method of passing a qualifying examination shows that during it there are only theoretical knowledge and practical skill, that is only a professional qualification person is set. Therefore, the interview would make it possible to identify and evaluate the moral and ethical aspects of conduct of the individual.

**Conclusions.** Summing up, it should be noted that the selection of candidates advocates not only the criterion of knowledge, but also on the personal and moral and ethical qualities fully justified, as all these features form a complete identity of the candidate, and set the stage for the title of "advocate". It's aptly noted the Chairman of the Committee on Foreign Relations NAUU Andrei Kostin, speaking at the international conference "Craftsman or professional? Representation by advocates in court proceedings", held in June 5-6, 2015: "Each of our colleagues who knowingly wrongly violates or even ethical rules, harms us with you, because the first thing that connects us with the client is the relationship of trust, not only to us personally but also our status" [6].

Therefore, it appears that Part 2 of Art. 9 of the Law of Ukraine "On Advocacy and legal practice" can be outlined as follows: "The qualification examination is to identify the theoretical knowledge in law, the history of advocacy, legal ethics of the person who wishes to become an advocate, level of practical skills and abilities to use law and moral and ethical qualities of the candidate".

The proposed idea should be implemented in the law only after comprehensive discussion among the legal community with the development of clear criteria by which it would be reasonable to estimate the identity of the applicant, candidate's areas of life that could be the subject of study, created a procedural mechanism for such verification.

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## ПРОФЕСІЙНО-ОСОБИСТІСНІ ТА МОРАЛЬНО-ЕТИЧНІ ЯКОСТІ ЯК ОДНА З ГОЛОВНИХ ВИМОГ ДО ПРЕТЕНДЕНТА В АДВОКАТИ

### Анотація

Статтю присвячено дослідженню та аналізу правових норм, в яких передбачені вимоги для набуття статусу адвоката та заняття адвокатською діяльністю. Зосереджено увагу на тому, що відбір кандидатів в адвокати повинен проводитись не лише за критерієм рівня теоретичних знань та практичних навичок, але й з урахуванням особистісних та морально-етичних якостей, оскільки всі вказані риси формують цілісну особу кандидата, та створюють передумови для отримання високого статусу адвоката. Обґрунтовуються пропозиції щодо нормативно-правового закріплення професійно-особистісних та морально-етичних вимог до претендентів в адвокати.

**Ключові слова:** набуття права на заняття адвокатської діяльністю, вимоги до набуття статусу адвоката, адвокатська етика, морально-етичні вимоги.

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## ПРОФЕСИОНАЛЬНО-ЛИЧНОСТНЫЕ И МОРАЛЬНО-ЭТИЧЕСКИЕ КАЧЕСТВА КАК ОДНО ИЗ ГЛАВНЫХ ТРЕБОВАНИЙ К ПРЕТЕНДЕНТУ В АДВОКАТЫ

### Аннотация

Статья посвящена исследованию и анализу правовых норм, в которых предусмотрены требования для получения статуса адвоката и осуществление адвокатской деятельности. Сосредоточено внимание на том, что отбор кандидатов в адвокаты должен проводиться не только по критерию уровня теоретических знаний и практических навыков, но и с учетом личностных и морально-этических качеств, поскольку все указанные черты формируют целостную личность кандидата, и создают предпосылки для получения высокого статуса адвоката. Обосновываются предложения нормативно-правового закрепления профессионально-личностных и морально-этических требований к претендентам в адвокаты.

**Ключевые слова:** приобретения права на занятие адвокатской деятельностью, требования к получению статуса адвоката, адвокатская этика, морально-этические требования.

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## FOREIGN POLICY AS A STATE'S CHOICE AND MODERN INTERNATIONAL LAW

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The article is devoted to the analysis of the definition and meaning of the right of choice, to the research of the issue of a state's choice (a state as a subject of international law). The definition and meaning of foreign policy as a general course of a state in international affairs, as a state's choice, are given and analyzed. The correlation between foreign policy and international law, the influence of international law on foreign policy and the influence of foreign policy on modern international law are investigated. Some certain features of modern international relations are determined. On the basis of legal literature the definition of modern international law as the law of development is given.

**Keywords:** choice, right of choice, foreign policy, international law, modern international law, the law of development, international relations, politics, law.

**Resolution of the problem.** The questions of choice and the right of choice are quite complicated and controversial. It's all due to the multidimensionality of a term "right" and due to the absence of unity in understanding of the term "choice". Choice is understood in the correlation between the process of the decision-making and the objectification of the result of this process (decision as a result).

One of the spheres of right of choice realization is foreign policy that is conducted by the state and its authorized subjects.

It is quite difficult to define the nature and essence of foreign policy clearly and simply. It is mainly the sum of separate, situational decisions and actions and it is very difficult to trace and explain clearly visible connections between them.