

Crimes Related to Attorney-at-Law Act Violation

- Promulgated on March 31, 2014. Effective on July 1, 2014.
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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Providing or Arranging Legal Services of Non-attorneys (Attorney-at-law Act, Article 109, subparagraph 1), Entering Into Partnership with Non-attorneys (Attorney-at-law Act, Article 109, subparagraph 2, Article 34, paragraph 1, 2), Receiving Money, Valuables, or Other Benefits Under the Pretext of Associating with Judges, Prosecutors or Other Public Officials of Trial and Investigation Agencies (Attorney-at-law Act, Article 110), or Receiving Money, Valuables or Other Benefits Under the Pretext of Soliciting or Arranging a Public Official (Attorney-at-law Act, Article 111).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 PROVIDING OR ARRANGING LEGAL SERVICES BY · ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 10 million	– 4 mos.	2 mos. – 8 mos.	6 mos. – 1 yr.
2	10 million or more, but less than 30 million	4 mos. – 8 mos.	6 mos. – 1 yr.	10 mos. – 2 yrs.
3	30 million or more, but less than 50 million	6 mos. – 1 yr. 6 mos.	10 mos. – 2 yrs.	1 yr. – 3 yrs. 6 mos.
4	50 million or more, but less than 100 million	1 yr. – 2 yrs. 6 mos.	1 yr. 6 mos. – 3 yrs. 6 mos.	2 yrs. 6 mos. – 5 yrs.
5	100 million or more	2 yrs. – 4 yrs.	3 yrs. – 6 yrs.	4 yrs. – 7 yrs.

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases where the extent of the offender's participation and the actual gain is exceptionally minor • Cases where the offense ended only with a demand or a promise • Extenuating circumstances for offender's motive for committing offense	• Cases where the offender committed repeatedly or in an organized manner or commercially to multiple clients • Instigating the subordinate to commit the offense • Highly egregious conducts or methods • Cases where legal services offered caused significant damages or multiple victims
	Offender/ Etc.	• Money and valuables or other gains returned (including deposit) • Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or whistle-blowing of internal corruption	• Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct		• Offense by exploiting offender's experience as a person employed in legal-related occupations, or is currently a person employed in legal-related occupations
	Offender/ Etc.	• Sincere remorse • No prior criminal convictions	• Post-offense evidence tampering or attempt to destroy or conceal evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (within ten years after the completion of the sentence)

2 RECEIVING MONEY AND VALUABLES OR OTHER BENEFITS UNDER THE PRETEXT OF SOLICITING · ARRANGING A PUBLIC OFFICIAL

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 30 million	- 6 mos.	4 mos. - 10 mos.	6 mos. - 1 yr. 6 mos.
2	30 million or more, but less than 50 million	6 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs. 6 mos.
3	50 million or more, but less than 100 million	10 mos. - 2 yrs.	1 yr. - 2 yrs. 6 mos.	2 yrs. - 3 yrs. 6 mos.
4	100 million or more	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 5 yrs.

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases where the extent of the offender's participation and the actual gain is exceptionally insignificant • Cases where the offense only ended with a promise • Passive acquiescence to the active demand	• Highly egregious conducts or methods • The offense stipulated in the Attorney-at-Law Act, Article 110 • Instigating the subordinate to commit the offense
	Offender/ Etc.	• Money and valuables or other gains returned (including deposit) • Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or whistle-blowing of internal corruption	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct		• Cases where the offender engaged in solicitation or arrangements
	Offender/ Etc.	• Sincere remorse • No prior criminal convictions	• ases where offender is a public official with duties related to the solicitation or arrangements, or offender impersonated such a public official • Post-offense evidence tampering or attempt to destroy or conceal evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (within ten years after the completion of the sentence)

DEFINITION OF OFFENSES

1 PROVIDING OR ARRANGING LEGAL SERVICES BY · ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS[1)]

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person that is not an attorney-at-law provides legal services	Attorney-at-Law Act, Article 109, subparagraph 1
Those who enter a partnership with non-attorneys	Attorney-At-Law Act, Article 109, subparagraph 2, and Article 34, paragraphs 1, 2

1. TYPE 1

- This indicates cases in which the amount of money involved is less than 10 million KRW. The amount of money involved indicates the monetary value received, demanded, or promised to be received; amount provided, or promised to be provided to a third party; or value of benefits provided or promised to be provided (hereinafter the same).

2. TYPE 2

- This indicates cases in which the amount of money involved is 10 million KRW or more but less than 30 million KRW.

3. TYPE 3

- This indicates cases in which the amount of money involved is 30 million KRW or more but less than 50 million KRW.

4. TYPE 4

- This indicates cases in which the amount of money involved is 50 million KRW or more but less than 100 million KRW.

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1) Sentencing factors with the same designation that apply to Receiving Money and Valuables or Other Benefits Under the Pretext of Soliciting · Arranging a Public Official have the same definition unless defined otherwise.

5. TYPE 5

- This indicates cases in which the amount of money involved is 100 million KRW or more.

2 RECEIVING MONEY AND VALUABLES OR OTHER BENEFITS UNDER THE PRETEXT OF SOLICITING · ARRANGING A PUBLIC OFFICIAL

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Receiving money or valuables under the pretext of associating with public officials of trial and investigation agencies	Attorney-at-Law Act, Article 110
Receiving money or valuables under the pretext of soliciting or arranging	Attorney-at-Law Act, Article 111

1. TYPE 1

- This indicates cases in which the amount of money involved is less than 30 million KRW. The amount of money involved indicates the monetary value received, agreed to receive, or promised to be received; amount provided, or promised to be provided to a third party (hereinafter the same).

2. TYPE 2

- This indicates cases in which the amount of money involved is 30 million KRW or more but less than 50 million KRW.

3. TYPE 3

- This indicates cases in which the amount of money involved is 50 million KRW or more but less than 100 million KRW.

4. TYPE 4

- This indicates cases in which the amount of money involved is 100 million KRW or more.

DEFINITION OF SENTENCING FACTORS

1 PROVIDING OR ARRANGING LEGAL SERVICES BY · ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS[2)]

1. EXTENUATING CIRCUMSTANCES FOR OFFENDER'S MOTIVE FOR COMMITTING OFFENSE

- This applies where one or more of the following are present:
  - When the offender passively acquiesced to the client's active solicitation
  - Cases in which the offender committed the offense by receiving only the amount of actual costs to help the acquaintance in difficulty
  - Cases in which the offender participated in the offense due to the employment relationship or business instructions
  - Other cases with comparable factors

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - Cases in which the offender provided legal services or introduced an attorney-at-law while impersonating an attorney or actively claiming that their conduct was legitimate
  - Cases in which the offender actively took the lead in performing legal affairs, such as taking over bonds or performing acts related to a lawsuit under an employment relationship or the like
  - Other cases with comparable factors

3. SINCERE REMORSE

- This indicates cases in which, after examining and assessing the specific circumstances surrounding the offender's admission of the offense and any voluntary efforts made toward victim restitution and/or the prevention of re-offending, the offender is deemed to show genuine remorse for the offense.

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2) Sentencing factors with the same designation that apply to Receiving Money and Valuables or Other Benefits Under the Pretext of Soliciting or Arranging a Public Official have the same definition unless defined otherwise.

4. NO PRIOR CRIMINAL CONVICTIONS

- This indicates cases in which, the offender has never committed a crime even once prior to the relevant offense. However, this excludes cases where crimes were committed repeatedly over a prolonged period.

2 RECEIVING MONEY AND VALUABLES OR OTHER BENEFITS UNDER THE PRETEXT OF SOLICITING · ARRANGING A PUBLIC OFFICIAL

1. PASSIVE ACQUIESCENCE TO THE ACTIVE SOLICITATION

- When the other party actively demanded association, solicitation, or arrangement while offering money, valuables, hospitality, or other benefits, and the offender passively acquiesced to such demand and offer.

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - When the offender demanded money, valuables, or other benefits by implying that with the exercise of the offender's influence, the offerer will be treated unfairly if money, valuables, or other benefits are not offered
  - Cases in which the offender committed the offense by acting as though they have a special relationship with public officials and even referring to the future actions in detail
  - Other cases with comparable factors

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se*, shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.

GENERAL APPLICATION PRINCIPLES

1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

❶ After the assessment of Special Sentencing Factors, if a case falls within the Aggravating Sentencing Range and either i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, the upper limit of the recommended sentencing range may be increased by up to 1/2.

❷ After the assessment of Special Sentencing Factors, if a case falls within the Mitigating Sentencing Range and either i) two or more Special Mitigating Factors exist alone, or ii) Special Mitigating Factors outnumber Special Aggravating Factors by two or more, the lower limit of the recommended sentencing range may be reduced by up to 1/2.

2 RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE SENTENCING GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- Where the sentencing range recommended under this guideline conflicts with the statutory applicable aggravated/mitigated sentencing range, the upper or lower limit of the applicable sentencing range by law shall govern.

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

- Where a judge declines to apply discretionary statutory mitigating factors listed in the Sentencing Factor Table of this guideline, such factors shall be considered as extenuating circumstances among mitigating factors.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE RANGE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act include both an offense set forth in the sentencing guidelines and an offense not covered by the sentencing guidelines, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

2 DETERMINING THE BASE OFFENSE

- The "base offense" refers to the offense subject to the most severe punishment after selecting the type of punishment and applying any statutory aggravation and/or mitigation thereto. However, where the upper end of the sentencing range under the sentencing guidelines for an offense covered by this chapter is lower than the upper end of the sentencing range under the sentencing guidelines for the other concurrent offense, the other concurrent offense shall become the base offense.

3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE SAME-OFFENSES

- For concurrent same-offenses among Providing or Arranging Legal Services by or Entering Into Partnership with Non-attorneys, and concurrent same-offenses among Receiving Money and Valuables or Other Benefits Under the Pretext of Soliciting or Arranging a Public Official the following method of aggravation for multiple offenses shall apply.

  ❶ The Type of offense shall be determined based on the aggregate amount of criminal gain. Within that Type, the sentencing range shall be selected by the

judges taking into account all relevant circumstances.

❷ (1) Where the aggregation of criminal gain results in an offense Type one level higher than that of the most severe single offense among offenses of the same Type, the lower end of the sentencing range shall be reduced by 1/3. (2) Where the aggregation of criminal gain results in an offense Type two levels higher than that of the most severe single offense among offenses of the same Type, the lower end of the sentencing range shall be reduced by 1/2. However, the reduced lower end of the sentencing range shall not fall below the lower end of the sentencing range of the offense Type applicable to the most severe single offense.

- For multiple offenses between Providing or Arranging Legal Services by or Entering Into Partnership with Non-attorneys, and Receiving Money, Valuables or Other Benefits Under the Pretext of Soliciting or Arranging a Public Official, the following methods of 'Determining the Sentencing Range for the Concurrent Offenses of the Different Type' shall apply.

4 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE DIFFERENT-OFFENSES

- Except for concurrent different-offenses that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply.

❶ The sentencing range for multiple offenses involving two offenses shall be determined by adding 1/2 of the upper end of the sentencing range of the other offense to the upper end of the sentencing range of the base offense.

❷ For multiple offenses involving three or more offenses, the upper end of the sentencing range shall be determined by adding the following three figures: (1) the upper end of the sentencing range of the base offense, (2) 1/2 of the upper end of the sentencing range of the offense with the highest upper end of the sentencing range among the other offenses, and (3) 1/3 of the upper end of the sentencing range of the offense with the second highest upper end of the sentencing range among the other offenses.

❸ For multiple offenses where the lower end of the sentencing range of the other offense is higher than the lower end of the sentencing range of the base

offense, the lower end of the sentencing range after applying the method of aggravation for multiple offenses shall be the lower end of the sentencing range of the other offense.

- However, where the multiple offenses include concurrent same-offenses of the Providing or Arranging Legal Services by or Entering Into Partnership with Non-attorneys, or concurrent same-offenses involving Receiving Money, Valuables or Other Benefits Under the Pretext of Soliciting or Arranging a Public Official, the sentencing range shall first be determined by applying the method for concurrent offenses of the same type above, and the method of aggravation for multiple different-offenses set out above shall then be applied to that sentencing range.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

1 PROVIDING OR ARRANGING LEGAL SERVICES BY · ENTERING INTO PARTNERSHIP WITH NON-ATTORNEYS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Cases where the offender committed repeatedly or in an organized manner or commercially to multiple clients • Highly egregious conducts or methods • Cases where legal services offered caused significant damages or multiple victims	• Cases where the extent of the offender's participation and the actual gain is exceptionally minor • Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, and the like) • Money, valuables, or other gains returned (including deposit)
General Circumstance	• Prior conviction for the same-offense • Post-offense evidence tampering or attempt to destroy or conceal evidence • Leading role as a co-offender	• No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Stable social/family ties

2 RECEIVING MONEY AND VALUABLES OR OTHER BENEFITS UNDER THE PRETEXT OF SOLICITING · ARRANGING A PUBLIC OFFICIAL

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Cases where the solicitation is related to illegal or unfair affairs • Highly egregious conducts or methods	• Cases where the extent of offender's participation and the actual gain is exceptionally insignificant • Expresses substantial penitence (including voluntary surrender, confessions, whistleblowing, and the like) • Money, valuables, or other gains returned (including deposit)
General Circumstance	• Prior conviction for the same-offense • Cases where the offender engaged in soliciting or arranging • Post-offense evidence tampering or attempt to destroy or conceal evidence	• No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Stable social/family ties

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment was imposed, the period of a prior conviction is calculated from the date on which the judgment became final to the date of the commission of the offense.
  - For cases where a sentence of imprisonment was executed, the period of a prior conviction is calculated from the date on which the sentence was fully served to the date of the commission of the offense.

PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with labor and judges decide to suspend execution of the sentence, they must give greater weight to the Primary Circumstances than to the General Circumstances, and the following principles should be considered:
  ❶ When two or more Primary Affirmative Circumstances exist alone, or when Primary Affirmative Circumstances outnumber Primary Adverse Circumstances by two or more, it is recommended to suspend the sentence.
  ❷ When two or more Primary Adverse Circumstances exist alone, or when Primary Adverse Circumstances outnumber Primary Affirmative Circumstances by two or more, imprisonment is recommended.
  ❸ In cases in which ❶ or ❷ apply, but the difference between the number of General Adverse (Affirmative) Circumstances and General Affirmative (Adverse) Circumstances is greater than the difference between the number of Primary Affirmative (Adverse) Circumstances and Primary Adverse (Affirmative) Circumstances, or in cases other than ❶ or ❷, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.