

The strategy choice and application of criminal defense in duty crime

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ABSTRACT

The essence of criminal defense in official misconduct cases lies in accurately identifying the case's unique characteristics and complexities. This requires both adhering to the rigid provisions of legal statutes and flexibly addressing discretionary factors in judicial practice. Defense strategies should be developed by focusing on the intersection of case facts and legal application, thoroughly examining the correlation between the perpetrator's subjective intent, authority scope, and consequences of actions. Particularly during evidence review, defense attorneys must meticulously differentiate the probative value between direct and indirect evidence to avoid legal disadvantage caused by weak evidentiary chains. Through dual considerations of procedural justice and substantive fairness, defense counsel should pursue the optimal defense approach.

KEYWORDS

Job-related crime; Criminal defense; Strategy; Choice; Application

1 Introduction

The defense of official misconduct cases is not merely a test of legal expertise, but also an exploration of judicial discretion boundaries. When formulating defense strategies, counsel must balance legal logic with practical experience—while addressing statutory elements of criminal liability, they should also examine the power dynamics underlying case outcomes. Particularly in joint crimes and liability allocation, it's crucial to clearly distinguish between decision-makers' and executors 'responsibilities to prevent improper attribution. Effective defense requires moving beyond mere legal text references, thoroughly examining the fundamental logic of judicial decisions. This approach respects judicial authority while maximizing protection of clients' legitimate rights and interests.

2 Definition and judicial status of duty crime

2.1 Legal definition and main types of duty crimes

Official crimes refer to acts committed by public officials or specific responsible individuals who exploit their positions or violate professional obligations, thereby infringing upon national governance order or public interests. China's Criminal Law categorizes official crimes into two main types: embezzlement and bribery offenses, and dereliction of duty. The former includes crimes such as bribery, embezzlement, and misappropriation of public funds, where the core lies in individuals using their authority to seek personal gains (as shown in Figures 1 and 2). Dereliction of duty offenses encompass crimes like dereliction of duty and abuse of power, focusing on public officials failing to perform or improperly fulfilling their duties. Additionally, with social development, emerging forms of official crimes such as bribery through influence and embezzlement have emerged, reflecting a trend toward diversified crime patterns. The essential characteristic of these crimes is their role-related nature—criminal acts must be directly linked to the perpetrator's official responsibilities or duties, which remains a key factor in judicial determinations.

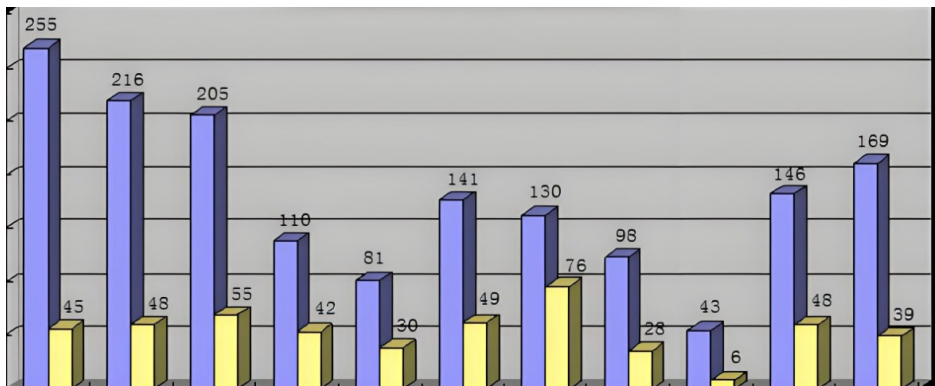


Figure 1 Diagram of the proportion of types of job crimes

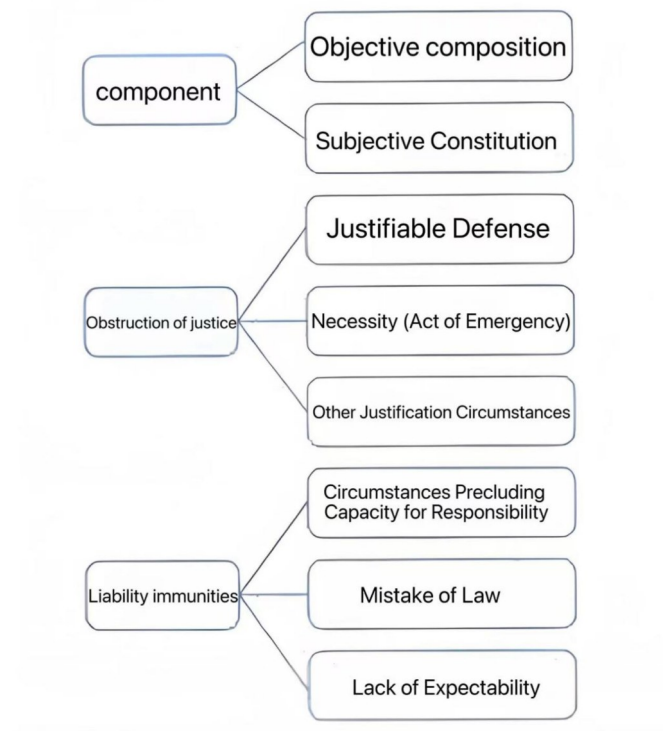


Figure 2 Composition of the subject of duty crime

2.2 Common points of dispute in current judicial practice

In the judicial practice of official crimes, the main points of contention revolve around three aspects: subject identification, determination of subjective intent, and definition of behavioral nature. Regarding subject identification, disputes often arise in confirming the status of atypical public officials such as temporary seconded personnel and cadres on secondment, with whether they possess the legal capacity to commit official crimes frequently becoming a focal point of debate between prosecution and defense. Determining subjective intent also presents challenges, particularly for dereliction-of-duty crimes, where distinguishing between work errors and intentional malfeasance often lacks clear standards in judicial practice. In defining behavioral nature, especially in economic transactions, the boundary between normal duty performance and illegal acts remains blurred. For instance, legitimate business dealings and bribery may exhibit highly similar objective manifestations, complicating judicial determinations. These contentious issues directly impact case characterization and sentencing, while also testing the adjudicative wisdom of judicial authorities.

2.3 The particularity and difficulty of duty crime cases

Official misconduct cases present distinct challenges compared to ordinary criminal cases, primarily manifested in three aspects: the complexity of investigation and evidence collection, extensive societal ramifications, and profound social impact. As these crimes typically occur during the exercise of power, their methods often involve concealment and technical sophistication. Evidence is frequently held by specific individuals, creating significant obstacles for evidence gathering. Moreover, such cases often involve multiple departments or administrative levels, making investigations susceptible to various external factors that complicate case resolution. Socially, official misconduct directly affects government credibility – any misstep in handling cases could spark public skepticism, requiring judicial authorities to balance legal outcomes with social consequences. Additionally, with increasingly sophisticated and covert criminal methods, modern official misconduct cases exhibit characteristics like cross-border operations and digital networks, presenting new challenges for investigations. These unique features make the adjudication of official misconduct cases a key and complex area in judicial practice.

3 Core strategy selection in criminal defense

3.1 Core strategy selection in criminal defense

3.1.1 Definition of job authority

The delineation of authority boundaries should be grounded in organizational structures and job responsibilities,

requiring both review of formal authorization documents and examination of actual performance. The key lies in distinguishing between nominal positions and actual power distribution, particularly in accurately defining individual roles within collective decision-making mechanisms. During defense proceedings, objective materials such as meeting minutes, approval processes, and work logs should be utilized to reconstruct the authentic scope of authority held by individuals. For cases involving overlapping management or temporary authorization scenarios, it is crucial to strictly adhere to the specificity and time-bound nature of authority to prevent overextension of liability determinations (as shown in Figures 3 and 4).



Figure 3 Rights "seal" transactions



Figure 4 Below the coat of arms

3.1.2 Precise identification of responsible subjects

The determination of responsible entities should adhere to the principle of integrating subjective and objective criteria. While examining formal requirements of official positions, greater emphasis should be placed on assessing their actual control over case-related matters. For divisional leadership roles, it is necessary to prove their specific oversight of case-related operations. When evaluating department heads, their independent decision-making authority must be examined. During defense proceedings, particular attention should be paid to liability allocation in multi-person management scenarios. Evidence such as division-of-labor documents and workflow records should clarify individual responsibility boundaries to prevent joint liability attribution caused by positional connections.

3.1.3 Nomination, secondment and temporary performance of duties

In special circumstances, the determination of subject liability requires thorough examination of actual performance. Nominal positions should be substantiated through work records showing no substantive management involvement; seconded personnel must verify their assigned responsibilities as stipulated in secondment agreements; temporary authorization requires verification of clear and specific terms. During defense proceedings, systematically collect evidence such as attendance records, handover documentation, and colleague testimonies to establish a proof framework demonstrating the individual's lack of actual authority exercise, thereby preventing liability attribution based solely on nominal position.

3.2 Evidence defense strategy

3.2.1 Evidence legality review

Evidence legality review must strictly adhere to the evidentiary standards outlined in the Criminal Procedure Law. For testimonial evidence, compliance with interrogation procedures must be verified; physical evidence requires validation of extraction protocols; and electronic data must ensure reliable forensic techniques. Key focus areas include detecting illegal practices such as fatigued interrogations or induced confessions, as well as inconsistencies between audio-video recordings and written transcripts. Particular attention should be paid to critical evidence that may influence conviction or sentencing, with stricter adherence to legality standards and prompt submission of exclusion requests.

3.2.2 The probative force of direct and indirect evidence

When evaluating direct evidence, particular emphasis should be placed on verifying its authenticity and credibility. In cases where isolated evidence exists, it must be corroborated with objective evidence. The application of indirect evidence requires establishing a coherent chain to eliminate reasonable doubt. During defense arguments, attorneys should analyze logical connections between pieces of evidence while identifying weak links and contradictions. For facts established through inference, legal professionals must examine whether such deductions align with empirical principles and consider alternative possibilities, thereby reducing the probative value of the prosecution's evidence system.

3.2.3 Challenge and exclusion of key evidence

To challenge critical evidence, investigators should examine it from three dimensions: source, content, and format. Expert opinions must be vetted for proper qualifications and methodological compliance; metadata integrity should be analyzed for electronic data; and verbal evidence requires comparison of stability across multiple statements. During defense proceedings, experts can assist with technical reviews and use cross-examination to expose inconsistencies. Illegally obtained evidence must be firmly excluded, while flawed evidence demands corrections or reasonable explanations to diminish its probative value.

3.3 Defences of the application of law

3.3.1 The line between guilt and innocence

The determination of criminal liability must strictly adhere to statutory requirements for constituting crimes. Key distinctions between work-related errors and intentional offenses, as well as violations of regulations versus criminal acts, require thorough analysis. During legal defense, four essential elements should be rigorously examined: the defendant's standing, subjective intent, objective conduct, and causal relationship, with arguments focusing on circumstances that fail to meet statutory criteria. For emerging behaviors with ambiguous legal boundaries, the principle of legality in criminal law must be upheld to prevent indiscriminate application through analogical reasoning that risks expanding the scope of prosecution.

3.3.2 Differentiation between this crime and that crime

Accusation analysis requires precise identification of differences in constitutive elements across crimes. By comparing distinctions in object characteristics, objective conduct, and subjective factors, we demonstrate the inadequacy of the charged offense. Key considerations include examining whether there exists an overlap or inclusion relationship between constitutive elements to avoid double counting. For similar offenses with significant sentencing disparities, we should advocate for lighter conviction through element-based analysis to achieve optimized sentencing.

3.3.3 Refinement of sentencing circumstances

Sentencing defense requires a comprehensive review of statutory and discretionary factors. For voluntary surrender and meritorious service, precise timing and substantive criteria must be identified. In asset restitution and compensation cases, phased evaluation of outcomes is essential. Voluntary plea agreements must ensure genuine voluntariness and authenticity. Discretionary factors should be analyzed through motivations, attitudes, and remedial measures to establish a multi-layered sentencing evidence framework. Defense attorneys should integrate case analysis from similar precedents to propose well-founded recommendations that align with standardized sentencing requirements.

4 Practical points of strategy application

4.1 Defense priorities at the investigation stage

The defense work during the investigation phase is characterized by foundational and time-sensitive features, requiring focused attention on three key dimensions. First, safeguarding procedural rights—including the right to timely meetings and applying for changes in compulsory measures—should be ensured through written applications and communication negotiations. Second, supervising evidence formation involves monitoring investigative activities like interrogations and inspections by requesting witness attendance and retrieving synchronized audio-video recordings to prevent illegal evidence collection. Finally, collecting and securing case information requires understanding the alleged crimes and basic facts within legal boundaries, with original materials preserved through meeting transcripts and evidence collection applications. This stage particularly emphasizes maintaining proactive defense strategies: promptly presenting legal opinions while avoiding improper interference with investigations, thereby protecting clients' legitimate rights and ensuring smooth progress of litigation procedures.

4.2 Defense space in the stage of review and prosecution

The defense space during the review and prosecution phase primarily manifests in two dimensions: evidence examination and procedural advancement. Regarding evidence, attorneys may request access to case files to systematically analyze the completeness and probative value of evidence systems, submitting written opinions addressing issues like insufficient evidence or illegal evidence collection. For procedural matters such as jurisdictional determinations and enforcement measures, they can provide recommendations while actively advocating for non-prosecution decisions where statutory conditions are met. This stage particularly requires attention to the application of the leniency system for guilty pleas, assisting defendants in making rational decisions based on thorough case analysis and evidence evaluation through effective sentencing negotiations. Defense counsel should skillfully leverage this pivotal transitional phase to establish a favorable foundation for subsequent trials.

4.3 Defense techniques during trial

During trial defense, systematic litigation strategies should be developed. Pre-trial preparations involve thorough case file analysis to identify key disputes, along with drafting cross-examination outlines and key defense points. During court proceedings, employ targeted questioning techniques to reveal factual uncertainties; focus on critical evidence during cross-examination using methods like interrogative cross-examination; emphasize core arguments with logical coherence and clear priorities during debate phases. For complex cases, consider inviting expert witnesses to resolve technical challenges. Maintain consistent defense logic throughout the trial process, adjusting strategies as circumstances evolve while adhering to judicial etiquette and communication standards to enhance effectiveness.

4.4 Synergistic strategies for the connection of each stage

Criminal defense requires establishing a comprehensive collaborative strategy system. Information gathered during the investigation phase should be systematically organized to provide material for subsequent stages. Defense opinions formed during the review and prosecution phase should maintain continuity, with further development during the trial stage. Experience accumulated in the first instance should be promptly summarized to prepare for potential appellate proceedings. All stages must maintain constructive communication with case-handling authorities, documenting the defense trajectory through legal opinion letters, situation explanations, and other written materials. Attention should also be paid to shifting defense priorities across phases: procedural safeguards dominate during investigation, evidence examination takes center stage in review and prosecution, while factual determination and legal application focus on during trial, forming a progressively advancing defense framework. This collaborative strategy maximizes protection of the client's legitimate rights and interests.

5 The boundary and ethics of defense against duty crimes

5.1 Legal restrictions on the exercise of the right to defence

The exercise of defense rights in official crime cases must strictly adhere to the boundaries established by the Criminal Procedure Law. Lawyers are prohibited from assisting suspects in concealing, destroying, fabricating evidence, or colluding with witnesses—a fundamental professional red line. During client meetings, lawyers should avoid sharing case details or teaching countermeasures, ensuring communication remains within legal consultation limits. When conducting investigations and evidence collection, lawful methods must be employed; inducing false testimony or disrupting normal witness procedures is forbidden. For cases involving state secrets, strict confidentiality obligations must be observed, and unauthorized disclosure of case information is prohibited. When raising procedural objections, defense counsel must base their arguments on objective facts and legal grounds, avoiding the abuse of litigation rights that could delay proceedings. These restrictions not only meet legal requirements but also serve as essential guidelines to ensure proper exercise of defense rights.

5.2 Lawyers' professional ethics and risk prevention

In defense of professional misconduct cases, lawyers must strike a balance between loyalty and truthfulness. While making every effort to protect clients' legal rights, they must avoid presenting false arguments that contradict established facts. Effective risk management requires standardized professional conduct, including maintaining complete meeting records, handling case materials with due diligence, and properly managing fee collection. When interacting with judicial authorities, maintaining professional boundaries is crucial to prevent improper contact. During high-profile cases attracting media attention, exercising discretion in public statements is vital to avoid judicial interference through public pressure. For sensitive cases, establishing comprehensive case logs and work records serves dual purposes: demonstrating accountability to clients while safeguarding professional integrity. These ethical standards form the

foundation for mitigating legal risks in practice.

5.3 How to balance effective defense and judicial justice

To achieve a balance between effective defense and judicial fairness, three principles must be observed: The principle of legality requires defense strategies to comply with legal provisions; the principle of authenticity demands factual accuracy without distortion; and the principle of proportionality ensures defense intensity aligns with case characteristics. In practice, this balance can be achieved through thorough legal analysis, rigorous evidence evaluation, and well-reasoned defense arguments. For cases with conclusive evidence, parties should be guided to properly understand legal liabilities; for contentious cases, defense positions must be expressed through lawful channels. Judicial authority must be respected during proceedings, and extreme measures to disrupt legal processes should be avoided. This balance represents both a fundamental consensus within the legal profession and an essential aspect of the rule of law.

5.4 Ethical considerations of defense in special circumstances

In exceptional circumstances, defense strategies for official misconduct cases involve more complex ethical considerations. When a client conceals material criminal facts, lawyers must refrain from disclosing such information and cease active defense efforts. For cases involving significant public interests, lawyers should carefully balance confidentiality obligations with public welfare. If major procedural violations are identified, they should be addressed through official channels rather than media hype. When conflicting defense strategies with client preferences arise, lawyers must thoroughly explain legal risks and may legally terminate representation when necessary. In handling plea bargaining cases, it's crucial to ensure clients make informed, voluntary decisions. Addressing these special scenarios requires lawyers to demonstrate heightened professional judgment and ethical awareness. <end>

6 Conclusion

The ultimate goal of criminal defense in official crimes is to achieve fair justice within the framework of rule of law. Successful defense not only relies on solid legal expertise but also requires keen case insight and flexible strategies. Defense attorneys should respect judicial procedures while skillfully utilizing procedural rights and substantive legal grounds, balancing legal outcomes with social impacts. Ultimately, only by upholding professional integrity and ethical standards can they secure optimal legal interests for clients in complex judicial environments, truly embodying the value of the defense system.

About the Author

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