

Appendix G

Standards of Professional Conduct and Etiquette to be Observed by Advocates

(Made by the Bar Council of India under Section 49(1)(c) of the Advocates Act, 1961)

An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and normal for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

Section I – Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. An advocate shall not influence the decision of a Court by any illegal or improper means. Private communications with Judge relating to a pending case are forbidden.

4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

5. An advocate shall appear in Court at all times only in the prescribed dress, and his appearance shall always be presentable.

6. An advocate shall not enter appearance, act, plead or practice in any way before a Court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to be Advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, daughter-in-law or sister-in-law.

7. An advocate shall not wear bands or gown in public places other than in Courts except on such ceremonial occasions, and at such places as the Bar Council or the Court may prescribe.

8. An Advocate shall not appear in or before any Court or Tribunal or any other authority for or against an organisation or an institution, society or corporation, if he is a member of the Executive Committee of such organisation or institution or society or corporation. "Executive Committee," by whatever name it may be called, shall include any Committee or body of persons which, for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation.

Provided that this Rule shall not apply to such a member appearing as '*amicus curiae*' or without a

fees in a matter affecting the affairs of a Bar Council, Incorporated Law Society or a Bar Association.

9. An Advocate should not act or plead in any matter in which he himself is pecuniarily interested.

Illustration

I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from a company of which he is a director.

10. An Advocate shall not stand as a surety, or certify the soundness of surety, for his client required for the purpose of any legal proceedings.

Section II – Duty to the Client

11. An Advocate is bound to accept any brief in the Courts or Tribunals or before any authority in or before which he professes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An Advocate shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given, to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

13. An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interests.

14. An Advocate shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement.

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

16. An Advocate appearing for the prosecution in a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishing the innocence of the accused shall be scrupulously avoided.

17. An Advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.

18. An Advocate shall not, at any time, be a party to fomenting of litigation.

19. An Advocate shall not act on the instruction of any person other than his client or his authorised agent.

20. An Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

21. An Advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. Nothing in this Rule shall apply to stock, shares debentures or government securities, or to any instruments which are for the time being, by law or custom negotiable, or to any mercantile document or title to goods.

22. An Advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an Advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase provided the Advocate is expressly authorised in writing in this behalf.

23. An Advocate shall not adjust fees payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an Advocate.

24. An Advocate shall not do any thing whereby he abuses or takes advantage of the confidence reposed in him by his client.

25. An advocate should keep accounts of the client's money entrusted to him, and the accounts

should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particular.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceedings, no Advocate shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client the fact of such receipt must be intimated to the client as early as possible.

28. After the termination of the proceeding the Advocate shall be at liberty to appropriate towards the settled fee due to him any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the Advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Courts in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client's account should be furnished to him on demand provided the necessary copying charge is paid.

31. An Advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

32. An Advocate shall not lend money to his client, for the purpose of any action or legal proceedings in which he is engaged by such client.

Explanation – An Advocate shall not be held guilty of a breach of this rule, if in the course of a pending, suit or proceedings, and without any arrangement with the client in respect of the same, the Advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

33. An Advocate who has at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings or acted for a party, shall not appear or plead for the opposite party.

Section III – Duty to Opponent

34. An Advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an Advocate except through that Advocate.

35. An Advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under rules of the Court.

Section IV – Duty to Colleagues

36. An Advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars. Advertisements, touts, personal communications, interview not warranted by personal relations, furnishing or inspiring newspaper comments or procuring his photograph to be published in connection with cases in which he has been engaged or concerned. His sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Members of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate-General.

37. An Advocate shall not permit his professional services or his name to be used in aid of or to make possible, the unauthorised practise of law by any lay agency,

38. An Advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.

39. An Advocate shall not enter appearance in any case in which there is already a vakalat or memo of appearance filed by an Advocate engaged for a party except with his consent, in case such consent is not produced he shall apply to the Court stating reasons why the said consent could not be produced and he shall appear only after obtaining the permission of the Court.

Section IVA

40. Every advocate borne on the Rolls of a State Bar Council shall pay to the State Bar Council a

sum of Rs. 30 every third year, commencing 1st April, 1980, either at one time or in three equated instalments.

41. The aforesaid sum collected by the State Bar Council shall be credited to a separate fund to be known as 'Advocates Welfare Fund'.

42. All sums so collected by the State Bar Council in accordance with Rule 40 shall be remitted to the Bar Council of India forthwith, which shall be credited by the Bar Council of India to a separate fund to be known as 'Advocates Welfare Fund.'

43. Every advocate borne on the rolls of a State Bar Council shall deliver on or before 1st April every year, commencing from 1st April 1980 a declaration in the form prescribed.

44. Every Advocate borne on the Rolls of a State Bar Council shall entrol himself as member of a Bar Association within the territory over which the said Bar Council exercises, jurisdiction. Every declaration under Rule 43 above, shall be accompanied by a certificate of the Secretary of that Bar Association, certifying that he is a member and that he has paid all the dues of the Bar Association.

45. The name of every Advocate, who fails to pay the aforesaid sums within the prescribed time set out in Rule 40 or fails to file the declaration under Rule 43 or makes any false statement in the declaration under Rule 43 shall be removed from the Rolls of the State Bar Council.

46. Before the name of any Advocate is removed from the Rolls under Rule 45 the Secretary of the State Bar Council shall serve on the Advocate concerned a notice to show cause against the removal of his name and the cause shown, if any, shall be dealt with by the Chairman of the State Bar Council forthwith who, in his discretion, shall pass such orders as he thinks fit.

Section V – Duty in Imparting Training

47. It is improper for an Advocate to demand or accept fees or any premium for any person as a consideration for imparting in law under the rules prescribed by the Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961.

Section VI – Duty to Render Legal Aid

48. Every Advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to society.

Section VII – Restrictions on Other Employments

49. An Advocate shall not personally engage in any business but he may be a sleeping partner in a firm doing business provided that, in the opinion of the Bar Council the nature of the business is not inconsistent with the dignity of the profession.

50. An Advocate may be a Director or Chairman of the Board of Directors of a company with or without any ordinary sitting, fee provided none of his duties are of an executive character. An Advocate shall not be a Managing Director or a Secretary of any company.

51. An Advocate shall not be full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment, intimate the fact to the Bar Council and shall thereupon cease to practise as an advocate so long as he continues in such employment.

Nothing in this rule shall apply to Law Officer of the Central Government or the Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of the Bar Council made under Section 28(2)(d) read with Section 24(1)(c) of the Advocates Act, 1961 despite his being a full-time salaried employee.

52. An Advocate who has inherited, or succeeded by survivorship, to a family business may continue it, but may not personally participate in the management thereof. He may continue to hold a share with others in any business which has descended to him by survivorship or inheritance or by will, provided he does not personally participate in the management thereof.

53. An Advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do 'press-vetting' for newspapers, coach pupils for legal examinations, set and examine question papers; and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism, lecturing and teaching subjects both legal and non-legal.

54. Nothing in these rules shall prevent an Advocate from accepting, after obtaining the consent of the Bar Council part-time employment provided that in the opinion of the Bar Council the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession.

These rules shall be subject to such directives if any as may be issued by the Bar Council of India from time to time.

CONDITIONS FOR RIGHT TO PRACTICE

1. Every Advocate shall be under an obligation to see that his name appears on the roll of the State Council within whose jurisdiction he ordinarily practices.

2. An Advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal Practitioner who is not an Advocate.

3. Every Advocate shall keep informed the Bar Council on the roll of which his name stands, of every change of his address.

4. The Council or a State Council can call upon an Advocate to furnish the name of the State Council on the roll of which his name is entered, and call for other particulars.

5. (1) Any Advocate who voluntarily suspends practice for any reason whatsoever shall intimate such suspension to the State Council on the roll of which his name is entered.

(2) A similar intimation shall be given by every Advocate on resumption of practice.

6. (1) An Advocate whose name has been removed by order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practise the profession of law either before the Courts and authorities mentioned under Section 30 of the Advocates Act, 1961 or in chambers, or otherwise.

(2) An Advocate who is under suspension, shall be under same disability during the period of such suspension as an advocate whose name has been removed from the roll.

7. A person, who has held judicial/quasi judicial office in any part of the Union Territory of Delhi at any time within two years immediately preceding his retirement or otherwise ceasing to be in service, shall not practise for a period of two years from the date of his retirement or ceasing to be in service as the case may be in the territory of Delhi.

Provided that nothing in this Rule shall prevent any such person from practising in any Court of Superior jurisdiction to the one in which he held the office.

Explanation – A Court of Sessions, a District Court or the City Civil Court shall be a Court of Superior jurisdiction in relation to a Magistrate's Court or Small Causes Court, even though no appeal may lie from the latter to the former.

8. No Advocate shall be entitled to practise if in the opinion of the Bar Council he is suffering from such contagious disease as makes his practice of law a hazard to the health of others. This qualification shall last for such period as the Bar Council directs from time to time.