

# PROFESSIONAL ETHICS

## **STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE**

Advocates, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice. An advocate shall, at all times, compose himself in a manner befitting his status as an advocate, an officer of the court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar may still be improper for an advocate.

Rules on the professional standards that an advocate needs to maintain are mentioned in Chapter-II, Part-VI of the Bar Council of India Rules. These rules are framed under Section 49(1)(c) of the Advocates Act, 1961.

### **Section – I Duty towards the Court (Rule 1-10)**

#### **1. Act in a dignified manner**

During the presentation of his case and also while acting before a court, an advocate should act in a dignified manner. He should at all times conduct himself with self-respect.

However, whenever there is proper ground for serious complaint against a judicial officer, the advocate has a right and duty to submit his grievance to proper authorities.

#### **2. Respect the court**

An advocate should always show respect towards the court. An advocate has to bear in mind that the dignity and respect maintained towards judicial office is essential for the survival of a free community.

#### **3. Not communicate in private**

An advocate should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should not influence the decision of a court in any matter using illegal or improper means such as coercion, bribe etc.

#### **4. Refuse to act in an illegal manner towards the opposition**

An advocate should refuse to act in an illegal or improper manner towards the opposing counsel or the opposing parties.



He shall also use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any matter towards the judiciary, opposing counsel or the opposing parties.

An advocate shall refuse to represent any client who insists on using unfair or improper means. An advocate shall exercise his own judgment in such matters. He shall not blindly follow the instructions of the client.

He shall be dignified in use of his language in correspondence and during arguments in court.

He shall not scandalously damage the reputation of the parties on false grounds during pleadings.

He shall not use unparliamentary language during arguments in the court.

#### **5. Appear in proper dress code**

An advocate should appear in court at all times only in the dress prescribed under the Bar Council of India Rules and his appearance should always be presentable.

#### **6. Refuse to appear in front of relations**

An advocate should not enter appearance, act, plead or practice in any way before a judicial authority if the sole or any member of the bench is related to the advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

#### **7. Not to wear bands or gowns in public places**

An advocate should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe.

#### **8. Not represent establishments of which he is a member**

An advocate should not appear in or before any judicial authority, for or against any establishment if he is a member of the management of the establishment. This rule does not apply to a member appearing as "*amicus curiae*" or without a fee on behalf of the Bar Council, Incorporated Law Society or a Bar Association.



### **9. Not appear in matters of pecuniary interest**

An advocate should not act or plead in any matter in which he has financial interests. For instance, he should not act in a bankruptcy petition when he is also a creditor of the bankrupt. He should also not accept a brief from a company of which he is a Director.

### **10. Not stand as surety for client**

An advocate should not stand as a surety, or certify the soundness of a surety that his client requires for the purpose of any legal proceedings.

## **Section- II DUTY TOWARDS THE CLIENT (Rules 11-33)**

### **11. Bound to accept briefs**

An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

### **12. Not withdraw from service**

An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

### **13. Not appear in matters where he himself is a witness**

An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client's interests.

### **14. Full and frank disclosure to client**

An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure 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 judgement in either engaging him or continuing the engagement.

### **15. Uphold interest of the client**

It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so 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 guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

### **16. Not suppress material or evidence**

An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of the innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

### **17. Not disclose the communications between client and himself**

An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

### **18. An advocate should not be a party to stir up or instigate litigation.**

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

### **19. An advocate should not act on the instructions of any person other than his client or the client's authorised agent.**

### **20. Not charge depending on success of matters**

An advocate should not charge for his services depending on the success of the matter undertaken. He also shall not charge for his services as a percentage of the amount or property received after the success of the matter.

### **21. Not receive interest in actionable claim**



An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments, which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

## **22. Not bid or purchase property arising of legal proceeding**

An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

### **22A. (came into force w.e.f. 24-9-1998) Not bid or transfer property arising of legal proceeding**

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

## **23. Not adjust fees against personal liability**

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate.

## **24. An advocate should not misuse or takes advantage of the confidence reposed in him by his client.**

An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

## **25. Keep proper accounts**

An advocate should always keep accounts of the clients' money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

## **26. Divert money from accounts**

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An advocate should mention in his accounts whether any monies received by him from the client are on account of fees or expenses during the course of any proceeding or opinion. He shall not divert any part of the amounts received for expenses as fees without written instruction from the client.

### **27. Intimate the client on amounts**

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

### **28. Adjust fees after termination of proceedings**

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. Entitlement to deduct money for unsettled fee**

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 Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client

### **30. Provide copy of accounts**

An advocate must provide the client with the copy of the client's account maintained by him on demand, provided that the necessary copying charge is paid.

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

### **32. Not lend money to his client**

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. An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, 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. Not appear for opposite parties

An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.

## Section – 3 DUTY TO OPPONENTS (Rules 34-35)

### 34. Not to negotiate directly with opposing party

An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

### 35. Carry out legitimate promises made

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. 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 the rules of the Court.

**In addition to the above duties** prescribed by the Bar Council of India an Advocate is expected to perform the **following duties** also to the client.

1. He shall give advice to his client honestly and in good faith.
2. He shall prepare the case with due care and skill.
3. He shall submit all relevant documents before the court in support of the claim of his client.
4. He should attend the court on every day fixed for hearing of his client's case.
5. He should return the whole fees received from his client, if he is not in a position to conduct the case.

## Section – 4 DUTY TOWARDS COLLEAGUES (Rules 36-39)

### 36. Not to advertise or solicit work

An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, and interviews other than through



personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

An advocate's 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 Member 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.

That this Rule will not stand in the way of advocates furnishing website information as prescribed in the Schedule under intimation to and as approved by the Bar Council of India. Any additional other input in the particulars than approved by the Bar Council of India will be deemed to be violation of Rule 36 and such advocates are liable to be proceeded with misconduct under Section 35 of the Advocates Act, 1961.

### **37. Not promote unauthorized practice of law**

An advocate shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law by any law agency.

**38. An advocate shall not accept a fee less than the fee, which can be taxed under rules when the client is able to pay more.**

### **39. Consent of fellow advocate to appear**

An advocate should not appear in any matter where another advocate has filed a *vakalatnama* or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

### **Duty in imparting training (Rule 45)**

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



## Duty to render Legal Aid (Rule 46)

46. 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.

Justice is a great interest of man on earth and the lawyer is the high priest in the shrine of justice. The quality of justice, to a great extent, depends on the moral quality, integrity and fairness of the lawyers. To develop their moral qualities, the lawyers must actively participate in the legal and aid programs and give free legal services to the poor and the needy people. This is one of the important duties an advocate owes to the society.

If a lawyer personally knows that his client is unable to pay because of poverty then he must represent the case without demanding any fees from him. Similarly, when the court appoints a lawyer to defend an accused, it is his moral obligation to accept such order and discharge his duties towards the court and the accused by the best use of his knowledge and ability. Lawyers shall co-operate and actively participate in joining hands with the local area legal services Authorities in organizing Lok Adalats and Legal Aid programs and conciliation proceedings.

## Restriction on other employments (Rules 47-52)

47. 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 appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be Director or Chairman of the Board of Directors of a Company with or without any ordinarily 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.

49. An advocate shall not be a 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 on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment.

50. 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.



51. 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 examination, 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.

52. Nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession. This rule shall be subject to such directives if any as may be issued by the Bar Council India from time to time.