

Rules framed by High Court in relation to Advocates

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Rule

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Rules framed by High Court in relation to AdvocatesIn exercise of powers under Sub-section (1) of section 34 of the Advocates Act, 1961, the High Court of Orissa has made the following rules laying down the conditions subject to which an Advocate shall be permitted to practice in the High Court and the subordinate Civil and Criminal Courts.

1.

In these rules, unless there is anything repugnant in the subject or context the word "advocate" shall include a partnership or a firm of Advocates-

2.

Save as otherwise provided for in any law for the time being in force, no advocate shall be entitled to appear, plead or act for any person in any Court in any proceeding unless the Advocate files an appointment in writing signed by such person or his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and signed by the Advocate in token of its acceptance or the advocate file a memorandum of appearance in the form prescribed by the High Court ;Provided that where an advocate has already filed an appointment in any proceeding, it shall be sufficient for another advocate, who is engaged to appear in the proceeding merely for the purposes of pleading, to file memorandum of appearance or to declare before the Court that he appears on instructions from the advocate who has already filed his appointment in the proceedings :Provided further that nothing herein contained shall apply to an advocate who has been requested by the Court to assist the Court amicus curiae in any case or a proceeding or who has been appointed at the expense of the State to defend an accused person in a criminal proceeding.Explanation 1 - A separate appointment or a memorandum of awareness shall be filed in

each of the several connected proceedings, notwithstanding that the same advocate is retained for the party in all the connected proceedings. Explanation 2 - The appointment in writing shall be in the following form : Vakalatnama Cause Title Between.....

Appellant/Petitioner And..... Respondent /Counter petitioner Known all men by those presents, that by this Vakalatnama I/We..... Appellant/Respondent/ petitioner / Opposite-party/ in the aforesaid case do hereby appoint and retain..... Advocate (s) to appear for me/us, in the above case and to conduct and prosecute (of defend) the same and all proceedings that may be taken in respect of any application connected with the same, or any decree or order passed therein including all applications for return of documents or receipt of any moneys that may be payable to me/ us in the said case and also in applications for review in appeals under Orissa High Court Order and in, applications for leave to appeal to Supreme Court. I/We authorise my/our Advocate(s) to admit any compromise lawfully entered in the said case. Dated the.....20.....

Signature of the executant (s)(a) When a Vakalatnama is given by a party who can sign his/her name, it must be signed by the party. When the party can not sign his/her name, the thumb impression or the mark of the executant must be attested, to the satisfaction of the Advocate accepting the Vakalatnama, to have been affixed in presence of the attesor. (b) The Advocate should, as far as possible, accept Vakalatnamas from Parties themselves and in case of its being not feasible from persons professing to be authorised by special or general powers-of-attorney to act on behalf of other person, and in accepting the Vakalatnama purporting to be executed by the party in person, is bound to satisfy himself that it was so executed. When the Vakalatnama purports to be executed by a third party on behalf of the client, the Advocate is bound to ascertain that such person has been duly empowered by the client to appoint an Advocate and, has himself executed the document and no Advocate shall receive a Vakalatnama from any person other than the party himself or his recognised agent or a person duly authorised a Power-of attorney to act in this behalf or his servant or relation. (c) Where there are more parties than one and they want to file one Vakalatnama it may be received from any one of them of a person duly authorised by any one of them without special authority from the other(s). (d) When a Vakalatnama is filed by an Advocate, he shall endorse on the back of it the date of acceptance, the name of the person from whom it is received and if such person is neither the client himself nor another lawyer, he shall state the precise nature of the authority, with date, of that person. He shall also certify that he (has) satisfied himself that he does not appear or hold brief for the opposite party. (e) A Vakalatnama containing the name of more Advocates than those accepting cannot be accepted by any other Advocates after it had been filed in Court. (f) When a Vakalatnama is executed by a person who is blind or illiterate or a person who does not understand the language of the Vakalatnama or by a pardanashin woman, the Advocate(s) accepting the Vakalatnama must satisfy himself that the executant signed the Vakalatnama after understanding its contents.

3.

An Advocate who is not on the Roll of Advocates of the Bar Council of the State in which the Court is situate, shall not appear, act or plead in such Court, unless he files an appointment along with an Advocate who is on the Roll of such State Bar Council and who is ordinarily practising in such Court.

4.

In case in which a party is represented by more than one advocate, it shall be necessary for all of them to file a joint appointment or for each of them to file a separate one.

5.

The acceptance of on appointment on behalf of a firm or partnership of advocates shall be indicated by a partner affixing his own signature as a partner on behalf of the firm or partnership of Advocates.

6.

An advocate at the time of acceptance of his appointment shall also endorse on it his address, which address shall be regarded as one for service within the meaning of Rule 5 of Order 3 of the Code of Civil Procedure, 1908. Provided that where more than one advocate accepts the appointment, it shall be sufficient for one of them to endorse his address, which address shall be regarded as one for service within the meaning of rule 5 of order 3 C.P. Code.

7.

Where an Advocate appointed by a party in any of proceedings is prevented by reasonable cause from appearing and conducting the proceedings at any hearing, he may instruct another advocate to appear for him at that hearing.

8.

(1) In civil cases, the appointment of an advocate, unless otherwise limited, shall be deemed to be in force to the extent provided in that behalf by rule 4 of order 3 of the Code of Civil Procedure, 1908. (2) In criminal cases, the appointment of an advocate, unless otherwise limited shall be deemed to be in force until determined with the leave of the Court by writing signed by the party or the advocate, as the case may be and filed in Court or until the party or the advocate dies, or until all proceedings in the case are ended so far as regards the party. (3) For the purposes of sub-rule (2), a case shall be deemed to mean every kind of enquiry, trial or proceeding before a Criminal Court whether instituted on a police report or otherwise than on a police report, and further- (i) an application for bail or reduction, enhancement or cancellation of bail in the case; (ii) an application for transfer of the case from one Court to another; (iii) an application for stay of the case pending disposal of a civil proceeding in respect of the same transaction out of which the case arises; (iv) an application for suspension, postponement or stay of the execution of the order or sentence passed in the case; (v) an application for the return, restoration or restitution of the property as per the order of disposal of property passed in the case; (vi) an application for leave to appeal against an order of acquittal passed in the case; (vii) any appeal or application for revision against any order or sentence passed in the case; (viii) a reference arising out of the case; (ix) an application for review of an order or

sentence passed in the case or in an appeal, reference or revision arising out of the case;(x)an application for making concurrent sentence, awarded in the case of in an appeal, reference, revision or review arising out of the case;(xi)an application relating to or incidental to or arising in or out of any appeal, reference, revision or review arising on or out of the case (including in application for leave to appeal to the Supreme Court);(xii)any application or act for obtaining copies of documents or for the return of articles or documents produced or filed in the case or in any of the proceedings mentioned herein before;(xiii)any application or act for obtaining the withdrawal or the refund or payment of or out of the moneys paid or deposited in the Court in connection with the case or any of the proceedings mentioned herein before (including money paid or deposited for covering the costs of the preparation and the printing of the Transcript record of Appeal in the Supreme Court);(xiv)any application for the refund of or out of the moneys paid or recovered as fine or for the return, restitution or restoration of the property forfeited or confiscated in the case or in any appeal, reference, revision or review arising out of the case as per final orders passed in that behalf;(xv)any application for expunging remarks or observations on the record of or made in the Judgement in the case or any appearance, revision or review arising out of the case; and(xvi)any application or proceeding for sanctioning prosecution under Chapter XXXV of the Code of Criminal procedure, 1898 or any appeal or revision arising from and out of any order passed in such an application or proceeding, shall be deemed to be proceedings in the case ;Provided that where the venue of the case or the proceeding is, shifted from one court (subordinate or otherwise) to another, the advocate filing the appointment referred to in Sub-rules (1) and (2) above in the former Court shall not be bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him in the latter Court that he has instructions from his client to appear, act and plead in that Court.

9.

(1)Except when specially authorised by the Court or by consent of the party, an advocate, who has advised in connection with the institution of a suit, appeal or other proceeding or has drawn up pleadings in connection with such matter, or has during the progress of any suit, appeal or other proceeding appeared, acted or pleaded for a party, shall not unless he first gives the party whom he has advised or for whom he has drawn up pleadings, appeared, acted or pleaded, an opportunity of engaging his services, appear or act or plead in such suit, appeal or other proceeding or in an appeal or application for revision arising there from or in any matter connected therewith for any person whose interest is in any manner in conflict with that of such party.Provided that the consent of the party may be presumed if he engages another advocate to appear, act or plead for him in such suit, appeal or other proceeding without offering an engagement to the advocate whose services were originally engaged by him or on his behalf.(2)Where it appears on the face of the record that the appearance of an advocate in any proceeding for any party is prejudicial to the interest of the other party on account of the reasons mentioned in Sub-rule (1) above, the Court may refuse to permit the appearance to be filed or cancel such appearance if it has already been filed, after giving the said advocate an opportunity of being heard.(3)An advocate who discloses to any party information confined to him in his capacity as an advocate by another party without the latter's consent shall not be protected merely by reason of his being permitted to appear, act of plead for the said party.

10.

(a)The appointment of a firm or partnership of advocate may be accepted by any partner on behalf of the firm.(b)No such firm or partnership shall be entitled to appear, not or plead in any Court unless all the partners thereof are entitled to appear, act or plead in such Court.(c)The name of the firm or partnership may contain the names of the persons who were or are members of the partnership but of no others.(d)The words "and company" shall not be affixed to the name of any such partnership or firm.(e)The names of all members of the firm shall be recorded with the registrar of the High Court and/or the District Judge as the case may be and the State Bar Council, and the names of all the partners shall also be set out in all professional communication issued by the partners or the firms.(f)The firm of advocates shall notify to the Registrar of the High Court and/or the District Judge, as the case may be, and the State Bar Council, and change in the composition of the firm or the fact of its dissolution as soon as may be from the date on which such charge occurs or its dissolution takes place.(g)Every partner of the firm of advocates shall be bound to disclose the names of all the partners of the firm whenever called upon to do so by the Registrar of the High Court, the District Judge, the State Bar Council, any Court or any party for the against whom the firm or any partner thereof has filed the appointment or memorandum of appearance.(h)In every case where a partner of a firm of advocates signs any document or writing on behalf of the firm he shall do so in the name of the partnership and shall authenticate the same by affixing his own signature as partner.(i)Neither the firm of advocate nor any partner thereof shall advise a party or appear, act or plead on behalf of a party in any matter or proceeding where the opposite party is represented by any other partner of the-firm or by the firm itself.

11.

No advocate shall be permitted to file an appointment or memorandum of appearance in any proceeding in which another advocate is already on record for the same party save with the consent of the Court, unless the former advocate has ceased to practise or has by reason of infirmity of mind or body by otherwise become unable to continue to act.

12.

An Advocate may correct any clerical error in any proceeding with the previous permission of the Registrar or an officer of the Court, specially empowered in this behalf by the Court obtained on a memorandum stating the correction desired.

13.

No advocate who has been debarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognised agent of any party within the meaning of order 3 of the Code of Civil Procedure, 1908.

14.

No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of contempt.

15.

Advocates appearing before the Court shall wear the following dress : (1) Advocates other than lady advocates- (a) Black buttoned of coat (Chapkan), achakn or sherwani), Barrister's gown and bands, or (b) Black open collar coat, white shirt, white collar, stiff or soft, with Barrister's gown and bands. Lady Advocates- Regional dress of subdued colour or colours with Barrister's gown and bands.