

**Final Year**

**Sri Lanka Law College**

# **Professional Ethics**



Empowers Independent Learning



**Independent Law Student Movement**

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## **WHAT IS PROFESSIONAL ETHICS?**

Ethics are standards by reference to which preferable conduct relating to a certain area of human activity may be determined.

Professional Ethics is a set of standards relating to the activities of professionals

It is important because,

- The number and frequency of ethical violations is increasing thus leading to the erosion of public confidence in the profession.
- New entrants should be equipped to deal with ethical issues.
- Public insists on high quality service and value for money

- Dr. Amarasinghe

## **Features of the Profession**

With the development of society there have developed groups and within such groups knowledge was shared in order to accelerate growth, thereby a scientific approach appears to have developed where those groups eventually are recognised as a profession.

Together they act to strengthen their knowledge and seek recognition as a separate entity.

The fundamental cores of a profession are that (1) the art practices is helpful to others and (2) the persons engaged in the art govern the practice in a way which is primarily for the public good

## ***The Legal Profession -***

- Consists of persons with the minimum standards of high intelligence, skill and learning acquired after extensive training
- Provides an essential service to society
- Willing to provide services to those who require it
- Willing to work for a living and belong to an organisation that represents them
- Independent in the exercise of professional judgement
- Voluntarily submits to standards of conduct
- Governed by the Constitution, Supreme Court Rules and other statutory provisions
- Register of Attorneys is maintained by the Supreme Court

## **Duties of the Lawyer**

***To his client*** – he should serve the interests of his client with the best skill, care, diligence, confidence and should be scrupulous in all financial dealings with the client

***To the court*** – as an officer of the court the lawyer should assist with the administration of justice and the bringing about of fairness

***To members of the legal profession*** – lawyers are required to maintain and uphold the dignity and honour of the profession

***To the public*** – lawyers are required to provide a service to the public and command respect and confidence

**RELEVANT ARTICLES OF THE CONSTITUTION**

Article 136 (1) (g) &amp; (h)

Article 169 (11) (12) (13)

**Article 136 (1)**

Subject to the provisions of the constitution and any law, the Chief Justice with any three judges of the SC nominated by the CJ, may from time to time, make rules regulating generally the practice and procedure of court including;

- (g) the Admission,  
Enrolment,  
Suspension and  
Removal  
Of Attorney at Law  
and the rules of conduct, etiquette for such Attorney at Law.
- (h) the attire of  
Judges,  
Attorneys – at – Law  
Officers of court  
Persons attending the courts in SL  
Whether established by the constitution parliament or existing law

**Article 169 (11) :**

All Attorney at Law admitted and enrolled or demand to have been admitted and enrolled as Attorney at Law under the provisions of Administration of Justice of Law No 44 of 1973, Shall subject to the provisions of the constitution be deemed to have been admitted and enrolled as Attorney at Law of SC created and established by the constitution.

**Article 169 (12) :**

Oaths or Affirmations

After the date fixed by the Minister of Justice by order published in the Gazette,

No Attorney at Law shall be entitled to represent any party to a proceeding or be given the right of audience in any court,

Unless he has taken and subscribed the oath or made and subscribed the affirmation,

Set out in the fourth schedule, before a judge of the SC, COA or HC or any other judicial officer as defined in Ar. 114,

And it shall be the duty of such judge or judicial officer to forward such oath or affirmation to the Registrar of the SC who shall cause the same to be entered in the rolls of such court.

Such entry shall be the only proof that such Attorney at Law has taken and subscribed or made and subscribed such oath or affirmation.

**Article 169 (13) :**

Provision of the Admin of Justice law, relating to AG the legal profession, state attorneys, and state counsel, shall be deemed to be in operation and every reference to SC in provisions of Admin of Justice Law shall be deemed to be a reference to the SC established by the constitution.

### **ATTIRE OF JUDGES AND ATTORNEYS AT LAW – RULES 1978**

**Rule 2** – The attire of the judges of the Supreme Court and Court of Appeal shall be as determined by the Chief Justice after consultation with other judges of the Supreme Court.

**Rule 3** – Attire of Judges of High Court other than women judges of High Court shall be

- a) Black gown with red lapel
- b) Black Shervani and dark trousers OR black coat, dark trousers and black tie.

**Rule 4** – Attire of Judges of District Courts and Magistrates Courts other than women judges of District Court and Women Magistrates:

- a) Black gown with purple lapel
- b) Black Shervani and dark trousers OR black coat, dark trousers and black tie.

**Rule 5** – Attire of women judges of High Court, District Court and Magistrate Courts

- a) Black gown with red/ purple lapel
- b) Black, white or grey saree and jacket  
White/Grey frock

**Rule 6** – Attire of Attorneys at Law other than female Attorneys at Law

- a) Black coat and dark or white trousers and black tie      OR
- b) White National costume      OR
- c) Black Shervani with dark or white trousers

**Rule 7** – Attire of female Attorneys at Law

- a) White, black, grey or mauve saree and jacket      OR
- b) White, black, grey or mauve frock

**Rule 8** – Attorneys at Law in Supreme Court and Court of Appeal shall also wear a black gown.

### **“GENERALLY, ONLY ATTORNEYS MAY PRACTICE LAW” – RULE 70**

Rule 70 of the Supreme Court rules of 1978 provides that,

“No person, who has not been duly

- admitted and enrolled as an Attorney at Law      OR
- who has been suspended from practice      OR
- removed from office after having been so admitted and enrolled

Shall be allowed;

To assist and advice clients AND to appear, plead or act for or on behalf of clients in any court or other institution established by law for the administration of Justice.

In **general**, the **intention** of the **State** is to **exclude** the **practice of the law** by **persons who are not Attorneys at Law**.



## **RELATIONSHIP BETWEEN LAWYER & CLIENT - CAB RANK RULE**

**Rule 5:** An Attorney-at-Law may not refuse to act on behalf of party or person in any matter or proceeding before any court, tribunal or other institution established for administration of justice or in any professional matter at his or her professional fee.

This rule is popularly identified as Cab-Rank Rule. In considering a fleet of cabs, a driver cannot make choices on customer, when the customer is ready to pay the charge, the drivers should take him to the expected place.

It is derived from the cab-bank rule which was discussed in *Rondel v Worsley* – In English law (and other countries which adopt the rule), the cab-rank rule is the obligation of a barrister to accept any work in a field in which he professes himself competent to practise, at a court at which he normally appears, and at his usual rates.

Similarly, when the client is ready to pay his fees, an Attorney-at-Law cannot make selections of his clients in performing his professional matter.

This rule relates to the fundamental right in a democratic society in which every person has the right to legal representation

Acceptance of the case does not equate with approval of a client's conduct

These are the exceptions to the cab-bank rule:

- Where case affects professional independence or otherwise makes acceptance of matter incompatible with best interests of administration of justice.
- Where there is a personal interest (the lawyer may proceed if he makes full disclosure and get written consent so as to protect oneself if petition against him later).
- If conflict of interest with the interest of any other client or connected professional matter
- Where conflict of interest between two of your clients.
- Any professional matter, which may in his opinion embarrass him by reason of his holding any office or appointment.
- Any professional matter, unless can attend to it with due diligence.
- If the matter means that the lawyer would be getting involved in the commission of an offence.
- Where the matters involves the lawyer as a witness. However the lawyer may accept it if he is a witness in a formal or non-contentious matter such as presenting of documents as an officer holding a certain post.
- Attorneys, in the same law firm, should not represent two opposing clients unless it is in the matter of an out of court settlement.

**FEES AND REMUNERATION****Justification for accepting fees**

- An Attorney-at-Law is not engaged in charitable activity and not obliged to accept work unless the client can pay
- Rendering services for a living and charging fees is a characteristic of a professional
- Adequate compensation is necessary to serve clients effectively and preserve the integrity and independence of the profession

**An Attorney must consider the following when naming the fee**

- He may not quote excessive fees to avoid unwanted briefs
- Must charge a reasonable fee (a legal aid fee has been said to be a proper fee). If the client is eligible for legal aid, the Attorney must tell the client
- He must consider his personal interests, his duty as a professional and to provide justice to those in need
- Charging excessive fees is a ground for discipline

## **CONFIDENTIAL INFORMATION**

The employment of an attorney places him in a special position that imposes upon him the duty to maintain inviolate the confidence and at every peril to himself to preserve the secrets of his clients.

An Attorney at Law should not disclose the information received by the client to a third party nor should he utilize them for his own benefit.

Private information is imparted by a client with a complete reliance and faith in the attorney and a firm trust that he will not fail them.

The principle of confidentiality rests on two bases:

1. The Attorney-Client privilege embodied in the Law of Evidence **Sec 126** of the Evidence Ordinance states that there is an obligation to keep the information in strict confidence.
2. The rules of confidentiality established in Professional Ethics Supreme Court Rules 31-38

The SC rules on confidentiality can be identified as follows;

**Rule 31** – An Attorney at Law should keep in strict confidence all information whether oral or documentary, acquired by him from the client.

**Rule 32** - However the Attorney at Law should disclose such information if it is authorized by the client or in the event of the death of his client by the legal representatives of the client. Even then the Attorney at Law should be careful to disclose any such information as is necessary.

**Rule 33** - It is the duty of the Attorney at Law to keep the information in strict confidence during the existence of his professional relations with the client. And as well as after the said Attorney at Law ceased to act for the client, in the event of the death of the client.

**Rule 34** – This duty extends to any partner or assistant of the Attorney at Law in profession. It is the duty of Attorney at Law to take reasonable steps to prevent the disclosure of any such information by such persons even after the termination of his relationship with such persons.

**Rule 35** – an Attorney at Law shall not undertake professional work from the opposite party of his client and possessing his information. Such information shall not be used to prejudice his former client.

**Rule 36** – where Attorney at Law had not received confidential information from his former client he can work on behalf of his former clients' opposite party.

**Rule 37** – these rule apply when one law firm amalgamates with another firm or when a new law firm is formed.

**Rule 38** – On following occasions information can be disclosed w/o the consent of the client.

1. In order to defend himself, his associates or employees against any allegation of misconduct or malpractice made by his client.
2. To prevent the commission of crime, fraud or illegal act.

3. In the case of a joint retainer or where client has joint interest with others, information can be disclosed to such members of the joint retainer or joint interest.

Other instances where confidential information can be disclosed;

1. Where the information becomes public knowledge.
2. The circumstances give rise to a public duty of disclosure.
3. Attorney at Law subsequently obtains info, outside his relationship with the client.

The rules of the profession require an Attorney at Law to be faithful, loyal and trustworthy. That is the reason why the law has declared that such information is privileged from disclosure.

Instances in which the Attorney-Client confidentiality is overridden by duty to court –

1. There is a duty to disclose whether the client is on probation or under a suspended sentence.
2. There is a duty to disclose when client is on bail and evading arrest.

**CEASING TO ACT AS AN ATTORNEY-AT-LAW (RULE 19 – 26)**

The general rule stipulates as follows:

**Rule 19** – An Attorney-at-Law on accepting instructions from a client is under a duty not to withdraw his services in respect thereof except for a good cause.

Dr. Amarasinghe – “good cause means that the lawyer should be able to adduce supporting material justifying ceasing to act for the client”

Some of the circumstances are –

- Coming into possession of documents belonging to another party by means other than proper channels
- If he comes to know of certain facts which, if he knew of at the beginning, he would have refused to accept the brief
- Where he is not competent to handle the matter or there is a conflict of interest
- Where the client insists on an unethical or illegal course of action
- Where client refuses to accept advice and insist on pursuing a course of action which the attorney considers is inconsistent with his duty to the court
- Where the attorney cease to practice his profession
- In criminal matters there is no duty to withdraw except in very serious matters – there is a duty to see it to the end except in very compelling circumstances
- Attorney should never pass the case to another Attorney without client’s approval
- Must make arrangement for smooth transition of work to another Attorney where required

**Rule 21** – An Attorney-at-Law may cease to act for his client if the client being requested to do so, declines or neglects to give further instructions in circumstances where the Attorney-at-Law would be left with no authority to take further action on behalf of his client in any professional matter or proceeding

**Rule 22** – An Attorney-at-Law may withdraw from any professional matter on the failure of the client to pay his fees or provide for disbursements in respect of such professional matter

**Rule 25** – An Attorney-at-Law shall cease to act on behalf of his client if so requested by the client

**Rule 26** – An Attorney-at-Law shall preserve and safeguard all property of the client entrusted to him

### **TOUTING AND ADVERTISING (39-49)**

An attorney's primary concern should be public service and not making money. He ought therefore not to publicize his services and seek business as persons who are engaged in trades, businesses and other primarily money making occupations.

When an attorney advertises his services or the service of his firm to the public – he must do so in a manner consistent with the maintenance of proper professional standards in the manner permitted by the rules of the supreme court.

Some guidelines on advertising:

1. Such publication must not contain any material misrepresentation or omission
2. Information must be objective.
3. Reference must not be made to quality of service which cannot be verified or objectively measured by the person to whom it is addressed.
4. What is said must be relevant and understandable.
5. Information must be communication without undue emphasis.

There is no absolute prohibition on advertising, however, an attorney cannot directly or indirectly procure to attract business through a newspaper/magazine/book/pamphlet either by himself or through another person or organization.

Touting can be identified as,

Applying to a potential client for professional business by contact in person/ by telephone or other methods of communication directed to a specific person by the attorney himself or through another.

Elements of touting can be identified as:

1. Engaging any person to solicit clients
2. For a commission, payments or consideration or
3. Advertising unfairly for attracting clients.

It must be noted that touting is a serious offence and can even result in disenrollment.

Re. A V. De Silva: Expelled an attorney for touting.

Rules are made to keep independence of each advocate, he should be able to succeed on his own merits.

The rules relating to touting and advertising is provided for in Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) – Rules 1988 from Rule **39 to 49**

**Rule 39** - An Attorney at Law shall not under any circumstances, by himself or through another directly or indirectly resort to the practice of touting.

The expression 'touting' shall include the following acts or conduct:

1. Engaging in any manner for any commission, payment or consideration the services of any person to solicit clientele
2. Advertising in any manner, for the purpose of unfairly attracting clientele for himself.

**Rule 40** - An Attorney-at-Law may display his professional name plate at his office and/or residence.

Such name plate can only contain the following information:

1. Name of the Attorney-at-Law/ Law Firm
2. Professional Qualifications of the attorney/ partners of law firm. (Eg: Attorney-at-Law, Notary Public, Solicitors, JP, Commissioner of Oaths)
3. Academic Qualifications such as university degrees
4. Office hours

Illuminated name plates or boards showing the directions to the office of an attorney-at-Law shall not be used.

The professional or law firm name plate shall be of a reasonable size sufficient only to enable clients to find the office or residence of the Attorney-at-Law.

#### **Exceptions:**

**Rule 41** – if changes premises can leave notice for reasonable length of time in former premises giving new address.

**Rule 42** – Attorney at Law may have professional stationary – may contain following information:

1. Name of Attorney at Law/law firm, address and residential address telephone number, P.O. Box number etc.
2. Name of partners and members of law firm
3. Professional/academic qualifications of Attorney at Law, including partners and members
4. In case of law firm maybe described as “Attorneys at Law & Notaries Public” or “Attorneys at Law and Solicitors”.

**Rule 43** – Attorney at Law / Law firm may have its address on envelopes, cheques and documents.

**Rule 44** – Attorney at Law may use card which may contain:

1. Name
2. Professional/residential address
3. Telephone number
4. Professional/academic qualifications
5. Name of legal firm of which he maybe a member

**Rule 45** – Attorney at Law/Law firm may have its name , address description in any legal directory including telephone directory

**Rule 46** – Attorney at Law may broadcast on radio/TV/deliver lecture/give talk/ interview/ or write articles or letters on any legal or professional matter.

**Rule 47** – if Attorney at Law knows, believes his name would be advertised should take steps to see that it wouldn't offend rule/etiquette against advertising.

**Rule 48** – Attorney at Law should not give any interview/broadcast/permit publication of matter relating to client/former clients business without latter's consent.

**Rule 49** – Attorney at Law should not cause/permit to be published particulars of –

- i. His practice
- ii. A matter in which he has instructed (unless he can do so without disclosing confidential info pertaining to the matter).

## **DISCIPLINARY ACTION**

### **Suspension & Removal of Attorney at Law from office**

It is a characteristic of a profession that the activities of its members are subject to some form of discipline.

Accordingly, an Attorneys' admission to the profession is conditional upon his agreement to observe the rules of conduct of the profession.

His franchise is revocable if his conduct renders him unfit to belong to the legal profession.

Under **Article 136** of the Constitution, the Chief Justice with any three judges of the Supreme Court may make rules for:

- Admission
- Enrollment
- Suspension &
- Attire of Attorneys at Law

Important Sections of the Judicature Act regarding suspension & removal of Attorney at Law from office:

### **Section 42**

**42(1)** The Supreme Court shall have the power to refuse to admit and enroll any person as an Attorney at Law.

- And shall, if so required to do so by such person applying, assign & declare in open court the reasons for such refusal.

**42(2)** Every person admitted and enrolled as an Attorney at Law who shall be guilty of any

- Deceit
- Malpractice
- Crime
- Offence

Maybe suspended from practice or removed from office by any 3 judges of the Supreme Court sitting together.

The word offence in S. 42(2) of the Judicature Act has been interpreted to have a wider meaning than that given to it in the Penal Code and CPC.

Amarasinghe J in *Chandratilake V Munasinghe* held that the word offence means disciplinary offences. Thus if upon consideration, of all the circumstances if the court is of the view that although the Attorneys' conduct is not personally disgraceful it amounts to a failure to observe standards of the profession Supreme Court may exercise disciplinary jurisdiction.

The notice of such Rule should be given to the Bar Association and the Attorney General. The Chief Justice may appoint three judges to have a trial before the Supreme Court. Either AG or his representative should assist the court.

After hearing of the evidence, cross examinations and submissions and if the charges are proved, the Supreme Court shall take a suitable action such as suspend/dismiss from the service or on the other hand if the charges are not proved to acquit him from the charges against him.



*Re Wilbert Fernando* – Proceedings are not criminal or penal but are intended to protect the public, litigants and the legal profession itself.

*Re Dematagoda Don Harry Wilbert* – By way of a forged certificate entered Law College. After this fact was disclosed, he was dismissed from the profession.

*Re Brito* – Posting a Postcard to a lady with untrue words imprisoned for Six months by Magistrate Court. Upon reporting this matter to the Supreme Court, the Attorney at Law was removed from his office.

**42(3)** Before any such Attorney at Law is suspended or removed, a notice containing a copy of the charge/charges against him and Calling upon him to show cause within a reasonable time as to why he should not be suspended or removed, Shall be personally served on him.

Provided however, that every such Attorney at Law maybe suspended by any judge of the Supreme Court on such cause, pending the final decision of the Supreme Court.

**42(4)** It is the duty of every court before which the Attorney at Law was found guilty of any offence to bring it to the notice of the Supreme Court.

The Supreme Court may suspend an Attorney at Law from practice pending the final decision.

### **Section 43**

**43(1)** Chief Justice or any Supreme Court judge has the power to direct a preliminary inquiry to be held by Disciplinary Committee of the Bar Association of Sri Lanka into the alleged misconduct of the Attorney at Law.

**43(2)** This is not mandatory. The discretion whether to refer to a preliminary inquiry or to institute action is directly on the Supreme Court.

**43(3)** The members and secretary of the disciplinary committee are not liable to any action/prosecution in respect of any act or omission in the capacity as a member.

### **Section 44**

The disciplinary committee is chosen from a panel consisting of 15 members of the Bar Association appointed by the Chief Justice for a period of 3 years.

When a matter is referred to the disciplinary committee three members of the disciplinary committee may be nominated by the Chief Justice.

Once the disciplinary committee conclude the inquiry it will report it's findings to the Supreme Court. The Supreme Court is not bound to accept those recommendations and it will then determine whether further proceedings should be taken against the attorney concerned.