

WRITTEN ASSIGNMENT
PRACTICAL

SUBJECT : PROFESSIONAL ETHICS

PAPER : V

**TOPIC : DUTIES OF ADVOCATES AS PER THE BAR
COUNCIL OF INDIA RULES**

NAME OF THE STUDENT:

CLASS :

ROLL NO :

GUIDED BY:

**MR. MANOJ KUMAR JENA SAMANTA
ASST. PROFESSOR**

INTERNAL

EXTERNAL

**GANJAM LAW COLLEGE
AFFILIATED TO MADHUSUDAN LAW UNIVERSITY
AMBAPUA ROAD, BERHAMPUR- 760011, ODISHA**

CONTENTS

1. INTRODUCTION	1
2. PREAMBLE TO THE STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE.....	1
3. DUTIES TO THE COURT:	2
4. DUTIES TO THE CLIENT:	4
5. DUTIES TO OPPONENT:	7
6. DUTIES TOWARDS COLLEAGUES:	7
7. OTHER DUTIES	8
8. DUTY IN IMPARTING TRAINING.....	8
9. DUTY TO RENDER LEGAL AID:.....	8
10. RESTRICTIONS ON OTHER EMPLOYMENTS:	9
11. OPINION OF THE STUDENTS	10

DUTIES OF ADVOCATES AS PER THE BAR COUNCIL OF INDIA RULES

INTRODUCTION

Professional ethics may be defined as a code of conduct written or unwritten for regulating the behavior of a practicing lawyer towards himself, his clients, his adversary in law and towards the Court. Thus, ethics of legal profession means the body of the rules and practice which determine the professional conduct of the members of bar. The main object of the ethics of the legal profession is to maintain the dignity of the legal profession and the friendly relation between the Bench and Bar.

According to Chief Justice Marshall, the fundamental aim of Legal Ethics is to maintain the honor and dignity of the Law Profession, to secure a spirit of friendly co-operation between the Bench and Bar in the promotion of highest standards of Justice, to establish honorable and fair dealings of the counsel with his client, opponent and witness; to establish a spirit of brotherhood in the Bar itself; and to secure that lawyers discharge their responsibilities to the community generally.

The American Bar Association committee has well explained the need of the Code of legal ethics. Legal profession is not a business but a profession. It has been created by the state for the public good.

The preamble to the rules as to standards of conduct and etiquette made by the Bar Council of India has made it clear that the rules so made contain canons of conduct and etiquette adopted as general guides and the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned role in the administration of Justice. Thus, in India the exhaustive code of conduct lawyers has been provided by the Bar Council of India in the exercise of its rule-making power under section (U/S) 49 (I) (c) of the Advocate Act 1961.

PREAMBLE TO THE STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE

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 moral 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 the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

DUTIES TO THE COURT:

The duties of an advocate towards Court are prescribed under Part VI Chapter II of the Bar Council of India Rules as below-

Rule 1-It is duty of the advocate that during the presentation of his case and while otherwise acting before a Court, he should conduct himself with dignity and self-respect. He is not expected to be servile and whenever there is proper ground for serious complaint against a judicial officer, he becomes duty-bound to submit his grievance to proper authorities.

Rule 2 - It is expected of an advocate that he is maintaining a respectful attitude towards the Court, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

Rule 3 - It should never be the endeavour on the part of the advocate that he is influencing the decision of a Court by any illegal or improper means He should never attempt to indulge in the private communications with a Judge during the pendency of the cause.

Rule 4 - It is the duty of the advocate that he is restraining and preventing 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 the client. It should be the endeavour of the advocate that he is exercising his own judgment in the case, using restrained language in correspondence. The advocate should avoid using scurrilous attacks in pleadings, and intemperate language during arguments in Court.

Rule 5- It is the duty of the advocate to appear in at all times only in the prescribed dress, and in a presentable appearance.

Rule 6- It is the duty of the advocate not to enter appearance, act, end or practise 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 the advocate as father, grand-father, son, grand-son, uncle, brother, nephew, 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

Rule 7- It is the duty of the advocate not to wear bands or gown in public places other than in Courts except on such ceremonial occasions, and at such places as the Bar Council of India or the Court may prescribe.

Rule 8- It is the duty of the advocate not to 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.

The expression "Executive Committee" includes 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.

It should be noted that this rule shall not apply to such member appearing "amicus curiae" or without a fee in a matter affecting the affairs of the Bar Council, Incorporated Law Society, or a Bar Association.

Rule 9- It is the duty of the advocate not to act or plead in any matter in which he himself has pecuniary interests.

As for example:

- i. He should not act in a bankruptcy petition when he himself is also creditor of the bankrupt
- ii. He should not accept a brief from a company of which he is a director.

Rule 10 - It is the duty of the advocate not to stand as a surety, or certify the soundness of a surety, for his client required for the purpose of any legal proceedings.

The duties of an advocate towards his client are prescribed under Part VI Chapter II of the Bar Council of India Rules as below-

DUTIES TO THE CLIENT:

Rule 11- It is the bounden duty of an advocate to accept any brief in the Courts or tribunals or before any other 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. This is only under exceptional circumstances that he may refuse to accept a particular brief.

Rule 12-It is the duty of the advocate that he is not ordinarily withdrawing from the engagements that he has 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.

Rule 13- It is the duty of the advocate not to accept a brief or appear a case in which he has reason to believe that he will be a witness. In those cases when he comes to know afterwards that he would be a witness on material question of fact, he should not continue to appear as an advocate if he can retire without jeopardizing his client's interests.

Rule 14- It is the duty of the advocate that at the commencement of hi engagement and during the continuance thereof, he is making 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.

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

Rule 16-It is the duty of the prosecution counsel in a criminal trial that he is to conduct the prosecution in such a manner 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.

Rule 17-It is the duty of the advocate to see that he is not directly or indirectly committing the breach of the obligations imposed by section 126 of the Indian Evidence Act. Section 126 imposes restriction on an advocate whereby he is not permitted to make a disclosure of the

communication made to him by his client in the course and for the purpose of his employment. He can do so only when the client himself consents making such disclosure

Rule 18-The advocate should never be a party to fomenting of litigation.

Rule 19-It is the duty of the advocate not to act on the instructions of any person other than his client or his authorised agent.

Rule 20-The advocate should not stipulate for a fee contingent on the ac results of litigation or agree to share the proceeds of the litigation.

Rule 21-It is the duty of the advocate not to 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, share and debentures or Government securities P or to any instruments which are, for the time being, by law or custom negotiable or to any mercantile document of title to goods.

Rule 22-It is the duty of the advocate not to 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 other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was 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.

Rule 23-It is the duty of the client not to adjust fees payable to him by client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate.

Rule 24-It is the duty of the advocate not to do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

Rule 25-It is the duty of the advocate to maintain the accounts of the client's money entrusted to him. The accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and debits made on account of fees with respective dates and all other necessary particulars.

Rule 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 been received for fees or expenses. The

advocate during the course of the proceedings, shall not, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

Rule 27-In those cases where any amount is received or given to him on behalf of his client, it is the duty of the advocate to convey the fact of such receipt to his client as early as possible.

Rule 28-When the proceedings are terminated, the advocate shall be 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.

Rule 29-In those cases where the fee has been left unsettled, the shall be entitled to deduct, out of any money 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.

Rule 30-It is the duty of the advocate to furnish a copy of the client's account to him on demand provided the necessary copying charge is paid.

Rule 31-It is the duty of the advocate not to enter into arrangements whereby funds in his hands are converted into loans.

Rule 32-The advocate should 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 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.

Rule 33-In those cases where the advocate 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, it is his duty not to act, appear or plead for the opposite party.

The duties of an advocate towards his opponent are prescribed under Part VI Chapter II of the Bar Council of India Rules as below-

DUTIES TO OPPONENT:

Rule 34- It is the duty of the advocate that he should not in any way communicate or negotiate upon the subject-matter of controversy with any party represented by an advocate except through that advocate.

Rule 35- It is the duty of the advocate 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.

The duties of an advocate towards his colleagues are prescribed under Part VI Chapter II of the Bar Council of India Rules as below-

DUTIES TOWARDS COLLEAGUES:

Rule 36- It is the duty of the advocate not to 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 producing 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 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.

Rule 37- It is the duty of the advocate not to permit his professional services or his name to be used in aid of or to make possible, the unauthorised practice of law by any lay agency.

Rule 38- It is the duty of the advocate not to accept a fee less than the fee taxable under the rules when the client is able to pay the same.

Rule 39- It is the duty of the advocate not to enter appearance in any case in which there is already a vakalat or memo or 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.

The duty of an advocate in the matter of imparting training is prescribed under Part VI Chapter II of the Bar Council of India Rules as below-

OTHER DUTIES

Rule 40 - Every advocate on the rolls of the State Bar Council to pay a certain sum to the State Bar Council.

Rule 41- All the sums so collected by the State Bar Council shall be credited in a separate fund honour as "Bar Council of India Advocate Welfare Fund for the State" and shall be deposited in the bank as provided there under.

Rule 42 - deals with the consequences of non-payment of the said - amount by the advocate. It provides that if an advocate falls to pay the aforesaid sum within the prescribed time as provided under Rule 40, the Secretary of the State Bar Council shall Issue to him a notice to show- cause within a month why his right to practice is not suspended.

Rule 43-An advocate who has been convicted of an offence mentioned u/s 24-A of the Advocate Act or has been declared Insolvent or has taken full time service or part-time service or engaged In business or any advocate Inconsistent with his practicing as an advocate or has incurred any disqualification mentioned in the Advocate Act or the rules made there under, shall send a declaration to that effect to the respective State Bar Council in which the advocate is enrolled, within 90 days from the date of such qualification.

Rule 44-An appeal shall lie to the Bar Council of India at the Instance of an advocate within a period of 30 days from the date of the order passed under Rules 42 and 43.

DUTY IN IMPARTING TRAINING

Rule 45- The Bar Council of India makes it clear that 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 a State Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961.

DUTY TO RENDER LEGAL AID:

Rule 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, as advocate owes to society.

Rule 47-It would be highly inappropriate 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 a State Bar Council in order to enable such person to qualify for enrolment under the Advocates Act. 1961.

The duty of an advocate in the matter of rendering legal aid is prescribed under Part VI Chapter II of the Bar Council of India Rules as below

Rule 48-It should be deeply rooted in the mind of the advocate 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.

RESTRICTIONS ON OTHER EMPLOYMENTS:

Rule 49-The advocate is not permitted to personally engage in any business. That would be different thing that he is a sleeping partner in a firm doing business and the nature of the business is, in the opinion of the appropriate State Bar Council, not inconsistent with the dignity of the profession.

Rule 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.

Rule 51-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. If during the continuance of the practise he joins any such employment, he should intimate the fact to the Bar Council on whose roll his name appears. The advocate concerned has to thereafter cease his practise as an advocate so long as he continues in such employment.

Nothing in 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 his State Bar Council made under section 28(2)(d) read with section 24(1)(e) of the Act despite his being a full time salaried employee.

Law Officer for the purpose of this Rule means person who is so designated by the terms of his appointment, and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer.

Rule 52- In those cases where the advocate has inherited, or succeeded by survivorship to a family business, he may continue it, but he may not personally participate in the management of such business. 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.

Rule 53 – An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do ‘press-vetting’ for newspaper, 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.

Rule 54- 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 of India from time to time.

OPINION OF THE STUDENTS

Legal profession is not a trade of business. It is a noble profession. Members belonging to this profession have not encouraged dishonesty and corruption but have to strive to secure Justice. There is a heavy responsibility of these on whom duty has been rested under the Advocate Act, 1961 to take disciplinary action.

The position of an advocate in society is complicated and exposed to risk. He acts as what his client asks not only under the Indian Contract Act regulated not only to his client but also to his court as well as the proceedings of Bar Council to find that the misconduct has been falsely interpreted by intending to contradict. Some of the incidents of misconduct are non-appearance in court for the party engaged during professional acts, accepting being one party and other things in need of amendment as the strict case.

Advocate Act 1961 to take disciplinary action when the credibility and rapid action of the profession comes under a client on account of the act of omission and commission by any member of profession.

Signature of the Student