



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

SUBJECT: Professional Ethics and
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LECTURE: 24

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Lecture-24



**Duty to Colleagues,
Duty towards Society
And
Obligation to render legal aid**

LECTURE 24: Duty to Colleagues, Duty towards Society and obligation to render legal aid

Rule 11 to 33 deal with the duties of an advocate to his client. These rules may be explained as follow:

i. Bound to accept briefs: Rule 11 provides that an advocate is bound to accept any brief in the court or tribunal or before any authority which he proposes to practice at fee consistent with his standing at bar and also nature of case.

In *S.J. Chaudhary v. State*, AIR 1884 SC 1755, the Supreme Court has made it clear that if an advocate accepts the brief of a criminal case, he must attend the case day to day and if he does not do so, he will be held liable for breach of professional duty.

ii. Not to withdraw from service: Rule 12 provides that an advocate shall not ordinarily withdraw from engagements once accepted without sufficient cause and unless reasonable and sufficient notice given to the client. In case he withdraws himself from the case, he is bound to refund such part of the fee as has not been earned.

iii. Not to appear in matters where he himself is a witness: Rule 13 provides that an advocate should not accept the brief or appear in a case in which he has reason to believe that he will be a witness. In *Kokkanda B. Poondacha v. K.D. Ganpathi*, AIR 2011 SC 1353, the Court has held that one party to proceedings cannot cite advocate representing the other side as witness without disclosing as to how testimony is relevant as it will result in depriving the other side of services of the advocate.

iv. Full and frank disclosure to client: Rule 14 provides that an advocate shall 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 judgment in either engaging him or continuing the engagement.

v. Uphold interest of the client:

Rule 15 provides that it is the duty of an advocate to uphold the interest of his client fearlessly by all fair and honourable means without regard to any unpleasant consequences to himself or to any other. It is the duty of an advocate to defend a person accused of crime regardless of his personal opinion as to the guilty of the accused and in the discharge of this duty he should always bear in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

vi. Not to suppress material or evidence:

Rule 16 provides that an advocate appearing for the prosecution of criminal trial shall so conduct the prosecution that it does not lead to conviction of an innocent. The rule makes it clear that the suppression of material capable of establishing the innocence of the accused must be scrupulously avoided.

vii. Not to disclose the communications between client and himself:

Rule 17 provides that an advocate shall not commit directly or indirectly any breach of the obligation imposed by section 126 of Indian Evidence Act.

viii. An advocate should not be a party to stir up or instigate litigation:

Rule 18 provides that an advocate shall not at any time be a party to the fomenting litigation.

ix. Rule 19 makes it clear that an advocate shall not act on the instruction of any person other than his client or his authorized agent.

x. Not charge depending on success of matters: Rule 20 provides that the fee of an advocate depending upon the success of the suit is considered as oppose to public policy. Contract for contingent fee is also hit by section 23 of the Indian Contract Act. Agreement to share the proceeds of the litigation may amount to champerty. In such conditions the advocate has direct interest in the subject-matter and cannot act with the sense of detachment or with the attitude of objectivity. Such agreement degrades the honourable profession. To prevent such an agreement rule 20 provides that an advocate shall not stipulate for free contingent on the results of litigation or agrees to share the proceeds thereof.

xi. Not receive interest in actionable claim: Rule 21 provides that an advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. However, it has been made clear that nothing in this rule shall apply to stocks, shares, and debentures or government securities or any instruments which are, for the time being, by law or custom negotiable or to any mercantile document of title to goods.

xii. Not to bid or purchase property arising of legal proceeding: Rule 22 provides that an advocate shall not directly or indirectly bid for or purchase either in his own name or any other name for his own benefit or benefit of any other person, any property sold in execution of decree or other proceeding in which he was professionally engaged. The rule makes it clear that this prohibition 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.

xiii. Not to adjust fees against personal liability: Rule 23 provides that an advocate shall not adjust fee payable to him by his client against his own personal liability to the client which liability does not arise in course of his employment as an advocate.

xiv. Rule 24 provides that an advocate shall not do anything whereby he abuses or take advantage of the confidence repose in him by his client.

xv. Keep proper accounts: Rule 25 provides that an advocate should keep accounts of the clients 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 particulars.

xvi. Divert money from accounts: Rule 26 provides that where money are received from or on account of client, the entries in the account should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceeding, no advocate shall, accept with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

xvii. Intimate the client on amounts: Rule 27 provides that 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. If the client demands the payment of such money and in spite of such demand the advocate does not pay him, he will be guilty of professional misconduct – In the matter of P.J. Ratnam, AIR 1962 AP 201.

xviii. Adjust fees after termination of proceedings: Rule 28 provides that after termination of the proceeding the advocate shall be at liberty to appropriate towards the settled fee due to him any sum

remaining unexpanded out of the amount paid or sent to him for expenses or any amount that has come into his hands in that proceeding.

xix. Rule 29 provides that if the fee has been left unsettled the advocate can deduct out of any moneys of the client remaining in his hand 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 shall be refunded to the client.

xx. Provide copy of accounts: Rule 30 provides that the copy of clients account shall be furnish to him on demand provided the necessary charges are paid.

xxi. Rule 31 requires an advocate not to enter into arrangements whereby funds in his hands are converted into loans.

xxii. Not lend money to his client: Rule 32 prohibits an advocate to lend money to his client for the purpose of any action or legal proceeding in which he is engaged by such client. It provides that an advocate shall not lend money to his client for the purpose of any action or legal proceeding in which he is engaged by such client.

xxiii. Not appear for opposite parties: Rule 33 provides that an advocate who has, at any time, advice in connection with the institution of the suit appeal or matter has drawn pleading or acted for party, shall not act appear or plead for the opposite party.

In Chandra Shekhar Soni v. Bar Council of Rajasthan and Ors., an advocate who was representing one party in a criminal case switched sides and began representing the opposite party. It was held by the Supreme Court that "...it is not in accordance with professional etiquette for an advocate while retained by one party to accept the brief of the other. It is unprofessional to represent conflicting interests except by express consent given by all concerned after a full disclosure of the facts.... Counsel's paramount duty is to the client, and where he finds that there is conflict of interests, he should refrain from doing anything which would harm any interests of his client. A lawyer when entrusted with a brief is expected to follow the norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust."

The Supreme Court upheld his being found guilty of malpractice by the Bar Council of India in disciplinary proceedings, and he was suspended from practise for the period of one year. The consequences of a conflict of interest situation for the lawyer can be severe and costly.

For example, acting with a conflict of interest can result in civil liability for professional malpractice as well as disciplinary action. Some very serious consequences also flow from a proven claim in contract, tort or equity, including:

disqualification from representation of one or more clients;

forfeiture of fees charged; the inability to charge for work in

progress and other time invested; embarrassment, inconvenience and aggravation of defending a malpractice claim or investigation; lost time spent on defending a malpractice claim or investigation.

Thus, it is clear that lawyers have to be very careful while dealing with potential and current clients, so as to ensure that a conflict of interest situation does not arise. When such a situation does arise, the best plan

of action is to request the new client to seek other representation so that the interests of the current client are not adversely affected.

However, if a lawyer is already representing two different clients, and a potential conflict of interest situation arises, he may choose to disclose the relevant non-confidential aspects of the potential conflict to both of them and seek their express written consent to his continued representation of them, provided that it is clear that he can represent the interests of one client without adversely affecting the interests of the other. If, however, the two interests are directly conflicting ones, the advocate will have to remove him from the matter rather than face action for professional negligence or malpractice, the consequences of which have already been outlined above. In India, the counsel's relation with his client is primarily a matter of contract. The relation is in the nature of agent and principal. The agreement determines to what extent the counsel can bind his clients by his acts and statements; what shall be its remuneration, whether he will have a lien on his client's property, etc. It is evident, however, that as counsel is also conform to the ethical code prescribed for him by law and usage, he cannot be a mere agent or mouthpiece of his clients to carry out his biddings.

The relationship is personal and fiduciary: It is a relation of trust and confidence. It is confidential requiring a high degree of fidelity and good faith.

In *V.C. Rangadurai V. D. Gopalan*, AIR 1979 SC 281, Justice Sen has observed that the relation between the advocate and his client is purely personal involving a highest personal trust and confidence.

Advocate's fee- fixation of fees:

In an ancient book called *Mirror des justices*, written by Andrew Horne, laid down that a lawyer in fixing his fees should take four things into consideration:

- i. The value of the cause;
- ii. The pains of the sergeant;
- iii. The worth of pleader on point of skill
- iv. The usage of the court.

By the present day usages of the Bar, the following elements usually enter into consideration in fixing the amount of fee:

- a) The qualifications and standing of advocates who is asked to render professional service. It is evident that service rendered by the person of superior education and rich experience is likely to be more valuable and of better quality than the advice given by a person who is less qualified;
- b) The difficulty in the problem involve in the case. The more intricate the case the greater will be the degree of skill and amount of labour required;
- c) The amount of time required to render professional service;
- d) The amount involved in the suit;
- e) The result expected to be accomplished as a consequence of the lawyer's exertion;
- f) The customary charges of the Bar for such services. Contingent fee and right of lien: The fee depending upon the success of the suit or proceeding is regarded as against the public policy.

The agreement for Contingent fee is hit by section 23 of the Indian Contract Act. Rule 9 framed by the Bar council of India expressly provide that an advocate should not act or plead in any matter in which he is himself be pecuniary interested. The agreement for the contingent fee is looked upon with disfavour, and later as inconsistent with the high ideals of the Bar. In the case of R.D. Saxena V. Balram Prasad Sharma; AIR 2000 SC 2912; The Supreme Court has held that an advocate cannot claim a lien over a litigation file entrusted to him for his fees. The court has held that no professional can be given the right to withhold the returnable records relating to the work done by him with his clients matter on the strength of any claim for unpaid remuneration. The alternative is the professional concerned can resort to other legal remedies for such unpaid remuneration.

The same ruling is given by Apex Court in the matter of, New India Insurance Company Ltd V. A.K. Saxena; AIR 2004 SC 311.

It is permissible for an advocate to sue for his fees:

In India, law allows it. However, according to general practise of the profession, it is dignified that the council should sue for his fee. The rule exists to maintain prestige of the profession and the public confidence in the Bar. His fee should therefore, be both fixed and paid beforehand.

3. Rules on Advocate's Duty to Opponents:

- i. 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 that advocate representing the parties.
- ii. Carry out legitimate promises made: 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.

4. Rules on Advocate's Duty towards Fellow Advocates:

- i. Not 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.
- ii. Sign-board and Name-plate: An advocate's sign-board or nameplate 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.
- iii. 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.
- iv. 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.
- v. Consent of fellow advocate to appear: An advocate should not appear in any matter where another advocate has filed a vakalt nama 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.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Rule 11 to 33 deal with the duties of an advocate to his client	True	False
2.	Rule 11 provides that an advocate is bound to accept any brief in the court or tribunal or before any authority which he proposes to practice at fee consistent with his standing at bar and also nature of case.	True	False
3.	An advocate transacts business under authority that is governed and restricted by power of attorney granted by the principal.	True	False
4.	Rule 12 provides that an advocate shall not ordinarily withdraw from engagements once accepted without sufficient cause and unless reasonable and sufficient notice given to the client.	True	False
5.	Rule 15 provides that it is the duty of an advocate to uphold the interest of his client fearlessly by all fair and honourable means without regard to any unpleasant consequences to himself or to any other.	True	False

Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)