



Professional Standards an Advocate should Keep



The advocate's profession is an esteemed one which seeks to promote dispensation of justice. An advocate in India has to submit to some written and unwritten code of conduct and

ethical regulations so long as he remains in his profession.

Provisions on advocate's conduct

The Advocates Act 1961 regulates the conduct and punishment for misconduct of and advocate. The Section 35 of the act provides for the practices and procedures to be followed in case of misconduct by an advocate.

In addition, the Bar Council of India formulated the **Standards of Professional Conduct and Etiquette of Advocates** by invoking Section 49 (c) of the Advocates Act, 1961. It also regulates the conduct of advocates.

The Standards prescribe that what may be lawful and moral for a non-advocate may not be quite proper for an advocate. Advocates have to maintain certain high

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standards - intellectual & ethical - for the upkeep of the dignity of the Bar as a professional group.

To attract disciplinary action, the misconduct of the advocate need not be confined to the profession alone, but 'other misconduct' will also be quite sufficient.

Duties of an advocate

An advocate has numerous duties to different categories of people such as the court/judge, the client, the public, the opponent, the State, the profession etc. Many of these duties may conflict with one another due to clash of interests. An advocate should try to reconcile those diverse interests so as to avoid his competing duties reach a clash point, even though harmonizing them is not an easy task.

Duty to the court

In the court, an advocate shall behave with due dignity and respect. There must be mutual respect between the Bar and the Bench. An advocate should not raise scurrilous allegations or scandals against any judge. The Bar and the Bench have to work as two integral limbs of a single system.

The Supreme Court holds that a lawyer owes duty to be fair not only to his client but also to the court and the opposite party. The administration of justice which concerns not only the Bench but also the Bar has to be kept pure, clean and unpolluted (see *P D Gupta v Ram Murti* : AIR 1998 SC 283).

No advocate shall influence the decision of the court by any illegal or improper means. It is his solemn duty to restrain or prevent his client from resorting to unfair practices in the court. An advocate shall refuse to represent the client who engages in improper conduct.



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An advocate must apply his reasoning in presenting his client's case. He shall do any illegal or unfair means to influence the decision of the court in any manner. He shall not consider himself a mere mouthpiece of his client..

Free to fix advocate fee

An advocate is free and bound to accept any brief in the court at a fee fixed by him. A lawyer must take up a case of any member of the public if proper fee is tendered, adequate instructions are given, and the case is familiar to the lawyer to handle.

However he can refuse to take up a case if he has some other sensible assignment. But refusing to take up a case on flimsy reasons due to some other issues, such as the accused is alleged to be a heinous murderer, is a professional misconduct. Such a refusal deserves punishment.

Bar Association cannot restrain practice

Even if the Bar Association has passed a resolution not to take up a particular case by any of its members, any advocate holding the membership of the Bar Association has a right to appear in that case, even though the case is against another advocate of the same association. And it is his duty as an advocate as well.

An advocate shall not keep himself away from the court without informing the client. A Boycott resolution of the Bar Association will have no sanctity of law. A deliberate abstinence from conducting the case is a breach of contract as well. The strike by lawyers is illegal, unethical and amounts to professional misconduct.

The Bar Association or lawyer instigating lawyers to participate in boycott or strike is an action that demands disciplinary action. It may include imposition of

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costs and compensation to client (please see *Common Cause v Union of India*: (2006) 9 SCC 295).

Advocate's duty to law

The advocate has a duty to the law. He has an obligation to defend anybody irrespective of the severity of the crime alleged on him. Therefore it is his duty to defend an accused who he considers to be guilty of the crime. No lawyer shall act as his client's judge in regard to his guilt by usurping the functions of the judge without hearing the evidence. Defending the client does in no way mean that the advocate should tell untrue facts or put forth unfounded law points before the court.

An advocate shall use no unfair or malicious practice against the opponent. He shall not abuse the rules of the court to injure the opponent. In witness box an advocate shall not make it an opportunity to show anger or malice towards the opponent.

Advocate as officer of the court

An advocate is an officer of the court. He has an obligation to assist the administration of justice. He is not a commercial professional. A lawyer for his professional work depends on his personal skill, intelligence, competence and knowledge. It is his duty to hone all these qualities regularly.

In legal profession, an advocate fights against another advocate before a judge, with facts and law points. He must deal with both of them respectfully. A lawyer must never force a judge, who has to take a decision in a contested issue, on the basis of a mass of false evidence, forgeries, fabricated documents and all that. An advocate shall never influence or attempt to influence a judge for obtaining a verdict in favour of his client. He should not make any private communication with the judge.

A lawyer can use any legal, honest and respectful tactics in the court. The lawyer, despite he is facing financial and competitive pressures, must balance his duties to all the stakeholders meaningfully. A lawyer can raise every issue fearlessly, advance every argument sternly and ask distasteful question tactfully in the court he appears. Lawyer's public duty to the court may take priority over his private duty to the client's interest.

An advocate's incivility in litigation can be curbed by using contempt of court as a tool. On the other hand if an advocate has a serious allegation against a judicial officer he has the right to submit a complaint to the appropriate authority by following due formalities and procedures.

Misstating facts is improper

A lawyer cannot knowingly offer false evidence or misstate facts. Knowingly misstating facts in argument, inducing witness to state misleading evidence and knowingly maintain a false pretence, are ways of misleading the court.

Blatantly offering false evidence is a way an advocate can mislead the court. A lawyer should not misstate the law as well. There is a duty to make full disclosure of all the binding judgments, either favourable or not, to the court when preparing the argument notes for filing or directly arguing the case.

What some case laws say

The conduct of advocates by way of soliciting, advertising and other obnoxious practices for betterment of legal business is misconduct. The advocate taking advantage of the ignorance and illiteracy of his client by misrepresenting expenses to the court processes is improper. The advocate purchasing the property, which is the subject matter of litigation, is a bad practice.

Both making groundless charges of insulting nature against witness in pleadings and asking insulting questions to witness in witness box are unacceptable. Refusal to take up case with intention of not appearing against another advocate is improper conduct. Retaining judgment of the trial court so as to get the engagement in appeal is an unacceptable conduct.

Carrying on other business, making false records to file in the court, conducting indecent cross-examination, dereliction in appearing in the court, giving improper legal advice without good faith, consciously abstaining from conducting cases in pursuance of the strike call by Bar Association, etc are instances of misconduct.

Uphold client interest ably

An advocate shall fearlessly uphold the interest of the client by all fair and honourable means. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. The guilt of the accused in fact is to be decided by the court alone and not by the advocate in advance.

However, an advocate is not a mere agent of a client, for the duties he is expected to do for his client. He is not the mouthpiece of the client. He shall not misstate the law or fact for the benefit of his client. It is the sublime duty of an advocate to place his client's case before the court upholding the lawful interests of the client. This must be done by fair and honourable means alone.

Lord Denning, in *Rondel v Worsley*, says that advocate's duty to the court is paramount. He is not the mouthpiece of his client to say what he wants or his tool to do what he directs. He must not consciously misstate facts or conceal

truth. He must see that his client discloses documents that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court. If he breaks it he is subject to discipline. In fearlessly advancing client's cause there are boundaries for an advocate. A lawyer must not compromise his professional standards in order to please the client. No doubt and advocate shall accept any brief and shall not withdraw from engagement once accepted.

Justice Krishna Iyer, in *Bar Council of Maharashtra v M V Dabholkar etc* (1976 AIR 242) says that the Bar is not a private guild like that of barbers, butchers and candle stick makers but by contrast a public institution committed to public justice and pro bono public service.

He adds that the grant of a monopoly licence to practice law is based on three assumptions : there is a socially useful function for the lawyer to perform, the lawyer is a professional person who will perform that function, and his performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice.

Practice in other countries

In Canada a lawyer's duty to the client and duty to the court are given equal importance. In the US, the duty to the client is generally seen as the lawyer's primary duty. But in the UK the duty to the court is preeminent. Australia and New Zealand follow the footsteps of the UK.

Additional Reading

1. Bar Council of India: *The Standards of Professional Conduct and Etiquette of Advocates*, available at <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>

2. The judgment in *P D Gupta v Ram Murti* (AIR 1998 SC 283) at <https://indiankanoon.org/doc/228854/>
3. The judgment in *Bar Council Of Maharashtra v M. V. Dabholkar Etc. Etc* decided on 3 October, 1975 (1976 AIR 242) at <https://indiankanoon.org/doc/276363/>
4. The judgment in *Indian Council Of Legal Aid & ... v Bar Council Of India & Anr* (1995 AIR 691) at <https://indiankanoon.org/doc/1542937/>
5. The judgment in *Ex-Capt. Harish Uppal vs Union Of India & Anr* on 17 December, 2002 at <https://indiankanoon.org/doc/181613840/> The judgment deals with the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s.



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on 12 December 2018



Published in Constitutional Law
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