

Swk. L.N. (F) 71

THE ADVOCATES ORDINANCE

THE ADVOCATES (PRACTICE AND ETIQUETTE) RULES, 1988.

(Made under section 17(a))

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THE ADVOCATES ORDINANCE

THE ADVOCATES (PRACTICE AND ETIQUETTE) RULES, 1988

(Made under section 17 (a))

In exercise of the powers conferred by paragraph (a) of section 17 of the Advocates Ordinance, the Chief Justice with the concurrence of the State Attorney-General has made the following Rules: *Cap. 110.*

Citation and commencement.

1. These Rules may be cited as the **Advocates (Practice and Etiquette) Rules, 1988**, and shall come into force on the 1st day of December, 1988.

No advocate obliged to act for every person.

2. No advocate is obliged to act as adviser or advocate for every person who may wish to become his client but the advocate may accept any brief in the courts in which he professes to practise at a proper professional fee dependent on the length and difficulty of the case:

Provided that special circumstances may justify his refusal, at his discretion, to accept a particular brief.

Advocate not to accept brief if embarrassed.

3.—(1) An advocate shall not accept a brief if he is or would be embarrassed.

(2) An embarrassment arises—

(a) where the advocate finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter;

(b) where there is some personal relationship between him and a party or a witness in the proceedings.

No advocate to accept brief if professional conduct likely to be impugned.

4. No advocate shall accept a brief in a case where he knows or has reason to believe that his own professional conduct is likely to be impugned.

No advocate to accept brief if difficult to maintain professional independence.

5.—(1) No advocate shall accept a brief if such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice.

(2) (a) An advocate who has at any time advised or drawn pleadings or acted for a party in connection with the institution or prosecution or defence of any suit, appeal or other proceedings shall not act, appear or plead for the opposite party in that suit, appeal or other proceedings.

(b) An advocate shall not act unless the consent of the first party for whom the advocate acted is obtained in writing and the advocate is not embarrassed by so acting.

An advocate not to accept brief if unable to appear.

6.—(1) An advocate shall not accept any brief unless he is reasonably certain of being able to appear and represent the client on the required day.

(2) An advocate shall not ordinarily withdraw from an engagement once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.

No advocate to accept remuneration in capacity as Member of Parliament, etc., except emoluments as Member of Parliament, etc.

7.—(1) An advocate shall not accept any remuneration for that which he does in his capacity as a Member of Parliament or of the State Legislature, other than emoluments received by him as a Member of Parliament or of the State Legislature.

(2) No advocate who has set up a practice may accept the position of an executive director or executive secretary of a company without the express consent of the Chief Justice.

Advocate not to ask for excuse from assignment.

8. Subject to any Rules of Court made in this behalf, an advocate assigned as counsel or advocate in any civil or criminal matter shall not ask to be excused for any trivial reason and shall always exert his best effort in that assignment.

Advocate to undertake defence fairly and honourably.

9.—(1) An advocate who undertakes the defence of a person in any criminal matter shall by all fair and honourable means present every defence that the law permits.

(2) An advocate shall undertake the defence of a person accused of an offence regardless of his personal opinion as to the guilt or otherwise of the accused.

Advocate to conduct prosecution so that no innocent person is convicted.

10.—(1) An advocate appearing for the prosecution in a criminal trial shall so conduct the prosecution that it does not lead to the conviction of an innocent person.

(2) Material capable of establishing the innocence of the accused shall not be suppressed.

Fees for litigious or contentious matters.

11. In determining the amount of fee for litigious or contentious matters involving representation of a client in court, it is proper to take into consideration—

(a) the time, labour and skill required;

(b) the novelty and difficulty of the case or question involved;

(c) whether acceptance of the particular employment will preclude his appearance for others of which he has a reasonable expectation;

(d) the customary charges of the profession for similar services;

(e) the amount in controversy;

(f) the benefit resulting to the client for the services;

(g) the character of the employment—whether casual or for an established client; and

(h) the special position or seniority of the particular advocate.

Advocate not to conduct civil case intended to delay proceedings, etc.

12. An advocate shall not conduct a civil case or make a defence which is intended merely to delay proceedings or to harass or injure the opposite party or to work oppression or wrong.

Advocate to guard against insulting or annoying questions.

13. An advocate shall guard against being made the channel for questions which are only intended to insult or annoy, and to exercise his own judgment as to the substance and form of the questions put.

Questions irrelevant to actual enquiry not to be asked.

14.—(1) Questions which affect credibility by attacking character but are otherwise irrelevant to the actual enquiry, shall not be asked unless the cross-examiner has reasonable grounds for thinking that the imputation is well-founded or true.

(2) Where a question relates to matters so remote in time or of such a character that it would not materially affect the credibility of a witness, it shall not be put.

Respect to court.

15. An advocate shall maintain a respectful attitude towards the court.

Advocate to uphold interest of client, justice and dignity of profession.

16. An advocate shall, while acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interest of his client, the interest of justice and dignity of the profession without regard to any unpleasant consequences either to himself or to any other person.

No deception on court.

17. An advocate shall not practise any deception on the court.

Advocate to conduct with candour, courtesy and fairness.

18. The conduct of an advocate before the court and in relation to other advocates shall be characterised by candour, courtesy and fairness.

Advocate not to refer to facts not proved.

19. In opening a case, an advocate shall not refer to any facts in the case which he is not in a position to prove.

Advocate to put before court any relevant binding decision.

20.—(1) An advocate shall put before the court any relevant binding decision of which he is aware which is immediately in point, whether it be for or against his contention.

(2) This rule applies with particular importance in ex-parte proceedings.

Improper to misquote.

21. It is improper for an advocate—

(a) knowingly to misquote the contents of a paper, the testimony of a witness, the argument of opposing counsel or the language of a decision or textbook; or

(b) with knowledge of its invalidity, to cite as authority a decision that has been over-ruled or a written law that has been repealed; or

(c) in argument, to assert as a fact that which has not been proved; or

(d) to mislead his opponent by concealing or withholding in his opening speech positions upon which he intends to rely.

Advocate to bring to court's attention any proposition of law, etc.

22.—(1) Where after the conclusion of the evidence and argument and while judgment is reserved, an advocate discovers a proposition of law or a decision of law which is directly in point, he shall bring it to the court's attention and the advocate appearing on the other side shall concur in the proposal even though the proposition is against him.

(2) Where the other advocate does not concur it is still in order for the first-named advocate to submit the additional authority and the proper course is for the first-named advocate to send the other advocate a copy of his letter to the court, so that the other advocate can comment on it if necessary.

Advocate to supply to court all information.

23. An advocate shall supply to the court all information as to the probable length of a case and the possibility of a settlement.

Advocate to be ready for the day fixed for trial

24.—(1) An advocate shall make every effort to be ready for trial on the day fixed.

(2) An advocate may apply for postponement of a case fixed for hearing for good and cogent reasons only.

(3) Except in an emergency, it is improper for an advocate to apply for a postponement in the absence of counsel for the other side unless he has given the counsel concerned at least forty-eight hours notice of his intention to make the application.

Advocate to disclose all circumstances to client.

25. An advocate at the time of his being retained shall disclose to the client all the circumstances of his relation to the parties, and any interest in connection with the controversy, which may influence the client in the selection of counsel.

Advocate not to mislead.

26. An advocate shall avoid everything which may tend to mislead a party not represented by counsel.

Advocate not to appear where pecuniarily interested.

27.—(1) An advocate shall not appear in any matter in which he is directly pecuniarily interested.

(2) This rule does not apply to the case of an advocate appearing himself to tax his own costs.

Advocate not to appear in a case where he is a witness.

28.—(1) An advocate shall not appear in court or in chambers in any case in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interests.

(2) An advocate shall not appear before an appellate tribunal if in the case under appeal he has been a witness on a material and disputed question of fact in the court below.

(3) This rule does not prevent an advocate from swearing or affirming an affidavit as to formal or undisputed facts in matters in which he acts or appears.

Advocate not
to testify
on behalf
of client.

29. Except when essential to the ends of justice or as to merely formal matters, an advocate appearing in any cause shall not testify in court on behalf of his client only in that cause.

Advocate
appearing as
party or
witness not
to wear robes.

30.—(1) An advocate who appears in person as a party or who is in the witness box shall not wear robes.

(2) An advocate appearing before courts martial may appear either in uniform (if he is entitled to do so) or in robes.

(3) Except on ceremonial occasions and at such places as the Chief Justice or the court may prescribe, an advocate shall not wear bands or robes in public places other than in court or whilst travelling to or from court.

Advocate to
uphold
dignity of
profession.

31. Every advocate shall at all times uphold the dignity and high standing of his profession.

Clients'
feeling not
to influence
conduct of
counsel.

32. The feeling existing between clients shall not be allowed to influence counsel in their conduct and demeanour towards each other or towards parties and their witnesses in the case.

Advocate to
treat adverse
witnesses
with
fairness and
due con-
sideration.

33. An advocate shall treat adverse witnesses and parties with fairness and due consideration and he shall not minister to the malevolence or prejudices of a client in the conduct of a case.

Advocate
may
interview
witnesses
for opposing
side.

34. An advocate may properly interview any witness or prospective witness for the opposing side in any civil or criminal matter without the consent of but subject to first giving notice to the opposing counsel or party. In doing so, he shall scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate from the truth.

Advocate not
to abuse
confidence
reposed in
him by
client.

35.—(1) An advocate shall refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by the client.

(2) An advocate shall preserve his clients' confidence and this duty outlasts his employment.

Advocate to
prevent
client from
wrongful
conduct
towards
courts, etc.

36. An advocate shall use his best efforts to prevent his client from doing things which the advocate himself ought not to do, particularly with reference to his conduct towards courts and judicial officers, jurors, witnesses and parties. Where a client persists in such wrong doing the advocate shall terminate the relationship.

Advocate
writing for
press not
to describe
himself as
advocate.

37. Subject to rule 38, an advocate writing for the press or for publication except in his professional capacity shall take reasonable steps to secure that no description of him as an advocate or of his legal work appears in connection with his article.

Exceptions.

38 Rule 37 does not apply to the following—

(a) where an advocate publishes a legal text-book (whether or not jointly with a person who is not an advocate)

upon the cover or title page thereof his name, qualification and references to other text-books he may have written may appear therein or in advertisements about it;

(b) an advocate who has retired from practice may write the memoirs of his experiences as a legal practitioner, but he shall not betray the confidence which his clients have reposed in him;

(c) where an advocate writes an article for a legal journal.

Advocate not to describe himself as advocate without consent of Chief Justice.

39. An advocate undertaking to give a lecture or a broadcast on a legal or quasi-legal subject may not without the consent of the Chief Justice permit himself to be described by name as a member of the legal profession.

Advocate not to stand surety.

40. An advocate shall not stand as a surety or bailor for his client required for the purpose of any legal proceedings.

Advocate who has advised arbitrator cannot appear in arbitration proceedings.

41. An advocate who has in an arbitration acted for the arbitrator in advising him on points of laws shall not advise or appear for one of the parties in any proceedings relating to the arbitration or award.

Advocate not to communicate with a person represented by another advocate.

42. An advocate shall not communicate with a person upon any matter in respect of which to his knowledge that person is represented by another advocate except with the other's express consent.

Advocate not to stir up strife and litigation.

43. No advocate shall volunteer advice to bring an action or to stir up strife and litigation.

Advocate not to actively carry on any trade.

44.—(1) An advocate shall not actively carry on any trade which is declared by the Chief Justice from time to time as unsuitable for an advocate to engage in or be an active partner or a salaried officer in connection therewith.

(2) An advocate shall not be a fulltime salaried employee of any person, firm (other than advocate or firm of advocates) or corporation so long as he continues to practise and shall on taking up any such employment, intimate the fact to the Chief Justice and take steps to cease to practise as an advocate so long as he continues in such employment.

Advocate not to advertise.

45.—(1) An advocate shall not solicit work or advertise either directly or indirectly, whether by circular, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or procuring his photographs to be published in connection with cases in which he has been engaged or concerned.

(2) No advocate shall display outside his office facing a public road or public thoroughfare, a nameplate larger than in size .762 metre by .6096 metre.

(3) No advocate shall indicate in his signboard, nameplate or stationery that he is or has been a member 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.

No personal
advertisement.

46. An advocate shall not do or cause or allow to be done anything with the primary motive of personal advertisement, or anything calculated to suggest that it is so motivated.

Advocate not
to give
interview.

47. An advocate shall not give an interview or supply information to the press concerning his life, practice or earnings in the legal profession.

Advocate not
to publish
photograph.

48. An Advocate shall not take steps to procure the publication of his photograph as a member of the legal profession in the press or any periodical.

Advocate not
to solicit
reporting.

49. It is contrary to etiquette for an advocate to solicit the reporting of any matter in which he has been professionally engaged, but he may consider and revise reports or cases in which he has been professionally engaged so as to ensure the correctness of the Report.

Advocate not
to advertise
address.

50. It is contrary to etiquette for an advocate—

(a) to advertise his address or the address of his firm in any book, pamphlet, newspaper, periodical or other publication, or

(b) to sanction the publication in the press or elsewhere of notices or articles referring to his professional qualifications or merits:

Provided that this rule shall not apply to the printing of the name and address of any advocate or any firm of advocates in the Law List, Law Directories, Legal Diaries and such other publications as the Chief Justice may from time to time sanction, or in any telephone directory in Malaysia, including that part reserved for advertisements and currently known as the "yellow pages" or in ordinary legal notices published in the press or elsewhere. In so printing his or their name and address an advocate or firm of advocates shall give no undue prominence thereto either by the use of large print or enlarged space and in every case the publication shall comply with any restrictions, guidelines or rules laid down from time to time or at any time by the Chief Justice in respect of the publication in issue.

Advocate not
to do or
cause touting.

51. An advocate shall not do so or cause or allow to be done, anything for the purpose of touting directly or indirectly or which is calculated to suggest that it is done for that purpose.

No division
of costs or
profits with
unqualified
person

52. It is unprofessional and improper conduct—

(a) for an advocate to divide or agree to divide either costs received or the profits of his business with any unqualified person;

(b) for an advocate to pay, give, agree to pay or agree to give any commission, gratuity or valuable consideration to any unqualified person to procure or influence or for having procured or influenced any legal business and whether such payment, gift or agreement be made under pretext of services

rendered or otherwise, but this rule does not prohibit the payment of ordinary bonuses to staff;

(c) for an advocate to accept or agree to accept less than the scale fees laid down by law in respect of non-contentious business carried out by him.

Agency
commission
or profit
costs.

53. Agency commission or profit costs may be allowed between an advocate practising in the State and his recognised agent or agents practising in Malaysia or elsewhere.

Advocate not
to appear
for a party
represented
by another
advocate.

54. Where in any matter or proceeding, the name of any advocate or the name of his firm appears on the records for any party, or an advocate is known to be acting for a party, in a matter whether in a court or not, no other advocate shall knowingly agree to appear or to act or continue to appear or to act for such party in such matter or proceeding unless—

(a) he obtains the consent of the first-named advocate; or

(b) he is satisfied that the proper professional remuneration of the first-named advocate has been paid or he undertakes that the same will be paid;

(c) he has, in ignorance that such name so appears on the record or that such advocate has been so acting, already agreed to appear or to act for such party and is unable by reason of circumstances or urgency or the like to refuse to appear or to act further for such party, without exposing himself to a charge of breach of professional duty; or

(d) the first-named advocate is unwilling, or has refused to act further for such party, in which event he shall, if so required, protect any lien which the first-named advocate may have for costs.

Advocate's
lien.

55. Except by way of securing his first to a lien, an advocate shall not otherwise withhold the client's papers to the detriment of the client.

Judgment
by default.

56. Where the name of the advocate or his firm appears on the court record or the fact of representation is known to the other side, no advocate representing the other party to the proceedings shall enter Judgment by Default against the client of the first-named advocate or to take advantage of delay in pleading or filing documents in the nature of pleadings or in taking any necessary steps or in complying with any order in the proceedings by such first-named advocate, unless he shall have given to such first-named advocate written notice of his intention to do so, and forty-eight hours shall have elapsed after the delivery of such notice to the first-named advocate.

Extension
of time
to plead.

57. Where an extension of time within which to plead has been given to a party, the advocate representing such party shall, if so required, accept short notice of trial at the next sitting of the court, in any case in which, had the pleading been delivered in the time ordinarily limited for its delivery without any extension, the party allowing the extension would have been in a position to have given notice of trial for such sitting.

Objection to
admissibility
of
insufficiently
stamped
documents.

58. It is contrary to etiquette to object to the admissibility of any document on the ground that it is not or not sufficiently stamped, unless such objection goes to the root of the subject matter or the suit.

No branch
office
without
advocate.

59.—(1) No advocate shall maintain a branch office unless the same is—

(a) in the name of his firm; and

(b) continuously manned by the advocate himself or one of the partners in his firm or by an advocate and wholly employed by him or his firm.

(2) The branch office shall not be in the same office as that of any other firm of advocates.

(3) No advocate shall practise his profession in the State in or as a partner of more than one firm at any time without the consent of the Chief Justice.

(4) No advocate shall practise his profession unless he maintains an office within the State.

“Consultant”
and
“Associate”.

60. No person's name shall appear as a “Consultant” or “Associate” on the letterhead of a firm of advocates.

Lay agency.

61. An advocate shall not permit himself to be controlled or exploited by any lay agency intervening between client and himself.

Provision
with respect
to serving,
working or
acting as
agent of
overseas
advocates
and
solicitors.

62. No advocate shall—

(a) practise either directly or indirectly or act as agent of;

(b) agree to serve, work or share profit costs with;

any firm of advocates and solicitors whether registered within or outside the State, unless the Registrar is satisfied that the persons named in the advocates and solicitors firm whom the advocate has applied to serve, work or act as agent in the State have been admitted to practise as advocates in the State.

Waiver

63. The Chief Justice may, in writing, waive any of these Rules.

Failure to
comply with
Rules.

64. If an advocate fails to comply with any provision of these Rules, any person may make a complaint in respect of that failure to the Inquiry Committee, and thereupon the Inquiry Committee shall act in accordance with the provisions of the Advocates (Inquiry Committee) Rules, 1988.

*Swk. L.N.
(F) 70/88.*

Made this 28th day of October, 1988.

TAN SRI DATUK AMAR LEE HUN HOE,
Chief Justice of the High Court in Borneo