

## Bangladesh Bar Council Canons of Professional Conduct and Etiquette

## Rules for ethical lawyering: a wake-up call

## LAW DESK SPECIAL

PROFESSIONAL code of conduct and etiquette for advocates are extremely important for sustaining public confidence in the administration of justice and rule of law. By their efforts advocates are expected to contribute significantly towards the creation and maintenance of conditions in which a government established by law can function fruitfully so as to ensure the realization of political, economic and social justice by all citizens. In order effectively to discharge these high duties advocates must conform to certain norms of correct conduct in their relations with members of the profession, their clients, the courts and the members of the public generally.

Framed in exercise of the power conferred on the Bangladesh Bar Council by Section 48(q) of the Legal Practitioners and Bar Council Act, 1965 and adopted by a resolution of the Bar Council on the 5th January, 1969 [vide Article 449(g)], canons of professional conduct and etiquette are sine-qua-non for ethical lawyering. Unfortunately, the advocates themselves ignore most of these rules. Many lawyers and people as well are even unaware of their existence. As a result, ethical standards of lawyers are deteriorated. The Law Desk requests all Advocates to conform to these Canons in their conduct with regard to the members of the profession, their clients, the courts and the public generally. The Bar Council should take immediate steps to monitor their implementation closely for maintaining professional standard and integrity of lawyers.

## Conduct with regard to other Advocates

1. It is the duty of every Advocate to uphold at all times the dignity and high standing of his profession, as well as his own dignity and high standing as a member thereof.

2. An Advocate shall not solicit professional employment by advertisement or by any other means. This clause shall not be construed as prohibiting the publication or use of ordinary professional cards, name plates or conventional listings in directories, so long as the information contained therein is limited to professional and academic qualifications and public offices currently held, and does not contain any matter which savours of personal advertisement.

3. An Advocate shall not employ any other person to solicit or obtain professional employment nor remunerate another for soliciting or obtaining professional employment for him; nor shall he share with an unlicensed person any compensation, arising out of or incidental to professional employment, nor shall he aid or abet an unlicensed person to practise law or to receive compensation therefor; nor shall he knowingly accept professional employment offered to him as a result of or as incidental to the activities of an unlicensed person.

4. An Advocate shall not communicate about a subject of controversy with a party represented by an Advocate in the absence and without the consent of such Advocate.

5. An Advocate shall not, in the absence of the opposing counsel communicate with or argue before a judge or judicial officer except in open court and the merits of a contested matter pending before such judge or judicial officer; nor shall he, without furnishing the opposing Advocate with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. This rule shall not apply to ex parte matters or in respect of matters not sub-judice before the judge or judicial officer concerned.

6. A client's proffer of assistance of additional Advocate/s should not be regarded as evidence of want of confidence but the matter should be left to the determination of the client. An Advocate should decline association as a colleague unless the dues of the Advocate first retained are paid.

7. Clients, not advocates, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence Advocates in their conduct and demeanour toward each other or toward the parties in the case. All personal clashes between Advocates should be scrupulously avoided, in the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of Advocates appearing on the other side. Personal colloquies between Advocates, which cause delay and promote unseemly wrangling, should be carefully avoided.

8. No division of fees with any person for legal services is proper, except with another advocate based upon the principle of division of work as expressed in the agreement between the Advocates.

9. Subject to the precedence of the Attorney General and the Advocate General as established by constitutional usage and practice, it is the duty of Advocates to maintain and uphold the order of precedence in accordance with the Roll of Advocates maintained by the Bar Council.

10. Junior and younger members should always be respectful to senior

and older members. The latter are expected to be not only courteous but also helpful to their junior and younger brethren at the Bar.

11. Where more than one Advocate is engaged on any side it is the right of the senior member to lead the case and the junior members to assist him.

## Conduct with regard to clients

1. An Advocate shall not acquire an interest adverse to a client in the property or interest involved in the case.

2. An Advocate shall not accept employment adverse to a client or former client, relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client provided that an Advocate, who has not been formally engaged by a person and accepted a retainer nor received any fees for such engagement is not precluded from accepting employment adverse to the interest of such a person.

3. An Advocate shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of such employment.

4. An Advocate shall not represent conflicting interests.

5. An Advocate shall not himself or in benami purchase any property at a probate, foreclosure or judicial sale in an auction or proceeding in which such Advocate appears for a party nor shall he accept the whole or part of the property, in respect of which he had been engaged to conduct the case, in lieu of his remuneration, or as a reward or bounty.

6. An Advocate shall not commingle the property of a client with his own and shall promptly report to the client the receipt by him of any money of other property belonging to such client.

7. An Advocate shall not advise the commencement of prosecution or defence of case, unless he has been consulted in reference thereto, except when his relation to a party or to the subject matter is such as to make it proper for him to do so.

8. An Advocate in his professional capacity shall not advise the violation of any law. This rule shall not apply to advice given in good faith, that a law is invalid.

9. It is the right of an Advocate to undertake the defence of a person accused of crime, regardless of his personal opinion as distinguished from knowledge, as to the guilt of the accused; otherwise innocent persons, victims merely of suspicious circumstances, might be denied proper defence. Having undertaken such defence, an Advocate, is bound by all fair and honourable means, to present every defence that the law of the land permits, to the end that no person may be deprived of life or liberty except by due process of law.

10. In fixing fees, Advocates should avoid charges, which overestimate their advice and services, as well as those, which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his property may justify a lesser charge, or even none at all. The reasonable requests of a brother Advocate should also receive special and kindly consideration. In respect of the widows and orphans of an Advocate, all Advocates shall assist them free of charge.

In determining the amount of fee, it is proper to consider; (i) the time and labour required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case; (ii) whether the acceptance of employment in a particular case will preclude the Advocate's appearance for others in cases likely to arise out of the transaction, about which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in a particular case; (iii) the customary charges of the Bar for similar service; (iv) the amount involved in the controversy and the benefits resulting to the client from the services; (v) the contingency or the certainty of the compensation, and (vi) the character of the employment, whether casual or for an established and constant client. Of these considerations, none in itself is the controlling factor. These are more guidelines in ascertaining the real value of the service. In fixing fees, it should never be forgotten that the profession is a branch of the administration of justice and not a mere money making trade.

11. Controversies with clients concerning compensation are to be avoided by the Advocate so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his service. Any law suits with clients should be resorted to only to prevent injustice, imposition or fraud.

12. Nothing operates more certainly to create or foster popular prejudice against Advocates as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than done the false claim, often set up by the unscrupulous in defence of questionable transactions, that it is the duty of the Advocate to do whatever may enable him to succeed in winning his client's cause.

It is improper for an Advocate to assert in argument his personal belief in

his client's innocence or in the justice of his cause. His professional duty is strictly limited to making submissions at the Bar consistently with the interest of his client.

An Advocate owes entire devotion to the interests of the client, warm zeal in the maintenance and defence of his right and the exertion of his utmost learning and ability to the end that nothing be taken or be withheld from him save by the rules of law, legally applied. No fear of judicial disfavour or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defence that is authorized by the law of the land, and he may expect his advocate to assert every such remedy or defence. But it is steadfastly to be borne in mind that the great trust of the Advocate is to be discharged within and not without the bounds of the law. The office of an Advocate does not permit, much less does it demand of him for any client, the violation of any law or any manner of fraud or chicanery. In doing his professional duty to his client he must obey the voice of his own conscience and not that of his client.

13. When an Advocate is a witness for his client except as to merely formal matters, such as the attestation or custody, of an instrument and the like he should leave the trial of the case to other Advocates. Except when essential to the ends of justice, an Advocate should avoid testifying in court on behalf of his client.

14. In incidental matters, not affecting the merits of the cause in a trial, nor working substantial prejudice to the rights of the client, such as forcing the opposing Advocate to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposing Advocate when no harm will result from a trial at a different time, agreeing to an extension of time for filing written statements, cross interrogatories and the like, the Advocate must be allowed to judge himself. In such matters no client has a right to demand that his Advocate shall be ungenerous or that he does anything therein repugnant to his own sense of honour and propriety.

## Duty to the court

1. It is the duty of an Advocate to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges not being wholly free to defend themselves are peculiarly entitled to receive the support of the Bar against unjust criticism and clamour. At the same time whenever there is proper ground for complaint against a judicial officer, it is the right and duty of an Advocate to ventilate such grievances and seek redress thereof legally and to protect the complainant and persons affected.

2. An Advocate shall not advise a person, whose testimony could establish or tend to establish a material fact, to avoid service of process, or conceal himself, or otherwise to make his testimony unavailable.

3. An Advocate shall not intentionally misquote to a judge, judicial officer or jury the testimony of a witness, the argument of the opposing Advocate or the contents of a document; nor shall he intentionally misquote to a judge or judicial officer the language of a book, statute or decision; nor shall he, with knowledge, of its invalidity and without disclosing such knowledge, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional.

4. Marked attention and unusual hospitality on the part of an Advocate to a judge or judicial officer not called for by the personal relations of the parties, subject both the judge and the Advocate to misconstructions of motive and should be avoided. An Advocate should not communicate or argue privately with the judge as to the merits of a pending cause and he deserves rebuke and denunciation for any device or attempt to gain from a judge special consideration or favour. A self-respecting independence in the discharge of professional duty, without denial or diminution of courtesy and respect due to the Judge's station, is the only proper foundation for cordial personal and official relations between the Bench and the Bar.

5. The primary duty of an Advocate engaged in public prosecution is not to convict, but to see that the justice is done. The suppression of facts or the concealing of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. Publications in newspapers by an Advocate as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement or reference to the facts should not reach the public, it is unprofessional to make them anonymously. An ex parte reference to the facts should not go beyond question from the records and papers on file in the court but even in extreme cases it is better to avoid any ex parte statement.

7. It is the duty of Advocates to endeavour to prevent political considerations from outweighing judicial fitness in the appointment and selection of Judges. They should protest earnestly and actively against the appointment or selection of persons who are unsuitable for the Bench and thus should

strive to have elevated thereto only those willing to forego other employments whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of Advocates for judicial position should be governed by an impartial estimate of their ability to add honour to the office and not by a desire for the distinction the position may bring to themselves.

8. It is the duty of Advocates to appear in court when a matter is called and if it is not so possible, to make satisfactory alternative arrangements.

9. An Advocate should in general refrain from volunteering his legal opinion on or addressing any arguments in cases in which such Advocate is not engaged unless called upon to do so in open court by a judge or judicial officer. In advancing any such opinion, he must do so with a sense of responsibility and impartiality without any regard to the interest of any party.

## Conduct with regard to the public generally

1. An Advocate shall not accept employment to prosecute or defend a case out of spite or for the purpose of harassing anyone or delaying any matter nor shall he take or prosecute an appeal willfully motivated to harass any one or delay any matter.

2. An Advocate should always treat adverse witnesses and parties with fairness and due consideration, and he should never minister to the malevolence or prejudices, of a client in the trial or conduct of a cause. The client can not be made the keeper of the Advocate's conscience in professional matters. He has no right to demand that his Advocate shall abuse the opposite party or indulge in offensive arguments. Improper speech is not excusable on the ground that it is what the client would say if speaking on his own behalf.

3. An Advocate must decline to conduct a civil cause or to make a defence when convinced that it is intended merely to harass or to injure the opposite party or to work any oppression or wrong. But otherwise it is his right, and having accepted a retainer, it becomes his duty to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court should be deemed equivalent to an assertion on his honour that in his opinion his client's case is one proper for judicial determination.

4. No Advocate is obliged to act either as adviser or advocate for every person who may wish to become his client. He has right to decline professional employment. Every Advocate upon his own responsibility must decide what business he will accept as an Advocate, what causes he will bring into court for plaintiffs, and what cases he will contest in court for the defendants.

5. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any Advocate render, any service or advice involving disloyalty to the law, whose ministers Advocates are, or disrespect the judicial office, which they are bound to uphold, or corruption of any person or, persons exercising public office or private trust nor indulge in deception or betrayal of the public. When rendering any such improper service or advice the Advocate invites and merits stern and just condemnation. Correspondingly, he advances the honour of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and undertaking exact compliance with the strictest principles of moral law, though until a statute shall have been finally construed and interpreted by competent authority, he is free and indeed is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all an Advocate will find his highest honour in a deserved reputation for fidelity to private trust and to public duty as an honest man and as a patriotic and loyal citizen.

6. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

7. An Advocate should not accept employment as an Advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

An Advocate having once held public office or having been in the public employ, should not, after his retirement accept employment in connection with any matter which he has investigated or dealt with while in such office, nor employment except in support thereof.

8. An Advocate should not as a general rule carry on any other profession or business, or be an active partner in or a salaried official or servant in connection with any such profession or business.

9. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

10. An Advocate should not accept employment as an Advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

11. An Advocate having once held public office or having been in the public employ, should not, after his retirement accept employment in connection with any matter which he has investigated or dealt with while in such office, nor employment except in support thereof.

12. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

13. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

14. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

15. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

16. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

17. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

18. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

19. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

20. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

21. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

22. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

23. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

24. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

25. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

26. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

27. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

28. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an Advocate representing interests that may be affected by the action of such officer, board, committee or body.

29. An Advocate shall not communicate with, nor appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing