

India today, is at the threshold of great change. As markets open up around the globe and new businesses make a foray into the country, India's 1.2 million strong legal community is faced with a new set of challenges thrown up by globalization.

The legal community in India has always played a critical role in shaping the future of the country. Apart from the vital role played by it in the administration of justice to one of the largest populations in the world, it has also been at the helm of several changes in policy. In the course of India's transition to a global economy, the legal community has continuously upgraded its own standards to meet the issues thrown up by India's unique demography. India's Bar, with its vast wealth of experience, is without doubt, amongst the most vibrant and tenacious legal communities in the world.

It is in recognition of this evolution in professional and ethical standards within the legal community that the Bar Council of India wishes to set out the present set of ethical standards of the Indian Bar.

#### ETHICAL STANDARDS

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This Code provides a general guide for ethical standards to be adhered to by members of the Bar whether practicing individually or as a law firm and whether engaged in litigation or transactional / corporate work. The expression "advocate" in these rules / Code of Conduct shall include to the extent practicable, any lawyer or group of lawyers practising as part of a law firm and the law firm itself.

An advocate shall, at all times, comport himself in a manner befitting the high standards of the Indian Bar and of his/her status as an officer of the Court and a privileged member of the community, 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/her 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/her client and in his/her 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.

#### I. AN ADVOCATE'S DUTY IN CONNECTION WITH BRIEFS

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1. An Advocate is under an obligation to accept a brief in the Courts in which he/she professes to practise, at a proper professional fee, unless there are special circumstances which justify his/her refusal to accept a particular brief. In particular, every person who is charged before the Court has a right to services of counsel in the presentation of his/her defence. Subject to what has been said above, it is the duty of every advocate to whom the privilege of practising in Courts of Law is afforded, to undertake the defence of an accused person who requires his/her services. Any action which is designed to interfere with the performance of this duty is an interference with the course of justice.
2. It shall be the duty of an advocate, when accepting a brief, to record in a letter to his/her client, the scope of work to be done in the brief and the services for which the client will be charged by the advocate. Any amendment to the scope of work may be done with the consent of the client and shall be duly recorded by the advocate.
3. An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.
4. An Advocate may decline a specialist brief if he/she considers himself not competent to accept the brief.
5. An earlier brief, once accepted, takes precedence over a later brief, should any conflict arise in regard to the performance of such briefs.
6. An advocate shall give his/her personal attention to all briefs. In doing so, an Advocate must hold requisite conferences/ discussions with clients/ briefing counsel. It is improper to hand on a brief received by him to anyone else.
7. It is improper for an advocate to hold a brief for another advocate, except in the case of illness or the intervention of unforeseen and unavoidable contingencies causing the latter's absence sine lucra causa or for any other reason which, in the opinion of the

Bar Council, is good and sufficient in the circumstances. This shall include the absence of a member on Bar Council business.

8. An Advocate shall accept only as many briefs as he/she is sure he/she can attend to, and shall refrain from accepting briefs in which he/she is likely not to be available owing to his/her preoccupation in other matters.
9. It shall be improper for an advocate to charge an additional fee to ensure his/her presence in a matter, once he/she has accepted a brief.
10. In a case where an Advocate after obtaining fee in advance is unable to appear in Court at the time of hearing of the case, the Advocate shall forthwith refund the entire fee, so obtained, to the client.
11. "Brief" includes transactional and non-litigation work entrusted by a client and handled by a lawyer or a firm of lawyers.

## II. AN ADVOCATE'S DUTY TO THE COURT

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### *PRESENTATION BEFORE A COURT*

12. An advocate shall appear in court at all times only in the prescribed dress, and his/her appearance shall always be presentable.
13. An advocate shall, during the presentation of his/her case, and while otherwise acting before a court, conduct himself/herself with honesty, dignity and self-respect.
14. An advocate shall, during the presentation of his/her case, and while otherwise acting before a court, address only the Court at all times. He/she shall refrain from making any statements to the opposite party or interrupting the opposite party when it is not his/her chance to address the Court. An interjection may be made only to respond to a question posed by the Court.
15. An advocate shall maintain, towards the courts, a respectful attitude, bearing in mind the dignity of the judicial office. He/she shall, however, not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his/her right and duty to register his/her protest in Court and submit his/her grievance to proper authorities.

16. An Advocate shall treat the opposing Advocate and all witnesses and officers of the Court with dignity and respect and refrain from making any personal statements against any of them unless it pertains to the merits of the case.
17. An advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.
18. An advocate must, at the appropriate time in the hearing of the case and if the court has not yet been informed of that matter, inform the court of:
  - (a) any binding authority;
  - (b) any authority decided by an intermediate court of appeal;
  - (c) any authority on the same or materially similar legislation as that in question in the case, including any authority decided at first instance in the Supreme Court, which has not been disapproved; or
  - (d) any applicable legislation which the advocate has reasonable grounds to believe to be directly in point, against the client's case.
19. An advocate must inform the court of a misapprehension by the court as to the effect of an order which the court is making, as soon as the advocate becomes aware of the misapprehension.
20. An advocate whose client informs the advocate during a hearing or after judgment or decision is reserved and while it remains pending, that, upon an issue which may be material the client has lied to the court or has procured another person to lie to the Court or has falsified or procured another person to falsify in any way a document which has been tendered:
  - (a) must refuse to take any further part in the case and formally seek discharge as advocate for such client, from the Court unless the client authorises the advocate to inform the court of the lie or falsification;
  - (b) must promptly inform the court of the lie or falsification upon the client authorising the advocate to do so; but
  - (c) must not otherwise inform the court of the lie or falsification.

### OF MISLEADING STATEMENTS

21. An advocate must not knowingly make a misleading statement to a court on any matter.
22. An advocate must take all necessary steps to correct any misleading statement made by the advocate to a court as soon as possible after the advocate becomes aware that the statement was misleading.
23. The Advocate's duty to divulge to the Court material facts of which he/she has knowledge is governed on the one hand by his/her overriding duty not to mislead the Court, and on the other by his/her duty not to disclose to any person, including in a proper case the Court itself, information confided to him as a lawyer. The application of this principle in particular circumstances and the question of when an advocate may be said to have knowledge of facts may be difficult to resolve. However as a general rule, an advocate will not have made a misleading statement to a court simply by failing to disclose facts known to the advocate concerning the client's character or past, when the advocate makes other statements concerning those matters to the court, and those statements are not themselves misleading.

### III. AN ADVOCATE'S DUTY TO THE CLIENT

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("Clients" includes a client of the law firm of which the *advocate* is a partner or associate, whether or not the advocate handles the client's work)

24. It shall be the duty of an advocate to fearlessly uphold the interests of his/her client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He/she shall defend a person accused of a crime regardless of his/her personal opinion as to the guilt of the accused; bearing in mind that his/her loyalty is to the law which requires that no man should be convicted without adequate evidence.
25. An advocate must seek to assist the client to understand the issues in the case and the client's possible rights and obligations, if the advocate is instructed to give advice on any such matter, sufficiently to permit the client to give proper instructions, particularly in connection with any compromise of the case.

26. An Advocate shall not make any compromise or concession without the proper and specific instructions of his/her client.
27. An advocate must (unless circumstances warrant otherwise in the advocate's considered opinion) advise a client who is charged with a criminal offence about any law, procedure or practice which in substance holds out the prospect of some advantage (including diminution of penalty), if the client pleads guilty or authorises other steps towards reducing the issues, time, cost or distress involved in the proceedings.
28. An advocate must regularly and promptly update the client on the developments in his/her case, as often as possible, and definitely after every hearing in the matter.
29. In civil matters, the advocate may, as far as possible, suggest to the client the option of mediation or arbitration as methods of resolving disputes, as an alternative to initiating court proceedings.

#### *CONFIDENTIALITY AND PRIVILEGE*

30. The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and shall not divulge any such information except as expressly or impliedly authorized by the client, required by law or otherwise required by this Code. Unless,
  - (a) Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that would substantially interfere with health or well-being, the lawyer shall disclose confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.
  - (b) The lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court or tribunal facility shall inform the person having responsibility for security at the facility and give particulars, being careful not to disclose confidential information except to the extent necessary. Where possible the lawyer should suggest solutions to the anticipated problem such as:

- (i) the need for further security;
  - (ii) that judgment be reserved;
  - (iii) such other measure as may seem advisable.
- (c) Disclosure may also be justified in order to establish or collect a fee, or to defend the lawyer or the lawyer's associates or employees against any allegation of malpractice or misconduct, but only to the extent necessary for such purposes.
31. An advocate briefed to appear in criminal proceedings, whose client confesses guilt to him, but maintains a plea of not guilty:
- (a) may return the brief, if there is enough time for another legal practitioner to take over the case properly before the hearing, and the client does not insist on the advocate continuing to appear for the client;
  - (b) in cases where the Advocate keeps the brief for the client:
    - (i) must not falsely suggest that some other person committed the offence charged;
    - (ii) must not set up an affirmative case inconsistent with the confession; but
    - (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged; and
    - (iv) may argue that for some reason of law the client is not guilty of the offence charged, or
    - (v) may argue that for any other reason not prohibited by (i) or (ii) the client should not be convicted of the offence charged.
32. An advocate whose client informs the advocate that the client intends to disobey a court's order must:
- (a) advise the client against that course and warn the client of its dangers;
  - (b) not advise the client how to carry out or conceal that course; but
  - (c) not inform the court or the opponent of the client's intention unless -
    - (i) the client has authorised the advocate to do so beforehand; or

- (ii) the advocate believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety.

*CONFLICT OF INTEREST*

- 33. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his/her withdrawal from a case, he/she shall refund such part of the fee as has not been earned.
- 34. An advocate shall not, at any time, be a party to fomenting of litigation.
- 35. An advocate shall not act on the instructions of any person other than his/her client or his/her authorised agent.
- 36. An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn, or advised on, pleadings, or acted for a party, shall not act, appear or plead for the opposite party.
- 37. An advocate should not accept a brief or appear in a case in which he/she has reason to believe that he/she will be a witness, and if being engaged in a case, it becomes apparent that he/she is a witness on a material question of fact, he/she should not continue to appear as an Advocate if he/she can retire without jeopardising his/her client's interests.
- 38. An advocate shall at the commencement of his/her engagement and during the continuance thereof, make all such full and frank disclosure to his/her client relating to his/her connection with the parties and any interest in or about the controversy as are likely to affect his/her client's judgment in either engaging him or continuing the engagement.
- 39. An advocate shall not advise or represent both sides of a dispute and, except after adequate disclosure to and with the consent of the clients, preferably after receiving an independent legal advice, shall not act or continue to act in a matter when there is a conflicting interest, which gives rise to substantial risk that the advocate's representation of the client would be materially and adversely affected by the advocate's duties to another current client, a former client, or a third person



including, but not limited to, the duties and loyalties of the advocate or a partner or professional associate of the advocate of the law firm in which such advocate is a partner or associate, to another client, whether involved in the particular matter or not, including the obligation to communicate information.

40. Before the advocate accepts a brief from more than one client in the same matter, the advocate must advise the clients that the advocate or a partner or professional associate of the advocate has been asked to act for both or all of them, that no information received in connection with the matter from one can be treated as confidential so far as any of the others is concerned and that, if a dispute develops that cannot be resolved, the advocate cannot continue to act for both or all of them with respect to the matter and may have to withdraw completely.
41. Where a advocate or a partner or professional associate of the advocate has a continuing relationship with a client for whom the advocate or a partner or professional associate of the advocate in the law firm in which such advocate is a partner or associate acts regularly, before the advocate accepts joint briefs for that client and another client in a matter or transaction, the advocate must advise the other client of the continuing relationship and recommend that the other client obtain independent legal advice about the joint retainer. If, following such disclosure, all parties are content that the advocate act for them, the advocate should obtain their consent, preferably in writing, or record their consent in a separate letter to each. The advocate should, however, guard against acting for more than one client where, despite the fact that all parties concerned consent, it is reasonably obvious that a contentious issue may arise between them or that their interests, rights or obligations will diverge as the matter progresses.
42. If a contentious issue arises between clients on a joint retainer, the advocate, although not necessarily precluded from advising them on other non-contentious matters, would be in breach of this Code if the advocate attempted to advise them on the contentious issue. In such circumstances the advocate should ordinarily refer the clients to other advocates. However, if the issue is one that involves little or no legal advice, for example, a business rather than a legal question in a proposed business

transaction, and the clients are sophisticated, they may be permitted to settle the issue by direct negotiation in which the advocate does not participate.

43. An advocate may only act in a matter which is adverse to the interests of a current client provided that:

(a) the matter is unrelated to any matter in which the advocate is acting for the current client; and

(b) no conflicting interest is present

44. Where an advocate has acted for a former client and, in that context, has obtained confidential information relevant to a new matter, the advocate's partner or associate of the law firm in which such advocate is a partner or associate may act in the new matter against the former client if

(a) the former client consents to the advocate's partner or associate acting, or

(b) the new matter does not involve attacking the prior legal work or, in effect, changing sides on a central aspect of the prior legal work and the law firm establishes that it is in the interests of justice that it act in the new matter, having regard to all relevant circumstances, including

(i) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur,

(ii) the extent of prejudice to any party,

(iii) the good faith of the parties,

(iv) the availability of suitable alternative counsel, and

(v) issues affecting the public interest.

45. An advocate may act against a former client in a fresh and independent matter wholly unrelated to any work the advocate has previously done for that person. An advocate may advise, represent or take a position for or against a particular issue for another client where the immediate interests of the former client are not directly and adversely affected by the advocate's representation of another client. However, if the

reputation of the former client is in question, and/or mala fides are alleged against him, and the same would conflict with the position taken by the advocate in the previous proceeding, the advocate shall:

(a) Divulge such fact to the present client, and offer not to press issues on that point; or

(b) Decline to accept the present engagement entirely;

46. Counsel should not become personally, as opposed to professionally, associated with his/her client's interest. he/she should not, e.g., stand bail for his/her client, nor take part in a public movement for his/her reprieve.

47. An advocate shall not, directly or indirectly, bid for or purchase, either in his/her own name or in any other name, for his/her 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/she was in any way professionally engaged. this prohibition, however, does not prevent an advocate from bidding for or purchasing for his/her client any property which his/her client may himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.

48. An advocate shall not directly or indirectly bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his/her own name or in any other name for his/her own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he/she is in any way professionally engaged.

#### *OF REMUNERATION AND PROFESSIONAL FEES*

49. An advocate shall not adjust fee payable to him by his/her client against his/her own personal liability to the client, which liability does not arise in the course of his/her employment as an advocate.

50. An advocate shall, as far as possible accept payment of fees only by cheque, but if payment is made in cash, proper receipts must be furnished to the client, and a register of the same maintained.

51. An advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his/her behalf, the

expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars. The payments made to senior counsel or other advocates who have been engaged will also be reflected in these accounts.

52. Where money is received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceeding, no advocates shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

53. After the termination of the proceeding, the advocate shall be at 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/her hands in that proceeding.

54. Where the fee has been left unsettled, the advocate shall be entitled to deduct, out of any moneys of the client remaining in his/her hands, at the termination of the proceeding for which he/she 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.

55. A copy of the client's account shall be furnished to him on demand.

56. An advocate shall not lend money to his/her client for the purpose of any action or legal proceedings in which he/she is engaged by such client.

#### IV. AN ADVOCATE'S DUTY TO THE OPPONENT

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57. An advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an advocate except through that advocate.

58. An advocate shall do his/her 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.

59. An advocate must not knowingly make a false statement to the opponent in relation to the case (including its compromise).

60. An advocate must take all necessary steps to correct any false statement unknowingly made by the advocate to the opponent as soon as possible after the advocate becomes aware that the statement was false.

61. An advocate will not have made a false statement to the opponent simply by failing to correct an error on any matter stated to the advocate by the opponent.

#### V. AN ADVOCATE'S DUTY TO COLLEAGUES

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62. An Advocate shall not solicit work or advertise, except through a medium maintained by the Bar Council of India, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his/her photographs to be published in connection with cases in which he/she has been engaged or concerned. His/her sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he/she is or has been a President or Member of a Bar Council or of any Association or that he/she has been associated with any person or organisation or with any particular cause or matter or that he/she specialises in any particular type of work or that he/she has been a Judge or an Advocate General.

Soliciting work or advertise" as used in this clause of the Code would not mean and include setting up of a web-site by an advocate or a law firm giving only basic information about the names and number of lawyers in a law firm, the contact details and areas of practice. This would apply similarly to lawyers' brochures and law directories.

63. An advocate shall not permit his/her professional services or his/her name to be used in aid of, or to make possible, the unauthorised practice of law by any law agency.

64. An advocate shall not accept a fee less than the fee taxable under rules when the client is able to pay the same.

65. An advocate shall not enter appearance in any case in which there is already a vakalat or memo of appearance filed by an advocate engaged for a party except with his/her consent; in case such consent is not produced he/she shall apply to the Court stating

reasons why the said consent could not be produced and he/she shall appear only after obtaining the permission of the Court.

#### VI. AN ADVOCATE'S DUTY TO IMPART TRAINING

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66. 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 State Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961.

#### VII. AN ADVOCATE'S DUTY TO RENDER LEGAL AID

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67. 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/she 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.

#### VIII. RESTRICTION ON OTHER EMPLOYMENTS

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68. An advocate shall not personally engage in any business; but he/she may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

69. An advocate may be Director or Chairman of the Board of Directors of a Company with or without any ordinarily sitting fee, provided none of his/her duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any Company.

70. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he/she continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his/her name appears and shall thereupon cease to practise as an advocate so long as he/she continues in such employment.

71. An advocate who has inherited, or succeeded by survivorship to a family business may continue it, but may not personally participate in the management thereof. He/she 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/she does not personally participate in the management thereof.
72. An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, 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.
73. 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/her 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 India from time to time.

## IX. GENERAL

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74. An advocate shall comply with the letter as well as the spirit of the Code of Ethics.
75. While the Code recognizes that ethics either lies in the heart or nowhere, it expects advocates to maintain highest standard of ethics consistent with the dignity of the profession. In particular, the Code strongly encourages advocates to follow a duty of candour whereby advocates share their ethical dilemma with senior colleagues in the profession and seek aid and advice.
76. The Code expects advocates to resolve ethical dilemma strictly in accordance with this Code. In the case of any doubt, an advocate shall be at liberty to seek advance ruling from the Bar Council of India.