

**LEGAL PROFESSION ACT
(CHAPTER 132)
ADVOCATES AND SOLICITORS
(PRACTICE AND ETIQUETTE)
RULES**

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SUBSIDIARY LEGISLATION
ADVOCATES AND SOLICITORS
(PRACTICE AND ETIQUETTE) RULES

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SUBSIDIARY LEGISLATION
Rules under section 65 of the Act
ADVOCATES AND SOLICITORS
(PRACTICE AND ETIQUETTE) RULES

Commencement: 1st January 1991

PART I

PRELIMINARY

Citation.

1. These Rules may be cited as the Advocates and Solicitors (Practice and Etiquette) Rules.

Application.

2. These Rules shall apply to any person to whom a practising certificate is granted for 1991 or thereafter under the Legal Profession Act (Chapter 132) (hereinafter referred to as the principal Act).

Interpretation.

3. In these Rules, unless the context otherwise requires, “advocate” means any person to whom the principal Act applies.

PART II

ACCEPTANCE OF BRIEF

Advocate not obliged to act for every person.

4. (1) An advocate is not obliged to act as adviser or advocate for every person who may wish to become his client.

(2) An 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 and upon his own skill and experience.

(3) Special circumstances may justify the refusal, at his discretion, of an advocate to accept a particular brief, even if the conditions set out in these Rules are otherwise met.

Advocate not to accept brief if embarrassed.

5. (1) An advocate shall not accept a brief if he is or might be embarrassed thereby.
- (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; or
 - (b) where there is some personal relationship between him and a party or a witness in the proceedings.

When advocate impugned.

6. An advocate shall refuse a brief in a case in which he knows, or has reason to believe, that this own professional conduct is likely to be impugned.

Professional independence.

7. (1) An advocate shall not 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 interests of the administration of justice.
- (2) 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, or other proceedings connected therewith shall not act, appear or plead for the opposite party in that suit, or such other proceedings.

When an advocate shall not accept brief.

8. (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.

Release from assignment.

9. Subject to any other law, an advocate assigned as counsel in any civil or criminal matter shall only ask to be excused in exceptional circumstances.

PART III

CONDUCT IN COURT

Defence.

10. (1) An advocate who undertakes the defence of a person in any criminal matter shall by all fair 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.

Prosecution.

11. (1) An advocate appearing for the prosecution in a criminal trial shall conduct the prosecution fairly.

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

Fees for litigious or contentious matters.

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

(a) the time, labour and skill required;

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

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

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

(e) the amount in controversy;

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

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

(h) the experience or skill of the particular advocate.

Conduct of civil case.

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

[Subsidiary]

Insulting or annoying questions.

14. An advocate shall not ask questions which are only intended to insult or annoy, and shall exercise his own judgment as to the substance and form of the question put.

Irrelevant questions.

15. (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.

(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.

16. An advocate shall maintain a respectful attitude towards the Court.

Interest of client.

17. An advocate shall, while acting with all due courtesy to the Court, fearlessly uphold the interests of his client, the interests of justice and the dignity of the profession, without regard to any unpleasant consequences, either to himself or to any other person.

No deception.

18. An advocate shall not practise any deception on the Court.

Facts not proved.

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

Relevant binding decisions.

20. (1) An advocate shall put before the Court any relevant binding decision of which he is aware and 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 conduct.

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 overruled or a statute 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 propositions upon which he intends to rely.

Propositions of law etc.

22. (1) Where after the conclusion of the evidence and argument and while judgment is reserved, and 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.

(2) The first-named advocate shall send the other advocate or party a copy of his letter to the Court, so that the other advocate or party can comment on it if necessary.

Advocate to supply information.

23. An advocate shall supply to the Court such information as he has as to the probable length of a case and the possibility of a settlement or of a plea of guilty.

Advocate to be ready on day fixed for trial.

24. (1) An advocate shall be ready for trial on the day fixed for it.

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

(3) Except in any 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 48 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 his relationship, if any, 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 as such if he is a witness.

27. (1) An advocate shall not appear as such in Court or in chambers in any case in which he has reason to believe that he will be a witness on any disputed question of fact. If

[Subsidiary]

while appearing in a case it becomes apparent that he will be such a witness, he shall retire from it if he can do so 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 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.

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

Advocate not to testify.

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

Dress restrictions.

29. (1) An advocate who appears in person as a party or witness 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 such ceremonial occasions and at such time and 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.

Dress.

30. (1) An advocate shall, when appearing before a Court, be dressed neatly, in bands, a dark jacket and a dark skirt or trousers.

(2) If appearing for the Public Prosecutor or if qualified as a barrister, or as a member of a profession fused outside Brunei Darussalam, an advocate shall also wear a wig.

Clients' feelings.

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

Adverse witnesses.

32. An advocate shall treat adverse witnesses and parties with fairness and due consideration.

PART IV
CONDUCT OUT OF COURT

Advocate may interview witnesses for opposing side.

33. 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 avoid any suggestion calculated to induce the witness to suppress or deviate from the truth.

Advocate not to abuse confidence.

34. (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 a client.

(2) An advocate shall preserve his clients' confidence. This duty shall outlast his employment.

Advocate to prevent client from wrongful conduct.

35. An advocate shall use his best efforts to prevent his client from doing any 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.

PART V
RESTRICTIONS

Advocate writing for press.

36. Subject to rule 37, 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 advocate or of his legal work appears in connection with the article.

Exceptions to rule 36.

37. (1) Rule 36 does not apply in the events set out in this rule.

(2) If 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, qualifications and references to other books he may have written, he may appear therein or in advertisements about it.

(3) If an advocate has retired from practice, he may write about his experiences at the Bar, but he shall not betray the confidence which his clients have reposed in him.

- (4) An advocate may write an article for a legal journal.

Advocate not to describe himself as such.

38. An advocate wishing to give a lecture, or to 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 an advocate or solicitor.

Advocate not to stand surety.

39. An advocate shall not stand as a surety or bailor for his client in any legal proceedings.

Arbitrations.

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

Advocate not to communicate.

41. 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 latter's consent.

Advocate not to actively carry on any trade.

42. (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, company or firm (other than as an advocate or solicitor). On taking up such employment, he shall intimate the fact to the Chief Justice and cease to practise as an advocate so long as he continues in such employment.

PART VI

ADVERTISING ETC.

Advocate not to advertise.

43. (1) An advocate shall not solicit work or advertise, either directly or indirectly, whether by circular, advertisement, touts, personal communications, by inspiring newspaper comments or procuring his photograph to be published about, any case with which he has been concerned.

(2) No advocate shall display outside his office a name plate larger than 2½ feet by 2 feet.

(3) No advocate shall indicate in his signboard, name plate or stationary 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.

44. An advocate shall not do or cause or allow to be done anything which has as its primary motive personal advertisement in any form.

Interviews.

45. An advocate shall not give an interview or supply information to the press concerning his life, practice or earnings at the Bar.

Photographs.

46. An advocate shall not procure the publication of his photograph as a member of the Bar in the press or any periodical.

Advocate not to solicit reporting.

47. 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 revise any reports or case in which he has been professionally engaged so as to ensure the correctness of the report.

Advertisement in books articles etc.

48. (1) It is contrary to etiquette for an advocate —

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

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

(2) This rule shall not apply to the printing of the name and address on any advocate or firm in the Law List, Law Directories, Legal Diaries and such other Directory as the Chief Justice may from time to time sanction, or in any telephone directory or in ordinary legal notices published in the press or elsewhere. In so printing his or its name and address an advocate or firm 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 made from time to time by the Chief Justice in respect of the publication in issue or publications generally.

PART VII

MISCELLANEOUS

Touting.

49. An advocate shall not do or allow to be done, anything for the purpose of touting, directly or indirectly.

No division of costs.

50. It is unprofessional and improper conduct —

(a) for an advocate to divide, or agree to divide, any part of the 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, whether such payment, gift of agreement be made under pretext of services rendered or otherwise, but his 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, except for some special reason where no charge at all is made.

Agency commission.

51. An agency commission may be allowed between an advocate and his recognised agent practising in Brunei Darussalam or elsewhere.

Party represented by another advocate.

52. Where in any matter or proceeding, the name of any advocate or firm appears on the record 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; or

(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.

53. Except in order to secure his right to a lien, an advocate shall not otherwise withhold any papers to the detriment of his client.

Judgment by Default.

54. Where the name of an advocate or 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 other 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 48 hours shall have elapsed after the delivery of such notice to the first-named advocate.

Extension of time to plead.

55. 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.

Objection to admissibility.

56. 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 of the suit.

Offices.

57. (1) No advocate shall maintain a branch office unless the same is under the complete and continuous supervision of an advocate.

(2) No advocate shall practise his profession in Brunei Darussalam unless he maintains an office within Brunei Darussalam.

Lay agency.

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

[Subsidiary]

Breach of Rules.

59. (1) Any person, whether or not an advocate, may draw the attention of the Chief Justice to any alleged breach of any of these Rules.

(2) The Chief Justice may, if an alleged breach is reported to him, take such steps as he may consider proper in relation thereto including such measures as are authorised by the principal Act.

Waiver.

60. The Chief Justice may, in writing, waive any of these Rules, generally or in relation to a particular advocate or firm.

