

**LEGAL PROFESSION (LAW SOCIETY OF BRUNEI
DARUSSALAM) ORDER**
(Order 1 of Chapter 132)

**LEGAL PROFESSION (PRACTICE AND ETIQUETTE)
RULES**

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SUBSIDIARY LEGISLATION

**LEGAL PROFESSION (LAW SOCIETY OF BRUNEI DARUSSALAM) ORDER
(Order 1 of Chapter 132)**

LEGAL PROFESSION (PRACTICE AND ETIQUETTE) RULES

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SUBSIDIARY LEGISLATION

**LEGAL PROFESSION (LAW SOCIETY OF BRUNEI DARUSSALAM) ORDER
(Order 1 of Chapter 132)**

Rules made under paragraph 36(1)

LEGAL PROFESSION (PRACTICE AND ETIQUETTE) RULES

Commencement: 12th May 2015

PART 1

PRELIMINARY

Citation

1. These Rules may be cited as the Legal Profession (Practice and Etiquette) Rules.

Application

2. These Rules apply to any person to whom a practising certificate is granted under section 13.

Interpretation

3. In these Rules, unless the context otherwise requires, “advocate and solicitor” means an advocate and solicitor of the court.

PART 2

ACCEPTANCE AND NON-ACCEPTANCE OF BRIEF

No obligation to act for every person

4. (1) An advocate and solicitor is not obliged to act as such, for every person who may wish to become his client.

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

[Subsidiary]

Acceptance of brief

5. An advocate and solicitor may accept any brief in the courts in which he professes to practice, at a proper professional fee, dependent on the length and difficulty of the case and upon his own skill and experience.

Non-acceptance of brief if embarrassed

6. (1) An advocate and solicitor shall not accept a brief if he is or may be embarrassed thereby.

(2) An embarrassment arises —

(a) where the advocate and solicitor 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) in a contentious matter where there is some personal relationship between him and a party or a witness in the proceedings.

Non-acceptance of brief if likely to be impugned

7. An advocate and solicitor shall not accept a brief in a case in which he knows, or has reason to believe, that his own professional conduct is likely to be impugned.

Non-acceptance of brief due to professional independence etc.

8. (1) An advocate and solicitor 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 and solicitor who has at any time —

(a) advised;

(b) drawn pleadings; or

(c) acted for,

a party in connection with the institution, 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.

Non-acceptance of brief due to inability to appear

9. An advocate and solicitor shall not accept any brief unless he is reasonably certain of being able to appear and represent the client on the required day.

Release and withdrawal from assignment

10. (1) Subject to any other written law, an advocate and solicitor assigned as counsel in any civil or criminal matter shall only request to be released from the assignment in exceptional circumstances.

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

PART 3

CONDUCT IN COURT

Respect towards court

11. An advocate and solicitor shall maintain a respectful attitude towards the court.

No deception

12. An advocate and solicitor shall not practise any deception on the court.

Prosecution

13. (1) An advocate and solicitor 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.

Conduct of civil case

14. An advocate and solicitor shall not conduct a civil case or raise a defence which is intended merely to delay proceedings, or to harass or injure the opposite party, or to work oppression or wrong.

Defence

15. (1) An advocate and solicitor 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 and solicitor 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.

Interest of client

16. An advocate and solicitor 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

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profession, without regard to any unpleasant consequences, either to himself or to any other person.

Advocate and solicitor to disclose all circumstances to client

17. An advocate and solicitor at the time of his being retained shall disclose to the client —

- (a) his relationship, if any, to the parties; and
- (b) any interest in connection with the controversy,

which may influence the client in the selection of counsel.

Advocate and solicitor to be ready on day fixed for trial

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

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

(3) Except in cases of emergency, it is improper for an advocate and solicitor 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.

Facts not proved

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

Advocate and solicitor not to mislead

20. An advocate and solicitor shall avoid everything which may tend to mislead a party, whether or not represented by counsel.

Advocate and solicitor to supply information

21. An advocate and solicitor shall supply to the court such information as he possesses as to the probable length of a case and the possibility of a settlement or of a plea of guilty.

Insulting or annoying questions

22. An advocate and solicitor 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 to him.

Irrelevant questions

23. (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.

Relevant binding decisions

24. (1) An advocate and solicitor 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 paragraph applies with particular importance in *ex parte* proceedings.

Improper conduct

25. It is improper for an advocate and solicitor —

(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;

(b) with knowledge of its invalidity, to cite as authority a decision that has been overruled or a statute that has been repealed;

(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.

26. (1) Where after the conclusion of the evidence and argument and while judgment is reserved, an advocate and solicitor 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 and solicitor shall send the other advocate and solicitor or party a copy of his letter to the court, so that the other advocate and solicitor or party can comment on it if necessary.

Advocate and solicitor not to appear as such if he is witness

27. (1) An advocate and solicitor 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.

[Subsidiary]

(2) If, while appearing in a case, it becomes apparent that he will be such a witness, he shall withdraw from it if he can do so without jeopardising his client's interests.

(3) An advocate and solicitor 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.

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

(5) This paragraph does not apply to the case of an advocate and solicitor appearing in person to tax his own costs.

Advocate and solicitor not to testify

28. Except it is in the interest of justice or with respect to merely formal matter, an advocate and solicitor appearing in any cause shall not testify in court on behalf of his client in that cause.

Dress code

29. (1) An advocate and solicitor who appears in person as a party or witness shall not wear a robe.

(2) An advocate and solicitor appearing before a court martial may appear either in uniform (if he is entitled to do so) or in a robe.

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

Dress

30. When an advocate and solicitor appears in open court, the advocate and solicitor shall comply with such dress code as the Chief Justice may determine.

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 witnesses in the case.

Adverse witnesses

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

PART 4

CONDUCT OUT OF COURT

Advocate and solicitor may interview witnesses for opposing side

33. (1) An advocate and solicitor 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.

(2) In doing so, he shall avoid any suggestion calculated to induce the witness to suppress or deviate from the truth.

Advocate and solicitor not to abuse confidence

34. (1) An advocate and solicitor 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 and solicitor has a duty to preserve his clients' confidence which shall outlast his employment.

Advocate and solicitor to prevent client from wrongful conduct

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

PART 5

RESTRICTIONS

Touting

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

Advocate and solicitor shall not bail or stand as surety

37. An advocate and solicitor shall not bail, or stand as a surety for, his client in any legal proceedings.

[Subsidiary]

Arbitrations

38. An advocate and solicitor 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 and solicitor not to communicate

39. An advocate and solicitor shall not communicate with a person upon any matter in respect of which to his knowledge that person is represented by another advocate and solicitor, except with the latter's consent.

Advocate and solicitor not to actively carry on trade

40. (1) An advocate and solicitor shall not actively carry on any trade which is declared by the Chief Justice or the Law Society as unsuitable for an advocate and solicitor to engage in, or be an active partner or a salaried officer, in connection therewith.

(2) An advocate and solicitor 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 inform the fact to the Chief Justice and the Law Society and cease to practise as an advocate and solicitor so long as he continues in such employment.

PART 6

GENERAL

Fees for litigious or contentious matters

41. 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;
- (f) 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 and solicitor.

No division of costs

42. It is unprofessional and improper conduct for an advocate and solicitor —

- (a) to divide, or agree to divide, any part of the costs received, or the profits of his business, with any unqualified person;
- (b) to pay, give or 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 the pretext of services rendered or otherwise, but this paragraph does not prohibit the payment of ordinary bonuses to staff;
- (c) 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.

Party represented by another advocate and solicitor

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

- (a) he obtains the consent of the first named advocate and solicitor;
- (b) he is satisfied that the proper professional remuneration of the first named advocate and solicitor 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 and solicitor 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 and solicitor 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 and solicitor may have for costs.

[Subsidiary]

Advocate's and solicitor's lien

44. Except in order to secure his right to a *lien*, an advocate and solicitor shall not otherwise withhold any paper to the detriment of his client.

Judgment by default

45. Where the name of an advocate and solicitor or firm appears on the court record, or the fact of representation is known to the other side, no advocate and solicitor representing the other party to the proceedings shall —

(a) enter judgment by default against the client of the first named advocate and solicitor;

(b) take advantage of the delay in —

(i) pleading or filing documents in the nature of pleadings;

(ii) taking any necessary steps or complying with any other proceedings by such first named advocate and solicitor,

unless he has given to such first named advocate and solicitor written notice of his intention to do so and 48 hours have elapsed after the delivery of such notice to the first named advocate and solicitor.

Objection to admissibility

46. 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

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

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

Lay agency

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

Breach

49. (1) Any person, whether or not an advocate and solicitor, may draw the attention of the Chief Justice or the Law Society 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 Act or any rules made thereunder.

Waiver

50. The Chief Justice may, in writing, waive any of the provisions of these Rules, generally or in relation to a particular advocate and solicitor or firm.