



LEGAL PROFESSION ACT 1976 [ACT 166]

P.U.(A) 369/78

LEGAL PROFESSION (PRACTICE AND ETIQUETTE) RULES 1978

Incorporating latest amendments - P.U.(A) 345/2001

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LIST OF AMENDMENTS

Preamble

IN exercise of the powers conferred by section 77 of the Legal Profession Act 1976 [Act 166], the Bar Council makes the following rules:

Rule 1. Citation.

These Rules may be cited as the Legal Profession (Practice and Etiquette) Rules 1978.

Rule 2. Obligation of advocate and solicitor to give advice on or accept any brief.

An advocate and solicitor shall give advice on or accept any brief in the Courts in which he professes to practise at the proper professional fee dependent on the length and difficulty of the case, but special circumstances may justify his refusal, at his discretion, to accept a particular brief.

[Subs. P.U.(A) 58/94]

Rule 3. Advocate and solicitor not to accept brief if embarrassed.

- (a) An advocate and solicitor shall not accept a brief if he is or would be embarrassed.
- (b) An embarrassment arises-
 - (i) 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;
 - (ii) where there is some personal relationship between him and a party or a witness in the proceedings.

Rule 4. No advocate and solicitor to accept brief if professional conduct likely to be impugned.

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

Rule 5. No advocate and solicitor to accept brief if difficult to maintain professional independence.

- (a) No advocate and solicitor shall accept a brief if such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice.
- (b)
 - (i) An advocate and solicitor who has at any time advised or drawn pleading or acted for a party in connection with the institution or prosecution or defence of any suit, appeal or other proceedings shall not act, appear or plead for the opposite party in that suit, appeal or other proceedings.
 - (ii) An advocate and solicitor shall not act unless the consent of the first party for whom the advocate and solicitor acted is obtained in writing and the advocate and solicitor is not embarrassed by so acting.

Rule 6. An advocate and solicitor not to accept brief if unable to appear.

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



Rule 7. No advocate and solicitor to accept remuneration in capacity as Member of Parliament etc. except emoluments as Member of Parliament etc.

- (a) An advocate and solicitor shall not accept any remuneration for that which he does in his capacity as a Member of Parliament or of any State Legislature, other than emoluments received by him as a Member of Parliament or of any State Legislature.
- (b) No advocate and solicitor may accept the position of an executive director or executive secretary of a company without the express consent of the Bar Council.

Rule 8. Advocate and solicitor not to ask for excuse from assignment.

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

Rule 9. Advocate and solicitor to undertake defence fairly and honourably.

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

Rule 10. Advocate and solicitor to conduct prosecution so that no innocent person is convicted.

- (a) An advocate and solicitor appearing for the prosecution in a criminal trial shall so conduct the prosecution that it does not lead to the conviction of an innocent person.
- (b) Material capable of establishing the innocence of the accused shall not be suppressed.

Rule 11. Fees for litigious or contentious matters.

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

- (a) the time, labour and skill required;
- (b) the novelty and difficulty of the question involved;
- (c) whether acceptance of the particular employment will preclude his appearance for others of which he has a reasonable expectation;
- (d) the customary charges of the profession for similar services;
- (e) the amount in controversy;
- (f) the benefit resulting to the client for the services;
- (g) the character of the employment-whether casual or for an established client; and
- (h) the special position or seniority of the particular advocate and solicitor.

Rule 12. Advocate and solicitor not to conduct civil case intended to delay proceedings etc.

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

Rule 13. Advocate and solicitor to guard against insulting or annoying questions.

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

Rule 14. Questions irrelevant to actual enquiry not to be asked.

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

(b) 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.

Rule 15. Respect to court.

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

Rule 16. Advocate and solicitor to uphold interest of client, justice and dignity of profession.

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

Rule 17. No deception on Court.

An advocate and solicitor shall not practice any deception on the Court.

Rule 18. Advocate and solicitor to conduct with candour, courtesy and fairness.

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

Rule 19. Advocate and solicitor not to refer to facts not proved.

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

Rule 20. Advocate and solicitor to put before Court any relevant binding decision.

(a) An advocate and solicitor shall put before the Court any relevant, binding decision of which he is aware which is immediately in point, whether it be for or against his contention.

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

Rule 21. Improper to misquote.

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; 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 positions upon which he intends to rely.

Rule 22. Advocate and solicitor to bring to Court's attention any proposition of law etc.

- (a) 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 and the advocate and solicitor appearing of the other side shall concur in the proposal even though the proposition is against him.
- (b) Where the other advocate and solicitor does not concur, it is still in order for the first-named advocate and solicitor to submit the additional authority and the proper course is for the first-named advocate and solicitor to send the other advocate and solicitor a copy of his letter to the Court, so that the other advocate and solicitor can comment on it if necessary.

Rule 23. Advocate and solicitor to supply to Court all information.

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

Rule 24. Advocate and solicitor to be ready for the day fixed for trial.

- (a) An advocate and solicitor shall make every effort to be ready for trial on the day fixed.
- (b) An advocate and solicitor may apply for postponement of a case fixed for hearing for good and cogent reasons only.
- (c) Except in an emergency, it is improper for an advocate and solicitor to apply for a postponement in the absence of counsel or the other side unless he has given the counsel concerned at least forty eight hours notice of his intention to make the application.

Rule 25. Advocate and solicitor to disclose all circumstances to client.

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

Rule 26. Advocate and solicitor not to mislead.

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

Rule 27. Advocate and solicitor not to appear where pecuniarily interested.

- (a) An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested.
- (b) This rule does not apply to the case of an advocate and solicitor appearing himself to tax his own costs.

Rule 28. Advocate and solicitor not to appear in a case where he is a witness.

- (a) An advocate and solicitor shall not appear in Court or in Chambers in any case in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interests.
- (b) An advocate and solicitor shall not appear before an appellate tribunal if in the case under appeal he has been a witness on a material and disputed question of fact in the Court below.
- (c) These rule 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.

Rule 29. Advocate and solicitor not to testify on behalf of client.

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

Rule 30. Advocate and solicitor appearing as party or witness to wear robes.

- (a) An advocate and solicitor who appears in person as a party or who is in the witness box shall not wear robes.
- (b) An advocate and solicitor appearing before Courts Martial may appear either in uniform (if he is entitled to do so) or in robes.
- (c) Except on such ceremonial occasions and at such places as the Bar Council or the Court may prescribe, and advocate and solicitor shall not wear bands or robes in public place other than in Court or whilst travelling to or from Court.

Rule 31. Advocate and solicitor to uphold dignity of profession.

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

Rule 32. Client's feeling not to influence conduct of counsel.

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

Rule 33. Advocate and solicitor to treat adverse witnesses with fairness and due consideration.

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

Rule 34. Advocate and solicitor may interview witnesses for opposing side.

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

Rule 35. Advocate and solicitor not to abuse confidence reposed in him by client.

- (a) 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 the client.

- (b) An advocate and solicitor shall preserve his client's confidence and this duty outlasts his employment.

Rule 36. Advocate and solicitor to prevent client from wrongful conduct towards courts etc.

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

Rule 37. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]

Rule 38. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]

Rule 39. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]

Rule 40. Advocate and solicitor not to stand surety.

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

Rule 41. Advocate and solicitor who has advised Arbitrator cannot appear in arbitration proceedings.

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.

Rule 42. Advocate and solicitor not to communicate with a person represented by another advocate and solicitor.

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 other's express consent.

Rule 43. Advocate and solicitor not to stir up strife and litigation.

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

Rule 44. Advocate and solicitor not to actively carry on any trade.

- (a) An advocate and solicitor shall not actively carry on any trade which is declared by the Bar Council from time to time as unsuitable for an advocate and solicitor to engage in or be an active partner or a salaried officer in connection therewith.
- (b) An advocate and solicitor shall not be a full-time salaried employee of any person, firm (other than advocate and solicitor or firm of advocates and solicitors) or corporation so long as he continues to practise and shall on taking up any such employment, intimate the fact to the Bar Council and take steps to cease to practise as an advocate and solicitor so long as he continues in such employment.

Rule 45. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]



Rule 46. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]

Rule 47. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]

Rule 48. Advocate and solicitor not to publish photograph.

An advocate and solicitor shall not take steps to procure the publication of his photograph as a member of the Bar in the press or any periodical.

*(*The above Rule prohibiting a member from the publication of his photographs a member of the Bar in the Press or any periodicals has been waived by the Bar Council with the approval of the Attorney General pursuant to Rule 62 of the abovementioned Rules with effect from 1 June 2003.)*

Rule 49. Advocate and solicitor not to solicit reporting.

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

Rule 50. [Deleted by P.U.(A) 345/2001].

[P.U.(A) 345/2001]

Rule 51. Advocate and solicitor no to do or cause touting.

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

Rule 52. No division of costs or profits with unqualified person.

It is unprofessional and improper conduct-

- (a) for an advocate and solicitor to divide or agree to divide either costs received or the profits of his business with any unqualified person;
- (b) for an advocate and solicitor to pay, give, agree to pay or agree to give any commission, gratuity or valuable consideration to any unqualified person to procure or influence or for having procured or influenced any legal business and whether such payment, gift or agreement be made under pretext of services rendered or otherwise, but this rule does not prohibit the payment of ordinary bonuses to staff;
- (c) for an advocate and solicitor 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.

Rule 53. Agency commission or profit costs.

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

Rule 54. Advocate and solicitor not to appear for a party represented by another advocate and solicitor.

Where in any matter or proceeding, the name of any advocate and solicitor or the name of his firm appears on the records 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 proceeding unless-

- (a) he obtains the consent of the first-named advocate and solicitor; or
- (b) he is satisfied that the proper professional remuneration of the first-named advocated and solicitor 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 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.

Rule 55. Advocate and solicitor's lien.

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

Rule 56. Judgment by default.

Where the name of the advocate and solicitor or his 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 enter Judgment by Default against the client of the first-named advocate and solicitor 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 in the proceedings by such first-named advocate and solicitor, unless he shall have given to such first-named advocate and solicitor written notice of his intention to do so, and forty-eight hours shall have elapsed after the delivery of such notice to the first-named advocate and solicitor.

Rule 57. Extension of time to Plead.

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

Rule 58. Objection to admissibility of insufficiently stamped documents.

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

Rule 59. No branch office without advocate and solicitor.

(1) No advocate and solicitor shall maintain a branch office unless the same is.

- (a) in the name of his firm; and



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

[Am. P.U.(A) 365/81]

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

[Ins. P.U.(A) 365/81]

- (3) No advocate and solicitor shall practise his profession in the States of Malaya in or as a partner of more than one firm at any time without the consent of the Bar Council.

- (4) No advocate and solicitor shall practise his profession unless he maintains an office within the States of Malaya.

[Am. P.U.(A) 365/81]

Rule 60. Use of "consultant" and "associate".

- (1) An advocate and solicitor may have his name appear as "consultant" on the letterhead of a firm of advocates and solicitors if-

- (a) he has a valid practising certificate issued under Part III of the Act;
- (b) he has been-
- (i) in active practice at the Malaysian Bar for a period of not less than 20 years; or
 - (ii) in active practice at the Malaysian Bar for a period of not less than 10 years and, in addition, has served as a Judge or a member of the Judicial and Legal Service for a period which, aggregated with the period of his active practice at the Malaysian Bar, total not less than 20 years; and
- (c) he is not a partner or legal assistant in any other firm of advocates and solicitors or engaged in any other capacity in any such other firm in the States of Malaysia.

[Subs. P.U.(A) 58/94]

- (2) [Deleted by P.U.(A) 345/2001]

Rule 60A. Documents filed not to be furnished to the press before hearing.

An advocate and solicitor shall not furnish copies of any document filed in Court, before the hearing of the matter in open court, to the press and shall not in any event furnish copies of any document other than documents read in Court.

Rule 61. Lay agency.

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

Rule 62. Waiver.

The Bar Council may, in writing, with the approval of the Attorney General in writing, waive any of these Rules.

[Am. P.U.(A) 189/87]

Rule 63. Revocation.

The Rules of Practice and Etiquette [F. GN. 3406/48] is revoked.



[Ins. P.U.(A) 101/79]

Made the 2nd October 1978.
[BC/LPA; PN. (PU²) 314.]

ABDULLAH A. RAHMAN,
Chairman,
Bar Council, Malaysian Bar

