

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

336

SUPREME COURT OF INDIA

ADVOCATES-ON-RECORD EXAMINATION - JUNE, 2023

Roll No. 168

Dated 14th June, 2023 (Wednesday)


Paper No. - III


Signature of
the Candidate



Name of the Paper: Advocacy & Professional Ethics

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Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

SUPREME COURT OF INDIA
ADVOCATES-ON-RECORD EXAMINATION (JUNE, 2023)

Roll No. 336

14.06.2023

Name of the Paper: Advocacy and Professional Ethics (Paper-III)

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MARKS OBTAINED

PART-A		PART-B		PART-C	
Q.1	14 ✓	Q.3	7 ✓	Q.9	4 ✓
Q.2	15 ✓	Q.4	6 ✓	Q.10	4 ✓
		Q.5		Q.11	
		Q.6		Q.12	3 ✓
		Q.7	6 ✓	Q.13	4 ✓
		Q.8	7 ✓	Q.14	
Total Marks				70 ✓	
				Initials of the Examiner	

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Answer No. 13

Section 126 of the Indian Evidence Act, 1872

No barrister, attorney, valuer or pleader, shall at any time be permitted, unless with client's express consent, to disclose any communication made to them as such a barrister, attorney, valuer or pleader in the course of his employment, by or behalf of the client, to state the contents and conditions of the documents he has acquainted with during the course or for the purpose of such employment, or discloses the legal advice given by him to his client during the course of and for the purpose of such employment.

Provided nothing shall prevent disclosure -

- (i) communication made in the furtherance of an illegal purpose;
- (ii) of the fact observed by the advocate during his employment, showing commission of fraud or crime ~~some~~ after the commencement of his engagement.

It is immaterial whether such fact was brought to the attention of the advocate by or on behalf of the client.

Rule 17 of the Standards on Professional conduct and Etiquettes
 "An advocate shall not, directly or indirectly, commit the breach of obligation imposed upon him by section 126 of the Indian Evidence Act, 1872"

The advocate must protect the information exchanged with the client from disclosure without the client's permission with any person, except for any illegal purpose being perpetuated under the guise of such protection.

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Leading / Relevant case laws:

1. Sushil Kumar Sharma vs Bar Council of Haryana
The test is not the form of employment but whether the person is engaged to act or plead for the employer in the court.

2. Municipal Corporation of Greater Bombay vs. Laxmi and Tarko vs Vijay Metal works
Advice by in-house legal counsel is not protected if given in an executive nature capacity.

3. Laxmi and Tarko vs. Prime Displays Ltd.
To get the protection under section 126, the legal advice be given by person qualified to be an advocate.

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Answer NO. 12

Rule 11' standards of Professional conduct and etiquette'

"An advocate is bound to accept any brief in any court or Tribunal in which he proposes to practice ~~at~~ at a fee consistent with his standing at the bar and the nature of the case. Special circumstances may justify his refusal to accept any one."

An advocate works for a noble profession, although not as an employee, but as an independent professional, only in the pursuit of justice. Since, people are required to approach the courts of law for legal remedies, Advocates by virtue of section 29 of the Advocates Act, 1961 are the only recognized class of persons entitled to practice the profession of law, if would be the given that choice as an option, would disturb the very institution of the justice system, and people would be rendered remedyless.

Therefore, an obligation of such nature, though with just exceptions, has been imposed by the Bar Council of India.

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Notable is the controversial stance of the advocates referring to represent the Delhi Police in the case of clash between lawyers and police at 12 Hazari courts, and also in the case of Nimbhoyya rape offence (Mukesh vs state NCT of Delhi).

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Answer No. 10

Duties towards the court by an advocates are provided for under section 7, Chapter II of Part II of Standards of Professional conduct and etiquette, BCI.

Rule 1

An advocate shall, during the presentation of his case or acting otherwise before the court, shall conduct himself with dignity and self-respect. He shall not be sensible and if there are grounds for complaint against the judicial officer, he shall have the right to move the appropriate authorities.

Rule 2

An advocate shall maintain towards the court a respectful attitude, bearing in mind that the dignity of the judicial office is essential of a free society.

Rule 3

An advocate shall not communicate either in any private communication with the judge in relation of his cases.

Rule 4

An advocate shall use his best efforts to restrain his client from resorting to unfair or sharp practices, and in relation to the court, opposite counsel and witness, do anything which the Advocate himself ought not to do. An advocate must bear in mind shall refuse to represent a client who persist in such improper behaviour. An advocate must bear in mind that the advocate is not a mere mouth

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Answer No. 9

Rule 4 of the 'Standards on Professional Conduct and Etiquette', BCI

- An advocate shall use his best efforts to restrain his client from using unfair or sharp practices and doing anything in relation to any court, opposite counsel/parties and witnesses, which the Advocate himself ought not to do.
- An advocate shall refuse to represent a client who persist in such improper behaviour.
- An advocate must bear in his mind that he is not a mere mouth piece of the client and should use his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in the pleadings and using intemperate language during arguments in the court.

Conclusion:

It is not appropriate to term the role of an Advocate as that of a "blood gun", as engaging an advocate by virtue of Rule 11 does not allow the client to reduce the advocate to an employee, and to be used as client's own human property in the conduct of proceedings on his behalf before the court. Rule 4, as delineated above, provides for it in a detailed manner.

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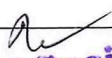
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piece of the court and shall use his own judgement in the use of restrained language during correspondence, avoiding emission attacks in the pleadings and interpret language during arguments in the court.

Rule 9

An advocate shall not act or plead in any matter in which he is himself pecuniarily interested.

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Answer No. 8

Rule 36 of 'Standards of Professional conduct and etiquette'

- An advocate shall not solicit work or advocation, directly or indirectly, whether by circulars, fairs, advertisements, personal communication, interviews not warranted by personal relations, furnishing or helping newspaper columns or producing his photographs to be published in connection with the cases he is engaged.
- ~~The~~ The sign board or name plate of an advocate should be of a reasonable size.
- The sign-board or name plate or stationery of an advocate should not provide that -
 - he is or has been associated with any person or organisation or he is connected with any particular cause or matter
 - he specialises in any particular type of work
 - he has been a judge or Advocate General.

Provided such rule shall not come in the way of advocates furnishing website information as prescribed under the scheduled and intimated to and approved by the Bar Council, the details to be provided: U/s 35 of the Advocates Act, 1961.

website information (which is allowed)

Name

Enrolment Number

Email ID

Telephone Number

Academic and Professional Qualification

Areas of Practice

Years of Experience

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The following case laws briefly explain the rationale for such rule prohibiting or regulating advertisement^{solicitation} by lawyers:

1. Government Pleader vs S.A. Pleadu

The court held that the act of sending postcard to the members of the public soliciting work by even quoting fees was unbecoming of an advocate. A was directed to be given severe reprimand by the District Judge in the open court.

2. In re, A, an advocate

The court held that writing a letter to Law Minister of Maharashtra seeking work by an AOR, first admitting before the Registrar and later denying before the court, must make ~~this~~ ^{clear} to the advocate known 'let him know that an advocate must not be a liar' and was debarred for a period of 5 years.

3. Bar Council of Maharashtra vs. M.V. Dabholkar

The court adversely commented on the conduct of the advocate who stood outside magistrate courts, rush towards potential clients, snatched brief, indulge in physical fights and undercutting of fees, that blatantly indulging in solicitation to such an extent was even more revolting than ambulance charging.

4. C.D. Sekhian vs Secretary, Bar Council

The court held the Rule 7(z) of Bar Council prohibiting electoral misconduct (no person shall canvass or announce his candidature to the Bar Council) by stating that advertisement in any form is unworthy of the profession and constitutes moral misconduct.

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Relevance as opinion
opinions regarding social media and rule against solicitation
and advertising:

- The legal profession in India is finding cruel disregard of such rule particularly by young counsels who are not only engaging in advertisement but blatant solicitation over social media, as only physical form has changed to e-form, and the Bar Council are not able to create any effective mechanism to curb the same.
- Unlike Singapore Legal Profession (Legal Profession) Rule, 2015 read with Legal Profession (Publicity) Rule, 1998 which allows advertisements by lawyers on social media including unsolicited advertisements (solicitation), the duty imposed by the Bar Council is proving to be a dead letter of law.

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Answer No. 7

- High courts do have the power (jurisdiction) to direct that any Advocate shall not be permitted to practice before that High court or its subordinate courts.
- The High courts can do it only under the exercise of contempt jurisdiction and through framing of rules under section 34 of the Advocates Act, 1961

Article 215 of the constitution of India

Every High court shall be a court of record and shall all the powers of such a court including the power to punish for contempt of itself.

sections 2(b), 2(c) read with sections 11 and 12 of the contempts of court Act, 1971 which provides that High courts can punish for contempt of itself or subordinate courts with imprisonment upto 6 months or fine upto ₹ 2000 or both.

section 34, Advocates Act, 1961

The High court may make rules laying down the conditions subject to which advocates are permitted to appear before the High court and courts subordinate thereto.

section 30, Advocates Act, 1961

subject to the provisions of this Act, any person who name is borne on the rolls of a state Bar Council as a matter of right is entitled to practice throughout the territories to which this Act extends -

- including all courts including Supreme court of India
- before any Tribunal or person who is legally authorized to take evidence

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— before any authority or person before which or under any law for the time being entitled to practice.

The following case laws provide the extent to which such jurisdiction can be exercised by the High courts:

1. Prashar C. Shah vs. K.A. Mohammad Ali

The petitioners had challenged Rule 11(2) of the Kerala High Court Rules which provided that an advocate could be barred from appearing before the High Court if found guilty of contempt of court unless he purges himself of such contempt. The court held the following while validating the rule.

- Right to formulate regulations in respect of proceedings inside the court is different from right to frame regulations concerning the practice of law.
- In the matter of appearing and conducting cases in the court, the courts must possess a superior supervisory jurisdiction.

2. Bar Council of India vs. High Court of Kerala

The court held that the power to frame rules under section 34 makes the section 30 of the Advocates Act, 1961 is subject to the power of the High Court to frame rules under section 34 thereof, and held the rule as valid.

3. R.K. Anand vs. Registrar, Delhi High Court

The court held the following:

- Although High Court ought to have framed rules including dealing with advocates guilty of contempt, this shall not

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tender keep the High court helpless, and High court could
debar an advocate from appearing before it.

- Debarment of advocate causing contempt jurisdiction
cannot be equated with ~~profession~~ punishment for professional
misconduct.
- such action must be taken in rare instances.

4. R. Muthukrishnan vs Registrar General of Madras High Court

The High court had framed Rules 14A, 14B, 14C and 14D
whereby an advocate found guilty of misconduct could be
debarred from appearing before the High court. The court
held that since the High court did not provide such
power was to be exercised in pursuance of contempt
jurisdiction, the case was found encroaching upon the
power of Bar Councils to initiate disciplinary proceedings
and punish for professional or other misconduct.

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Answer No. 3

Judge Edward Abbot Parry had said:

“A good advocate is not the man who has an eye for every side and angle for contingencies and who qualifies all his qualifications, but who throws ^{on your} ~~his~~ part so heavily, that he takes you out of a scrape.”

Seven Lamps of Advocacy:

1. Honesty: An advocate must be honest in terms of reliability and dependability. His thoughts, words and deeds must have a sincere co-relation.
2. Courage: An advocate must uphold the interest of his client fearlessly with all fair and honourable means without regard to the unpleasant consequences to him or other person. 'BOLDNESS, BOLDNESS, AND BOLDNESS' is the key in this regard.
3. Industry: An advocate must be like a hermit and work like a horse. He should be hardworking and dedicated towards the cause of justice.
4. Wit: Occasional humour and wit should be practised by an advocate in the courtroom, as it brings laughter or smile and energises not only the relation between the bar and bench, but also energises the minds towards the work of pursuit of justice.

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5. Eloquence : Eloquence implies fluency, force and style of communication. An advocate should have good command over language and vocabulary for the purpose of verbal and non-verbal communication.

6. Judgement : Judgement implies good sense turning into wise decisions. An inspiration ~~in contrast~~ which enables the mind to realize good sense into sensible conclusions. An advocate is required to make judgements at every step in the course of his advocacy and to take right decisions.

7. Followship : 'Do as what advocates do in law, strive mightily in courts, but eat and drink as friends'. The advocates on the opposite sides are like two pairs of shears, they cut everything which comes between them, but do not cut each other. There is no discrimination of age, ability, riches or capellen, and all are considered equal.

The relevance of seven lamps of advocacy can still be found in the present day practice, but is subjected to different individuals adopting varied new ways which might meet the very essentials of such lamps. In spite of any stand by any advocate, the lamps advocated are mostly compulsory for advocacy to ~~survive~~ in the long-run, as there is no short-cut in the practice of law, as far as hard work (sweat work) is concerned.

It is appropriate to mention about the book 'Professional Conduct and Advocacy' of K.V. Krishnaswamy Aiyar, which

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provided the 2nd Camp of Advocacy, which is as follows:

8. Tact : Tact means handling people and situations carefully without causing offence to any anyone. It means winning your client's opposite counsel and others, and making no quarrel with the Court/Tribunal.

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Answer No. 4

Meaning of Amicus Curiae

Amicus curiae means 'friend of the court', is a person, generally an advocate, who offers voluntarily or otherwise appointed by the court, whether or not for a party, to assist the court on a point of law or otherwise, in order to enable the court to do complete justice, especially in public interest or matter where any party is found unrepresented.

Outlets and Responsibilities of the Amicus curiae towards the court:

1. An amicus curiae must disclose his interest to the subject matter or the parties in the case, at the beginning of his appointment as such.
2. An amicus is expected to remain neutral and not advocate for a party, unless required to do so.
3. An amicus must not do anything by which he abuses or otherwise breaks the confidence reposed in him by the court.
4. An amicus must remain committed to the privilege accorded to him by the court as a special officer of the court.

Guidelines laid down by the Hon'ble supreme court regarding appointment of Amicus Curiae in criminal trials:

→ Reference to the supreme court Rules, 2013

1. A person in custody may present his affidavit and petition in a criminal trial through the jail superintendent to the

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court or otherwise, and the Registrar shall assign an advocate from the panel of advocates maintained with the Supreme Court legal services committee or panel of amicus maintained with the court.

2. The court shall maintain and periodically update the list of amicus curiae for appointment, particularly in criminal matters.

3. At the end of the matter, the Registrar shall issue a certificate to the Amicus Curiae, providing the fees payable to him by the state, as per the prescribed schedule.

4. The court, may suo motu, appoint amicus curiae in appropriate cases.

→ Reference to case laws, as are relevant hereto.

1. Mohammed Ali vs State of Assam

The court held that no criminal ~~trial~~ appeal be decided against the convict without being represented by a counsel. The court directed for a fresh hearing of the criminal appeal with direction for an amicus.

2. Mullesh vs State (NCT of Delhi)

The court remarked that it is not the case that advocates representing the parties are unable to assist, but rather the appointment of an amicus depending on multiple factors is done to obtain perspectives from all spectrum.

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3. Anokhial vs state of Madhya Pradesh

The court held that appointment of amicus must be with sufficient and real opportunity affording adequate time for the advocate to interact with the accused and prepare the matter. In fact, guidelines were prepared for appointment of amicus in criminal trials.

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Answer NO. 2

It is illegal for the advocates to resort to strike / boycott and strike constitute contempt of courts.

The development of law in respect of "strikes by Advocates" can be attributed to the following decided cases:

1. ~~Mahapat~~ Mahabir Prasad Singh vs. Jai Lal Mathur

The High court had sought for comments from an ADJ on account of his failure to transfer a case as challenged in a revision petition. The supreme court held:

- Judicial functioning cannot be stonewalled by resorting to bullying or browbeating.
- An advocate who does not want to appear before a particular judge must give up his engagement.
- Retaining the brief and not appearing is unbefitting of an advocate and constitute misconduct and contempt.

2. ~~Supreme court~~ Common Cause vs. Union of India

Instead of going into the question of whether advocates can abstain from appearing in the courts when a call for strike is given by an association, on assumption of the Bar Council of India to take adequate steps, the supreme court held:

- A call for strike by bar association would not prevent an individual lawyer being free to appear without fear and hindrance.
- Advocates must resort to different form of protest like wearing an arm band etc.
- Boycott / strike may be done in rare instance.

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3. Ex captain Harish vppal vs Union of India

Due to failure of the BCI to take adequate steps to contain the issue of strike, the court held the following:

- An advocate on acceptance of a brief has a duty to appear before the courts.
- Bar councils can never even consider to give a call for strike.
- Bar Associations expressing want of confidence in the judicial officer is contempt of court.
- strike by lawyers is illegal except with a sole exception of when it is about integrity, identity and independence of the bar - even then, it cannot last for more than one day. The President of the Bar Association concerned must consult the District Judge or Chief Justice and his decision shall be final, whether or not to permit strikes.

4. District Bar Association, Dehradun vs. Ishwar Shandilya

The court held that permanent strikes on Saturdays for such long period (221 day) was and consequent finding of High court intimating disciplinary action against the Bar Associations and writ against the advocates to be valid. The notices have been issued to the Bar Council of India and all state Bar Councils for direction further.

5. PCR Projects Ltd vs. Mahanadi Coalfields Ltd.

In respect of ex-manu strike by advocates demanding permanent bench of the High court, on nodding of the Supreme court, Bar Council had suspended the Uceem of 47 advocates at Raipur. The Supreme court held that Bar Council of India has the power to interim suspend the Uceem, pending the conclusion of disciplinary proceedings against the advocates.

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6. Praveen Pandey vs. State of Madhya Pradesh

The court held that the call for strike given by the Bar Council for a week long strike seeking appointment of high court judges, passing of Advocates Act Protection Bill and seating arrangement for advocates, was illegal and constituted contempt of the court.

7. Hussain vs Union of India

In respect of delay in disposal of bail applications and criminal trials, the high court recognized the right to speedy trial and directed the union to monitor the instances of strikes and implement the judgement in re Harsh Uppal.

8. Keshavnath Tamrakar vs State of Madhya Pradesh

While entertaining the bail plea of an industrial prisoner, the court remarked (held as follows):

- strikes cause irreversible damage to the judicial system.
- Bar Association and office bearers are to be considered guilty of contempt in case of call for strikes.
- Union of India was directed to submit quarterly reports in respect of
 - number of strikes,
 - loss caused, and
 - action proposed.

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Answer No. 1

- Section 35 of the Advocates Act, 1961

(1) where on ^{the receipt of} a complaint or otherwise, the state Bar council has reasons to believe that an advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(4) The disciplinary committee after affording the Advocate concerned and the Advocate General of the state an opportunity of being heard, may make any of the following orders:

- dismisses the complaint, and in case being instituted at the instance of the state Bar council, direct it to be filed;
- reprimand the advocate;
- suspend the advocate from practice for such period as it may deem fit
- remove the name of the advocate from state roll of advocates.

- Order IV, Rule 10 of Supreme Court Rules, 2013

where on a complaint of any person or otherwise, the court is of the opinion that an Advocate on Record is guilty of misconduct or conduct unbecoming of an advocate, it may order for suspension or removal of the name of the AOR from the register of AOR, either permanently or for such period as it may think fit.

- Meaning of the term 'Misconduct'

→ State of Punjab vs Ram Singh

The court held that although the term 'misconduct' is not capable of being precisely defined, its reflection receive

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its connotation from the context in which it is used, the delinquency in its application and its effect on the discipline or the nature of duty, it may impute moral turpitude, improper or wrong behaviour, (unlawful behaviour) ...

→ Mosottam Chomaxia vs M.R. Muli

The term 'misconduct' means 'any wrong behaviour, intentional wrong doing or deliberate violation of a rule of standard or behaviour'.

• Meaning / Definition of 'Misconduct' or 'conduct unbecoming of an AOR' shall mean, as per order IV of SC Rules, 2013

→ mere lending of name without any further participation in the proceedings of the court;

* (b) Absence from court without any justifiable cause when the matter is taken up for hearing;

* (c) Failure to submit appearance slip duly signed by the AOR for his actual appearance in the court.

* not notified as of now.

• Judgements of the Supreme Court on 'professional misconduct' and 'other misconduct', are stated briefly as follows:

1. Hilemat Ali Khan vs. Ishwar Prasad Barya

The accused advocate had attacked the opponent counsel with knife and also shot him and convicted u/s 307 IPC. During the proceedings, he produced a forged letter from Government in the name of Home Secretary regarding suspension of his sentence. The court held that the Advocate was unbecomingly



of remaining in the profession and debarred him for life.

2. In re Vinay Mishra (as overruled to an extent partly)
 The Supreme Court debarred an advocate from practice by initiating suo-moto proceedings for having threatened a HC Judge (not to ask questions to him, and will get him transferred or to see an impeachment motion is initiated) on the ground that nothing in the Advocates Act nor the Contempt of Court Act debar the power of the SC to revoke/suspend the U.C. of an advocate held guilty of contempt.

3. Supreme Court of Bar Association of vs Union of India
 The court held the following:

- The judgement in re Vinay Mishra is overruled to an extent that SC cannot revoke/suspend the U.C. of an advocate while exercising power as an appellate body i/s 38 of the Advocates Act, 1961
- Nothing in the Contempt of Court Act, 1971 curtails the power of the SC to punish an advocate for contempt, as punishment provided therein only acts as a guide.
- Article 142(2) read with section 38, Advocates Act, 1961 can be applied in rare instances, when a complaint against an advocate is pending with Bar Council for long and SC has failed to act upon the same.

4. V.C. Rangadurai vs. D. Gopalani

The SC held the advocate ^(AOR) guilty of professional misconduct for having filed only one of 2 cases, and wrongly referred the client with false dates.

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5. P.D. Khandekar vs. Bar Council of Maharashtra

The supreme court held:

- Misconduct without moral delinquency cannot be regarded as professional misconduct.
- Degree of proof in disciplinary proceedings is higher than civil but lower than criminal proceedings.

6. R.D. Saxena vs Baham Prasad Sharma

The supreme court held the following:

- An advocate does not keep a lien on litigation papers, as these are not goods bailed v/s 142 or 171 of Indian Contract Act.
- The cause of court is more important than the right of an advocate to receive fees.
- A client has fundamental right to engage an advocate v/a 22 after constitution of India v/w order 3 Rule 4 of CPC, 1908.

7. St. Col. S.J. Chandray vs State (Asst. Administrator)

An advocate is found to be committing breach of professional duty in not attending trial on day to day basis.

8. State of A.P. vs. Kurupalle / Kaluh Chandra Riwast vs Raju

The court held financial misappropriation to be the gravest form of professional misconduct.

9. CBI vs. K. Narayan Rao

more erroneous advice by an advocate without active participation with defaulter do not constitute professional negligence.

10. Rajendra V. Pai vs. Alex Fernandes

The court held that an advocate was guilty of professional misconduct.

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by engaging in solicitation of work based on contingent fee in which he was himself pecuniarily interested, but reduced the sentence for life to 7 years.

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