

APPENDIX VI

RULES FRAMED BY THE HIGH COURT UNDER SECTION 34(1) OF THE ADVOCATES ACT, 1961

1. (a) In these rules unless there is anything repugnant in the subject or context, the word 'Advocate' shall include a firm of Advocates.

(b) The word 'Court' shall mean the High Court of Judicature at Bombay and the Courts subordinate thereto.

2. (1) No Advocate shall act for any person in any Court unless he has been appointed for the purpose by such person by a Vakalatnama in the form annexed hereto and signed by such person or by his recognised agent or by some other person duly authorised by or under a Power of Attorney to make such appointment :

Provided that if in a suit or proceeding pending on 31st December 1976 in any Court an Attorney or firm of Attorneys have filed an appearance and the said attorney or in the case of a firm, all the partners thereof are also enrolled as Advocates of the Bar Council of Maharashtra, the said Attorney or firm, shall continue to represent the party for whom the appearance was filed unless proper discharge is obtained and shall be allowed to act, appear and plead in the matter as an Advocate for the party without filing a Vakalatnama.

(2) No Advocate who has been engaged for the purpose of pleading only shall plead on behalf of any party unless he has filed in Court a memorandum of appearance signed by himself and stating (a) the names of the parties to the suit, (b) the name of the party for whom he appears and (c) the name of the person by whom he is authorised to appear:

Provided that nothing in sub-rule (2) shall apply to any Advocate engaged to plead on behalf of any party by another Advocate who has been duly appointed to act in Court on behalf of such party:

Provided that nothing in this rule shall apply to a Public Prosecutor or an Advocate who has been requested by the Court to assist the Court *amicus curiae* in any case or a proceeding or who has been appointed at the expense of the State to defend the accused person in a criminal proceeding:

Provided further that when any Advocate appears on behalf of Government or any public servant suing or sued in his official capacity it shall be sufficient for him to file a memorandum of appearance.

3. An Advocate who is not on the roll of Advocates of the Bar Council of Maharashtra shall not appear or act in any Court, unless he files a Vakalatnama along with an Advocate who is on the roll of the Bar Council of Maharashtra and who is ordinarily practising in such Court.

4. (a) In all cases in which a party is represented by more than one Advocate, all of them may file a joint appointment.

(b) In such cases where the lawyer engaged is not able to sign the Vaka' Inama in token of his acceptance at the time of filing it, the same may be signed by another lawyer on his behalf provided that the former acknowledges and ratifies the acceptance of the Vakalatnama within two weeks from the date of its being filed in the Court by making an endorsement on the Vakalatnama to that effect.

5. The acceptance of an appointment on behalf of a firm of Advocates shall be indicated by a partner affixing his own signature as a partner on behalf of the firm.

6. An Advocate at the time of acceptance of his appointment shall also endorse on it his address, which address shall be regarded as one for service within the meaning of Rule 5 of Order 3 of the Code of Civil Procedure, 1908:

Provided that where more Advocates than one accept the appointment, it shall be sufficient for one of them to endorse his address, which address shall be regarded as one for service within the meaning of Rule 5 of Order 3, of the Code of Civil Procedure.

6-A. When an Advocate instructed by a party to act or appear in a matter has not been able to secure a Vakalatnama in the prescribed form duly signed by the client, he may file a written statement signed by him stating that he has instructions from or on behalf of his client to act or appear in the matter and also undertaking to file within a week a Vakalatnama in the prescribed form, duly signed, by the party.

7. (1) An Advocate shall be bound to appear in Court on any day, which, by notice duly given or in accordance with the practice of the Court, is fixed for the hearing of a proceeding in which he is appointed by the party.

(2) Where an Advocate appointed by a party in any of the proceedings is prevented by reasonable cause from appearing and conducting the proceedings at any hearing, he may instruct another Advocate to appear for him at that hearing.

(3) Where an Advocate is not able to instruct another Advocate on account of some sudden or unexpected cause, he may intimate or cause to be intimated in writing, to the Court, the cause that prevented him from appearing and conducting the proceedings and thereupon the hearing of the proceedings may be stayed for such period not exceeding four days as the Court may think proper in order to enable the Advocate to make necessary arrangements :

Provided that the hearing of the proceeding may not be stayed where there is on record another Advocate who is not similarly prevented and who is duly empowered to act, appear or plead on behalf of the party.

(4) The provisions of sub-rule (3) above shall not apply to criminal cases, Special Civil Applications and matters especially fixed for hearing or expedited by the order of the Court, in the High Court in its Appellate jurisdiction. The said provisions shall also not apply to Miscellaneous Petitions and matters especially fixed for hearing or expedited by the order of the Court, in the High Court in its Original Jurisdiction.

(5) In uncontested suits or matters where consent order is to be obtained, an Advocate may hold a brief of another Advocate provided that the Court at any time may require the presence of the Advocate to whom the brief really belongs.

8. (1) In Civil Cases, the appointment of an Advocate shall be deemed to be in force to the extent provided in that behalf by Rule 4 of Order 3 of the Code of Civil Procedure, 1908.

(2) In Criminal Cases, the appointment of an Advocate, shall be deemed to be in force until determined with the leave of the Court by writing signed by the client or the Advocate, as the case may be and filed in Court or until the client or the Advocate dies, or until all proceedings in the case are ended so far as regards the client.

(3) For the purpose of sub-rule (2), a case shall be deemed to mean every kind of enquiry, trial or proceeding before a Criminal Court whether instituted on a police report or otherwise the following shall be deemed to be proceedings in the case :-

(i) an application for bail or reduction, enhancement or cancellation of bail in the case;

(ii) an application for transfer of the case from one Court to another;

(iii) an application for stay of the case pending disposal of a civil proceeding in respect of the same transaction out of which the case arises;

(iv) an application for suspension, postponement or stay of execution of the order or sentence passed in the case;

(v) an application for the return, restoration or restitution of the property as per the order of disposal of property passed in the case;

- (vi) an application for leave to appeal against an order of acquittal passed in the case;
- (vii) any appeal or application for revision against any order or sentence passed in the case;
- (viii) a reference arising out of the case;
- (ix) an application for review of an order or sentence passed in the case or in an appeal, reference or revision arising out of the case;
- (x) an application for making concurrent sentences awarded in the case or in an appeal, reference, revision or review arising out of the case;
- (xi) an application relating to or incidental to or arising in or out of any appeal, reference, revision or review arising in or out of the case (including an application for leave to appeal to the Supreme Court);
- (xii) any application or act for obtaining copies of documents or for the return of articles or documents produced or filed in the case or in any of the proceedings mentioned here in before;
- (xiii) any application or act for obtaining the withdrawal or the refund or payment of or out of the moneys paid or deposited in the Court in connection with the case or any of the proceedings mentioned hereinbefore (including moneys paid or deposited for covering the costs of the preparation, printing and transmission of the transcript record of appeal to the Supreme Court);
- (xiv) any application for the refund of or out of the moneys paid or recovered as fine or for the return, restitution or restoration of the property forfeited or confiscated in the case or in any appeal, reference, revision or review arising out of the case as per final orders passed in that behalf;
- (xv) any application for expunging remarks or observations on the record of or made in the judgment in the case or any appeal, reference, revision or review arising out of the cases, and
- (xvi) any application or proceeding for sanctioning prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898 *(now Chapter XXVI of the Code of Criminal Procedure, 1973), or any appeal or revision arising from and out of any order passed in such an application or proceeding :

Provided that where the venue of the case or the proceedings is shifted from one Court (Subordinate or otherwise) to another, the Advocate filing a Vakalatnama referred to in sub-rules (1) and (2) above shall not be bound to appear, act or plead in the latter Court unless he files a

memorandum stating that he has instructions from his client to appear, act and/or plead in that Court.

(4) When an Advocate who has filed a Vakalatnama for a party wishes to withdraw his appearance, he shall serve a written notice of his intention to do so on his client at least seven days in advance of the case coming up for hearing before the Court. Leave of the Court to withdraw appearance may also be applied for if the client has instructed the Advocate to that effect.

The Advocate shall file a Note in writing requesting the Court for permission to withdraw appearance and shall also file along with the Note the letter of the client instructing him to withdraw his appearance or a copy of the intimation given to the client as above together with its written acknowledgment by the client. The Court if satisfied that no inconvenience is likely to be caused to the Court or the client, may permit the Advocate to withdraw his appearance and while permitting the Advocate to do so may also impose such terms and conditions as it may deem proper either in public interest or in the interest of the parties.

(5) A party who wishes to discharge the Advocate engaged by him may apply to the Court for an order of discharge by following a similar procedure and the Court if it is satisfied may pass orders discharging the Advocate and while doing so impose such terms and conditions as it may deem proper.

9. An Advocate who has advised in connection with the institution of a suit, appeal or other proceeding or has drawn up pleadings or has during the progress of any suit, appeal or other proceedings appeared, acted or pleaded for a party, shall not act, appear or plead in the suit, appeal or other proceeding or in an appeal or application for revision arising therefrom or in any matter connected therewith for the opposite party.

*** (9A.** Regulating an advocate's appearance in courts : An advocate involved in any of the following acts may be barred from appearing before the High Court and any court, tribunal or authority subordinate to it :—

- (a) Accepting money in the name of a Judge or on the pretext of influencing the judge in the matter of any court proceeding ;
- (b) Tampering with any court record or proceedings ;
- (c) Impeding orderly functioning of court or conduct of court proceedings;
- (d) Committing any act which tends to scandalize or lower the authority of any court or interfere with or obstruct the administration of justice or behaving unprofessionally and in an unbecoming manner ;

(e) depicting unruly behaviour and conducting unprofessionally or in a manner unbecoming of an officer of the Court and ;

(f) Appearing in court under the influence of liquor or other intoxicating substance.

Explanation 1 : Without prejudice to the generality of clause (c) above, any strike resorted to in any court or abstention from work in court by way of protest by an advocate or group of advocates or any bar association shall be deemed to be an act which impedes orderly functioning of court or conduct of court proceedings and the advocate or advocates indulging in such strike or abstention shall be liable to be proceeded with under this Rule.

Explanation 2 : Without prejudice to the generality of clause (d) above, acts of (i) browbeating and /or abusing the Judge, or (ii) circulating or publishing any material concerning the conduct of the Judge in any judicial proceeding or otherwise which tends to shake the confidence reposed by the public in court, shall be treated as falling within that clause ;

9B. Power to take action.—(1) Where any act listed in the foregoing Rule is committed by an advocate before the High Court or in relation to the proceedings before it or concerning its Judges, the High Court shall have the power to bar the advocate from appearing before the High Court and all courts, tribunals and authorities subordinate to it.

(2) Where any act listed in the foregoing Rule is committed by an advocate before the Court of Principal District Judge or in relation to the proceedings before it or concerning it, the Principal District Judge shall have the power to bar him from appearing before any court within such District.

(3) Where any act listed in the foregoing Rule is committed by an advocate before any subordinate court, the court concerned shall submit a report to the Principal District Judge within whose jurisdiction such court is situate and on receipt of such report, the Principal District Judge shall have the power to bar him from appearing before any court within such District.

(4) Whenever any advocate is barred by the Principal District Judge either under Sub-Rule (2)- or (3) above, a report shall be made by the Principal District Judge to the Chief Justice.

9C. Procedure to be followed.-(1) Where any act listed in Rule 9A is committed by an advocate, in the presence of hearing of the Chief Justice or the Principal District Judge, the Chief Justice or the Principal District Judge, as the case may be, shall make a note of the act and simultaneously, for reasons to be recorded in writing, prohibit the advocate concerned from

appearing before any court, authority or tribunal in the State or any court within the district, as the case may be, pending any inquiry under Sub-Rule (3) below.

(2) Where any act listed in Rule 9A is committed by an advocate in the presence or hearing of a Judge of the High Court, the Judge shall make a report to the Chief Justice for proceeding under Sub-Rule (3) below and simultaneously, for reasons to be recorded, prohibit the advocate concerned from appearing before him pending any inquiry under Sub-Rule (3).

(3) In any case, whether covered by Sub-Rule (1) or (2) above, or otherwise, the High Court or the Court of Principal District Judge, as the case may be, shall, before making an order under Rule 9B issue to such advocate a notice returnable before it, requiring the advocate to appear before the Chief Justice or his designate, or the Principal District Judge, as the case may be, and show cause. Such notice, so far as may be practicable, shall be served personally on such advocate.

(4) The Chief Justice or his designate, or the Principal District Judge, as the case may be, shall complete the inquiry in pursuance of the notice referred to in Sub-Rule (3) above and pass an order, if any, under Rule 9B within a period of eight weeks of service of such notice.

(5) If the matters alleged in the notice referred to in Sub-Rule (3) above concern any act in respect of which a note or a report referred to in Sub-Rules (1) or (2) of this Rule or Sub-Rule (3) of Rule 9B above has been made, the note or the report, as the case may be, shall be treated as conclusive of the facts stated therein and the only cause to be shown by the advocate concerned shall be to the measure of the disciplinary action called for on such facts.

9D. The order passed under Rule 9B or sub-rule (1) and (2) of Rule 9C above shall be final and shall not be questioned in any proceedings in any court.

9E. Power to prohibit appearance in addition to other powers.—The powers exercisable under Rules 9A to 9D above shall be in addition to, and not in derogation of, the powers of the Court under the Contempt of Courts Act, 1971, Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 or any other law for the time being in force bearing on the subject matter of these Rules.]

** Rule 9A to 9E inserted by Notification No. P.3602/2018., dated 26th October 2018*

10. (a) The appointment of a firm of Advocates may be accepted by any partner on behalf of the firm.

(b) No firm of Advocates shall be entitled to appear, act or plead in any Court unless all the partners thereof are entitled to appear, act or plead in such court.

(c) The name of the firm of Advocates may contain the name(s) of the persons who were or are partners of the firm of Advocates but of no others :

Provided that where the partners of a firm of Advocates were practising as a firm of Attorneys or Solicitors prior to 1st January 1977, the name of the firm of Advocates may be or may contain the name of such firm of Attorneys or Solicitors or contain the name(s) of one or more persons who were partners of such firm of Attorneys or Solicitors.

(d) The names of all the partners of the firm of Advocates shall be recorded with the Prothonotary and Senior Master, the Registrar of the High Court and /or District Judge, as the case may be, and the State Bar Council, and the names of all the partners shall also be set out in all professional communications issued by the partners or the firm.

(e) The firm of Advocates shall notify to the Prothonotary and Senior Master, Registrar of the High Court and/or the District Judge, as the case may be, and the State Bar Council any change in the composition of the firm or the fact of its dissolution takes place.

(f) Every partner of the firm of Advocates shall be bound to disclose the names of all the partners of the firm whenever called upon to do so by the Prothonotary and Senior Master, the Registrar of the High Court, the District Judge, the State Bar Council, any Court or any party for or against whom the firm or any partner thereof has filed the appointment or memorandum of appearance.

(g) In every case where a partner of a firm of Advocate signs any document or writing on behalf of the firm shall do so in the name of the firm and shall authenticate the same by affixing his own signature as partner.

(h) Neither the firm of Advocates nor any partner thereof shall advise a party or appear, act or plead on behalf of a party in any matter or proceedings where the opposite party is represented by any other partner of the firm or by the firm itself.

11. No Advocate shall be permitted to file an appointment or Memorandum appearance in any proceeding in which another Advocate is already on record for the same party save with the consent of the former Advocate on record or the leave of the Court, unless the former Advocate has ceased to practice or has by reason of infirmity of mind or body, or otherwise become unable to continue to act.

12. No Advocate who has been debarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognised agent of any party within the meaning of Order III of the Code of Civil Procedure 1908.

13. No Advocate who has been found guilty of contempt of Court shall appear, at, or plead in any Court unless he has purged himself of contempt.

The Court may in its discretion permit an Advocate who has been found guilty of contempt of Court to appear, act or plead without purging himself of contempt of Court.

14. Deleted.

VAKALATNAMA

In the Court of

Civil Suit/Criminal Case

Appeal/Revision etc. No.

of 19.

Plaintiff/Appellant

Petitioner/Complainant etc.

versus

Defendant/Respondent

Opponent/Accused etc.

Amount of Claim in

Suit etc.

I,inhabitant of the
.....in the said matter hereby appoint
.....to appear and act for me as my Advocate/sin the
said matter.

Witness may hand thisday of
.....19

(Signed).....

Witness : Accepted :

Signature of Advocate/s.

Filed in court on