

SCHEDULE VII

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.

(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 or Attorney 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 Vakalatnama 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 rectifies 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, Civil Procedure Code.

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) Deleted.

(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.

6A. Notwithstanding anything contained hereinbefore the provisions in this rule will apply to the subject of non- attendance of the Advocates practising in the High Court.

7. (1) If an Advocate is not able to attend to any Criminal matter or any matter which is already on board or to any matter which is specially fixed on any day or in any week, he shall make or cause to be made a motion in the Court before which the matter is on board or before which the matter is to come on board for adjourning the

matter and the Court may, after hearing the other Advocate or Advocates in the matter for sufficient cause, adjourn the matter for such period as it deems fit.

¹[(2) The Registrar, the Additional Registrar or the Special Officer may direct that the matters not covered by sub-rule (1) above of any Advocate shall not be placed on board for a period not exceeding 14 days on an application made to him by the Advocate who for the said period will be unable to attend the Court on account of some unforeseen reason or on account of being required to go out of Bombay, Nagpur, Aurangabad or Panaji as the case may be :

1. Substituted by Notification No. P. 3601/82, Dt. 29-4-1983.

Provided that the Registrar, the Additional Registrar or the Special Officer may pass similar direction for a further period not exceeding 14 days if in respect of those matters for which direction is sought the Advocate concerned produces before the Registrar, Additional Registrar or the Special Officer consent of the other Advocate appearing in the said matter:

Provided further that the Judge designated in this behalf by the Chief Justice may give similar direction on sufficient cause being shown for a period exceeding the period for which the Registrar, the Additional Registrar or the Special Officer has given the direction.]

(3) The judge designated in this behalf by the Chief Justice may direct that the matters of any Advocate who on account of sickness is unable to attend the Court shall not be placed on board for such period as he deems fit.

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 purposes 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 the 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 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 acknowledgement by the client. The Court if it is 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 order 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 party, shall not act, appeal or plead in the suit, appeal or other proceedings or in an appeal or application for revision arising there from or in any matter connected therewith for the opposite party.

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 names of the persons who were or are partners of the firm of Advocates but of no others.

(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 the 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 as soon as may be from the date on which such change occurs or 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 Advocates signs any document or writing on behalf of the firm he 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 proceeding 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 of 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 practise or has by reason of infirmity of mind or body, or otherwise become unable to continue to act.

12. No advocate who has been disbarred 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.

^{1A}12(A). Strike resorted to in Court or abstention of work from Court by way of Protest by an Advocate or group of Advocates or any Bar Association shall be deemed as an act which tends to interfere with the administration of justice.

12(B). Any Advocate resorting to strike as per Rule 12(A) will be dealt with in accordance with law.

12(C). In exceptional cases where dignity, integrity and independence of the bar and/or the Judiciary are at stake, the President of the Bar Association of the High Court in consultation with the Chief Justice and in case of subordinate Courts the President of the concerned Bar Association in consultation with the Principal Judge of the concerned District, may express protest by abstention from work which shall not be for more than one (1) day:

Provided further that the Chief Justice in case of the High Court and the Principal Judge of the concerned District in case of the Subordinate Courts will

determine the issue after obtaining the views of the Chairman Bar Council of Maharashtra and Goa if necessary, as regards involvement of dignity, integrity or independence of the Bar and/or the Judiciary and the degree and adequacy of degree thereof to call for abstention from work and the decision of the Chief Justice in the case of High Court and the Principal Judge of the concerned District in the case of subordinate Courts shall be final.

1A. Added vide High Court Notification No. P. 3602/2007, dated 17-08-2007.

13. No Advocate who has been found guilty of Contempt of Court shall appear, act 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.

²**14.** Deleted.

2. Deleted vide High Court Notification No. P. 0108/61, Dt. 19-7-1979.

15. The above rules shall be subject to rules made or deemed to have been made by the High Court under section 34(2)(iii) of the Advocates Act determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its Original Jurisdiction.

