

HIGH COURT OF JAMMU AND KASHMIR
(Office of the Registrar General at Srinagar.)

Subject: Jammu and Kashmir Advocates (Regulation of Practice in the High Court and Subordinate Courts) Rules, 2003.

NOTIFICATION

No: 887

Dated: 23/10/2019

Consequent upon issuance of Constitution (Application to J&K) Order 2019, C.O 271 notified vide Notification dated 05.08.2019 read with Declaration under Article 370(3) of the Constitution, C.O 273 notified vide Notification dated 06.08.2019, the Jammu and Kashmir Advocates (Regulations of Practice in the High Court and Subordinate Courts) Rules, 2003 issued vide High Court Notification No. 82 dated 31.05.2003, shall deemed to have been adopted in terms of Article 225 of the Constitution of India.

By Order of the Hon'ble High Court.

(Sanjay Dhar)
Registrar General

No: 197799-817/L.P

Dated:- 23/10/2019

Copy to the :-

1. Principal Secretary to the Hon'ble Chief Justice, High Court of J&K.
2. Secretary to Hon'ble Mr/Mrs. Justice _____
..... for information of their Lordships.
3. Registrar Vigilance High Court of J&K.
4. Registrar Rules, High Court of J&K.
5. Registrar Judicial, High Court of J&K, Jammu /Srinagar.
6. President, High Court Bar Association, Jammu/Srinagar.
..... for information.
7. CPC, e-Courts, High Court of J&K, for uploading the same on the official Website of The Hon'ble High Court.
8. Manager Ranbir Government Press, Jammu for publication in the next issue of the Government Gazette.

Registrar General

**JAMMU & KASHMIR ADVOCATES
(REGULATION OF PRACTICE IN THE
HIGH COURT AND SUBORDINATE
COURTS) RULES, 2003**

Notification No. 82 Dated: 31.5.2003

In exercise of the powers conferred by section 34(1) of the Advocates Act, 1961 read with Section 102 of the Constitution of Jammu and Kashmir and all other enabling provisions and to carry out the mandate of law laid down by the Supreme Court in case 'Ex. Captain Harish Uppal Vs. Union of India' Writ Petition(c) No. 132 of 1998 with Nos. 394 of 1993, 821 of 1990, 320 of 1993 and 406 of 2000, the High Court of Jammu and Kashmir hereby makes the following rules:-

1. Short title

- (i) These Rules may be called Jammu and Kashmir Advocates (Regulation of practice in the High Court and Subordinate Courts) Rules, 2003.
- (ii) These Rules shall come into force at once.

NOTES

1. Duty of High Court: The High Court has power to formulate rules under Section 34(1) of Advocates Act, 1961 regarding proceedings inside the court, including the conduct of advocates during such proceedings. The court can not be deprived of control or supervision of proceedings inside a court, merely because the right of an advocate is involved. Bar Council exercises control over Advocate's right to practice. ¹ The High Can lay down the conditions subject to which an advocate would be permitted to practice in the High Court and courts subordinate to the High Court. Right of appearance of Advocates in the courts is within the control and jurisdiction of the High Court.

¹ Parvin Shah v. K.A. Mohd. Ali & anr.; (2001)8 SCC 650.

2. **Duty of Advocate & Bar Councils:** The Bar Councils are enjoined upon with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council and the Bar Council of India has a public duty to perform, namely to ensure that the monopoly of practice granted under the Advocate Act is not misused or abused by a person who is enrolled as an Advocate. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the code of conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society.²

It is a clear duty of a legal practitioner to put in an appearance on every date of hearing to represent his client in a case and to do all necessary acts connected with the due and diligent prosecution of the case. A legal practitioner failing in this respect does not act upto the best traditions of the noble profession to which he belongs and may even risk of being found guilty of professional misconduct unless there is a good and sufficient excuse justifying his non-appearance on a particular date to represent his client in a case.³

3. **Strike by Advocates:** Lawyers have no right to go on strike or give call for boycott of courts. If a lawyer having vakalatnama of a client, absents himself from the court due to strike call, he is liable to pay costs/damages to the client as it amounts to breach of contract and is unprofessional.⁴

An Advocate is an officer of the court and enjoys special status in society, thus he has obligation and duties to ensure smooth functioning of the court. Strike or abstaining from work impairs the administration of justice and is inconsistent with the profession of lawyers.

There is no scope for accommodating a striking advocate. An advocate who appears despite call of strike can not be refused hearing.⁵

Functioning of the court has to be ensured uninfluenced by a call for strike by the lawyers. Courts are bound to discharge their duties without fear and no effort of brow beating should deter the court from discharge their judicial functions.⁶

2. Definitions

In these Rules, unless the context otherwise requires:-

A. 'Act' means the Advocates Act 1961.

² Indian Council of Legal Aid & Advice v. Bar Council of India, (1995)1 SCC 732; AIR 1995 SC 691.

³ 1979-1991 PLR, J&K 315 (D.B).

⁴ Ex. Capt. Harish Uppal v. Union of India & anr., AIR 2003 SC 739; (2003)(1) JKJ 449.

⁵ Ramon Service Pvt. Ltd. v. Subash Kapoor, AIR 2001 SC 207.

⁶ Iftikhar Hussain & anr. v. State, 2002(1) SLJ 293.

- B. 'Advocate' means an Advocate entered in the 'State roll' or in the roll of any other State or Union territory under the provisions of the Act or any other law for the time being in force.
- C. 'Bar Council' means Bar Council constituted under the Act.
- D. 'Bar Association' means an Association of Advocates whether or not recognized by the Bar Council.
- E. 'Chief Justice' means Chief Justice of the High Court of Jammu and Kashmir.
- F. 'Committee of Bar' means the members of a Bar Association/Bar Council, by whatever name called, responsible for running day to day affairs of the Association/Council and includes its office bearers and executive / governing committee.
- G. 'District Judge' means a District Judge posted as Principal District Judge of a District and includes any Additional District Judge posted at a station in the District other than the station where Principal District Judge is functioning.
- H. 'High Court' means the High Court of Jammu and Kashmir.
- I. 'State' means State of Jammu and Kashmir.
- J. 'Subordinate Court' means any court subordinate to the High Court of Jammu and Kashmir and includes Tribunals and Forums subject to superintendence, control and appellate jurisdiction of the High Court.
- K. 'State Roll' means a roll of Advocate prepared and maintained by the High Court under the Act.
- L. All other words and expressions used in these Rules but not specifically defined herein shall have the same meaning as assigned to such words and expressions in the Advocates Act, 1961 and Jammu and Kashmir General Clauses Act, Svt. 1977.

3. Right of an Advocate to appear and conduct cases in Court not absolute

No Advocate shall have an absolute right to appear and conduct cases in the High Court or courts subordinate to the High Court and the said right shall be subject to the Rules laid down herein as modified, amended and supplemented from time to time in exercise of the power under section 34 of the Act.

4. Prohibition against giving a call for strike or boycott of Judicial Proceedings

No Advocate individually or jointly with other Advocates, Group of Advocates or any Association shall give a call for a strike, abstention from court or boycott of Judicial Proceedings.

5. Prohibition against requisitioning meeting of Bar Association / Council

No Advocate individually or jointly with other Advocates, Group of Advocates or any Association shall requisition meeting of Bar Association, Bar Council or any Group of Advocates to consider call for a strike, abstention from court(s) or boycott of Judicial Proceedings.

6. 'Committee of Bar' not to call meeting of the Association/Council to consider call for strike

A Bar Association/ Bar council or 'Committee of Bar' shall not entertain or act upon any requisition for a meeting received from one or more members of the Bar Association/Bar Council to consider call for strike, abstention from court work or boycott of Judicial Proceedings and shall refrain from calling such a meeting on its own or on such a requisition.

7. The Advocates not to go on Strike

Save as otherwise provided in these Rules, no Advocate individually, as part of a group of Advocates or a member of an Association shall go on strike, abstain from court work or boycott the Judicial Proceedings whether in pursuance or otherwise of a call given for strike, abstention from court work or boycott of Judicial proceedings.

8. Abstention from Court work where dignity, integrity and independence of the Bar and/or Bench are at stake

The High Court may ignore protest abstention from work by the Advocates for not more than one day, in rarest of rare cases, where the dignity, integrity and independence of the Bar and/or Bench are at stake.

Provided that in case of afforested protest abstention, it will be for the Chief Justice, if the Advocates propose to absent themselves from High Court or the subordinate courts and the District Judge, if the Advocates propose to absent themselves from the District Court or any other Court of the District, to decide whether or not issue prompting protest abstention from work by the Advocates involves dignity, integrity or independence of the Bar and/or Bench.

Provided further that the President of the Bar Association shall consult Chief Justice of the High Court or the District Judge of the concerned District before the advocates decide to absent themselves from the court and decision of Chief Justice or the District Judge as the case may be shall be final and have to be abided by the Bar Association.

9. No Advocate refusing to abide by any call for strike, abstention from court work or boycott of Judicial proceedings, shall be visited with any adverse consequences by the Bar Association or the Bar Council and no threat or coercion of any nature including that of expulsion can be held out against such Advocate.

PENALTY

10. Contravention of Rules 4, 5 & 6

An advocate or a member of 'Committee of Bar' contravening the provisions laid down in Rules 4, 5 & 6 may be debarred from appearing, pleading and conducting cases in the High Court and/or Subordinate Courts for a period not less than one year but not exceeding five years.

11. An Advocate or a member of "Committee of Bar" contravening Rule(s) 7 and 9 may be debarred from appearing, pleading and conducting cases in the High Court and/or Subordinate Courts for a period not less than 2 years but not exceeding seven years.

PROCEDURE

12. Disciplinary Committee

The Chief Justice shall constitute committee/committees of one or more Judges of the High Court to enquire into and dispose off the complaints alleging contravention of any of the Rules(s) laid down herein by any Advocate, group of Advocates or member/members of the 'Committee of the Bar'.

13. The complaints alleging contravention of any of the Rule(s) laid down herein shall be addressed to Chief Justice of the High Court who on receipt of such a complaint shall assign the same to the Disciplinary committee.

14. The Disciplinary Committee after hearing the Advocate(s) or member(s) of the 'Committee of the Bar' if satisfied that the contravention alleged in the complaint is substantiated, shall make an order debarring the erring Advocate(s) or member(s) of the 'Committee of Bar' from appearing, plead-

ing and conducting cases, in the High Court or Subordinate Court(s) for a period prescribed in Rules 10 and 11, as the case may be.

15. The Disciplinary Committee shall conclude enquiry and finally dispose of the complaint within a period of 30 days from the date the complaint is assigned to the committee.

16. The Chief Justice shall have power to withdraw the complaint assigned to Disciplinary committee and assign it to other Disciplinary Committee constituted in accordance with Rule 13.

APPEAL

17. (i) Anyone aggrieved of the order passed by the Disciplinary Committee debaring him from appearing, pleading and conducting cases in the High Court or/and Subordinate Courts under Rules 10 and 11, as the case may be, may file an appeal before High Court within 15 days from the date the order is made.

(ii) Every such appeal shall be listed for hearing before a Bench of not less than two Judges.

18. The Bench after hearing the appellant(s) may set aside or modify the order of the Disciplinary Committee debaring the appellant(s) from appearing pleading and conducting cases in the High court or/and Subordinate Court(s), reduce the period for which the appellant is debarred from appearing, pleading and conducting by Disciplinary Committee.

RULES FRAMED UNDER SECTION 3 OF THE DESTRUCTION OF RECORDS ACT, 1977

Published in Govt. Gazette dated 2nd Phagan, 1992

Rules made by the High Court of Jammu and Kashmir under section 3 of the Destruction of Records Act and sanctioned by His Highness the Maharaja Bahadur.

A-General

1. Obsolete records and registers to be destroyed annually.

All Judicial records and registers which, under these rules, become liable to destruction, shall be destroyed as soon as the period for their retention has expired.

2. How to be destroyed and disposed of

The destruction of such records and registers shall be carried out under the supervision of Record-keeper and shall be effected by tearing, care being taken that all Court-fee stamps have been duly cancelled. The paper shall then be sent to the Superintendent of the nearest Central Jail who will purchase it at its market value, and return the bill drawn by the office from which the purchase is made, duly countersigned, for transmission to the Accountant General. The latter will place the sum to the credit of the Record Office Fund in the public accounts. If there is no Jail, or if the Jail authorities decline to take the paper, the orders of the Chief Justice for papers pertaining to the record of his court and of the District and Sessions Judge in other cases shall be taken as to its disposal.

B-Records

3. Parts of file

All Civil and Criminal records shall be arranged in separate parts A and B.