

CLIENT COMMUNICATION AND PROFESSIONAL ETHICS

ROLE OF LEGAL CLINIC TO STRIKE BALANCE

Written by *Abhishek Srivastava** & *Jyoti Kukreja***

** Assistant Professor, Alliance University*

*** Assistant Professor, CPJ-CHS- SOL, Delhi*

CLIENT-LAWYER COMMUNICATION

Importance of Communication with Client: As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law. Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually

all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation to zealously protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives; cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

Privileged Professional Communication: The Indian law on privileged professional communication, codified under the Indian Evidence Act of 1872, has developed on the same lines as UK common law. The benefit of privileged communication under sections 126 and 129 of the Evidence Act is available only in relation to communications and correspondences between client and attorney or advocate. The attorney is not permitted, at any point of time, to disclose details of any communication or document pertaining to the client without the client's express consent. The client can also not be compelled to disclose to the Court any confidential communication with his attorney unless he offers himself as a witness.

Apart from the policy justifications discussed above, the restriction of privilege to advice by lawyers in India is understandable considering that the Advocates Act of 1961 (section 29) states very clearly that advocates are the "only recognized class of persons entitled to practice

law" in India. The Madras and Bombay High Courts have recently clarified that the practice of law includes advice on both litigious and non-litigious matters.

Non-advocates are not generally authorized to practice law in India. While advocates are governed by a comprehensive code of ethics laid down by the Bar Council of India, there are no governance standards for legal advice provided by other advisors and professionals. Lawyers are also bound by strict norms of conflict so as to ensure that client interests are fully protected, while the lawyer retains her professional independence. The legal profession differs from other professions on account of the formal legal training on procedural and substantive laws, legal interpretational skills, fiduciary nature of an advocate's role, accountability towards clients, and wider professional responsibility as officer of the Court.

In a country like India where litigation is the order of the day (especially in matters of taxation and property), the issue of client-attorney confidentiality privilege has assumed unprecedented importance. Clients have a right to receive sound legal advice and the privilege of sharing confidential information with attorneys without fear of disclosure

Professional Ethics: Professional ethics is basically the standard or code of behavior that a professional must follow. There is no clear definition of the word 'professional', but for the purposes of professional ethics it may be safe to assume that a "professional" means any person in an occupation which requires public licensing or certification. Doctors, lawyers, chartered accountants, teachers are all supposed to keep it in mind at all times.¹

Many professions in India, such as legal and medical professions have codes of practice that members of the profession must follow. For advocates it is the Advocates Act and Bar Councils Act, whereas for doctors it's the Indian Medical Councils Act, 1956 and Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.

Legal ethics include attorney-client privilege, legal billing, disclosures which lawyers are obligated to make, professional and personal relationships with other members of the legal profession, relationships with jurors, situations in which lawyers and judges must refused from taking up a case, ethical conflicts which can arise in the law, and situations in which people can

¹ S. Dinesh Babu, Professional Ethics and Human Values, Firewall Media, 2007

offer legal advice. In many nations, legal ethics also includes mandates to perform volunteer service, or a strong stress on performing pro bono work.²

In *A S Mohammed Rafi v State of Tamil Nadu Rep by Home Dept&Ors*³ Justice Katju of Supreme Court held, “Professional ethics requires that a lawyer cannot refuse a brief, provided a client is willing to pay his fee, and the lawyer is not otherwise engaged. Hence, the action of any Bar Association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or on the ground that he is a suspected terrorist, rapist, mass murderer, etc. is against all norms of the Constitution, the Statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused for a crime. Such a resolution is, in fact, a disgrace to the legal community. We declare that all such resolutions of Bar Associations in India are null and void and the right minded lawyers should ignore and defy such resolutions if they want democracy and rule of law to be upheld in this country. It is the duty of a lawyer to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of the Gita.”

Balance between Ethics and Client Confidentiality: Professional responsibility involves recognizing how to balance the various duties owed by lawyers. To the administration of justice, to the Court of which practitioners are officers, to the client, to the public and to the profession. Legal Clinic helps in bringing the balance between the Professional ethics of lawyer and the confidentiality. It helps a lawyer to not only full fill its duty towards his client which he must follow, but also perform ethics of the legal profession in which as said above has duty towards others too.

Professional conduct and ethical behaviour are central canons of the legal profession. Among the core principles of professional responsibility is the lawyer’s duty of loyalty to the client. This principle is codified in the general rules prohibiting conflict of interest, requiring diligent representation, and mandating confidentiality. When exploring the feasibility of an interdisciplinary legal clinic, questions of how to uphold these ethical duties often predominate.

²Times of India, HC judge gives tips on ethics in law, 8th September 2008

³*A S Mohammed Rafi v State of Tamil Nadu Rep by Home Dept&Ors*. [2010] INSC 1060

These issues include “maintaining a single profession of law with responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.”

