

NOTE BY MANINDER SINGH, SR. ADVOCATE
(AOR EXAMINATION – PAPER III)

1. Paper No. III of the AOR examination is on the subject of “**Advocacy and Professional Ethics**”.

NOTIFICATION DATED 19.04.2023 REGARDING SYLLABUS

2. Alongwith the notification dt. 19.04.2023 for the AOR examination, the broad description of the syllabus for Paper-III has been enumerated in Notice-II appended to the said notification.
3. Further, the candidates may also refer to the Document with the caption “*List of Materials on Ethics in respect of Paper-III (Illustrative and not Exhaustive)*” uploaded on the website of the Supreme Court under the Tab – “AOR examination”. This document also refers to various judgments on each of the topics, including the scheme under the Advocates Act, 1961 and the Rules framed by the Bar Council of India u/s 49(1)(c) of the 1961 Act.

STATUTORY PROVISIONS

CHAPTER – V OF ADVOCATES ACT

4. The legal recognition to the status of Advocates, their rights privileges as well as duties are provided under the statutory scheme of the **Advocates Act, 1961**. Therefore, it is necessary to be familiar with the provisions of the said Act, especially the provisions dealing with professional conduct of Advocates, as well as the consequences / punishment for misconduct etc. Special reference would deserve to be made to Chapter-V of the said Act and specifically Sections 35 – 44 of the said Act.

CHAPTER-II OF PART-VI OF BAR COUNCIL OF INDIA RULES

5. The candidates are also required to be familiar with Part VI of the Rules framed by the Bar Council of India, particularly Chapter-II thereof providing for *Standards of Professional Conduct and Etiquette*.

This chapter consists of the following sections:-

Section I	-	Duty to the Court.
Section II	-	Duty to the Client.
Section III	-	Duty to the Opponent.
Section IV	-	Duty to Colleagues.

Section IVA	-	BCI Advocates Welfare Fund.
Section V	-	Duty in imparting legal training.
Section VI	-	Duty to render legal aid.
Section VII	-	Restrictions on employment.

6. While the candidates are not expected to memorise, by heart, each of the Rules, illustration-based questions may be asked or there may be questions for enumeration of some of the duties in different sections of the said Rules.

ORDER-IV OF SUPREME COURT RULES, 2013

7. The special responsibilities of Advocates on Record (AOR) are stipulated under Order IV of the Supreme Court Rules, 2013. While many of the provisions of Order IV of the Supreme Court Rules are similar to the duties incorporated in the BCI Rules, there are also various additional responsibilities cast on AORs under the Supreme Court Rules. The candidates are advised to go through all of the provisions under Order IV of the Supreme Court Rules and there may be questions relating to various situations that may be faced by an AOR as part of their practice.
8. The precedents in relation to professional misconduct of Advocates in general, as well as AORs, are also required to be examined thoroughly by the candidates, including the facts of each case as well as the principles laid down therein. Broadly the cases can be classified in the following manner:-

A. Violating the Confidence of the Client:

- (i) V.S. Rangadurai Vs. D. Gopalan, (1979) 1 SCC 308:

The client paid court fee and expenses to the AOR for the purpose of filing two cases. However, the AOR filed only one case and falsely informed the client that the second case has also been filed. He also conveyed false dates to the client. The Hon'ble Supreme Court held it to be a case of professional misconduct.

- (ii) P.D. Khandekar Vs. Bar Council of Maharashtra, (1984) 2 SCC 556:

The Advocate drafted a false affidavit for a couple, stating that their marriage had been solemnized in Poona on the

same day, knowing that the marriage had not been performed. Further, in order to effect gift of immovable property by a lady to her granddaughter, the Advocate advised that instead of spending huge amount on stamp duty and registration charges, he will get the work done in Rs.45/- only. The Advocate simply drew an affidavit stating that the land had been gifted. The Hon'ble Supreme Court held that negligence without moral delinquency did not constitute professional misconduct. It was held that in cases of professional misconduct, degree of proof is higher than civil proceedings, however, lesser than criminal prosecution.

(iii) Harish Chander Singh Vs. S.N. Tripathi, (1997) 9 SCC 694;

The Advocate was engaged by the Complainant to represent him in consolidation proceedings. The Advocate persuaded the client to sign the Mukhtarnama in favour of his junior. The junior sold the land on the basis of the Mukhtarnama to the Advocate's father. The conduct of the Advocate was held to be gross professional misconduct.

(iv) D.S. Dalal Vs. State Bank of India, 1993 Supp (3) SCC 557;

An Advocate's firm was engaged by State Bank of India to file a recovery suit. Original documents were handed over and payments were made towards fee and miscellaneous charges. When the suit was filed, it was returned by the Registry with objections, but was never refiled and nor did the firm inform the SBI that the suit has been returned. The firm misappropriated the amounts paid by SBI. The Hon'ble Supreme Court held it to be a case of professional misconduct and upheld the punishment for removal of the names of the Advocates from the rolls.

(v) John D'Souza Vs. Edward Ani, (1994) 2 SCC 64;

The Client had entrusted the original copy of the Will to the Advocate. When the testatrix had demanded a copy of the Will, the Advocate refused to hand over the original copy.

Such conduct was held to be professional misconduct by the Hon'ble Supreme Court.

B. Violating the duty towards the court:

- (i) Lt. Col. S.J. Chaudhary Vs. State (Delhi Administration), (1984) 1 SCC 722;

An application was filed for modification of the bail order wherein it was directed that the criminal trial shall proceed on day to day basis. The Advocates of the petitioner were not prepared to agree for day to day hearing. The Hon'ble Supreme Court held that it is a duty of every Advocate who accepts a brief to attend the trial on day to day basis. Any failure to do so constitutes breach of professional duty of the Advocate.

- (ii) N.G. Dastane Vs. Srikant S. Shivde, (2001) 6 SCC 135;

In this case, the court found that 2 Advocates repeatedly sought adjournments in a case on one pretext or the other. On one date, they filed an application stating that they were suffering from throat infection and could not speak. However, on the same day, they were found arguing in another court. Both the State Bar Council as well as the Bar Council of India, rejected the complaint of misconduct against these advocates. The Hon'ble Supreme Court held that such conduct constituted abuse of process of court and was therefore, in the nature of misconduct. Further, it was held that whenever witnesses are summoned or are present in the court, it is the duty of the Advocates to carry out the examination of the witnesses. If they are not available, they should make alternate arrangements. Further, it was held that if the complaint is genuine and does not show any malafide or attempt to harass, it is the duty of the Bar Council to refer the complaint to the disciplinary committee.

C. Acting without authority of the client:

- (i) Byram Pestonji Gariwala Vs. Union Bank of India & Ors., (1992) 1 SCC 31;

In this case, the Court was interpreting the provision of Order 23 Rule 3 CPC, wherein the words 'in writing and signed by

parties' had been inserted through an amendment. It was held that this provision would also include compromise signed by the counsel, however, it would be prudent for counsel not to act on implied authority of their client, unless warranted by exigency of circumstances.

(ii) Narain Pandey Vs. Pannal Lal Pandey, (2013) 11 SCC 435;

In this case, it was found that the Advocates concerned had filed forged and fabricated Vakalatnamas and signed compromises on behalf of parties, without any authorization. Such conduct was held to be gross professional misconduct and the Advocates concerned were suspended from practice for a period of 3 years.

D. Interpretation of the phrase "Professional or other misconduct":

(i) Noratanmal Chouraria Vs. M.R. Murli, (2004) 5 SCC 689;

In this case, in a landlord – tenant dispute, the landlord was an Advocate and he had filed an eviction petition against the tenant. There were allegations of a physical altercation between the landlord and tenant basis which the tenant filed a complaint against the landlord for professional misconduct as an Advocate. The Hon'ble Supreme Court while interpreting the word 'misconduct' inter alia, held that 'professional or other misconduct' should ordinarily be judged qua the profession and not on general allegations against the Advocate concerned.

(ii) Shambhu Ram Yadav Vs. Hanuman Das Khattri, (2001) 6 SCC 1;

In this case, the Advocate had demanded an amount of Rs.10,000/- from the client as illegal gratification, on behalf of the judge. The disciplinary committee of the Bar Council decided to permanently disbar the concerned Advocate. However, in review proceedings, the disciplinary committee reviewed its order and reduced the punishment to that of reprimand. The Hon'ble Apex Court held that different view by the disciplinary committee – is not permissible. It is a case

of serious misconduct and no sympathy could be shown. The appeal was allowed and the original order for permanent disbarment of the Advocate was restored.

(iii) N.G. Dastane Vs. Srikant S. Shivde, (2001) 6 SCC 135;

Facts of this case have already been discussed hereinabove.

(iv) State of Punjab v. Ram Singh, (1992) 4 SCC 54.

The word “misconduct”, not defined statutorily, was interpreted by the Hon’ble Supreme Court in this case (though in a different context, i.e. the disciplinary proceedings for misconduct against a police personnel).

E. Professional Negligence:

(i) CBI Vs. K. Narayana Rao, (2012) 9 SCC 512;

In this case, the allegation was made against the Advocate for giving a wrong advice regarding the encumbrances on the property mortgaged to the bank by one party for availing loan. The criminal proceedings against the Advocates were quashed by the High Court and the appeal of CBI was rejected by the Hon’ble Supreme Court. It was held that erroneous advice does not constitute professional negligence. Further, unless the Advocate has actively conspired with the defaulters, it cannot be held to be a case of criminal negligence.

F. Fee related misconduct:

(i) D.S. Dalal Vs. State Bank of India, 1993 Supp (3) SCC 557;

Facts of this case have already been discussed above.

(ii) L.C. Goyal Vs. Suresh Joshi, (1999) 3 SCC 376;

In this case, the Advocate misappropriated an amount of Rs.25,000/- given to him by the client towards payment of court fee. When the money was demanded back by the client, the Advocate issued a cheque for the same. However, even the said cheque got dishonoured. The Hon’ble Supreme Court held it to be case of professional misconduct.

- (iii) R.D. Saxena Vs. Balram Prasad Sharma, (2000) 7 SCC 264;

In this case, the Hon'ble Supreme Court reiterated the salient principle that the Advocate has no lien on the litigation papers. The advocate cannot refuse to return the files to the client even if there is a dispute regarding non-payment of fees. It was held that the cause of the court is more important than the right of the Advocate to receive fees. Litigation papers are not 'goods bailed' u/s 148 or 171 of the Indian Contract Act, 1872. Further, every litigant has a right to appoint a pleader of his / her choice, under Article 22 of the Constitution as well as under Order 3 Rule 4 CPC.

G. Personal Interest of Advocate:

- (i) Rajendra V. Pai Vs. Alex Fernandes, (2002) 4 SCC 212;

In this case, the appellant Advocate was defending land acquisition proceedings where his own family property was also involved. Further, he solicited work from the adjacent villages, indulged in fixing contingent fee i.e. contingent on the success in the proceedings and also wrongly identified various claimants in the said proceedings. The conduct of the Advocate was held to be a gross professional misconduct. While the Bar Council debarred the Advocate from practicing for life, the Hon'ble Supreme Court reduced the punishment to debarment for a period of 7 years.

H. Misappropriation of money:

- (i) Harish Chandra Tiwari Vs. Baiju, (2002) 2 SCC 67;

In this case, the Advocate had received compensation of Rs.8,000/- in the land acquisition proceedings, on behalf of his client. However, he misappropriated the money. Even in the proceedings before the disciplinary committee, the Advocate filed a forged affidavit of the client stating that the money has been returned. The Hon'ble Supreme Court held that misappropriation of client's money is the gravest form of misconduct. The punishment of permanent debarment was imposed upon the Advocate.

- (ii) Bar Council of Andhra Pradesh Vs. Kurapati Satyanarayana, (2003) 1 SCC 102;

The Advocate had received decretal amount of Rs.14,000/- received in execution proceedings, on behalf of his client. However, he did not pay the said amount to the client. The Hon'ble Apex Court reiterated that misappropriation of money is the gravest form of professional misconduct and that removal from the rolls of Bar Council would be the only appropriate punishment for the said Advocate.

I. Physical Assault by Advocate:

- (i) Hikmat Ali Khan Vs. Ishwar Prasad Arya, (1997) 3 SCC 131.

In this case, the Advocate assaulted the opposing counsel in the courtroom with a knife, and also shot him with a pistol. He was convicted u/s 307 IPC. In the disciplinary proceedings, he produced a forged letter in the name of the Home Secretary stating that the Hon'ble Governor has suspended his conviction. The Hon'ble Supreme Court held that it is a case of grave misconduct and that the Advocate is unworthy of remaining in the profession. His name was struck off the rolls.

PROFESSIONAL MISCONDUCT AND CONTEMPT OF COURT

9. Another topic that the candidates would be required to study is the tests laid down by the Hon'ble Courts to determine that the conduct of an Advocate constitutes contempt of court, wherein the jurisdiction to punish such actions / conduct would then be vested in the courts.
10. In this regard, candidates would have to examine the statutory provisions of the Advocates Act, 1961 as well as the Contempt of Courts Act, 1971, and the precedents laying down the law on the difference between professional misconduct and contempt of court.
11. While the disciplinary jurisdiction in relation to professional misconduct lies with the Bar Council(s), the jurisdiction to rule on contempt of court lies with the concerned court(s). The nature as well as severity of punishment for professional misconduct on the one hand and contempt of court on the other - is also different and distinct. This

distinction may also be required to be explained by the candidates as part of the examination.

12. On this aspect, some of the precedents which are required to be studied by the candidates are as follows:-

(i) In Re.: Vinay Mishra, (1995) 2 SCC 584;

The Advocate had threatened the High Court judge not to put questions to him or else he will get him transferred or see to it that an impeachment motion can be brought against the Judge. The Hon'ble Supreme Court initiated suo motu contempt proceedings against the Advocate and further held that neither the contempt of courts Act nor the Advocates Act limit the powers of the Supreme Court to punish an Advocate for contempt of court including by revocation / suspension of his / her license to practice. It was, inter alia, directed that the Advocate shall stand suspended from practice for a period of 3 years.

(ii) Supreme Court Bar Association Vs. UOI, (1998) 4 SCC 409;

The SCBA filed a writ petition under Article 32 of the Constitution of India, aggrieved by the observations made in the case of In Re.: Vinay Mishra. The matter was referred to a constitution bench. The Ld. Constitution Bench held that the inherent jurisdiction of the Hon'ble Supreme Court under Article 129 read with 142(2) of the Constitution cannot be curtailed even by the contempt of courts Act. The nature of punishment in the contempt of court act only acts as a guide for the Supreme Court. However, suspension of license or removal from the rolls of the Bar Council cannot be imposed as punishment for contempt. These punishments are prescribed for professional misconduct, which is to be decided in terms of the Advocates Act. The judgment in Vinay Mishra was overruled to the limited extent that it was not correct to hold that since the Supreme Court is the final appellate authority u/s 38 of the Advocates Act, therefore, it can impose any punishment prescribed u/s 35 of the Advocates Act including suspension / revocation of license of an Advocate. It was held that the jurisdiction under Article 142 cannot be exercised to come in direct conflict with a statute. However, it was held that in a given

case, the Supreme Court can exercise suo motu powers u/s 38 of the Advocates Act read with Article 142, if a complaint is pending before the Bar Council for a long period of time and the Bar Council fails to act upon the same.

(iii) Pravin C. Shah Vs. K.A. Mohammed Ali, (2001) 8 SCC 650;

In this case, the validity of Rule 11 of the Kerala High Court Rules was under consideration before the Hon'ble Supreme Court. The Rule 11 stipulated that any Advocate who has been held guilty of contempt, cannot practice before the Court unless the contempt is purged by the Advocate. The view of the Bar Council was that through this Rule, the High Court had usurped the power of the Bar Council. The Hon'ble Supreme Court held that power to formulate regulations for proceedings inside court cannot be confused with power to regulate practice of profession by the Advocates. It was held that the right to appear and conduct cases in a court is a subject matter on which the courts must be held to have superior supervisory powers. Rule 11 was upheld by the Hon'ble Supreme Court.

(iv) Bar Council of India Vs. High Court of Kerala, (2004) 6 SCC 311;

In this case, the Bar Council of India filed a petition before the Hon'ble Supreme Court challenging the validity of Rule 11 of the Supreme Court Rules. It was, inter alia, contended that the said Rule was in the teeth of Section 30 of the Act laying down the rights of Advocates to practice. The Hon'ble Supreme Court rejected the contention and held that the right to practice of an Advocate u/s 30 is subject to other provisions of the Act which includes Section 34 thereof. U/s 34, the High Court is empowered to frame rules and under this power, Rule 11 has been validly framed by the Kerala High Court.

(v) R.K. Anand Vs. Registrar, Delhi High Court, (2009) 8 SCC 106;

In this case, it was found that the Defence Counsel was suborning prosecution witnesses in collusion with the Special Public Prosecutor in the BMW Hit and Run Case. The High Court took suo motu cognizance of the case and debarred the concerned

Advocate from appearing before the Delhi High Court as well as the courts subordinate to the Delhi High Court. The Hon'ble Supreme Court held that ideally, every high court ought to frame Rules u/s 34 of the Advocates Act including for dealing with Advocates found guilty of contempt of court. However, even in the absence of such rules, the High Court would not be helpless. Debarring Advocates from practicing before the Court cannot be equated with punishment for professional misconduct. However, such a decision should be taken very rarely and as a matter of last resort.

(vi) Mahipal Singh Rana Vs. State of Uttar Pradesh, (2016) 8 SCC 335;

In this case, the Advocate was held guilty of criminal contempt for threatening the civil judge and was sentenced to two months simple imprisonment. On the right to practice of the Advocate, it was held that unless the Advocate purges himself / herself of a contempt, he / she shall be disbarred from appearing in the court even if their license is not suspended / terminated.

(vii) R. Muthukrishnan Vs. Registrar General, High Court of Madras, (2019) 16 SCC 407.

In this case, challenge was laid to the validity of Rules 14A, B, C and D of the Madras High Court Rules providing for debarment of Advocate from practicing before the High Court or subordinate courts if they are found to be indulging in misconduct. The Hon'ble Supreme Court struck down the rules as invalid, since the Rules did not provide that such action would be taken by the High Court in exercise of contempt jurisdiction. It was held that the debarment is sought to be carried out by the High Court by way of disciplinary control upon the Advocates, which is not permissible and encroaches on the powers / jurisdiction of BCI.

13. While examining the aforesaid judgments, it would also deserve to be critically examined that while exercising contempt jurisdiction, in what manner and to what extent is it open to Courts to pass orders prohibiting any advocate from practicing before the concerned court ? Further, does it fall within the jurisdiction of the High Courts to prohibit

any Advocate, who has committed contempt of court, from practising before the said court and under which jurisdiction can such direction be issued ?

STRIKES

14. One of the essential aspects of the practice of the legal profession is not to indulge in any conduct which would constitute obstruction to the administration of justice or to the functioning of courts including by indulging in impermissible strikes and especially where such strikes are organized on unsustainable / frivolous grounds. In this regard, the candidates may critically examine the following judgments / precedents:-

- (i) Mahabir Prasad Singh Vs. Jacks Aviation, (1999) 1 SCC 37;

A group of advocates had called for boycott of the Court of one ADJ. An application was filed before him for transfer of a particular case, which was rejected by him. A revision petition was filed before the Hon'ble Delhi High Court where the Hon'ble Delhi High Court called for the comments of the Id. ADJ. The Hon'ble Supreme Court found error with the proceedings conducted by the Delhi High Court by calling for the explanation of the Judge. It was, inter alia, held that judicial functioning cannot be permitted to be stonewalled by browbeating or bullying. If any Advocate does not wish to appear before a particular Judge he / she should give up their engagement. Retaining the brief and not appearing in court is unprofessional and unbecoming as an Advocate.

- (ii) Common Cause Vs. Union of India, (2006) 9 SCC 304;

Instead of going into the larger question whether Advocates can abstain from appearing in cases on account of call or strike / boycott, since the parties before the Supreme Court reached a consensus, directions were issued by the Hon'ble Supreme Court upon the assurance granted by the Bar Council of India, inter alia, to the effect that any call for strike by an Association shall not prevent individual lawyers from being free to appear without fear or hindrance and that the Advocates would resort to other forms of protest such as wearing of arm bands etc. and not indulge in strikes / boycotts except in rear instances.

(iii) Harish Uppal Vs. Union of India, (2003) 2 SCC 45;

Since the Bar Councils failed to implement / comply with the order passed in the case of Common Cause, the Supreme Court found it necessary to decide the question whether the lawyers have a right to strike / give a call for boycott. It was held that it is the duty of every lawyer who has accepted a brief to attend the trial. Bar Associations expressing want of confidence in judicial officers – constitutes contempt of court. Bar Councils can never even consider to give a call for strike or boycott. Strikes by lawyers were held to be illegal with the sole exception of protest on an issue regarding dignity, integrity and independence of the Bar, provided that even such a strike does not extend beyond one day. Even for such an issue, the president of the Bar Association must first consult the Chief Justice or the District Judge and the decision of the Chief Justice or District Judge to permit / not permit the strike – shall be final.

(iv) Hussain Vs. Union of India, (2017) 5 SCC 702;

In view of huge delay in disposal of bail applications and criminal trials, the Court emphasized the right to speedy trial and directed all High Courts to monitor instances of strikes and strictly implement the judgment in Harish Uppal Case.

(v) Krishnakant Tamrakar Vs. State of Madhya Pradesh, (2018) 17 SCC 27;

In bail proceedings relating to an undertrial prisoner the Court held that every strike causes irreversible damage to the judicial system. Strikes amount to contempt and office bearers of Bar Associations who give calls for strike are liable for contempt. The Union of India was directed to present quarterly report on strikes, the loss caused and the action proposed.

(vi) District Bar Association Dehradun Vs. Ishwar Shandilya, (2020) 17 SCC 672;

The Court was dealing with a permanent strike declared by lawyers in Uttarakhand District Courts on all Saturdays. The direction of the High Court to undertake disciplinary proceedings against the Bar Associations and Advocates was upheld. The

notice has been issued to the Bar Council of India and all state bar councils for issuance of further directions by the Supreme Court.

(vii) PLR Projects Vs. Mahanadi Coalfields Ltd., Transfer Petition (C) No. 2419 of 2019.

Advocates en-masse, who had boycotted the court proceedings as protest for a separate bench of the High Court – were held to have indulged in gross misconduct. On the nudging of the Supreme Court, the Bar Council of India suspended license of practice of 43 Advocates of District Bar Association, Sambhalpur. The Supreme Court held that Bar Council of India has the power to direct for interim suspension of license, till the disciplinary proceedings are concluded.

(viii) Praveen Pandey Vs. State of M.P., 2018 SCC Online MP 281

Applying the principles laid down by the Hon'ble Supreme Court, the Madhya Pradesh High Court held that the call given by the State Bar Council to the Advocates in the State to observe a week-long protest and abstain from Court proceedings (demanding appointment of High Court judges, enactment of Advocates' Protection Act and seating arrangement of Advocates in Courts) – is entirely illegal and unconstitutional.

ALLEGATIONS AGAINST COURT / REGISTRY

15. There have also been instances wherein Advocates have made scurrilous allegations or cast aspersions on the Courts / Registry. Such incidents have also been dealt with by the Supreme Court and the principles laid down in this behalf would deserve to be examined. Some of the precedents on this issue are as follows:-

(i) Reepak Kansal Vs. Secretary General of Supreme Court, (2020) 7 SCC 805;

It was held that the Registry of the Court is also an arm of the Court and irresponsible allegations / casting aspersions against the Registry is unbecoming of Advocates. The writ petition filed by an Advocate casting irresponsible aspersions against the Registry was dismissed with costs.

(ii) In Re.: Vijay Kurlle, Suo Motu Contempt Petition (Crl) 2 / 2019;

In this case, scandalous and scurrilous allegations made by an Advocate against a sitting judge of the Hon'ble Supreme Court, was held to constitute contempt of court. The Advocate was held guilty of contempt, inter alia, for circulating material on social media, containing baseless and scurrilous allegations against a Supreme Court judge.

(iii) In Re.: Prashant Bhushan & Anr., (2021) 1 SCC 745.

In this case, the Advocate had made scandalous allegations against the Supreme Court, during the Covid 19 pandemic period. Two tweets had been made by the Advocate. It was held that the Advocate is guilty of contempt of court and he was sentenced with a fine of Re.1/- to be deposited with the Registry of the Court failing which it was directed that he shall undergo simple imprisonment for a period of 3 months and also be debarred from practicing in the Supreme Court for a period of 3 years.

ADVERTISING / SOLICITATION

16. One of the duties of the Advocates under Section-IV of Chapter-II of the Rules framed by the Bar Council of India is - to not to solicit work. In this behalf, the candidates may be required to explain the extent to which an Advocate is permitted to display his name either in the physical manner or in the virtual manner on a website. Further, the principles in relation to advertisement and solicitation laid down by the Supreme Court would also deserve to be examined including in the following judgments:-

(i) Government Pleader Vs. S.A. Pleader, 1929 SCC Online Bom 335

The Bombay High Court held that the conduct of the Advocate in sending postcards to the public, soliciting work and also notifying his fee through the said postcards – constituted “misconduct”. However, since the Advocate was a junior practitioner, the Court did not suspend his license, but punished him with “severe reprimand”, to be conveyed personally by the District Judge in open Court.

- (ii) A, an Advocate, In Re, AIR 1962 SC 1337;

The AOR had sent a letter to the Law Minister of Maharashtra for soliciting work. Initially, he admitted the letter before the Registrar, however, subsequently, he denied sending the letter. The Supreme Court directed that the AOR shall be suspended from practicing before the Court for a period of 5 years and observed that 'let him learn that a lawyer must not be a liar'.

- (iii) C.D. Sekkizhar v. Secretary, Bar Council, 1966 SCC OnLine Mad 181

The Petitioner had challenged the validity of Rule 7(2) of the Bar Council Rules, which provided for "electoral misconduct" whereby any person announcing or canvassing his candidature to the Bar Council – was defined as "electoral misconduct". It was treated as a form of advertisement. The Madras High Court upheld the validity of the Rule and held that advertisement in any form by a member of the profession is considered as unworthy of the profession, and constituting moral misconduct.

- (iv) Bar Council of Maharashtra Vs. M.V. Dabholkar, (1976) 2 SCC 291;

The Supreme Court was dealing with the conduct of Advocates who would stand outside the Magistrate's Court in Bombay, rush towards potential litigants and snatched briefs. They even indulged in physical fights and undercutting of fee. The Bar Council of India absolved all of the Advocates of misconduct. The Bar Council of Maharashtra appealed against the decision of the BCI, before the Hon'ble Supreme Court. The Hon'ble Supreme Court adversely commented on such conduct of the Advocates in indulging blatantly in solicitation of work to an extent which was even more revolting than 'ambulance chasing'.

- (v) Rajendra V. Pai Vs. Alex Fernandes, (2002) 4 SCC 212.

Facts of this case have already been discussed hereinabove.

17. The candidates are also advised to broadly examine the development of law in this regard, i.e. advertising / soliciting of work by Advocates, in some of the foreign jurisdictions. Further, the bar on advertisement by Advocates, would deserve to be examined also in light of the

judgment of Hon'ble Supreme Court in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139 holding that the right to commercial speech (advertising) also falls within the fundamental right to speech and expression under Article 19(1)(a) of the Constitution.

ROLE OF AMICUS CURIAE

18. As part of the duty towards the court, the Advocates are often requested by the Courts to assist in the capacity of an Amicus Curiae (friend of the court). The role of the Advocate and his duty towards the court in the capacity as an Amicus Curiae would deserve to be studied / examined by the candidates.
19. Further, the responsibility as well as critical role performed by Amicus Curiae in criminal cases where the accused person may not be getting suitable legal assistance – would also deserve to be examined, including the principles laid down regarding selection of an Advocate as an Amicus Curiae in such criminal cases. In this behalf, the candidates are advised to also study the following precedents:-

(i) Mohd. Sukur Ali Vs. State of Assam, (2011) 4 SCC 729;

It was held that a criminal appeal against an accused cannot be decided in the absence of the counsel. If the defence counsel is not available someone ought to have been appointed as an amicus curiae. The conviction order was set aside and the appeal was directed to be heard by another bench of the High Court.

(ii) Mukesh Vs. State (NCT of Delhi), (2016) 14 SCC 416;

It was held that appointment of an amicus curiae is not given an impression as if the counsels are not able to assist the court. It was held that the courts appoint amicus curiae depending on multiple factors and to get perspectives from all spectrums.

(iii) Anokhilal Vs. State of Madhya Pradesh, (2019) 20 SCC 196.

It was observed that the amicus curiae was appointed by the lower court on the same day when the charges were framed. He did not even have the opportunity to prepare for the case. It was held that opportunity must be real and sufficient, and that adequate time must be granted to the amicus curiae to prepare the case. Guidelines were laid down for appointment of amicus curiae in

criminal cases and for giving them reasonable time to interact with the accused and also to prepare the case.

DUTIES OF AORs

20. The special responsibility of Advocates on Record and the duty owed by them to the Supreme Court – would also deserve special emphasis while preparing for the examination. The instances where it has been found that the concerned AOR was indulging in name-lending and the manner in which the said instances were dealt with by the Hon'ble Apex Court would also deserve to be examined in detail.

ATTORNEY-CLIENT PRIVILEGE

21. Another aspect which falls within the subject of Advocacy and Professional Ethics is the Attorney-Client Privilege as codified u/s 126 of the Indian Evidence Act, 1872. The scope and extent of the Attorney Client Privilege as incorporated in the Indian law would deserve to be examined.

ADVERSARIAL SYSTEM

22. The adversarial system, which has been adopted in our country would deserve to be critically examined, including its advantages and disadvantages. Further, the balancing of the Duty towards Client and the Duty towards Court, while being a part of this adversarial system, is also an issue which may be required to be elaborated by the candidates. In such an adversarial system where the duty towards the Court and duty towards the Client are required to be balanced, the role of persons discharging duties as a Public Prosecutor or as an Amicus Curiae – would deserve special emphasis. Candidates may make specific reference to instances / illustrations to present their critical analysis on these aspects.

SEVEN LAMPS OF ADVOCACY

23. One of the renowned texts explaining the concept of advocacy is found in the Seven Lamps of Advocacy by Justice Abbott Parry. The Seven Lamps as described by the author are as under:-
- a. Honesty;
 - b. Courage;
 - c. Industry;
 - d. Wit;

- e. Eloquence;
 - f. Judgment;
 - g. Fellowship.
24. The candidates are advised to go through the said texts and appreciate the facets each of the Seven Lamps as explained by the author. The candidates may be required to explain their own original thoughts in relation to the said lamps of Advocacy described by the author.

MEDIATION / CONCILIATION

25. The duty of Advocates to promote / endorse settlement / mediation / conciliation as against prolonged litigation to their clients as well as the various statutory provisions envisaging such mediation / conciliation at various stages, as well as the essential ingredients of these statutory provisions would also deserve to be critically analyzed by the candidates.
26. The statutory provisions in this behalf under the CPC, Arbitration and Conciliation Act, 1996 as well as Commercial Courts Act, 2016 would deserve to be critically examined by the candidates and including the recent judgments of the Hon'ble Apex Court.
27. This Note has been prepared for reference and convenience of the candidates. Further, the precedents given above are not an exhaustive list. The candidates are advised to carefully study the syllabus published on the website of the Supreme Court under the Tab "AOR Examination" and read all the statutory provisions as well as judgments on their own, for preparing for the examination.
28. The candidates are also advised to keep themselves abreast and updated about the recent events and developments as well as judgments in relation to all the aforesaid issues. Further, reference to specific instances / illustrative incidence while elaborating on the various issues, would also be advisable.
29. I wish the candidates all the best for their preparation and for the examination.