

**LAA 3064
MOOT/MOCK AND
PLACEMENT**

PROFESSIONAL ETHICS



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Introduction

- Negative View:
- Professional myth lore and narrative.
- Ethics is an open ended, reflective and critical intellectual activity not capable of being settled by agreement or by authority.
- Ethics is self directed and attempt to lay down a code binding on others is self contradictory.
- Positive View:
- An ethical rule should be applied in the light of advancing the trust in the profession and the confidence in the law as a whole.

Definition.

- Rules of or codes of conduct binding on members of the legal profession whether as a matter of contract or of statutory prescription.
- A rule of morality and having statutory force.
- Standard of conduct which an advocate and solicitor has which are not in common with non-advocate and solicitor.
- LP (P&E) 1978 laid down minimum standards of conduct to the advocate and solicitor.
- Syarie lawyers are governed by the Code of Ethics, PSR and they are also bound to the syariah principles.

Cont...

- Why it is so important?
- 1) lawyers must assume personal moral responsibility for the consequences of their personal actions.
- 2) sharp separation between private and professional morality.
- 3) Duty of care. Professional duties.
- Surah An-Nisaa;105 “ we have revealed to you the book with the truth so that you may judge between people in accordance with the right way which Allah has shown you, so not be an advocate for those who betray us”.

Cont....

- To what extent?
- 1) adopting and adhering to modes of practice which are fair and just.
- 2) to preserve ethics in general ie to the profession, to the client and to justice.
- 3) to observe any undertaking in conducting contentious and non-contentious matter.

Principles of Syarie Advocatory

- Good behaviour and character.
- Sincere, honest and trustworthy.
- Not to accept bribe.
- Not to waive any right of his client without his permission.
- To seek knowledge continuously.

To uphold the dignity of Profession-R 31

- Section 3 Code of Ethics PS- Good behaviour, attitude and character.
- Rule 16- shall acting with ail due courtesy, fearlessly uphold the interest of his client, the interest of justice and dignity of the profession without regards to any unpleasant consequences either to him or to any other person.
- Maintenance and advancement of trust in the profession as a whole is the justification for rules in promoting the interest of the profession.

Cont...

- The messenger of Allah said
- *“I’m only a human being and you bring your disputes to me Perhaps some of you indulge in logic to prove your assertions and it may be that I give my decision or the strength of your argumentation.”*
- Neutrality- client’s interest always prevail.
- To avoid Conflict of interest in the widest possible.
- For eg. Family has direct interest with the client. Section 27 of LPPER 1978.

How?

- Surah Al-An'am:152
- “whenever you speak be just even if it affects your own relatives and fulfil your covenant with Allah”.
- Confidentiality, just and not to involve in illegal activities “*afaf*”.
- Do not make wrongful allegations and be fair and respect to witness, third party, other lawyers, and the court.

To seek knowledge

- Section 4- Keep on going seeking knowledge in syariah and law.
- Knowledgeable lawyers will ensure that any work can be done effectively.
- Knowledge includes substantive and procedural laws and syariah rulings on certain aspects of life.

Duty of diligence and competence

- To complete any work as soon as is reasonably possible. If not possible please inform the client. R 6- Not to represent if unable to appear.
- Avoid unnecessary works. Moral responsibility.
- Passed to client all information material including progress and status of the case.

Conduct with candour, courtesy and fairness - R 19 and S 16

- Should not denigrate another lawyer or indulge in comparative promotion.
- Should not allow a deponent to an affidavit to allege wrongdoing or illegality by another solicitor without first giving the solicitor concerned an opportunity to answer the intended allegations.
- when make complaints against another solicitor, to furnish with copies of document and should not complaint upon unsubstantiated grounds.
- Prophet prohibit us from cursing and making any wrongful allegations.

Not to communicate with client of another peguam syarie- R 42 & S 37

- The parties are free to communicate directly to the parties. But if lawyer wants to communicate directly with the opposite parties he must get consent from their solicitors.
- General rule- cannot directly or indirectly communicate with the client of another solicitor without the solicitor's express consent.
- Should avoid direct contact with the opposite party.

Why?

- 1) the danger of unfair or undue pressure is presented.
- 2) the appearance of sharp practice is created.
- 3) the respect and courtesy to be shown to another solicitors.
- 4) likely to lead to acrimony and accusations of improper behavior.

Not to appear for party represented by another Peguam syarie- R 54 & S 49

- A client must be free to seek legal advice from any lawyer.
- Lawyer owes duty of fairness and courtesy to his fellow solicitors unless:-
 - 1) he obtains the consent.
 - 2) He undertakes that the proper professional remuneration of other peguam syarie has been paid .
 - 3) In ignorance
 - 4) Other peguam syarie is unwillingly or has refused to act further for such party.

What to do?

- Lawyer should insist on a clear termination of the previous retainer by the client before he acts in a new retainer for the same client.
- Inform the previous lawyer of the new retainer.
- Previous solicitor who receives request from another solicitor to transfer a client's file to that other solicitors should do so.

Duty of disclosure-R 23 & S 21

- Surah An-Nisa':135 *“O you who believe stand out firmly for justice as witness to Allah even as against yourselves or your parent or you kin and whatever it be against rich or poor”*.
- Not to conceal facts.
- To supply court all information as to the probable length of a case and the possibility of a settlement.

Cont...

- Rule 25-To disclose to the client all circumstances of his relation to the parties and any interest in connection with the controversy which may influence the client in the selection of counsel.
- Prophet said' if you see any evil deed, prevent it by your hand if not by your tongue and if not by your heart.....

Not to mislead-Rule 26 & S 24

- Information given by the lawyer should be reliable and not misleading.
- Should not gain a tactical advantage for one's client. For eg. Delay the proceedings for technical mistakes.
- Lawyers shall honor the terms of his professional undertakings given to any party.
- Common courtesy in dealing with the documents.

Not to advertise-Rule 45 & S 40-41

- Why?
- The need to ensure that the service is a matter of quality rather than price.
- To minimize commercialism in an honorable profession and to preserve the dignity of the profession.
- Opponents view
- Advertising is necessary in order to ensure competitiveness.
- To give access to relevant about the quality and price of services.

No division of costs or profits with unqualified person or touting.

- Rule 51 and 52 & S 46-47-Prohibition of touting and fee sharing.
- Unprofessional and improper conduct.
- must not pay, give, agree to pay or agree to give any commission, gratuity or valuable consideration to influence any legal business.
- Not to act in respect of gift from the client.

Confidentiality

- Rule 35 and S 31- not to abuse confidence reposed by client.
- to keep confidential all communications between him and his client unless it against the public interest.
- Shall preserve his clients' confidence and this duty outlasts his employment.
- To prevent a breach of confidentiality for eg letters in sealed covers.

Keeping proper records

- Accurate and up-to-date.
- Keep a record at least 6 years if it involves civil cases.
- Upon termination of the retainer and payment of legal fees a solicitor should hand over all documents to the client.
- Shall not withhold the client's papers to the detriment of the client- R 55 and S 51

Should charge fees which are reasonable and proper.

- Rule 11 & s 12-Fees for litigious and contentious matter. Basis- time, labor and skill required.
- Should inform the basis on which the fees will be charged and the manner in the which the client is expected to pay the fees and disbursement.
- Other reasonably foreseeable payments.
- The estimates of the fees and other payments which shall not vary substantially from the final amount.

Cont....

- Prophet Muhammad said “Do you know what is the right of neighbors are? Help him if he asked for your help. Give him relief if he seeks your relief, lend he needs a loan. Show him concern if he is distressed. Nurse him when he is ill. At end his funeral if he dies. Congratulate him if he meets any good. Sympathize with him if any calamity befall him. Do not block his air by raising your building high without his permission. Harass him not. Give him a share when you buy fruits and if you do not give him bring that you buy quietly and let not your children take them out to excite the jealousy of his children”.

Cont....

- When we appoint a person to a position on his provision. If he takes anything beyond that it is illegal gains. In Islam lawyers are accountable to the client and they must give their service professionally and competence.

Disciplinary Action

- Section 94 of the LPA-
- 1) Struck off
- 2) suspend
- For breach of any rule of practice and etiquette of the profession.
- Section 19 of PSR 1991-
- 1) Struck off or suspend
- 2) warning or any other order deems fit and reasonable.

Conclusion

- Professional ethics are very important in order to safeguard against breach of the trust and confidence of the public to the profession.
- Lawyers or peguam syarie must have standard of conducts which are not in common to the layman.
- Islam encourage all human being to preserve good ethics, conscience and piousness.

Required Reading

- Lord Denning. Advice to Lawyers. MLJ [1980] 1 MLJ lxxv
- Justice Dato' Wan Yahya Pawan Teh. The Conduct and Qualities of an Ideal Lawyer [1980] 2 MLJ lxxxvi.
- Tan Yock Lin, The Law of Advocates and Solicitors in Singapore and West Malaysia, 1991 MLJ
- Ahmad Ibrahim, *Al Ahkam (PENGhakiman dan Kepeguaman)*, Dewan Bahasa dan Pustaka, 1997, Kuala Lumpur.