

CHAPTER XIV

LEGAL PRACTITIONERS

ADMISSION OF ADVOCATES IN THE HIGH COURT

The following rule has been framed pursuant to Section 9 of the Indian Bar Councils Act (Act XXXVIII of 1926):

1. (1) Every person, before being admitted to practice as an advocate in the High Court, shall, unless otherwise qualified under sub. R. (18) and sub-R (19) to this rule, have obtained the Degree of Bachelor of Laws in the University of Calcutta, Dacca, Madras, Allahabad, Patna, the Punjab, or Bombay, or in the Muslim University of Aligarh, or in the Benaras Hindu University or in the University of Nagpur or in the University of Lucknow or in the Gauhati University or in the University of Rajasthan or in the University of Utkal.¹

(2) Except as mentioned in sub-Rr. (14), (18) and (19) of this rule, every person, before being admitted as an advocate in the High Court, shall serve a regular clerkship to some advocate of the High Court, for the full period of two years unless the Court, for special reason, think fit to remit any portion of the periods mentioned above:

Provided that the advocate with whom the candidate intends to serve his clerkship should be at least of 7 years' standing and his name should appear in the Approved List of Advocates maintained by the Court or that he must be approved by the Court before the contract is entered into in writing pursuant to the rules hereinafter contained;²

Provided also that permission shall not be granted under this rule to any advocate to entertain more than two articled clerks at one time;

Provided that the term of service required by the last preceding rule may be to different advocates with the previous approval of the Court on good cause shown.

(3) The person under whom the article shall be served shall, during the whole period of the service, be actually practising as an advocate in the High Court.

(4) No person shall be capable of service under these rules until he shall have passed the B.A. or B.Sc., examination of the University of Calcutta, Dacca, Allahabad, Patna, the Punjab or Bombay or in the Muslim University of Aligarh or in the Benaras Hindu University or in the University of Nagpur or Agra or in

Note 1: Rule 1(1)— In sub R.(1), the words "or in the University.....of Utkal" were inserted vide correction slip No. 17 Notification No. HC 1-43/59/210-E, dated the 12th January, 1960, to come into effect from the date of publication of the notification in the Assam Gazette.

Note 2: Rule 1(2)— The first proviso in sub-R.(2) was substituted vide correction Slip No. 1-B, and the original first proviso to sub-R.(2) read as follows.

"Provided that the advocate shall be approved by the Court before the contract is entered into in writing, pursuant to the rules hereinafter contained."

the University of Lucknow or in the Gauhati University or in the B.A. examination of the University of Madras or the B.Com. examination of the University of Calcutta, or of the Gauhati University.

(5) The contract in writing, whereby a person shall engage as aforesaid to serve as a clerk to any advocate, shall be filed with the Registrar of the High Court, within one calendar month after the execution of the same by the parties.

(6) In case the contract be not filed within the specified, the same may be filed with such Registrar after the expiration thereof, but the service of such clerk shall be reckoned to have been commenced or renewed from the date of filing such contract unless Court shall otherwise order.

(7) (a) Every person articulated to serve as clerk to an advocate for the purpose of being admitted as an advocate shall, unless Court thinks fit to grant him a special dispensation, be, during the whole period of service, exclusively employed by the advocate in his proper business and practice as such.

(b) Service under articles shall be continuous, unless the previous sanction of the Court is obtained to an interruption thereof, or unless an interruption permitted by the advocate but not so previously sanctioned, is subsequently explained to the satisfaction of the Court and condoned.

(c) Before any person is admitted as an articulated clerk he shall give a declaration disclosing the particulars of his profession, business or employment, if any, at the time of his application.³

(8) Before any person shall be admitted as an Advocate in the High Court he shall sign and file with such Registrar as aforesaid answers to the questions contained in schedule A hereunto annexed; and the person or persons under whom he shall have served his articles shall sign and file answers to the questions contained in schedule B hereunto annexed, as also a certificate in the form given therein.

(9) The applicant shall in all cases produce satisfactory testimonials as to his good character.

(10) The applicant shall also, if required, sign and leave with the said Registrar answers in writing to such other questions, as shall be directed by the Court, touching the service and conduct of the applicant, and also, if required, attend the court personally for the purpose of giving further explanation touching the same; and shall also, if required, procure the attendance of the person or persons with whom he shall have served his clerkship or to answer either personally or in writing any questions touching such service, conduct, or shall make proof to the satisfaction of the Court of his inability to procure the same.

Note 3: Rule - 1, Sub-rule(7) (c) — it was inserted vide correction Slip No.5, Notification No. HC XI/57/1714-RC, dated 9.4.1957.

(11) Upon compliance with the aforesaid rules, the applicant shall have to appear, on the expiration of the aforesaid articles, as the case may be, at an examination in the following subjects:

Code of Civil Procedure,
 Code of Criminal Procedure,
 Limitation Act,
 Provincial Small Cause Courts Act,
 Assam Land Laws,
 Indian Succession Act (portions dealing with procedure),
 Registration Act (Portions dealing with procedure),
 Bengal, Agra and Assam Civil Courts Act - Chapter II, III, and IV,
 Full Bench decisions of the Calcutta High Court - for 15 years immediately preceding the examination,

Decisions reported in the I.L.R., Assam Series, Assam High Court Rules - Chapters IV, V and VII to XI.

(a) The applicant shall at the said examination produce, for the inspection of the Court, his note-book containing his notes of arguments in at least 12 civil and 12 criminal cases heard in the High Court, at the hearing whereof he personally attended during the period of his articles;

(b) Proficiency in the subjects specified in sub-R. (11) and the notes and attendance referred to in sub-R. (11) (a) shall be taken into consideration at the said examination;

(c) Should the applicant satisfactorily pass the said examination and if the Court be satisfied as to his fitness and capacity, a certificate shall be granted to him in the following form:

It is hereby certified that AB has fulfilled the conditions entitling him to apply to be enrolled as an advocate of this Court under the Indian Bar Councils Act (xxxviii of 1926), and is a fit and proper person to be admitted to practice as such advocate;

Sd/—

A Judge of the High Court

(d) An advocate of any other High Court in India of not less than one year's standing, who is not otherwise disqualified, may be admitted as an advocate of this High Court on his undertaking in writing to have his name removed from the roll of advocates of such other High Court within a period of three months from the date of the granting of his application:

Provided that the Chief Justice may in special cases allow enrolment of such advocates without the above conditions being fulfilled.

(12) Any person intending to apply to be admitted to practice as an advocate in the High Court shall, after obtaining the certificate referred to in sub-R. (11)

(c), cause to be inserted in the Assam Gazetted for four successive weeks, a notice of his intention, and shall also give to the Registrar, a notice in writing of such intention accompanied by the said certificate and an impressed stamp paper of the value of Rs.750.

(13) Any person who has been admitted to the Degree of B.L. in the University of Calcutta, Dacca, Madras, Bombay, or Patna or in the Gauhati University or to the Degree of LL.B. in the University of Allahabad or of the Punjab or in the Muslim University of Aligarh or the Benaras Hindu University or the University of Nagpur or the University of Agra or the University of Lucknow or the University of Rajasthan or the University of Utkal who shall produce the certificate mentioned in sub. R.(11) (c) shall, after giving the notice is required by sub. R.(12), be enrolled as an advocate of the High Court.⁴

(14) Any person who has been admitted to the degree of B.L. in the University of Calcutta, Dacca, Madras, Bombay or Patna or in the Gauhati University or to the degree of LL.B. in the University of Allahabad or of the Punjab or the Muslim University of Aligarh or the Benaras Hindu University or the University of Nagpur or the University of Agra or the University of Lucknow or the University of Rajasthan or the University of Utkal and who shall prove to the satisfaction of the Court that he has bona fide practised for three years as a pleader in one or more of the Courts subordinate to the Assam High Court and that he is a person of good character, may after giving the notice required by sub-R.(12) be admitted to practise in the High Court as an advocate without service under articles:

Provided that, no pleader shall be admitted as an advocate of the High Court without passing the final examination prescribed by sub-R. (11).⁴

(15) Every person applying to be admitted under the last sub rule shall, one month prior to admission leave with such Registrar as aforesaid, answers to the questions contained in Schedule C hereunto annexed and also a certificate or certificates in the form contained in Schedule D hereunto annexed.

(16) In case the applicant should show sufficient cause to the satisfaction of the Court why the last sub-rule cannot be complied with, it shall be in the power of the Court to dispense with any part of this sub rule upon such terms as it may think fit and reasonable.

(17) An applicant under sub.R.(14) shall in the cases produce satisfactory testimonials as to his good character, and shall also, if required, leave with the said Registrar answers in writing to such questions as the Court shall direct touching the qualification of such person to be admitted as an advocate in the High Court; and shall, if required, attend the Court personally for the purpose of giving further explanation touching the same.

Note 4: In sub-Rr.(13) and (14) of Rule 1 the words, "or the University of Utkal" were added vide Correction Slip No. 17.

(18) Any Attorney of the High Court who establishes to the satisfaction of the Court that he has bona fide practised as such for a period of three years and that he is a person of good character and ability, may be admitted to practise in the High Court as an advocate:

Provided that no Attorney shall be admitted as an advocate of the High Court without passing the final examination prescribed by sub-R.(11).

(19) Any person, who has taken a Degree in Law at any of the Universities established by Law in the United Kingdom or is a Barrister of England or Northern Ireland or a member of the faculty of advocates in Scotland, may be admitted as an advocate in the High Court if he has undergone a course of training for one year in the chambers of an advocate on the roll of the Assam High Court whose name appears in a list prepared by the Bar Council and approved by the High Court or has read in chambers with a Barrister in England whose name is approved by the inn of Court to which applicant belongs and has secured a certificate from such advocate or Barrister of his having undergone the training and acquired efficiency, or has practised as a barrister in England or Northern Ireland or as a member of the faculty of advocates in Scotland for a period of three years.

SCHEDULE - A

[Sub Rule (8)]

QUESTIONS AS TO DUE SERVICE OF ARTICLES TO BE ANSWERED BY THE APPLICANT

1. What was your age at your last birthday ?
2. Have you served the whole term of your articles at the place where the person or persons to whom you are articulated carried on his or their business, and if not, state for what reason ?
3. Have you at any time during the term of your articles been absent without the permission of the person or the persons to whom you were articulated, and, if so, state the length and occasions of such absence ?
4. Have you during the period of your articles been engaged, or concerned, in any, and, if any, what profession, business, or employment, other than your professional employment as clerk to the person or persons to whom you are articulated ?
5. Have you since the expiration of your articles been engaged or concerned and for how long a time, in any, if any, what profession, trade, business or employment, other than the profession of an advocate ?

SCHEDULE - B**[Sub Rule(8)]****QUESTIONS TO BE ANSWERED, AND CERTIFICATE TO BE GIVEN, BY THE PERSON OR PERSONS WITH WHOM THE CLERK MAY HAVE SERVED ANY PART OF HIS TIME UNDER ARTICLES**

1. Has A B served the whole period of his articles at the place where you carry on your business, and, if not state the reason ?
2. Has the said AB at any time during the period of his articles been absent, and, if so, state the length and occasions of such absence ?
3. Has the said AB during the whole period of his articles been engaged or concerned in any, and, if any, what profession, business or employment, other than his professional employment, as your articulated clerk ?
4. Has the said AB during the whole period of his clerkship, with the exceptions above-mentioned, been faithfully and diligently employed in your professional business of an advocate ?
5. Has the said AB since the expiration of his articles been engaged or concerned and for how long a time, in any profession, trade, business or employment, other than the profession of any advocate ?

And I do hereby certify that the said AB has duly and faithfully served under his articles of clerkship bearing date, etc., for the term therein expressed, and he is a fit and proper person to be admitted as an advocate of the High Court.

SCHEDULE - C**[Sub Rule (15)]**

1. What was your age at your last birthday ?
2. What is the date of your enrolment as a pleader, and where were you enrolled ?
3. Have you practised in one or several Courts ? State the periods during which you practised in each, and the dates of the beginning and end of each period.
4. Have you at any time been engaged or concerned in any, and, if any, what profession, business, or employment, other than that of a pleader? If so, when and for what period ?

SCHEDULE D

[Sub-rule(15)]

I, CD, District Judge (or subordinate judge, or Munsiff as the case may be), do certify that to the best of my belief AB practised in my Court regularly as a pleader from the of 19 to the day of 19 and that he was diligent and faithful in the performance of his duties, and that he is a fit and proper person to be admitted as an advocate of the High Court.

(Signature)

RULES REGARDING DRESS OF THE ADVOCATES⁵

Advocates appearing in the Supreme Court, High Courts, Subordinate Courts, tribunals or authorities shall wear the following as part of their dress which shall be sober and dignified.

(1) Advocates other than lady advocates —

(a) a black buttoned up coat, chapkan, achkan, black sherwani and white bands with Advocate's Gowns, or

(b) a black open breast coat, white shirt, white collar, stiff and white bands with Advocates Gowns.

In either case long trousers (white, black or black striped or grey) or Dhoti.

(2) Lady Advocates —

(a) Black and full or half sleeves jacket or blouse, white collar stiff or soft, with white bands with Advocates Gowns;

(b) Sarees, or Mekhala with chadar or phanek or long skirts (white or black) or Flare:

Provided further that the rule relating to the Dress of a Lady Advocate shall have been complied with if the jacket, blouse or saree, as the case may be, is of any mellow or subdued colour without any print or design;

Provided that the wearing of Advocate's Gowns shall be optional except when appearing in the Supreme Court or in a High Court;

Provided further that in courts other than the Supreme Court, High Court, District Court, Sessions Court or City Civil Court a black tie may be worn instead of bands.

Note 5: This rule was inserted by Correction Slip No. 79 and the words "or mekhala with chadar or phanek" were inserted in Rule 2(b) vide correction Slip No. 80.

PRECEDENCE BETWEEN BARRISTERS AND ADVOCATES

2. The order of precedence between Barristers and Advocates shall be the following:

- (i) Barristers shall take precedence inter se from the date of their respective calls to the Bar in England, Scotland or Ireland.
- (ii) Advocates shall take precedence inter se from the date of their respective admissions in this Court.
- (iii) A Barrister shall be entitled precedence over an advocate only if the former has been called to the Bar in England, Scotland or Ireland before the latter was admitted as an advocate.

RULES REGARDING ADVOCATE'S LICENSED CLERKS, OTHER THAN ARTICLED CLERKS

3. (1) In these rules, (i) "licensed clerk" means a clerk, other than an articulated clerk, who is employed by an advocate of the High Court in connection with his legal business, and is licensed as such under this rules, and (ii) 'form' means a form prescribed by these rules.⁶

(2) The licensing authority shall be the Registrar, hereinafter called the licensing authority, who shall maintain a register, in Form No 15 (civil), Appendix I (*See at page No. 217*) of all licensed clerks of advocates.

(3) Every application, which shall be on plain paper, for the grant of a license to a clerk, shall be made to the licensing authority by the advocate desiring to employ him, and shall contain the following particulars:

(i) the name, father's name and residence of the person proposed to be employed as a clerk. These details being written on the application by the clerk with his own hand,

(ii) a certificate from the advocate that the person proposed is, to the best of his belief, fit to be employed and will be employed bona fide in his own service and for the purpose of his legal business.

(4) On receipt of the application referred to in sub-R.(3) if the licensing authority, after such enquiry as he may consider necessary, is of the opinion that there is no reason to refuse the grant of a license, shall cause the name of the person proposed to be licensed as a clerk to be entered in the register in Form No. 15 (civil) and a licence in Form No. 16 (civil) Appendix I (*See at page No. 218*) to be issued to him through the advocate concerned.

Note 6: If in the discharge of this duty, the advocate seems satisfied that swearing of an affidavit by his clerk would meet the requirements of law, he can definitely call upon his clerk to swear the affidavit. *Someswar Gogoi -Vs- State of Assam & Ors. (1988) 1 GLR 440.*

(5) The licence issued under sub-R.(4) shall be strictly non transferable and shall be valid only for the year for which it is granted.

(6) If an advocate desires to have the license granted to his clerk renewed for the following year, it shall be returned to the office of the licensing authority, not later than the 1st December with a request made to this effect from the advocate on the reverse of the licence.

(7) The licensing authority on receipt of a licence presented for renewal in the manner prescribed by sub-R. (6) shall unless he has reasons for not renewing it cause the necessary entries to be made on the back of the licence, as a token of renewal, by an officer to be authorised by him in this behalf.

(8) Not more than two clerks shall ordinarily be licensed at a time to an advocate. The licensing authority may, for good reasons and in special cases, allow an advocate to employ any licensed clerk in excess of this number.

(9) No clerk employed by an advocate of the High Court shall be allowed access to any of the offices of the High Court in accordance with the rules of the Court and the general instructions contained in R. 11, chapter I of these rules and the schedule therein referred to, unless he is for the time being a licensed clerk within the meaning of these rules.

(10) In cases in which it is alleged that a licensed clerk is guilty of misconduct, the licensing authority may, for reason to be recorded in writing and after hearing the licensed clerk in his defence, if he so desires, order the removal of his name from the register and the cancellation of his licence, and on the passing of such order the said clerk shall cease to be a licensed clerk who shall forthwith deliver up his licence to the licensing authority.

(11) When an order has been passed under sub-R. (10), the fact shall be notified in such manner as the licensing authority may direct and communicate to the advocate whose licensed clerk the person concerned was and also Bar Association, High Court Assam.

(12) No application shall be made by an advocate for the grant of a licence to a person whose name has been removed from the register of licensed clerks under sub-R.(10) unless the said order of removal has been, by a subsequent order of the licensing authority, withdrawn or modified. When an order for removal is subsequently withdrawn or modified, the fact shall be notified in the manner prescribed by sub-R.(11).

(13) No clerk licensed as the clerk of one advocate shall do business in the High Court or in the offices thereof on behalf of any other advocate:

Provided that when a licensed clerk or any advocate is unavoidably absent from Court on any day or days, such advocate may, in writing, authorise the licensed clerk any other advocate to transact business on his behalf on the particular

day or days during which his own clerk may be absent.

RULES REGARDING TOUTS

4. Any person who acts as a clerk of an advocate, without a licence granted to him accordance with R.3, shall be deemed to be a "tout" within the meaning of section 3 of the Legal Practitioners Act 1879 and in this respect the provisions of Sections 36 of the Act shall apply.

APPENDIX I

RULES UNDER SECTION 12(1) OF THE INDIAN BAR COUNCILS ACT, 1926
(XXXVIII OF 1926)

1. Upon a complaint that an advocate has been guilty of misconduct being referred by the High Court to the Bar Council, the complaint and all affidavits or other documents annexed thereto shall be forwarded by the Bar Council to the president of the Tribunal.

2. (1) The enquiry by the Tribunal shall be private, but shall as far as possible be conducted as action or proceeding before a Court exercising civil jurisdiction:

Provided that no complaint, shall, unless the Tribunal otherwise directs, be dismissed merely for defaults on the part of the complainant to appear or to be present or to proceed with the complaint. The Tribunal may if it thinks fit nominate some person, who may or may not be a member of the Council, to conduct the enquiry on behalf of the complainant. The complainant and the advocate concerned shall be entitled to appear advocates.

(2) In default of the complainant or advocate concerned or either of them appearing, the Tribunal may proceed ex-parte and may make such inquiry as it thinks fit.

3. If after considering the complaint and the examination of the advocate concerned, the Tribunal is of opinion that a prima facie case has not been made out against the advocate concerned, it may return the papers to the Bar Council, who shall return the papers to the High Court, with a finding to that effect.

4. If the Tribunal consider that further inquiry is necessary, it shall-

(a) frame a charge against the advocate;

(b) call from the High Court for all such further documents and records relating to the case as may be necessary;

(c) shall fix a date, hour and place for the inquiry of the Tribunal which shall not be later than fourteen days from the receipt of the summons by the party;

(d) hand over to or cause a copy of the charge to be served upon the complainant and the advocate.

5. The Tribunal shall thereafter proceed to hear the complainant, if any, and take all such evidence as may be adduced in support of the complaint. The Tribunal shall thereafter take all such evidence as may be adduced on behalf of the advocate concerned.

6. The process issued by the Tribunal shall be served on the parties or witnesses either by registered post or through the District Judge concerned.

7. The party which calls any witness or witnesses shall pay from time to time for the expenses of the necessary process according to the scale laid down by

the High Court from time to time for witnesses in the court before any such process can be issued.

8. The Tribunal may adjourn the enquiry from time to time to a date and place to be fixed from time to time and may make such orders and give such directions in regard to the inquiry and all matters relating to the same, at it may think fit, and shall make such orders as may be necessary in regard to matters specified in Indian Bar Councils Act, (xxxviii of 1926) Section 13,

9. The advocate concerned shall be a competent witness, on his own behalf and if so examined, he may be cross examined by the prosecutor or his representative.

10. The finding of the majority of the Tribunal shall be the finding of the Tribunal. A dissenting member of the Tribunal may record his finding separately.

11. If at any stage of the inquiry the Tribunal is of opinion that it is unnecessary to proceed further, it may record a finding to that effect with its reasons and remit the same to the Bar Council who in turn will forward the same to the High Court.

12. The findings of the Tribunal should be forwarded through the Bar Council along with dissenting finding (if any) to the High Court together with the record of the evidence.

13. Where a case has been referred under sub-section(2) of section 10 of the Act to District Judge, the procedure indicated above shall, with such modifications and adaptations as may be necessary, be followed.

14. On receipt of the findings of the Tribunal or the District Judge, as the case may be, a date shall be fixed for the hearing of the case and notice thereof given to the Bar Council, The Advocate General and the advocate, who may file objections to such finding within 10 days of the receipt of such notice.

15. (1) When the finding is adverse to the advocate he or his advocate shall be heard first. The Advocate General or the advocate for the Bar Council will then, if necessary, be heard in reply. Thereafter the advocate will, if necessary, be heard again in reply (2) Where the finding is in favour of the advocate, the Advocate General or the advocate for the Bar Council, will, if they desire to challenge the finding, be heard first. The Advocate will then, if necessary, be heard in reply. Thereafter the advocate General or the advocate for the Bar Council will, if necessary, be heard in reply to the advocate.

16. A copy of the final order passed by the Court shall be sent by the Register to the Bar Council for record.

17. Generally and so far as may be, but without prejudice to the foregoing rules, the Court shall observe the procedure prescribed by the Civil Procedure Code, 1908.

APPENDIX II

RULES UNDER SECTION 16 OF THE INDIAN BAR COUNCILS ACT, 1926

1. The fees payable as cost by any party in respect of fees of his adversary's advocate of all proceedings in the High Court shall be in the discretion of the Court and shall ordinarily be fixed and payable in accordance with the rules relating to cost of Chapter XII, part III of the rules of this High Court.

2. The fees payable as cost by any party in respect of fees of his adversary's advocate upon all proceedings in any Court subordinate to the High Court shall be in the discretion of that court and shall ordinarily be according to the scales prescribed for pleaders in the General Rules and Circular orders (Civil) of the High Court.

APPENDIX III

RULES UNDER SECTION 6(2) OF THE INDIAN BAR COUNCILS ACT, 1926

1. In this rules unless there is anything repugnant in the subject or context and subject to the provisions of R.36.

(i) "Act" means the Indian Bar Councils Act, 1926.

(ii) "Advocate General" means the Advocate General of Assam;

(iii) "Bar council" means the Bar Council to be constituted for the High Court;

(iv) "Barrister" means a barrister of England or Ireland or a member of the Faculty of Advocate in Scotland;

(v) "Chairman" means the Chairman of the Bar Council as provided by section 4(4) of the Act;

(vi) the "High Court" means the High Court of Assam;

(vii) "Secretary" means the Secretary or other person to be appointed by the Bar Council to perform the duties of a secretary however designated and shall include any person appointed under R. 8;

(viii) Voter means any person entitled by virtue of the Act to Vote at election to the Bar Council.

2. Elections of members of the Bar Council shall be held at such place and on such day and within such hours as the Chairman may appoint but not later than two months after the terms of office of elected members who shall next vacate office shall expire.

3. (i) Notice of such, time and place shall be given by publication in the Assam Gazette over the signature of the Secretary upon a date not less than 30 days before the date of the election.

(ii) Copies of such notice shall also be sent by the Secretary to the Advo-

cate-General and to the President of Bar Association to be affixed as they may direct.

4. Every candidate for election as a member of the Bar Council shall be proposed by ten voters by letter addressed to the Secretary and signed by each of such voters and delivered to the Secretary not less than 15 and not more than 30 days before the date fixed for the election.

5. The Secretary may submit to the Advocate-General any proposal as to the validity of which he may have any doubt and subject to the provisions of Rr. 15, 16, 18, and 19 the decision of the Advocate-General shall be final.

6. In the event of the Advocate-General deciding that a proposal is invalid the fact shall be notified forthwith to the candidate by the Secretary and the candidate may thereupon submit another proposal within the time prescribed by R 4 but in default of the candidate being so notified he shall not be entitled to submit another proposal after the time prescribed by R.4.

7. Not less than seven days before the date fixed for the election the Secretary shall cause the names of all candidates duly proposed to be posted on a notice board in the Court House and shall send lists of the said names to the Advocate-General and the President of the Bar Association to be affixed as they may direct.

8. Elections and all matters relating thereto provided for by these rules shall be conducted by the Secretary or such person as the Bar Council may appoint to discharge the duties of the Secretary under these rules and the Secretary or such person may with the approval of the Chairman appoint any person to assist him in the conduct thereof.

9. On the day and time and at the place appointed for the election a voting paper bearing the names of all candidates duly proposed and stating the number of members to be elected shall be handed by the Secretary to each voter who shall apply in person thereof.

10. (i) A voter shall vote by placing a cross against the name of any candidate for whom he desires to vote. He shall not place a cross against more names than the number of members to be elected. He shall not give more than one vote to one candidate.

The voting paper shall not be signed by the voter. In the event of any erasure, obliterations or alterations on the voting paper or of an excessive number of votes purporting to have been given or of the voting paper purporting to have been signed by a voter the voting paper shall be deemed to have been defaced and no votes purporting to have been given there by shall be counted.

(ii) The decision of the Advocate General whether a voting paper has or has not been defaced shall be final.

11. The voter after voting shall personally return the voting paper to the Secretary who shall place it in a sealed box and the name of the voter shall be struck off the list of voters.

12. At the conclusion of the voting the votes shall be counted and the voting papers shall thereupon be placed upon a box and sealed and the names of the candidates shall be set out in a list which shall specify the number of votes obtained by each. The list so prepared shall be filed by the Secretary as of record.

13. (i) The number of candidates who shall be declared to have been elected shall be as many as shall with members, if any, who do not go out of office complete the total number of ten elected members.

Such candidates shall be ascertained by taking one by one from the list prepared under R. 12.

Firstly, of the candidate qualified under Section 4 (2) of the Act, the candidates with most votes sufficient to bring the number of elected members qualified under that Section of the Act to the number specified therein;

Secondly, if the number required by Section 4(2) of the Act, of members qualified as therein provided is not then complete with members, if any, who do not go out of office, as many candidates with most votes so qualified next in the said as will complete that numbers of members so qualified; and

Thirdly, as many candidates, with most votes as may be then required will members, if any, who do not go out of office, to make the number of elected members up to ten.

(ii) In the event of an equality of votes the Secretary shall draw lots in the presence of the Advocate-General for the purpose of deciding the priority between candidates having the same number of votes.

14. A list of candidates declared elected to the Bar Council shall be prepared and signed by the Secretary and submitted by him to the Advocate-General who shall certify the same by the signature and the same shall be filed as of record by the Secretary. Copies thereof shall be published in the Assam Gazette and send to the Advocate-General and President of the Bar Association to be affixed as they may direct.

15. A candidate may contest the validity of the election of a candidate declared to have been elected to the Bar Council by letter signed by him and addressed to the Secretary. Such letter shall state the grounds upon which the validity of such election is contested and shall be delivered to the Secretary within seven days of the date of the publication in the Assam Gazette of the list required by R. 14 to be so published and after the expiry of seven days from the date of such publication the validity of the election of a candidate shall not be challenged by a candidate on any ground whatever.

16. At any time within 30 days from the date of publication aforesaid of the said list the Advocate-General may refer in writing to the committee constituted by R.18 any question relating to the validity of the election of a candidate declared to have been elected to the Bar Council.

17. At the expiry of 4 days from the publication aforesaid of the said list the election shall be final and the voting papers shall be destroyed; provided that in the event of the validity of an election being challenged under R.15 or of a reference under R.16 the voting papers shall be preserved and dealt with as the committee appointed under R.18 may direct.

18. All matters arising under R.15 or 16 shall be decided by a committee of two Judges of the High Court to be nominated by the Chief Justice and the said committee shall be at liberty to hold such enquiry and in such manner as it may seem fit. In case of difference the matter shall be referred to a third Judge by the Chief Justice and the decision of the majority shall be final as to any question that may arise at the said enquiry and in relation thereto and upon any matter referred to or to be enquired into by them under these rules.

19. If the said committee shall decide that a candidate has not been validly elected, the vacant place of the Bar Council shall be filled as herein after provided in the case of a casual vacancy.

20. (i) On the expiry of three years from the date of the first meeting of the Bar Council all elected members and further at the expiry of every three years thereafter, three of the elected members of the Bar Council shall go out of office.

(ii) A casual vacancy unfilled on the date upon which elected members go out of office as aforesaid shall be deemed going out of office for the purpose of this rule and a member who prior to the said date shall have stated that he will not seek re-election which shall be recorded by the Secretary shall be deemed to go out of office and members ceasing to be members by virtue of R.24 shall be deemed to go out of office.

(iii) the members to go out of office every three years shall be those who have been longest in office since their last election. If such number exceeds three, the Council shall draw lots under the direction of the Chairman as to who shall go out of office.

(iv) Elected members going out of office shall be eligible for re election. No elected member who under R.25 has caused a casual vacancy shall be eligible for re-election at the next election.

21. Nominated members shall go out of office at the expiry of three years from the date of the first meeting of the Bar Council and annually thereafter on the further expiry of one year from the said date but shall be eligible for re-nomination.

22. A casual vacancy among nominated members of the Bar Council shall be filled by nomination by the High Court.

23. A casual vacancy among elected members of the Bar Council shall be filled by the Council appointing the candidate with most votes being already a member of the Bar Council who failed at the last preceding election to secure election. In the event of two or more candidates having received the same number of votes the Council shall draw lots under the direction of the Chairman. Should there be no such candidate qualified to fill the vacancy the Council shall elect a duly qualified advocate there to in such manner as the Chairman may determine; provided that any advocate put forward for election shall have been proposed by one and seconded by another member of the council.

24. A member of the Bar Council who became a member thereof under the provisions of the last preceding rule shall cease to be a member of the Bar Council on the date following upon which members shall go out of office under the provisions of Rr.20 and 21 but shall be eligible for re-election.

25. Any elected member of the Bar Council who shall fail to attend three consecutive meetings of the Bar Council or two consecutive meetings held within period of two months shall be deemed to have vacated his seat and the same be deemed a casual vacancy and he shall not be eligible for appointment under R.23:

Provided that an elected member may obtain leave of absence from the Council for a period of not more than three months once during his term of office which may be granted to him retrospectively.

26. The Bar Council shall be deemed duly constituted notwithstanding any vacancy in elected or nominated members.

27. Meetings of the Bar Council shall be convened by the Secretary, under the direction of the Chairman, in his absence from Guwahati, of the Vice-Chairman, who shall determine the time and place thereof; provided that no meeting shall be convened for any date falling within a vacation of the High Court.

28. Notices of meetings of the Bar Council shall be given as the Bar Council may from time to time determine.

29. The Bar Council shall elect from among their members Chairman and a Vice-chairman who shall hold office until they or either of them shall resign the Bar Council or until another Chairman or Vice-Chairman shall be elected.

30. The election of the chairman and the Vice Chairman shall be by ballot to be held in such manner as the Chairman may determine:

Provided that no member of the Bar Council shall be deemed to have been duly elected as Chairman and Vice-Chairman unless they shall have secured a

majority of votes of the members present.

31. The election of the Chairman and the Vice-Chairman shall be held at the first meeting of the Bar Council convened after an election of members:

Provided that the Chairman may adjourn the election should no member have secured majority of votes as provided by R.30;

Provided further that the first meeting of the first Bar Council and if such meeting be adjourned as provided above at the adjourned meeting, the members present will elect a chairman for the meeting.

32. At all meetings of the Bar Council five members present shall form a quorum.

33. Resolutions of the Bar Council shall be by show of hands. Each member present shall have one vote and the Chairman of the meeting shall have a casting vote.

34. No matter determined by a resolution of the Bar Council shall be reconsidered or reopened within six months from the date of such resolution and the Chairman shall decide if a matter is within this rule and his decision shall be final.

35. The Bar Council may make such rules of business as it may think fit not inconsistent with the Act or these rules.

36. For the purposes of the first election to be held under the Act and these rules-

(i) In Rr 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15 "Registrar" shall be substituted for "Secretary".

(ii) In R. 2 "Chief Justice of the High Court" shall be substituted for "Chairman".

(iii) In Rr.5, 6 and 10(ii) the words "such Judge of the High Court as the Chief Justice may appoint" shall be substituted for the words "the Advocate General".

(iv) From R. 8 the words "or such person as the Bar Council may appoint to discharge the duties of the Secretary under these rules" and the words "or such person" and the words "with the approval of the Chairman" shall be deleted.

(v) To R.12 the words "and a copy send to the Chairman of the Bar Council when constituted" shall be added.

(vi) From R.13 (ii) the words "in the presence of the Advocate General" shall be deleted.

(vii) From R.14 the words "and submitted by him to the Advocate General who shall certify the same by his signature" shall be deleted.

(viii) "Registrar" means the Registrar of the High Court and shall include any

person appointed by him under R.8.

APPENDIX IV

RULE UNDER SECTION 15(B) OF THE INDIAN BAR COUNCIL ACT GOVERNING THE CONDITIONS SUBJECT TO WHICH ADVOCATE OF OTHER HIGH COURTS MAY BE PERMITTED TO PRACTICE IN THIS COURT

An advocate of any other High Court in India whose name is not entered on the roll of advocates of this High Court is not entitled as of right to plead and practice in this Court unless previous permission is obtained from the Chief Justice on a formal application made in that behalf.

SCHEDULE - E

GUIDELINES REGARDING DESIGNATING AN ADVOCATE AS SENIOR ADVOCATE UNDER THE PROVISIONS OF SECTION 16 OF THE ADVOCATES ACT, 1961⁷

1. The High Court may designate an Advocate as Senior Advocate, if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law, the said Advocate is deserving of such distinction.

2. Such designation as Senior Advocate shall be considered on the written proposal made by —

- (i) the Chief Justice ; or
- (ii) any sitting Judge of the Gauhati High Court ; or
- (iii) any Advocate General of the Gauhati High Court provided he himself is a Senior Advocate ; or
- (iv) two existing Senior Advocates of the Gauhati High Court.

3. No person shall be eligible to be designated as Senior Advocate unless—

Note 7: These Guidelines were formulated by Notification No.HC.XI-06/96/Pt/4510/RC, dated 25.11.1998 and the Schedule-E of Appendix-IV under Chapter-XIV of the Gauhati High Court Rules was repealed and substituted. The earlier Schedule-E read as follows :

1. The Chief Justice and judges may, with consent of the Advocate, designate an advocate as Senior Advocate if in their opinion by virtue of his ability, standing at the Bar or Special knowledge or experience in law he is deserving of such distinction.

2. The Advocate to be designated as Senior Advocate shall ordinarily be one of not less than ten years' standing.

3. Upon conferment of the distinction, the Registrar shall notify the same to the Advocate concerned, to the president of the High Court Bar Association and the Council of Assam/India, and the Registrar of the Supreme Court, New Delhi.

4. An Advocate on being designated as Senior Advocate shall, in the matter of practice, be subject to such restrictions as the Bar Council of India may, in the interest of legal profession prescribe from time to time.

- (a) he has completed the age of 35 years ;
- (b) has a minimum of 10 years standing as an Advocate of which 5 years practice should be in any Court within the jurisdiction of the Gauhati High Court.
- (c) is a permanent resident of any of the States under the jurisdiction of the Gauhati High Court.

(d) has the income of not less than 1 lakh per annum ;

Provided that such a person is liable to be taxed under the Income Tax Act ; and in case of those who are not liable to pay tax as statement to the extend of income shall be furnished.

Provided further that the High Court for the reasons to be recorded in writing, may grant exemption to any individual member from the above requirements regarding income ;

4. While calculating the aforesaid standing of 10 years, the period spent by a Judicial Officer during his service career shall be taken into consideration.

5. The proposal shall be in the form prescribed.

6. Consent of the concerned Advocate :

So far clauses (i) and (ii) of R.2 are concerned, a proposal may initiated after ascertaining the inclination of the Advocate concerned. So far clauses (iii) and (iv) of Rule 2 are concerned, prior consent of the Advocate concerned shall be appended to along with the proposal.

7. Immediately on receipt of the proposal, the same shall be entered in a Register maintained in the Registry.

8. Consideration of the proposal by the High Court :—

(a) The proposal for designation of an Advocate as Senior Advocate shall be considered at a meeting of the Full Court [except in cases mentioned in Rule 8(c)]⁸. It shall be accepted only if in such meeting not less than two third of the total number of Judges present are in favour of accepting the proposal.

(b) A proposal once rejected, shall not be considered again for designation as Senior Advocate, unless two years have expired since the date of such consideration.

[(c) In case of persons holding the office of Advocate General of any State under the jurisdiction of the Gauhati High Court, the designation of such Advocate as Senior Advocate may be made by the Chief Justice.]⁸

9. The designation of Senior Advocate shall be liable to be cancelled after due notice in the event of it being found that he has violated any or all of the provisions of the Rules prescribed by the Bar Council of India under Sections 16(3) and 49(1)(g) of the Act as provided at Annexure "A" of these rules.

10. Upon an Advocate being designated as Senior Advocate, or on cancellation of such designation, the Registrar General shall communicate the same to the Supreme Court of India, all the High Courts in India, the Secretary to the Bar Council of India, the Secretary to the Bar Council of Assam, Meghalaya, Manipur,

Note 8 : Rule 8(c) — Inserted vide Notification No. HC.XI-11/06/1344 dated 20.11.2006

Tripura, Nagaland, Mizoram and Arunachal Pradesh, the Advocate General of the concerned States, all the Districts & Sessions Judges subordinate to the High Court and to the Advocate concerned.

11. A record of all such decisions shall be maintained in the Registry of the High Court.

12. On notification of these guidelines, the earlier/previous Rules will stand repealed.

FORM OF PROPOSAL FOR DESIGNATION AS SENIOR ADVOCATE

1. Name of the Advocate :
2. Permanent Address :
3. Educational Qualification :
4. Date of birth :
5. Date of enrolment as Advocate :
and where enrolled.
6. Number in the Roll of Advocates :
maintained by the State Bar Council
and date thereof.
7. Is the Advocate under proposal :
an assessee under the Income Tax Act
in respect of his professional income.
If so, give details of the income
assessed for the last three years and
permanent Income Tax A/C Number.
8. Other information (optional), :
if any, including legal aid work
publication of books, journals,
participation in Seminar/Conference,
association with any
Faculty of Law etc. etc.

Date:

SIGNATURE OF PROPOSER

I hereby express and give my consent to be designated as Senior Advocate by the Gauhati High Court.

Dated this.....day of

SIGNATURE OF THE ADVOCATE CONCERNED

By order,
Sd/-

REGISTRAR GENERAL

GAUHATI HIGH COURT

ANNEXURE - A**RESTRICTIONS ON SENIOR ADVOCATES***

[Rules under Sections 16(3) and 49 (1) (g) of the Act]

Senior Advocate shall, in the matter of their practice of the profession of law mentioned in Section 30 of the Act, be subject to the following restrictions:

(a) A Senior Advocate shall not file a Vakalatnama or act in any Court, or Tribunal or before any person or other authority mentioned in Section 30 of the Act.

Explanation — “To act” means to file an appearance or any pleading or application in any Court or Tribunal or before any person or other authority mentioned in Section 30 of the Act, or to do any Act other than pleading required or authorised by law to be done by a party in such Court, or Tribunal or before any person or other authority mentioned in the said section either in person or by his recognised agent or by an advocate or an attorney on his behalf.

(b) (i) A Senior Advocate shall not appear without an advocate on record in the Supreme Court, or without an advocate in part (II) of the State Roll in any Court, or Tribunal or before any person or other authorities mentioned in Section 30 of the Act.

(ii) Where a Senior Advocate has been engaged prior to the coming into force of the rules in this Chapter, he shall not continue thereafter unless an advocate in part II of the State Roll is engaged along with him; Provided that a Senior Advocate may continue to appear without an advocate in part II of the State Roll in cases in which he had been briefed to appear for the prosecution or the defence in a criminal case if he was so briefed before he is designated as Senior Advocate or before coming into operation of the rules in this Chapter as the case may be.

(c) He shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind in any Court, or Tribunal or before any person or other authority mentioned in Section 30 of the Act or undertake conveyancing work of any kind whatsoever. This restriction, however, shall not extend settling any such matter as aforesaid in consultation with an advocate in Part-II of the State Roll.

(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocates.

(d) He shall not accept directly from a client any brief of instructions to appear in any Court, or Tribunal, or before any person or other authority in India.

(e) A Senior Advocate who had acted as an advocate (junior in a case, shall not after he has been designated as a Senior Advocate) advice on grounds of appeal in a Court of appeal or in the Supreme Court, except with an advocate as aforementioned.

(f) A Senior Advocate may in recognition of the services rendered by an advocate in part II of the State Roll appearing in any matter pay him a fee which he considers reasonable.¹⁰
