

## **PROFESSIONAL MISCONDUCT**

Misconduct means dereliction of duty. Professional misconduct means dereliction of duty relating to Legal profession. Under S.35 of the Advocates Act, An Advocate is punishable not only for professional misconduct but also for other misconduct. Other misconduct means a misconduct not directly connected with the legal profession.

Professional misconduct arises as a result of serious dereliction of duties to the court, to the client, to the opponent, to the colleagues, to the profession, to the public etc. Following are some of the instances of professional misconduct.

1. Making false allegation against judicial officers.
2. Deliberately lodging groundless criminal complaint.
3. Making groundless and insulting charges against witness.
4. Refusing to accept a case without justification.
5. Attending court proceedings in drunken state.
6. Attempting to influence judicial officers for favour.
7. Carrying on other trade or business.
8. Committing crimes.
9. Financing litigation.
10. Obtaining client's signature on blank papers.
11. Shouting slogans or holding demonstration in front of the court.
12. Approaching investigative officers for favour during investigation of a case.
13. Writing letter to the presiding officer in connection with the pending case.
14. Tampering with the witness
15. Suggesting the client to bribe the presiding officer.

16. Moving application before any court or authority before informing that a similar application has been presented before any authority or rejected by any authority.
17. An exclusively retained pleader accepting a case against the client from the opposite party.
18. Failure to appear in the proceedings of a case without any sufficient reason.
19. Retaining the judgement of the trial court with the intention of getting himself getting himself engaged in appeal.
20. Presenting the plaint with in sufficient court fee stamp, when the client has given money for the court fee.
21. Alleging partiality against presiding officer in open court.
22. Tampering with records and documents.
23. Writing letters to persons for soliciting cases.
24. Reporting no instructions from his client and subsequently appearing for the opposite party in the same suit.
25. Advertising about his profession.
26. Taking advantage of the ignorance and illiteracy of the clients, demanding money from them on false representations that is required for court purposes and misappropriating the same.
27. Misappropriation of decreed amount payable to the client.
28. Giving wrong advise to the client.
29. Taking money from the client for the purpose of giving bribe.
30. Suppression of truth.
31. Changing sides.
32. Indecent cross examination.
33. Committing contempt of court.
34. False identifications of deponents.
35. Gross negligence involving moral turpitude.

36. Appearing without authority ie. On forged vakalath.
37. Failure to attend the trial.
38. Attesting forged affidavit.
39. Abstaining from appearing in court on the ground of strike called by the Bar association.
40. Misleading the court resulting in erroneous order.

## **Punishment for misconduct**

The Disciplinary committee of the State Bar Council after hearing the Advocate concerned and the Advocate general comes to the conclusion that the misconduct is proved that it may pass any of the following orders, namely

- (i) Reprimand the Advocate.
- (ii) Suspend the Advocate from the practice for such period as it thinks fit.
- (iii) Remove the name of the Advocate from the Advocates Roll.

Punishment may be awarded depending on the gravity of misconduct established against him. The punishment to remove from the Advocates Roll is awarded only in the cases where the misconduct is of such nature that the Advocate is unworthy of remaining in the profession.

Where an Advocate is suspended from the practice he shall not practice in any court or tribunal or any authority or person during the suspended period.

Where notice is issued to the Advocate general, he may appear before the disciplinary committee in person or through any Advocate appearing on his behalf.

If the misconduct is not proved beyond reasonable doubt then the disciplinary committee shall dismiss the petition.

## **REMEDIES AGAINST THE ORDER OF PUNISHMENT**

**1. Appeal to the Bar council of India (s 37):** Any person aggrieved by the order of the disciplinary committee of the State Bar Council, or the Advocate general of the State may within 60 days from the date of the order may prefer an appeal to the Bar Council of India.

The appeal shall be filed in person or through by Advocate or by registered post. He must submit 5 copies of appeal memorandum along with the attested copy of the order of the State Bar Council.

Such appeal shall be heard by the disciplinary committee of the Bar Council of India and after hearing it may pass any order it deems fit ie., it can confirm. The order of the State Bar Council, or increase or reduce the punishment, or totally remove the punishment.

**2. Appeal to the Supreme Court :** Any person aggrieved by an order made by the Disciplinary committee of the Bar Council of India, or the Attorney General of India may within 60 days from the date of order prefer an appeal to the Supreme court. The Supreme Court after hearing the parties concerned shall pass any order as it thinks fit.

Normally, the Supreme court will not interfere with the concurrent findings of fact by the disciplinary committee of the Bar Council of India and the State Bar Council. If the finding is based on no evidence, then the court will examine it.

**3. Stay of the order:** For the convenience of filing an appeal against the order of the State Bar Council or the Bar Council of India, the aggrieved party can file an application before the concerned Bar Council which has passed the order to stay the

order still appeal is filed. If genuine grounds are there then the concerned Bar Council can stay the order.

Similarly, after filing the appeal before the Bar council of India or before the Supreme Court the aggrieved party can ask for the stay of the order still the disposal of the appeal. If the genuine grounds are there then the Bar Council or Supreme Court shall stay the order still the disposal of the appeal.