

ADVOCATES ORDINANCE (Cap. 2)

ADVOCATES (WEBSITE) RULES 2013

In exercise of the powers conferred by paragraph 17 (a) of the Advocates Ordinance of Sabah [Cap. 2], the Chief Judge with the concurrence of the State Attorney-General, has made the following rules:

Citation and commencement

1. (1) These Rules may be cited as the Advocates (Website) Rules 2013.
- (2) These Rules shall come into force on 1st June 2013.

Interpretation

2. For the purposes of these Rules –
 - (a) all references to “the Practice and Etiquette Rules” are to the Advocates (Practice and Etiquette) Rules 1988 [G.N.S. 16 of 1988] as amended or re-enacted from time to time. All references to specific Practice and Etiquette Rules are to the specific rules in the Advocates (Practice and Etiquette) Rules 1988;
 - (b) all references to “these Rules” mean the rules set out herein as may be amended from time to time by the Chief Judge with the concurrence of the State Attorney-General;
 - (c) all references to an advocate include a law firm, unless the context shall otherwise require;
 - (d) all references to laws include guidelines, directives, directions, rules and rulings whether or not having the force of law;

- (e) all references to applicable laws include applicable laws of Malaysia relating to publicity for an advocate and to rules and rulings prescribed by the Chief Judge with the concurrence of the State Attorney-General from time to time;
- (f) all references to a website include any website or webpage created by or for an Advocate or his firm;
- (g) "firm" means a sole proprietorship or partnership of advocates;
- (h) "Approved Information" means any one or more of the following:
 - (i) the name of the firm;
 - (ii) the address of the firm;
 - (iii) the telecommunication numbers of the firm;
 - (iv) the business hours of the firm;
 - (v) the year in which the firm or its predecessor in title was established;
 - (vi) the merger or association of that firm with any other firm or law organization, whether in Malaysia or elsewhere;
 - (vii) historical data of the firm or its predecessor in title;
 - (viii) the designation of "advocate" or "advocates";
 - (ix) the designation of "Justice of the Peace" or "Justices of the Peace";
 - (x) the designation of "Commissioner for Oaths" or "Commissioners for Oaths";
 - (xi) the designation of "Notary Public" or "Notaries Public";
 - (xii) the designation of "Agent for Trademarks and Patents" or "Agents for Trademarks and Patents";
 - (xiii) the area of practice engaged in by the firm or by the advocate or advocates practising in the firm;

- (xiv) the language proficiency of the advocate or advocates practising in the firm;
- (xv) the name of the advocate or advocates practising in the firm and whether he is a sole proprietor, partner or legal assistant of that firm;
- (xvi) the year of admission as an advocate of the advocate or advocates practising in the firm and whether he has been admitted as a practitioner in another jurisdiction;
- (xvii) the academic and professional qualifications of the advocate or advocates practising in the firm, and any award, decoration, merit or title conferred upon him or them;
- (xviii) such other information which has had the prior written approval of the Chief Judge; and
- (xix) "Website Address" shall mean the Universal Resource Locator (or more commonly known as the URL) of a particular website, and includes the domain name, title or any words necessary to gain access to a website.

Compliance

3. Every website (including the Website Address) shall comply with the Practice and Etiquette Rules, these Rules and all other applicable laws. For avoidance of doubt, this rule shall apply to each website notwithstanding that the name of the advocate or the name of his firm does not form part of the Website Address.

Presentation of website

4. The presentation of a website shall comply with the Practice and Etiquette Rules and an advocate who publicises his practice or practice of his firm within Malaysia shall not do so –

- (a) in a manner as will be likely to diminish public confidence in the legal profession or to otherwise bring the legal profession into disrepute; or

- (b) in a manner as may reasonably be regarded as being ostentatious, in bad taste, misleading, deceptive, inaccurate, false, sensational, intrusive, offensive or in any other way unbecoming the dignity of the legal profession.

Website Address

5. (1) The Website Address must be one acceptable to the Sabah Law Association.

(2) An Advocate shall report the Website Address of his website to the Sabah Law Association within one (1) month after the publication of the website on the Internet, or within one (1) month from the date of coming into effect of these Rules, whichever is the later. An Advocate shall also report to the Sabah Law Association any change to the Website Address, within one (1) month after date of such change.

(3) The absence of any response from the Sabah Law Association to the reporting of any Website Address or any change to a Website Address shall not be construed as an approval by the Sabah Law Association of the Website Address or any change thereto as reported; nor as confirmation by the Sabah Law Association that the website conforms to all applicable laws; nor as acquiescence by the Sabah Law Association to any contravention of applicable laws. The compliance with all applicable laws remains the primary obligation of the advocate.

Permissible information or materials

6. A website may contain the following information or matters:

- (a) Disclaimers may be inserted in a website provided that they appear on the home page (front page) of the website or are highlighted to the attention of visitors to the website by way of a prominent link appearing on the home page. However, such disclaimers should not breach any Rules made under the Advocates Ordinance (*Cap.2*) on disclaimers.
- (b) Link that connect a website to another website are generally permissible, provided that any website linked to a website shall comply with the Practice and Etiquette Rules, all applicable laws and these Rules.

- (c) Hidden text or hidden graphics which form part of the programming language or source code of a website and are therefore necessary for the creation of the website are permitted, provided that any such hidden text or hidden graphics does not –
 - (i) in a manner as will be likely to diminish public confidence in the legal profession or to otherwise bring the legal profession into disrepute; or
 - (ii) in a manner as may reasonably be regarded as being ostentatious, in bad taste, misleading, deceptive, inaccurate, false, sensational, intrusive, offensive or in any other way unbecoming the dignity of the legal profession.
- (d) An advocate may keep track of the number of visitors to his website, but such information shall not be published or made available to the public.
- (e) An Advocate may create means through his website for a visitor to contact him for the purpose of comments or inquiries on anything published on his website.
- (f) An Advocate may create or operate a website on or within another website, provided that the host website does not violate the Practice and Etiquette Rules, these Rules or any other applicable laws.
- (g) A website may provide such Approved Information as may be required to assist any person to make a decision whether to retain the relevant advocate in a particular matter or a website may enable any person to obtain further information from the advocate to assist that person in making such decision. An advocate shall avoid the establishment of a solicitor-client relationship directly or merely through his website.

Other permissible information or materials

7. (1) A website may be used by an advocate to publish a journal, magazine or newsletter relating to the practice of his firm, but such publication must contain only –
- (a) Approved Information;
 - (b) law notes; or

- (c) legal articles.

Provided that an advocate who has published a journal, magazine or newsletter under subrule (1) shall cause a copy of the journal, magazine or newsletter to be kept at his principal place of business for a period of at least 12 months from the date of its publication, and shall, upon being requested to do so by the Sabah Law Association, produce a copy of the journal, magazine or newsletter to the Sabah Law Association for inspection within the time as specified by the Sabah Law Association.

(2) A website may be used by an advocate to publish any notice for the purpose of conveying information regarding –

- (a) the commencement or dissolution of his practice;
- (b) the merger or association of his practice with the practice of any other advocate or firm;
- (c) the opening of any branch of his firm;
- (d) the admission, withdrawal, retirement, termination or resignation of any advocate to or from his firm, or the death of any advocate practising in his firm;
- (e) any change in the name, address or telecommunication numbers of his firm; or
- (f) such other matters as may be approved in writing by the Sabah Law Association.

(3) An advocate may publish in the website a notice regarding a vacant position in his firm and may in that notice state Approved Information, but the statement must not be of such nature as to reasonably give rise, in the opinion of the Sabah Law Association, to an inference that he is attempting, through the notice, to publicise his practice or the practice of his firm in a manner inconsistent with these Rules.

(4) An advocate who has publicized through a notice under subrule (2) or (3) shall cause a copy of the notice to be kept at his principal place of business for a period of at least 12 months from the date of its publication, and shall, upon being requested to do so by the Sabah Law Association, produce a copy of the notice of the Sabah Law Association for inspection within the time as specified by the Sabah law Association.

(5) Subrules (1), (2), (3) and (4) hereof are subject to compliance by the advocate with the Practice and Etiquette Rules, these Rules and all other applicable laws.

Information or material which is not permitted

8. (1) Without limiting the other provisions of these Rules and any applicable laws, the following material or information is not permitted on websites:

- (a) material or information which is indecent, obscene, false, offensive, defamatory or seditious under the laws of Malaysia;
- (b) publicity which is presented or published in a manner which is contrary to the laws (relating to publicity of Advocates and Solicitors) of Malaysia;
- (c) publicity which is presented or published in a manner which, in the opinion of the Sabah Law Association, is likely to diminish the confidence of the public as regards the legal profession of Malaysia or to otherwise bring the legal profession of Malaysia into disrepute;
- (d) publicity which is presented or published in a manner as may reasonably be regarded as being ostentatious, in bad taste, misleading, deceptive, inaccurate, false, sensational, intrusive, offensive or in any other way unbecoming the dignity of the legal profession;
- (e) publicity which makes any claim that he or any other advocate practising in his firm is a specialist or expert in any area of practice;
- (f) publicity which makes any direct or indirect reference to any case in which he or any other advocate practising in his firm had acted for any party to the case, including the number or proportion of cases that have been successfully undertaken by him or them, or to his earnings or the earnings of any other advocate practising in his firm;
- (g) publicity which states that any particular person is or has been his or his firm's client;

- (h) publicity which states anything that would be construed as offering any inducement to, or imposing any duress, upon any person as a means of obtaining professional business for himself or his firm;
- (i) publicity which makes any statement relating to the rates charged by him or his firm, or to his or his firm's method of charging;
- (j) publicity which makes any laudatory references to himself or his firm, or directly or indirectly extol the quality of the professional services provided by him or his firm;
- (k) publicity which makes any comparison with, or criticism in relation to, the charges for, or the quality of, services provided by any other advocate or firm;
- (l) publicity which incorporates the armorial bearings of the Malaysian Bar and Sabah Law Association;
- (m) publicity which refers to the appointment of an advocate currently or previously practising in his firm to a judicial office; or
- (n) any advertisement or publicity which relates to parties other than the advocate or his firm.

(2) Without prejudice to subrule 1 (m), an advocate who publicises the practice of his firm may, in the publicity, include in the name of his firm the name of an advocate who has been previously practising in his firm and who has been appointed to a judicial office, where prior to that appointment such name was part of the name of the firm.

(3) For the purposes of subrule 1 (d), a publicity is misleading, deceptive, inaccurate or false if –

- (a) it contains a material misrepresentation of fact;
- (b) it omits to state a material fact;
- (c) it contains any information which cannot be reasonably verified; or
- (d) it is likely to create an unjustified expectation about the results that can be achieved by the advocate or his firm.

No touting

9. (1) In accordance with rule 51 of the Practice and Etiquette Rules, nothing in these Rules shall be construed as permitting the doing of, or causing or allowing to be done, anything which, in the opinion of the Sabah Law Association, is for the purpose of touting (directly or indirectly); or which, in the opinion of the Sabah Law Association, is calculated to suggest that it is done for that purpose.

(2) Without prejudice to the generality of the foregoing, an advocate shall not engage the services of a service provider or any other person to promote his website or to give an advantage to the advocate over other advocates when an internet search is made.

Intellectual property rights

10. An advocate shall take appropriate measures to ensure that third parties' rights (including intellectual property rights) are not infringed in the development or presentation of his website.

Preservation of website materials

11. (1) Where a website does not incorporate multi-media effects, an advocate shall retain, at his principal place of business, a printed copy of such website page appearing in his website, including a copy of each version of the website as changes are introduced for a period of at least 12 months from the date of publication of each website page or each version of the website and shall, upon being requested to do so by the Sabah Law Association, produce the same to the Sabah Law Association for inspection within the time specified by the Sabah Law Association.

(2) Where a website incorporate multi-media effects, an advocate shall provide to the Sabah law Association, within the time specified by the Sabah Law Association, a copy of each website page appearing in his website, including a copy of each version of the website as changes are introduced, in a medium or format accurately reproducing the website (including all multi-media effects of the website) and readily accessible for viewing by the Sabah Law Association at its own premises.

Operation, maintenance, or access of website

12. Rule 52 of the Practice and Etiquette Rules shall apply to an advocate in connection with the operation or maintenance of, or access to, his website.

Cessation of practice

13. Upon the dissolution or cessation of practice of his firm, an advocate shall forthwith cause all access to his website to be terminated, and remove his website from the internet.

Made this 4th April 2013.

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM,
Chief Judge of the High Court in Sabah and Sarawak.

I concur with the making of the above Rules.

Dated this 11th April 2013.

DATUK RODERIC FERNANDEZ,
State Attorney-General Sabah.