

**APPENDIX-5****GAUHATI HIGH COURT (CONDITIONS OF PRACTICE OF ADVOCATES) RULES, 2010\***

NO.HC.XI-10/2008/ 114 /RC :- In exercise of the powers conferred by Section 34(1) of the Advocates Act, 1961 (Act No. 25 of 1961) and all other powers vested in it by law and in supersession of all previous orders, the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) (hereafter for short referred to as the High Court), hereby frames the following Rules laying down the conditions subject to which an Advocate shall be permitted to practice in this High Court and Courts subordinate thereto.

1. These Rules shall be named as The Gauhati High Court (Conditions of Practice of Advocates) Rules, 2010.

2. In these Rules unless there is anything repugnant in the subject or context, the word Advocate would have the same meaning as assigned by the Advocates Act, 1961.

3. Save as otherwise provided for in any law for the time being in force, no Advocate other than Designated Senior Advocate shall be entitled to appear, plead or act for any person in any Court in any proceeding unless he/she files an appointment in writing signed by such person or his recognized agent or by some other person duly authorised by or under a power of attorney to make such appointment and signed by the Advocate in token of acceptance or the Advocate files a memorandum of appearance in the form prescribed by the High Court.

Provided that where an Advocate has already filed an appointment in any proceeding, it shall be sufficient for another Advocate, who is engaged to appear in the proceedings merely for the purposes of pleading, to file a memorandum of appearance or to declare before the Court that he/she appears on instructions from the Advocate, who has already filed his appointment in the proceedings:

Provided further that nothing in Rule (2) contained shall apply to an Advocate, who has been requested by the Court to assist it as *amicus curiae* in any case or a proceeding or who has been appointed at the expense of the State to defend an accused person in a criminal proceeding.

Explanation A separate appointment or a memorandum of appearance shall be filed in each of the several connected proceedings, notwithstanding that the

same Advocate is retained for the party in all the party connected proceedings.

4. An Advocate, who is not on the Roll of Advocates of the Bar Council of the State, in which the Court is situated, shall not appear, act or plead in such Court, unless he files an appointment along with an Advocate, who is on the Roll of such State Bar Council and who is ordinarily practising in such court.

5. In case in which a party is represented by more than one Advocate, it shall be necessary for all of them to file a joint appointment or for each of them to file a separate one.

6. The acceptance of an appointment on behalf of a firm or partnership of Advocates shall be indicated by a partner affixing his own signature as a partner on behalf of the firm or partnership of Advocates.

7. An Advocate at the time of acceptance of his appointment shall also endorse on it his/her address, which address shall be regarded as one for service within the meaning of the Rule 5 of Order 3 of the Code of Civil Procedure, 1908 (as amended).

8. Where an Advocate appointed by a party in any of the proceedings is prevented by reasonable cause from appearing and conducting the proceedings at any hearing, he may instruct another Advocate to appear for him/her at that hearing.

9. (1) In civil cases, the appointment of an Advocate unless otherwise limited, shall be deemed to be in force to the extent provided in that behalf by Rule 4 of Order 3 of the Code of Civil Procedure, 1908 (as amended).

(2) In criminal cases, the appointment of an Advocate unless otherwise limited, shall be deemed to be in force until determined with the leave of the Court by writing signed by the party or the Advocate, as the case may be and filed in Court or on the demise of the Advocate or until all proceedings in the case end so far as regard the party.

(3) For the purposes of sub-rule (2) a case shall be deemed to mean every kind of enquiry, trial or proceedings before a Criminal Court whether instituted on a police report or otherwise than on a police report, and further

(i) an application for bail or for alteration/modification of the conditions thereof or for cancellation of bail in the case;

(ii) an application for transfer of the case from one Court to another;

(iii) an application for stay of the case pending disposal of a civil proceeding in respect of the same transaction out of which the case arises;

(iv) an application for suspension, postponement or stay of the execution of the order or sentence passed in the case;

(v) an application for the return, restoration or restitution of the property

as per the order of disposal of property passed in the case;

(vi) an application for leave to appeal against an order of acquittal passed in the case;

(vii) any appeal or application for revision against any order or sentence passed in the case;

(viii) a reference arising out of the case;

(ix) an application for review of an order or sentence passed in a case or in an appeal, reference, revision or review arising out of the case;

(x) an application for making concurrent sentences awarded in the case or in an appeal, reference, revision or review arising out of the case;

(xi) an application relating to or incidental to or arising in or out of any appeal, reference, revision or review arising in or out of the case (including an application for leave to appeal to the Supreme Court);

(xii) an application or act for obtaining copies of documents or for the return of articles or documents produced or filed in any case or in any of the proceedings mentioned hereinabove;

(xiii) an application or act for obtaining the withdrawal of the refund or payment of or out of the moneys paid or deposited in the Court in connection with the case or any of the proceedings mentioned herein before (including money paid or deposited for covering the costs of the preparation and the printing of the Transcript Record of appeal to the Supreme Court);

(xiv) an application for the refund of or out of the money paid or recovered as fine or for the return, restitution or restoration of the property forfeited or confiscated in the case or in any appeal, reference, revision or review arising out of the case as per final orders passed in that regard;

(xv) an application for expunging remarks or observations on the records of or made in the judgment in the case or any appeal, reference, revision or review arising out of the case, and

(xvi) an application or proceedings for sanctioning prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898, or any appeal or revision arising from and out of order passed in such an application or proceeding shall be deemed to be proceedings in case:

Provided that where the venue of the case or the proceedings is shifted from one Court (Subordinate or otherwise) to another, the Advocate filing the appointment referred to in sub-rules (1) and (2) above in the former Court shall not be bound to appear, act or plead in the latter court, unless he files or he has already filed a memorandum signed by him in the latter Court that he has instructions from his client to appear, act and plead in that Court.

10. (1) Except when specially authorized by the Court or by consent of the party, an Advocate, who has advised in connection with the institution of a suit, appeal, or other proceeding or has drawn up pleadings in connection with such matter, or has during the progress of any suit, appeal, or other proceeding appeared, acted or pleaded for a party, shall not, unless he first gives the party whom he has advised or for whom he has drawn up pleadings, appeared, acted or pleaded an opportunity of engaging his services, appear or act or plead in such suit, appeal or other proceedings or in an appeal or application for revision for arising there from or in any matter connected therewith for any person whose interest is in any manner in conflict with that of such party:

Provided that the consent of the party may be presumed if he engages another Advocate to appear, act or plead for him in such suit, appeal or other proceeding without offering an engagement to the Advocate whose services were originally availed by him or on his behalf.

(2) Where it appears on the face of the record that the appearance of an Advocate in any proceeding for any party is prejudicial to the interest of the other party on account of the reasons mentioned in sub-rule (1) above, the Court may refuse to permit the appearance to be filed or cancel such appearance if it has already been filed, after giving the said Advocate an opportunity of being heard.

(3) An Advocate, who discloses to any party, any information confined to him in his capacity as an Advocate by another without the latter's consent shall not be protected merely by reason of his being permitted to appear, act or plead for the said party.

11. (a) The appointment of a firm or partnership of Advocates may be accepted by any partner on behalf of the firm.

(b) No such firm or partnership shall be entitled to appear, act or plead in any Court unless all the partners thereof are entitled to appear, act or plead in such Court.

(c) The name of the firm or partnership may contain the names of the persons who were or are members of the partnership but of no others.

(d) The names of all the members of the firm shall be recorded with the Registrar of the High Court and/or the District Judge, as the case may be, and the State Bar Council and the names of all the partners shall also be set out in the professional communications issued by the partners of the firm.

(e) The firm of Advocates shall notify to the Registrar General of the High Court and/ or the District Judge shall as the case may be, and the State Bar Council, any change in the composition of the firm or the fact of its dissolution as

soon as may be from the date on which such change occurs or its dissolution takes place.

(f) Every partner of the firm of Advocates shall be bound to disclose the names of all the partners of the firm whenever called upon to do so by the Registrar General of the High Court, the District Judge, the State Bar Council, any Court or any party for or against whom the firm or any partner thereof has filed the appointment or memorandum of appearance.

(g) In every case where a partner of a firm of Advocates signs any document or writing on behalf of the firm, he shall do so in the name of the partnership and shall authenticate the same by affixing his own signature as partner.

(h) Neither the firm of Advocates nor any partner thereof shall advise a party or appear, act or plead on behalf of a party in any matter or proceedings where the opposite party is represented by any other partner of the firm or by the firm itself.

12. No Advocate shall be permitted to file an appointment or memorandum of appearance in any proceedings in which another Advocate is already on record for the same party save with the consent of the former Advocate on record or the leave of the Court, unless the former Advocate has ceased to practice or has by reason of infirmity of mind or body or otherwise become unable to continue to act.

13. An Advocate may correct any clerical error in any proceedings with the previous permission of the Registrar General or an officer of the Court specially empowered in this behalf by the Court obtained on a memorandum stating the correction desired.

14. No Advocate, who has been debarred or suspended or whose name has been struck off the Roll of Advocates, shall be permitted to act as a recognized agent of any party within the meaning of Order 3 of the Code of the Civil Procedure (as amended).

15. No Advocate, who has been found guilty of contempt of court, shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt.

16. Advocates appearing before the Court shall wear the following dress: -

(1) Advocates other than lady Advocates-

(a) Black buttoned-up coat (Chapkan, achkan or sherwani), Barristers or Advocates gown and bands.

(b) Black open collar coat, white shirt, white collar, stiff or soft, with Barristers gown and bands.

(2) Lady Advocates-

(a) Black full or half sleeve jacket, or blouse, white collar stiff or soft, with white bands and Advocates gowns.

(b) Mekhala-Sadar or Sarees or Long skirts or Traditional Community Dress (white or black or any mellow or subdued colour without any print or design) or Flare or Trouser (white, black or black striped or grey) or Churidar Kurta or Salwar Kurta with or without dupatta white or black.

Provided that the wearing of Barristers/ Advocates gown and bands shall not be compulsory for Advocates appearing in Courts subordinate to the High Court.

Provided further that the Advocate appearing in the Courts subordinate to the High Court may wear black tie.

17. Strike by Advocate/Advocates may be considered interference with the administration of justice and Advocate(s) participating in the strike may be barred from practicing before the High Court and the Courts subordinate to it.

By Order

Sd/-

Registrar General

#### NOTE

The earlier Rules "RULES MADE BY THE GAUHATI HIGH COURT UNDER S.34 (1) OF THE ADVOCATES ACT (ACT 25 OF 1961)" read as under

Notification No.HC-1/8/66/7552-RC, dated 4.10.1972 The Hon'ble the Chief Justice and Judges of the Gauhati High Court are pleased to make the following rules under Section 34 (1) of the Advocates Act, 1961:

1. In these rules unless there is anything repugnant in the subject or context,-

(i) "Advocate" shall include a partnership or firm of advocates;

(ii) "Bar Council" shall mean the Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura.

2. Save as otherwise provided for in any law for the time being in force, no advocate shall be entitled to appear, plead or act for any person in any Court in any proceeding unless the advocate files an appointment in writing signed by such person or his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and signed by the advocate in token of its acceptance:

Provided that where an advocate has already filed an appointment in any proceeding, it shall be sufficient for another advocate, who is engaged to appear in the proceedings merely for the purposes of pleading to file a memorandum of appearance or to declare before the Court that he appears on instructions from the advocate who has already filed his appointment in the proceedings;

Provided further that nothing herein contained shall apply to an advocate who has been requested by the Court to assist the Court amicus curiae in any case or a proceeding or who has been appointed at the expense of the State to defend an accused person in a criminal proceeding.

Explanation.-A separate appointment or a memorandum of appearance shall be filed in each of the notwithstanding that the same advocate is retained for the party in all the connected proceedings.

3. An advocate who is not on the Roll of Advocates of the Bar Council shall not act in such Court, unless he files an appointment along with an advocate who is on the roll of the Bar Council and who is ordinarily practising in such Court: but such advocate who is not on the Roll of Advocates of the Bar Council shall be permitted to appear and plead in such Court if he appears with or is instructed by an advocate who is enrolled on the Bar Council and who has filed an appointment.

4. In cases in which a party is represented by more than one advocate, it shall necessary for all of them to file a joint appointment or for each of them to file a separate one.

5. The acceptance of an appointment on behalf of a firm or partnership of advocates shall be indicated by a partner affixing his own signature as a partner on behalf of the firm or partnership of advocates.

6. An advocate at the time of acceptance of his appointment shall also endorse on it his address, which address shall be regarded as one for service within the meaning of R.5 of Order 3 of the Code of Civil Procedure, 1908:

Provided that where more than one advocate accepts the appointment, it shall be sufficient for one of them to endorse his address, which address shall be regarded as one for service within the meaning of R.5 of Order 3, Code of Civil Procedure, 1908.

7. Where an advocate appointed by a party in any of the proceedings is prevented by reasonable cause from appearing and conducting the proceedings at any hearing, he may instruct another advocate to appear for him at that hearing.

8. (1) In civil cases, the appointment of an advocate, unless otherwise limited shall be deemed to be in force to the extent provided in that behalf by R. 4 of Order 3 of the Code of Civil Procedure, 1908.

(2) In criminal cases, the appointment of an advocate, unless otherwise limited shall be deemed to be in force until determined with the leave of the Court by writing signed by the party or the advocate, as the case may be, and filed in Court or until the party or the advocate dies, or until all proceedings in the case are ended so far as regards the party.

(3) For the purposes of sub-R, (2) case shall be deemed to mean every kind of inquiry, trial or proceeding before a Criminal Court whether instituted on a police report or otherwise than on a police report and shall include-

- (i) an application for bail or reduction, enhancement or cancellation of bail in the case;
- (ii) an application for transfer of the case from one Court to another;
- (iii) an application for stay of the case pending disposal of a civil proceeding in respect of the same transaction out of which the case arises;
- (iv) an application for suspension, postponement or stay of the execution of the order or sentence passed in the case;
- (v) an application for the return, restoration or restitution of the property as per the order of disposal of property passed in the case;
- (vi) an application for leave to appeal against an order of acquittal passed in the case;
- (vii) any appeal or application for revision against any order or sentence passed in the case;
- (viii) a reference arising out of the case;
- (ix) an application for review of an order or sentence passed in the case or in an appeal, reference or revision arising out of the case;
- (x) an application for making concurrent sentences awarded in the case or in appeal, reference, revision or review arising out of the case;
- (xi) an application relating to or incidental to or arising in or out of any appeal, reference,

revision, or review arising in or out of the case (including an application for leave to appeal to the Supreme Court);

(xii) any application or act for obtaining copies of documents or for the return of articles or documents produced or filed in the case or in any of the proceedings mentioned hereinbefore;

(xiii) any application or act for obtaining the withdrawal or the refund or payment of or out of the moneys paid or deposited in the court in connection with the case or any of the proceedings mentioned hereinbefore (including moneys paid or deposited for covering the costs of the preparation and the printing of the Transcript Record of Appeal to the Supreme Court);

(xiv) any application for the refund of or out of the moneys paid or recovered as fine or for the return, restitution or restoration of the property forfeited or confiscated in the case or in any appeal, reference, revision or review arising out of the case as per final orders passed in that behalf;

(xv) any application for expunging remarks or observations on the record of or made in the judgment in the case or any appeal, reference, revision or review arising out of the case; and

(xvi) any application or proceeding for sanctioning prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898 or any appeal, or revision arising from and out of any order passed in such an application or proceeding:

Provided that where the venue of the case is shifted from one court (Subordinate or otherwise) to another, the advocate filing the appointment referred to in Sub-Rr.(1) and (2) in the former Court shall not be entitled to appear, act or plead in the latter court, unless he files or has filed a memorandum signed by him in the later court that he has instructions from his client to appear, act and plead in that court.

9.(1) Except when specially authorised by the court or with the consent of the party no advocate who has advised in connection with the institution of a suit, appeal or other proceedings or has drawn up pleadings in connection with such matter, or has during the progress of any suit, appeal or other proceeding appeared, acted or pleaded for a party, shall, unless he first gives the party whom he has advised or for whom he has drawn up pleadings, appeared, acted or pleaded, an opportunity of engaging his services, appear or act or plead in such suit appeal or other proceeding or in an appeal or application for revision arising therefrom or in any matter connected therewith for any person whose interest is in any manner in conflict with that of such party:

Provided that the consent of the party may be presumed if he engages another advocate, to appear, act or plead for him in such suit, appeal or other proceedings without offering an engagement to the advocate whose services were originally engaged by him or on his behalf.

(2) Where it appears on the face of the record that the appearance of an advocate in any proceeding for any party is prejudicial to the interest of the other party on account of the reasons mentioned in Sub-R.(1) above, the court may refuse to permit the appearance to be filed or cancel such appearance if it has already been filed, after giving the said advocate an opportunity of being heard.

(3) An advocate who discloses to any party information confided to him in his capacity as an advocate by another party without the latter's consent shall not be protected merely by reason of his being permitted to appear, act or plead for the said party.

10.(a) The appointment of a firm or partnership of advocates may be accepted by any



partner on behalf of the firm.

(b) No such firm or partnership shall be entitled to appear, act or plead in any court unless all the partners thereof are entitled to appear, act or plead in such court.

(c) The name of the firm or partnership may contain the names of the persons who were or are members of the partnership but of no others.

(d) The words "and Company" shall not be affixed to the name of any such partnership or firm.

(e) The names of the members of the firm shall be recorded with the Registrar of the High Court and/or the District Judge, as the case may be, and the Bar Council and the names of all the partners shall also be set out in all professional communications issued by the partners of the firm.

(f) The firm of advocates shall notify to the Registrar of the High Court and/or the District Judge, as the case may be, and the Bar Council, any change in the composition of the firm or the fact of its dissolution as soon as may be from the date on which such change occurs or its dissolution takes place.

(g) Every partner of the firm of advocates shall be bound to disclose names of all the partners of the firm whenever called upon to do so by the Registrar of the High Court, the District Judge, the Bar Council, any Court or any party for or against whom the firm of any partner thereof has filed the appointment or memorandum of appearance.

(h) In every case where a partner of a firm of advocates signs any document or writing on behalf of the firm he shall do so in the name of the partnership and shall authenticate the same by affixing his own signature as partner.

(i) Neither the firm of advocates nor any partner thereof shall advise a party to appear, act or plead on behalf of a party in any matter or proceeding where the opposite party is represented by any other partner of the firm or by the firm itself.

11. No advocate shall be permitted to file an appointment or memorandum of appearance in any proceeding in which another advocate is already on record for the same party save with the consent of the former advocate on record or the leave of the Court unless the former advocate has ceased to practise or has by reason of infirmity of mind or body otherwise become unable to continue to act.

12. An advocate may correct any clerical error in any proceeding with the previous permission of the Registrar or an officer of the Court specially empowered in this behalf by the court obtained on a memorandum stating the correction desired.

13. No advocate who has been debarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognised agent of any party within the meaning of Order 3 of the Code of Civil Procedure, 1908.

14. No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of contempt.

15. Advocates appearing before the Court shall wear the following dress:

(1) Advocates other than lady advocates:

(a) Black buttoned up coat (chapkan, achkan or sherwani), Barrister's gown and bands,

or

(b) Black open collar coat, white shirt, white collar, stiff or soft, with Barrister's gown and bands.

(2) Lady Advocates:

Regional dress of subdued colour or colours with Barrister's gown and bands.