

Professional Ethics for Lawyers

transcribed plenary speech of
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Before getting into the legal framework that is applicable to lawyers in Sri Lanka it is pertinent to quote from a famous fairytale Alice in wonderland chapter 6 by Luis carol 1865. "Would you tell me please which way I ought to go from here? That depends a good deal on where you want to get to." I want all the lawyers and especially the law students here to think about where you want to get to. The subject of professional ethics is important especially for the Ministry of Justice since its role in the administration of justice is to ensure that the citizens and non-citizens of Sri Lanka have access to quality justice. Lawyers as guardians of justice play a pivotal role in upholding the rights of individuals and ensuring a free and democratic society. Fulfillment of the role requires acceptance by lawyers of their duties and obligations within our legal syst. And unequivocal obligation of a lawyer is to maintain the highest standards of ethical conduct. In fulfilling professional Responsibilities a lawyer necessarily assumes diverse roles which require performance of many arduous tasks. Every situation a lawyer can encounter cannot be envisaged. However fundamental ethical principles are always present for guidance. The necessity to ensure high ethical standards in Sri Lanka is the need of the hour. Since the opinion of the general public is that the ethical standards of the legal fraternity has deteriorated over the years. In this respect it will advert to a speech made by G.P.S. de Silva who was the Chief Justice and also to Mr. H.L.S. Silva president of the bar association at the convocation of the bar association of Sri Lanka on the 27th of March 1993. Chief Justice G.P.S. de Silva said as follows; "The bar of Sri Lanka with its sturdy sense of independence and important contribution has made in many areas of public life as an honoured place in this country. As has often been said and rightly so, the bar is heir to great and glorious tradition. However as of late there has been disturbing indications that all is not well with the profession. It is with regret that I'm constrained to refer to the decline in proper conduct, complains in regard to misconduct on the part of attorneys at law are not infrequent now. My colleges on the bench spend a fair amount of time looking into these complaints. They are faced with a situation of increasing numbers in the profession. This in turn enhances the need to maintain proper ethical standards. In this connection I trust that it would not be irrelevant to bear in mind, timely goal

eloquently expressed by the former president of the bar association. The Chief Justice quoted the following words of Mr. Silva. "Out of all the qualities expected of us, the supremely important values are those of moral integrity and fairness. A conscious attention to a client's cause and never ending quest for perfection in the exercise of our professional skills and the indomitable courage in the face of improper pressures that conflict with our duties. All these qualities might be unattainable but are very properly expected of us when we are entrusted by our clients often with matters of great consequence in their personal lives for which let us remember we are often handsomely paid. These values must be underscored in the present times. Let us remember that the law has no life independent of lawyers who functions within it. If we lawyers thru our own weakness and lack of serious concern, permit a decline in the professional standard which will cause a blight upon the administration of that justice and eventually lead to the rejection by the people for whose benefit it has been established. That would indeed be a tragedy for everyone for we would have then lost a great deal that is of immense value. Lawyers' ethics is more than a set of principles for one to follow, it is also about how to conduct oneself whilst practicing. As such, a lawyer may owe duty to a third party and the wider community. As Dr. ARB Amarasinghe in his book of professional ethics and responsibilities of lawyers pointed out, a lawyer has many obligations. He has a duty to the client, to the court and to other tribunals and bodies. As an officer of the court he must act with honesty, integrity and candor. Any duties or directions made by the court must be fulfilled including any matter regarding which he has given an undertaking to court. His foremost duties to his clients require him to act with due skill and diligence and reasonable swiftness and courtesy while maintaining his clients confidence and avoiding conflict of interests. A lawyer has an obligation to demonstrate ethical practice to the public including his peers. In 1988 the supreme court of Sri Lanka in the exercise of its rule making power under article 136 (1) g of the constitution made the Supreme Court conduct of etiquette for attorneys at law rules. They were published in the gazette of 7th December 1988. These rules have the force of written law. Integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession. The relationship between the lawyer and the

client is a fiduciary one. The client is unable to repose full confidence in the lawyers trust worthiness. Dishonorable or dubious conduct on the part of the lawyer either in private life or professional practice will reflect adversely on the lawyer, the integrity of the legal profession and the administration of justice as a whole. The conduct whether within or outside the professional sphere is such that the knowledge of it would be likely to impair the trust of the client in the lawyer as professionals. A regulating body will justify it taking disciplinary action. There are several interesting cases where the Supreme Court in the past has issued rules against errant lawyers. some of which are in re de soya a proctor who in his professional capacity signed a false certificate which enabled persons to obtain identity cards was suspended for three years. In re proctor who had without dishonest or criminal intention had negligently misappropriated his client's money was suspended for six months and ordered to pay cost. In re Dharmalingam who misappropriated the survey fees deposited with him which resulted in his client's case being dismissed was suspended for four months. A proctor who appeared in court in a state of intoxication was suspended for three months. in re Dharmarathnam who had prepared a petition of appeal in false and scandalous terms insulting the judge against whose decision the appeal was made was suspend for a month. The subject of ethics cannot be dealt with within a few minutes. When taken into consideration the innumerable complaints received by the ministry of justice regarding clients' dissatisfaction with their lawyers' professional service, it will be confined to the disciplinary control of attorneys at law in Sri Lanka. Since 1802 the Supreme Court has had the power to admit and enroll lawyers or refuse to do so and to exercise disciplinary control over them. Presently, the chief justice with three judges of the Supreme Court are empowered to make rules with respect to the above as well as rules on etiquette, conduct and attire. When an attorney at law is guilty of malpractice or gross negligence in the discharge of his professional duties, such a person is likely to be subject to disciplinary control by the Supreme Court. A lawyer who is careless and irresponsible will not only do a disservice to his client but also disgrace the profession and cause detriment to his own reputation and practice. Thus such conduct rightly warrants sanctions by the Supreme Court in order to preserve the reputation of the bar and also to ensure that the clients get the service that they expect. Section 42 (2) of the judicature act states that every person admitted as an attorney at law who shall be guilty of any malpractice or offence will be suspended from practice or revoked from office by any three judges of the supreme court sitting together. The Supreme Court in such instances is exercising disciplinary jurisdiction and

not penal jurisdiction. An attorney at law whose misconduct is criminal in character whether it was done in pursuit of his profession or not may be struck off the roll, suspended from practice, reprimanded, admonished or advised even though he had not been brought by the appropriate legal process before a court of competent jurisdiction and even if there is nothing to show that a persecution is pending or contemplating. He further stated that "our task in the exercise of disciplinary jurisdiction is vested in us in terms of section 42 of the judicature act. In determination based on an appropriate degree of proof having regard to the nature of the charge will the person be formally to be struck off the roll or otherwise. The bar association too has a role to play in regulating the professional ethical conduct of attorneys law. In terms of section 43 of the judicature act, the chief justice or any judge of the supreme court may by order direct that a preliminary inquiry into any alleged misconduct of such attorney at law shall be held by the disciplinary committee of the bar association of Sri Lanka. Section 42 states that the chief justice shall appoint a panel of not less than 15 members of the bar association for the purpose of constituting a disciplinary committee for such inquiries. Each lawyers own conscience help determine the extent to which a lawyer's action should rise above minimum standards. But in the last analysis, it is the desire for respect and confidence of the members of the profession and of the society which lawyers serve which should provide to a lawyer the incentive for the highest possible degree of ethical conduct. A possible loss of that respect and confidence is the ultimate sanction. So long as practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength which permits of no compromise. Ethical conundrums can arise when lawyers' duties to law, colleagues and clients diverge. It is sometimes difficult to uphold these competing obligations. Not every situation which you as lawyers will encounter can be foreseen but fundamental ethical principles are always present for guidance. Within the framework of these principles a lawyer must with courage and foresight be able and ready to apply the body of the law to the ever-changing relationship of society. The extent to which a lawyer's conduct should rise above the minimum standards set up by the Supreme Court rules is a matter of personal decision. The lawyer who would enjoy the respect and confidence of the community as well as other members of the legal profession must strive to maintain the highest possible degree of ethical conduct. It is pertinent to stress the fact that sanctions for incompetence and negligence should not constitute the motivation for diligence. A lawyer should rather be motivated by the desire for excellence not only demonstrating astuteness with respect to

professional work but also in regard to every aspect of his conduct.