

# THE LAW SOCIETY OF KENYA

## **DIGEST OF PROFESSIONAL CONDUCT AND ETIQUETTE** *(as at 1<sup>st</sup> January, INTRO 2000)*

This Digest is intended to give guidance to advocates concerning their professional conduct and the etiquette of the profession. It should be read in conjunction with the Advocates (Practice Rules, the Advocates (Accounts) Rules and the Advocates (Accountant's Certificate) Rules.

This is not an exhaustive treatise, and where points are not covered, reference should be made to the Council of the Law Society for a ruling.

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# **DIGEST OF OPINIONS OF THE COUNCIL OF THE LAW SOCIETY OF KENYA**

## **On matters of Professional Conduct and Etiquette**

### **1. ABSENCE**

#### **(a) From Chambers**

- (i) When advocates close their offices for the purposes of annual holiday or sickness extending over ten days, they should make arrangements for their mail to be collected and acknowledged and the clients informed of the non-availability of the advocates during the period.

#### **(b) From Court**

- (i) Advocates who propose to leave the country should make arrangements for their court cases to continue during their absence. It is not sufficient merely to brief a colleague to ask for an adjournment since this disorganises the work of the Courts. Where for any valid reason an advocate cannot appear in Court, he must inform the Court at the earliest possible opportunity.
- (ii) In criminal cases advocates must attend Court on the day of the hearing once having appeared on plea day and having accepted a hearing date. Non – appearance on the hearing day upsets the Court's calendar and accused persons are held in custody longer than necessary.
- (iii) As a matter of professional etiquette an advocate should on the date of plea request the court to dispense with his attendance on mention dates.
- (iv) It is the paramount duty of defending counsel to ensure that the accused person is never left un-represented at any stage of the trial. In any event the advocate must notify the Court and his client at the earliest possible opportunity of his inability to attend Court. Advocates should contact the court either personally or by telephone, or telegram, if there is not sufficient time for letters to reach the Court.
- (v) When an accused person is represented by two advocates neither should absent himself other than for a purely temporary period except for good reason and then only if the consent of the instructing advocate, if any, or the client is obtained.
- (vi) Where an accused person is represented by only one advocate, that advocate must normally be present throughout the trial and may only absent himself in exceptional circumstances which he could not reasonably have been expected to foresee and provided:-
  - (a) he obtains the consent of the instructing advocate, if any, or his client; and
  - (b) another advocate takes his place who is well informed about the case and is able to deal with any questions which might reasonably be expected to arise.
- (vi) Failure to attend court could amount to professional misconduct and lead to disciplinary action.

## 2. ACTING AGAINST OTHER ADVOCATES

It is not right for an advocate to refuse to act in a matter merely because the opposite party is another advocate. This is intended as a statement of general principle and it is recognised that in particular cases, there may be circumstances in which an advocate should properly refuse to act.

## 3. ADVERTISING

The Press should not be permitted, so far as advocates can control it, to make reference to the professional careers of advocates in wig and gown. This does not apply to advocates on appointment to an established judicial or legal office in the service of the State.

- (a) Considering the application of Rule 2 of the Advocates (Practice) Rules, and bearing in mind the fundamental principle that advocates should not advertise, the following rulings are set out for the guidance of the profession;
- (b) An advocate should at all times have regard to the need to uphold the good name of the Profession. He should also be conscious of the fact that certain publications, broadcasts and appearances might well involve a breach of Rule 2 of the Advocates (Practice) Rules.
- (c) In particular, a breach could easily be committed by the manner or frequency of doing things not otherwise objectionable, in particular if they are done frequently.
- (d) Subject to (b) and (c) above, where an advocate:
  - (i) broadcasts on radio or television;
  - (ii) gives a talk or lecture; or
  - (iii) gives an interview to the press; or
  - (iv) contributes an article or letter to the press; or
  - (v) edits or writes a book or other periodicals;

whether on a legal or non legal subject:-

He may be identified by name only or by a designation, but the name and the designation may not be coupled PROVIDED THAT where an advocate contributes a legal article or letter to a legal journal or publication or edits or writes a book or periodical on a legal subject particulars may be given of his basic and academic qualifications, or any professional appointments currently or previously held by him and of specialised knowledge relevant to the subject matter of the publication, letter, talk or lecture, and his business address in the case of publications or letters;

- (ii) Nothing should be published identifying or likely to identify individuals or organisations for whom he or his firm acts or has acted;
- (iii) he should not enter into correspondence on an advocate/client basis with readers, viewers or listeners who are not already his clients;
- (iv) Prior press announcement or subsequent press reports relating to the above matter in relation to the identity and qualifications of an advocate may either name the advocate or give his designation, but the two must not be coupled.

#### 4. ADVOCATES EMPLOYED BY NON-LEGAL EMPLOYERS

- (a) Subject to what follows, there is no objection to an advocate agreeing to do legal work for an employer in consideration of a fixed annual salary.
- (b) Provided his employer allows it, he may also accept instructions from other clients.  
Such an advocate must comply with the Advocates (Accounts) Rules and the Advocates (Practice) Rules.
- (c) Such an advocate must ensure that his employer neither directly nor indirectly advertises his services, and in particular does not recommend him to fellow-employees.
- (d) The advocate must satisfy himself that any recommendation by the employer was made only at the express request of the intending client, and that he must explain that the employee is free to instruct any advocate of his choice or such advocate whom he may wish to instruct. Only on being satisfied that there is not, would the advocate be justified in accepting instructions.
- (e) In no circumstances may an employed advocate allow his employer to receive any part of any profit costs he may earn acting for clients other than the employer.
- (f) As regards the employer's legal work, the position is regulated by rule 4, proviso (ii) of the Advocates (Practice) Rules. The employed advocate can only set off the costs of contentious and non-contentious work done by him for his employer to the extent of his salary and reasonable office expenses. In other words, any amount by which the total fees exceed the advocate's salary and office expenses must be paid to him by the employer.
- (g) No employed advocate can comply with proviso (i) to Rule 46 of the Advocates (Practice) Rules unless he keeps a bills delivered book showing the full profit costs of all work done for the employer, and there is an annual accounting with his employer in terms of the proviso.
- (h) An employed advocate who is also a Commissioner for Oaths cannot, of course, administer an oath when he has drawn the document.
- (i) It is improper for such an advocate to administer an oath to any official of his employer in respect of that official's duties. Employer's personal affidavits are subject to the considerations set out in (d) above.

#### 5. ADVOCATES' FEES

Where one advocate acts for the client of another at the latter's request, the two advocates may conclude an agency or other agreement to provide for the remuneration of the advocate who does not work. In the absence of such an agreement, the advocate who carries out the work is entitled to treat the other advocate as being in the same position as a lay client and to charge him accordingly.

6. **ADVOCATES OFFICES**

(a) **Branch Offices**

There is no objection to the establishment of a branch office to be visited periodically by an advocate and to act otherwise only as a reception centre for making appointments and holding papers, provided that the office is under the effective control of an advocate and that his name is not merely made use of to enable other persons to practise under cover of it.

(b) **Sharing Offices**

It is improper for an advocate to share accommodation with someone who is not an advocate since this would almost inevitably lead to the unfair attraction of business and breach of Rule 2 of the advocates (practice) Rules.

7. **AGREEMENTS FOR SALE – VENDORS COSTS**

- There is no objection to the insertion in conditions of, or contracts for, a sale of land of an express provision requiring either party to pay the costs of the other party, provided that each party is left free to employ his own advocate in each transaction. It is improper to suggest that the advocate be employed by the other party.

8. **ATTESTATION OF SIGNATURES – REGISTRATION OF TITLES ACT (CAP 281)**

An advocate who is requested to attest a signature in pursuance of this Act should insist on the signature being appended in his presence and should not accept an acknowledgement of signature by the person requesting attestation. It is not considered that the advocate should accept any further responsibility for the identification of the signatory than that suggested above.

Advocates are requested to print, type or rubber-stamp their names below their signatures.

9. **BOWING**

- Advocates un-admitted assistants and clerks should not bow to any court. This privilege is, by custom, restricted to Members of the Bar appearing before the Court.

10. **CHAMBERS OF COMMERCE**

There is no objection, in principle, to an advocate or firm of advocates being a member of a Chamber of Commerce.

11. **CLIENTS' ACCOUNTS**

- (a) The attention of advocates is called to the detailed provisions of the Advocates (Accounts) Rules, the Advocates (Accountant's Certificate) Rules and the Advocates (Deposit Interest) Rules.

- (b) If a cheque drawn on a Client Account is dishonoured professional misconduct is disclosed and disciplinary action will follow.
- (c) Failure to produce an Accountant's Certificate (or statutory declaration in lieu thereof) pursuant to the Advocates (Accountant's Certificate) Rules is professional misconduct.

## 12. CLIENTS FILES

(a) Upon the dissolution of a business partnership an action was instituted by the outgoing partner against the continuing partners. The advocate who had acted for the partnership during its subsistence had refused to allow the advocate acting for the continuing partners to have access to the file relating to the partnership business. His costs had been paid and there was no question of a lien for them. A client is entitled to copies of any documents in his file that he may require and for which he must pay, and to access to his file.

(b) A client is entitled to the files relating to his own matters and an advocate should accordingly hand them over to a client on his request, subject to the qualifications:-

- (i) that an advocate has a lien over all papers relating to a client and that client's affairs for his costs; and
- (ii) that, if more than one party were involved, the advocate might be entitled to retain the files if required in connection with another client's affairs in the same matter.

(c) Clients files may be forwarded to the Public Archives only with the client's consent.

(d) Subject to the foregoing, there is no objection to destruction or disposal of records by advocates on the clear understanding, however, that the ultimate responsibility for this course of action is that of the advocate.

(e) Any advocate who is leaving the country and/or ceasing to practice must make arrangements for the retention or disposal of records and must inform the Secretary of the Law Society of the arrangements.

### (f) Records Disposal

It is agreed that the following periods are reasonable but not obligatory for the disposal of records:-

Conveyancing	-	after 20 years.
Debt Collection files	-	after 6 months.
Litigation + acting for the defendant	-	after the period of limitation from the cause of action.
Divorce and family matters	-	Never destroy until it is known that all parties have died. These should be brought up every 30 years.
Common Law matters	-	after 6 years.
Probate and Administration where whole estate is wound up and distributed	-	after 5 years.

(g) Advocates should also bear in mind that although in view of the Limitation Act, the Advocates (Accounts) Rules and the Income Tax Acts, it is essential and even



Obligatory to preserve certain records for at least six years, it may be in the interests of both the advocate and the client to preserve such records for up to 12 years since, in exceptional cases, the Income Tax authorities may demand information going back 12 years.

- (h) Advocates should have regard to the interests of their clients or former clients as well as their own, since records in the possession of advocates may have a bearing on their clients' affairs.

### 13. COMMISSIONER FOR OATHS – DUTIES

- (a) The attention of Commissioners for Oaths is drawn to the statutory requirements which are set out in the Oaths and Statutory Declarations Act (Cap 15) and the Supplemental Legislation published thereunder.
- (b) A Commissioner may not act as such in any proceeding in which he has acted as advocate for any of the parties to that proceeding or in which he is interested. The "Proceeding" referred to is not limited to a Court proceeding and also includes, for instance, all documents prepared by a partner or clerk in the Commissioner's firm. If a Commissioner is in any doubt as to whether he is (interested) or not, he should refuse to act.
- (c) Affidavits consisting of more than one page, or with exhibits annexed, should be sewn across the top left hand corner and sealed prior to presentation to the Commissioner.
- (d) The entire responsibility for the contents of the affidavit rests with the deponent and the advocate who prepared it. It would be impossible for a Commissioner to determine whether the deponent understood every statement made in the affidavit unless he himself had read it to the deponent, and had himself mastered the facts of the case. Such a course would be impracticable and beyond the duties of the Commissioner.
- (e) It is the duty of the Commissioner to satisfy himself that the oath which he is administering ~~is, in form and upon the face of it,~~ an oath which his commission authorizes him to administer.
- (f) When the deponent attends upon the Commissioner, subject to the exception as to blind and illiterate persons, all that a Commissioner is required to do is to ascertain that the deponent is actually in his presence, the deponent is apparently competent to depose to the affidavit and that he knows that he is about to be sworn by the Commissioner as to the truth of the statements it contains and that the exhibits (if any) are the documents referred to. If the answers to the Commissioner's questions are in the affirmative, the oath may be administered.
- (g) Where an affidavit is sworn by a blind or illiterate deponent, the Commissioner must certify, in the jurat, that the affidavit was read in his presence to the deponent, and that the deponent seemed to understand it, and made his signature (or mark) in the presence of the Commissioner.
- (h) If it comes to the notice of a Commissioner that an affidavit is incomplete, e.g. because it contains blanks, or the Commissioner is not satisfied from evidence before him, or in his possession, as to the capacity of the deponent to understand the Oath, or the Commissioner has good cause to believe that the affidavit is false, he should refuse to take the Oath.

- (i) Alterations and interlineations (including manuscript insertions in blanks left in typescript) must be authenticated by the Commissioner appending his initials in the margin against such alteration or interlineation.
- (j) No alterations may be made in an affidavit after it has been sworn and in any such case a second jurat commencing with the word "Resworn" must be added and that the deponent must be resworn though there is no need for him to sign again.
- (k) Every exhibit referred to in an affidavit, and whether annexed to it or not, must bear a certificate, signed by the Commissioner, to identify it with such affidavit. It is the duty of the advocate, or his clerk, to request the commissioner to mark the exhibits. The commissioner cannot have knowledge of the exhibits, unless his attention is drawn to them, without reading the affidavit and this he is not required to do.
- (l) The modern form of oath, the use of which (with any modifications required by the circumstances) is recommended, dispenses with the commissioner's enquiry as to the identity of the deponent which was formerly required. the procedure is as follows:-

The Commissioner places the affidavit before the deponent open at the page containing his signature and the jurat and says to the deponent, "Take the book in your right hand and raise that hand. Repeat after me the following words – "I swear by Almighty God that this is my name and hand-writing, and that the contents of this my affidavit are true".

Where there are two or more deponents, each must be sworn separately, but one jurat is sufficient, provided that it refers to both deponents, thus "Sworn by the deponents .....and .....at, etc.

- (m) A Commissioner for Oaths is entitled to charge for each copy of the Affidavit and exhibits he is asked to sign in addition to charging for the originals.

#### 14. CONSULTANTS

No person's name may be shown as Consultant on the letterhead of any firm of advocates, unless,

- (i) he is a former partner of the firm, and
- (ii) he continues to hold a practising certificate, and
- (iii) his advice is available only to that firm, and
- (iii) he does not set up an office of his own, and
- (iv) he does not advise or appear in court in matters other than those originating in the firm concerned.
- (v) The description of "advocate" should not be displayed on the name board or any place other than his office.

#### 15. CORRESPONDENCE

- (a) Attention is drawn to the absolute necessity of advocates replying to correspondence with the minimum of delay, particularly in the case of correspondence with other advocates and with the Law Society.
- (b) Failure to reply to correspondence has been held to amount to professional misconduct.

## 16. COUNSEL

### (a) Briefing

An advocate should always inform his opponent if he proposes to brief Counsel, or a leader from the junior Bar.

### (b) Cases taken out of the list

Advocates who have briefed counsel, or a leader from the junior Bar, should maintain close liaison with their leader. In particular, cases should not be taken out of the list, nor should hearing dates be altered without first obtaining the agreement of the leader.

## 17. COUNSEL'S FEES

- (a) Where it is desired to tax, in the Court of Appeal for Kenya or in the High Court, any sum a disbursement for fees paid to Counsel, the taxing officer will require in addition to Counsel's receipt, the brief with a dated backsheet showing the work to be done by Counsel and endorsed with the fee agreed to be paid.

Counsel are requested to treat the delivery of a backsheet with their instructions as essential as a matter of etiquette in every case, unless emergency renders this impossible when the backsheet should be delivered within 48 hours.

- (b) The fixing of Queen's Counsel's fee is primarily a matter of arrangement between Queen's advocate and the client on the other.

In Kenya, the instructing advocate is not bound to appear in court, leaving his leader (A Queen's Counsel or from the Junior Bar) to conduct the court work on his own, or may himself appear in court. It is felt, in these circumstances, that it is impracticable to lay down a hard and fast rule as to any relationship which should exist between the quantum of fees paid to a leader (whether Queen's Counsel or a member of the Junior Bar) and to the Junior concerned in the matter. As to the Junior, in whatever capacity, it is considered that he would be well-advised to fix his own fee with the client at the same time as the Leader's fee is fixed.

## 18. COURT FEES

Advocates should not ignore requests for payment of court fees; such fees should be paid promptly.

## 19. DEBT COLLECTION

- (a) Letters of demand threatening proceedings in default of payment should, save in exceptional circumstances, allow:-

7 days where the debtor resides in the same town as the advocate; not less than 10 days where he resides in a different town in Kenya. 15 days where he resides outside East Africa.

- (b) There is no objection to requiring a debtor to pay the creditor's advocate's costs of

collection in consideration of an agreement to accept payment of the debt by installments; if that condition is imposed at the time of acceptance of the proposal. It is not, however, permissible to claim costs from the debtor in the original letter on behalf of a client.

- (c) A creditor is entitled to receive payment in full and, accordingly, should not suffer loss by deduction of Bank Commission where the debtor's cheque is drawn on a bank in a different town.

## 20. DISCLOSURE AND PRIVILEGE

### (a) Income Tax Authorities

- (i) As a guiding principle, advocates should not disclose the addresses of parties to e.g. land transactions, if requested so to do by the Income Tax Department, unless authority is produced for the requirement, or the client consents. In the case of persons who are not clients, the advocate should state that he does not act and accordingly is not in a position to give any information.
- (ii) Where an advocate is asked for details of transactions as well as of parties, he should ask the clients whether they are prepared to waive privilege and give information only if the clients agree.
- (iii) The Commissioner for income Tax has agreed that section 61 of the Kenya Income Tax Act, (No.16 of 1973), cannot be made to apply to the affairs of an advocate's client generally.
- (iv) If an advocate is asked by the Tax Authorities to disclose the address of a client who had left Kenya, the test of whether disclosure is or is not permissible is whether the address is disclosed by the client "in secret".

### (b) Police

- (i) "Privilege" is the privilege of the client, not that of the advocate. It may accordingly be waived by the client, but not by the advocate.
- (ii) The object of the rule of privilege, and its cardinal principle, is to ensure that a client can confide completely and without reservation in his advocate, and the privilege extends to communications made to the advocate's agents and Counsel where the advocate acts as solicitor.
- (ii) In litigious matters the advocate's privilege is no greater than the client's right. If, therefore, a client could not refuse discovery, an advocate could not establish privilege.
- (iii) There is no privilege in respect of communications made in furtherance of a fraud or crime, but communications made to an advocate for the purpose of a defence in criminal proceedings are within the rule and privilege.
- (iv) If there is any doubt in an advocate's mind as to whether or not communication is privileged, he should claim that it is.
- (v) The preceding paragraph applies equally to preliminaries and non-litigious matters on the one hand and to actual proceedings before the court on the other. It is for

the court to decide, in proceedings before it, whether a claim of privilege holds good or whether the advocate is bound to disclose.

- (vi) The foregoing is not intended to be an exhaustive review of all points arising in vast and complicated subject, but only as a guide to some of the more important general principles which may arise.

## **21. DISSOLUTION OF PARTNERSHIP**

Where two advocates have dissolved partnership, it would be improper for the outgoing partner to act for a client in a claim against the continuing partner arising out of events which have occurred during the partnership but with which the outgoing partner had not been concerned.

## **22. EXECUTION PROCEEDINGS**

When proceedings for the execution of a judgement debt have been filed and payment has been made prior to a further step in execution, for example, prior to the date of hearing of an application to show cause, an advocate should notify the court and, subject to payment of any costs incurred, endeavour to have the proceedings withdrawn.

## **23. EXTRANEOUS ACTIVITIES**

Before engaging in other professions or businesses, there are two tests to be satisfied. First, the profession or business must be an honourable one that does not detract from one's status as an advocate. Secondly, it must not be calculated to attract business to the advocate unfairly, which would be in breach of the advocates (practice) rules. Subject as aforesaid, the following guidelines are given, but in case of doubt an advocate should not hesitate to seek a ruling from the council.

- (a) It is improper for a non-practising advocate to undertake some conveyancing work after office hours, either for friends or in connection with those types of business in which he had an interest.
- (b) There is no objection to an advocate being appointed as a Honorary Consul.
- (c) There is no objection to an advocate acting as an agent for insurance companies. He would not, however, be justified in charging clients for work done in placing and maintaining their insurance policies where a commission is earned from the insurance company.
- (d) He must not, however, include any reference to the fact that he is such an agent on his professional note-paper or include any reference to the fact that he is an advocate on the paper that he uses in connection with his Agency work, nor may the appointments be combined in any way on any brass plate.
- (e) An advocate temporarily ceasing to practise in order to enter into a family's business may;
  - Renew his practising certificate;
  - Should not appear in court on behalf of the business, though there is no objection to his doing preliminary advocate's work on behalf of the business;
  - That he should not conduct interviews in respect of legal matters at the business premises.

- (f) An advocate who wishes to become an active partner in a (non-legal) firm dealing with insurance agencies and office routine is advised that it would not be proper to enter into such partnership.
- (g) It is improper for advocates to register a limited liability company to undertake on their own account company work and the registration of companies.
- (h) There is no objection to an advocate, or firm of advocates, acting as the secretary of a limited company, provided that there is no reference to the professional qualifications or any law degree of the secretary in the company's letter-heads and other documents.
- (i) There is no objection to an advocate entering into a (non-active) partnership in a petrol station business in order to assist a client.

#### 24. HONORARY LEGAL ADVISER

Any person wishing to act as a legal adviser to any professional body or association should first be admitted as an advocate.

#### 25. INSURANCE

In their own interests, advocates should ensure that they are protected against the consequences of negligence in their offices by a proper Professional Indemnity Insurance Policy.

#### 26. LEASES AND COUNTERPARTS

A lessor is entitled to the original Lease (the Lessor retaining the Counterpart) on the basis that a grantee is entitled to the Grant.

#### 27. LETTER-HEADS

##### (a) Agents

The name of agents outside Kenya may not be shown on an advocate's letter-head.

##### (b) Assistants

The names of assistants, qualified outside Kenya, but not admitted in Kenya, may not be shown on advocates' letter-heads.

##### (c) Client's letter-heads

An advocate should not allow his name (associated with his designation) to be used on his clients' own note-paper whether he is described as advocate, honorary legal advisor, or otherwise, except only where the advocate himself uses that paper qua advocate on the business of the client.

There is no objection to the incorporation of an advocate's name (without his description as such) on the note-paper of a limited liability company, or a director of such company.

##### (d) Trade Mark Agents

This description may not be inserted on an advocate's letterhead.

- (e) An advocate may not describe himself as either a barrister or a solicitor or a Writer to the Signer on an advocate's letterhead.

## 28. LISTS OF AUTHORITIES

As a matter of professional courtesy, the advocate acting for the opposing party should be furnished with a copy of the list of authorities as submitted to the librarian, at least one day prior to the hearing.

## 29. LOANS BY ADVOCATES

- (a) Any request for loans by clerks in government offices should be ignored and, being highly irregular, any such case should be reported immediately to the appropriate Departmental Head.
- (b) It is improper for advocates to lend money to members of the judiciary whatever the circumstances.

## 30. MEDICAL PROFESSION-FEES

As a result of discussions with representatives of the Kenya Medical Association, the following rulings should be noted:-

### (a) Deceased's Estates

It would be discourteous for an advocate acting for the deceased's representatives, where the administration of the estate is likely to be a lengthy matter, not to inform a member of another profession who has a claim against the estate for fees that a delay in payment is expected.

### (b) Medical Opinions and Reports

There is a distinction to be drawn between requests made by advocate for opinions and reports, in which case they are primarily liable for the doctor's fees, and requests made by them on behalf of their clients, in which case the clients are primarily liable.

### (c) Special Damages

In cases where doctor's fees are claimed, and recovered as special damages, the advocate is under a duty to discharge those fees without delay.

### (d) Taxed costs

The doctor's fee should be paid in full, regardless of the amount allowed in respect thereof on taxation.

## 31. NAME OF FIRM

- (a) It is undesirable for firms to practise under any name other than that of a past or present member or members.

- (b) Advocates are reminded that in the event of any change of name or address, the secretary to the Law Society and the Registrar of the High Court should be informed immediately for record purposes.
- (c) When a partner in a firm has been appointed to the judiciary, there is no objection to the retention of the firm name by the remaining partners.

### 32. OFFICE EXPENSES - LIMITED COMPANIES

There is no objection in principle to advocates forming limited companies to deal with all expenses in connection with the running of their practices.

### 33. PLEAS IN MITIGATION

- (a) In any case where an advocate is instructed by his client to put forward matters in mitigation which involve serious imputation upon the character of a person or persons who are not in a position, at the time when such matters are ventilated, to challenge their accuracy, then he should, whenever practicable, avoid mentioning in open court any details which would enable the identity of the person impugned to be ascertained. Where necessary, names, addresses or other such details should be written down and handed in.
- (b) In normal circumstances, an advocate should see his lay client personally after conviction and sentence.

### 34. POOR PERSONS LITIGATION

- (a) The basis of the Law Society's scheme to assist poor persons who are unable to pay an advocate's fee in the ordinary way is that the work should be undertaken or ~~done~~ that is, without fee. Accordingly, an advocate should not "reduce" the p. ~~which would amount to undercutting, nor should he agree to accept remuneration in the event of a successful outcome which might lay him open to allegations of champerty and maintenance.~~

From the foregoing, it follows that pro deo litigation should not be undertaken in the expectation of any fee and that if a fee be offered, whether as the result of the litigation being successful or otherwise, it should be refused.

In the event of the court awarding costs to a successful pro deo litigant, such costs should not be retained by the advocate concerned but should be paid by him into a fund to be maintained by the society and from which, eventually, nominal fees could be paid to advocates acting on behalf of poor persons.

- (b) When acting for a wife on a pro deo basis, she is to be treated as pledging her husband's credit. In such circumstances the advocate could probably retain costs recovered from the husband.

### 35. PRACTISING CERTIFICATES

- (a) Practising certificates should be applied for prior to the end of January in each year. Applications submitted after this date are not backdated. Members practising without a certificate after the month of January do so illegally.
- (b) To practise without taking out a practising certificate is an offence.



- (c) It is not proper for an advocate to take out a practising certificate while he is still on the bench.

### 36. PRESS REPORTS – COURT CASES

Reporters of court cases in Kenya are interested in the news value of the proceedings and not reporting who are, no doubt, better judges of news value than advocates and who regard the independence of the press as of paramount importance may well resent unsolicited approaches from, or suggestions by, advocates as to the form and contents of their stories.

On the other hand, subject to his client, it would be discourteous in an advocate to refuse an help which a reporter may request to elucidate an incident or points, and an advocate who did so refuse could not complain of being misreported.

An advocate who considers that he has been misreported should bear the news value angle in mind but, subject thereto, will usually find that an Editor will sympathetically consider any complaint which may be made to him and will endeavour to make a correction if the complaint is justified.

Advocates also may have the right to draw the attention of the court to grave or substantial cases of misreporting. The practice should be to mention any such instance at the hearing immediately following publication and, where possible, the newspapers should be informed in advance of the intention to mention the report.

It is stressed that it is unprofessional for an advocate concerned in court proceedings which may be reported to encourage publicity for himself in the report of the case.

### 37. PUBLICATIONS

There is no objection to an advocate publishing his memoirs (including references to cases in which he has been engaged) provided that he bears points of professional etiquette in mind at all times and it is immaterial whether or not he has a practising certificate in force.

### 38. RECOVERY OF MONEY DUE FROM ADVOCATES

Advocates are under a duty to report to the Law Society immediately where a judgement debt against an advocate has not been satisfied in seven days.

### 39. REMUNERATION

#### (a) Agency

There is nothing wrong in paying or receiving agency as between advocates and legal practitioners in other countries. Advocates are at liberty to make such arrangements as they think proper.

(b) Professional clients

A firm of Attorneys outside East Africa instructed advocates in Kenya to take legal action against a Kenya resident, the plaintiff in the action being a partner in the firm of Attorneys. In such circumstances, there was no reason why the advocates should not raise their proper charges and that there would appear to be no reason for the allowance of agency.

(c) Transferred decree

Certain "foreign" advocates deducted a percentage of the amount recovered under decrees obtained in Kenya and transferred for execution abroad in addition to raising their normal charges.

A system which might amount to giving advocates a pecuniary interest in litigious proceedings is not favoured.

(d) Undercutting

An extremely serious view is taken of advocates who make a practice of charging fees at rates lower than those set out in the advocates (Remuneration) order, and attention is drawn to rule 2 Advocates (practice) Rules.

40. REPRESENTATIONS TO THE CHIEF JUSTICE

The Honourable the Chief Justice has stated that, whilst he would not wish to restrict the right of any advocate to approach him direct, he would prefer all representations and complaints, other than personal matters, to be made through the Council of the Law Society. This practice is commended to advocates since departure therefrom might, in some instances, create circumstances which would be embarrassing to the Chief Justice or the Council.

The same principles should apply to approaches to judges and magistrates.

41. SMOKING IN COURT

The habit of smoking in court before the commencement of proceedings is deprecated and advocates are requested not to do so.

42. STAFF-UNQUALIFIED: REMUNERATION

Although it may be permissible, in certain circumstances, to pay bonuses to unqualified staff at annual or other intervals of time in accordance with the employer's accounts, it is not permissible for advocates to pay unqualified staff on the basis of a percentage or commission on the fees charged for work introduced or carried out by such unqualified staff. The attention of advocates is drawn to Rule 4 of the advocates (practice) rules.

**43. TELEPHONE AND OTHER DIRECTORIES**

- (a) It is objectionable for an advocate's name to appear in heavy black type in the Telephone directory.
- (b) There is no objection to an advocate supplying biographical details requested by any Embassy or High Commission with diplomatic offices in Kenya.
- (c) There is no objection to the insertion of an Advocate's name, address and telephone number in "Classified Trades" section of the telephone directory or of a business directory.
- (d) Advocates should not include the qualification of "Advocate" in a telephone or other directory against their residential, as opposed to their office, addresses.

**44. TELEPHONE CONVERSATION-RECORDING**

It is wrong for an advocate to tape record by any means a telephone conversation with another advocate except with that advocate's consent.

**45. THREATS OF CRIMINAL PROCEEDINGS**

Advocates should carefully consider the implications involved before threatening a person with criminal proceedings on behalf of a client.

**46. UNDERTAKING**

An undertaking shall be in a form which is clear and once accepted by an advocate shall bind him or his firm to the undertaking and any breach thereof shall constitute professional misconduct.

**47. WITNESSES**

- (a) The attention of advocates is drawn to Rule 9 of the Advocates (Practice) Rules.
- (b) It is improper for an advocate to converse with his witness from the time when he begins to be examined by the other side until that examination is completed.
- (c) An exception may have to be made when the witness is the client and he requires advice during that time on matters other than the evidence which he is giving, but in such circumstances it is prudent to inform the opposing advocate generally of the circumstances.
- (d) It is the duty of an advocate to guard against being made the instrument by which publicity is obtained for allegations which are merely scandalous or calculated to vilify or insult any person.

*12<sup>th</sup> February, 1982*