

Kenya School of Law

ADVOCATES TRAINING PROGRAM

2015-16 ACADEMIC YEAR

Trial Advocacy

EXAMINATION IN CHIEF

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OUTLINE

Definitions

Statutory basis

Role of Examination in Chief

Law of Examination in Chief

Planning Examination in Chief

Techniques

Exercise

Statutory basis-Civil

Civil Procedure Act and Rules

Order 18 Rule 3: The evidence of the witnesses in attendance shall be taken orally in open court in the presence of and under the personal direction and superintendence of the judge.

Statutory basis-Criminal

Criminal Procedure Code, Cap. 75

Part VI-Procedure of Trials before subordinate courts

Part IX-Procedure of Trials before High court

208. (1) If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence (if any).

300. The advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

Role of Examination in Chief(Steve Lubet,“Modern Trial Advocacy”)

To present substance of the case.

- a) Introduce undisputed facts
- b) Enhance likelihood of disputed facts.
- c) Lay foundation for introducing exhibits.
- d) Reflect on witnesses' credibility.
- e) Hold attention of trier of fact.

Law of Examination in Chief

- a) Witness must be legally competent to testify.
- b) Use non-leading questions(open ended).(Leading question-that which suggests the answer.)
- c) Not testify in narrative.
- d) Generally offer fact, not opinion.
- e) Can refresh memory.

Open ended questions-Ian Morely, QC, Devils Advocate

WHO

WHAT

WHY

WHEN

WHERE

HOW

EXPLAIN

TELL US; PLEASE DESCRIBE

Planning Examination in Chief

- **Content**
- **Organisation and structure**

Content

Ask: Why did I call this witness?

1. What single most important thing are they to say?

Look at theme; reasons for actions; explanations; credibility.

2. What to exclude

Clutter; unprovables; implausibles; impeachables; door openers.

Organisation and structure

Primacy and recency

Apposition-juxtaposing facts to emphasize relationship.

Duration-How much time you spend on different aspects.

Repetition-To keep emphasizing the theme.

Start strong, end strong

- ❖ In the overall examination.
- ❖ In the sub examinations.

Guiding factors:

Admissibility; contribution to theory;
thematic value; dramatic impact;
undeniability.

Topical organization

- ❖ Be dramatic
- ❖ Be persuasive.
- ❖ Do not interrupt the action(flow of the story).
- ❖ Give each detail separate attention.
- ❖ “Diffuse the bomb”(deal with the weak points in advance).
- ❖ Affirm before refuting.
- ❖ Go to the point.
- ❖ End with a clincher.

Techniques

Short, open questions. (Avoid compound questions).

One fact per question.

Use transitional questions.

(“Piggy back”-Morley, Devil’s advocate).

Use headlines.

Explain where are going (e.g. “Let’s talk about the events at the hospital).

Use body movements.

Controlling the witness

Direct advise (e.g that Magistrate is writing).

Hand gestures(Palmer “Basic Trial advocacy skills-Hand up, stop. Hand down, continue.)

Techniques-contd.

- ❖ Make questions incremental.
- ❖ Reflect time, distance, intensity.
- ❖ Repeat important points.
- ❖ Use visual aids.
- ❖ Avoid negative, lawyerly, complex questions.

Other Important points- Presentation

(Prof. Goodno)

- Be organised
- Focus on relevant matters.
- Good delivery.
- Passion for the case

Communication techniques

(Adopted from NITA method).

Use appropriate communication techniques of

- language and vocabulary,
- demeanor,
- eye-contact,
- voice projection,
- pace, cadence and silence, (cadence-rhythmic flow of a sequence of sounds or words: a slight falling in pitch of the voice in speaking or reading, as at the end of a declarative sentence. the general modulation of the voice.)
- facial expressions,
- posture and
- avoidance of distracting gestures and verbal habits.

Q and A

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