

Kenya School of Law

ADVOCATES TRAINING PROGRAM

2015-16 ACADEMIC YEAR

Trial Advocacy

INTRODUCTION TO TRIAL ADVOCACY

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OUTLINE

What Is Trial Advocacy
Why Trial Advocacy?
Inter-relationships
Skills-based component
Course structure
Materials
In house rules

What is Trial Advocacy?

It is about presenting a case before a dispute resolution forum

Black's Law online Dictionary 2nd ed. Def. of Advocacy

“The active support of an issue or the espousement of a set cause

Definitions-Steve Lubet

Steven Lubet, “Modern Trial Advocacy”-

“Trials are held in order to allow the parties to PERSUADE(emphasis added) the judge or jury by recounting their version of the historical facts”

UN Basic Principles on the Role of Lawyers

No. 13: Duties of lawyers to their clients:

- 1. Advise on legal rights and obligations and working of legal systems.**
- 2. Assist clients in every way and take legal action to protect their interests.**
- 3. Assist clients before courts, tribunals or Administrative Authorities where appropriate.**

What is the role of the Lawyer?

To persuade the fact finder to arrive at an opinion favourable to their client, in accordance with:

- a) Substantive Law
- b) Relevant procedural law
- c) Ethics

What the lawyer will be doing

Persuading the fact finder to arrive at a conclusion favourable to his or her client.

Why Trial Advocacy?

- a) Is a compulsory unit!**
- b) Traditional role of representation in court.**
- c) Representation in other fora (administrative authorities, tribunals, or even other public appearance).**
- d) Effectively playing role in respective area of Legal practice. (In house lawyer, academic, political or state office)**

Inter-relationships

With other units in the program:

- **Civil Litigation.**
- **Criminal Litigation.**
- **Professional Ethics.**
- **Probate and Administration.**
- **Legal writing**
- **Commercial Transactions.**
- **Legal Practice Management.**

Civil Litigation-Example

Civil Procedure Act and Rules

Order 18 Rule 2: *Unless the court otherwise orders—*

(1) On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Criminal Litigation-Example

Criminal Procedure Code, Cap. 75

Sec. 300-Case for the Prosecution

“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.”

Sec. 307 –Case for the Defence

307. (1) The accused person or his advocate may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution; the accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case

Professional ethics

Ethical duties-To client; fellow advocates; to court; to the Administration of Justice.

Conflict of interest -Declining brief; Circumstances in which a judge ought to recuse himself or herself; Circumstances in which an Advocate can ask a judge to recuse.

Court etiquette-Court and similar fora

Standards set in instruments like the Constitution.

Focus of the Course

Practical aspect-Learning by doing.

Group work-working in Firms.

Case files-Criminal and Civil

a) Desmond Peters-Criminal

b) Faith Mueni-Civil

Methodology

- Lectures
- Simulation
- Role plays
- Group discussion
- Project work
- Guest speakers
- Video shows

Materials

- Books-Course outline
- Online resources.
- Relevant extracts from written legal drama.
- Transcripts of Proceedings of a Legal nature.
- Relevant video and even audio resources.

Ground Rules

- KSL code of conduct for students.
- Punctuality.
- Respect for fellow learners.
- Have only one meeting in a learning session.
- Preparation where will be making a presentation.
- Willingness to make mistakes.
- Willingness to assist fellow learner.
- Teamwork.
- Sharing-Learning is a two-way process.

Course outline-Part 1

1. Introduction to Trial Advocacy
2. The qualities of a good trial lawyer.
3. General ethical duties of trial lawyers.
4. Conflict of interest.
5. Court etiquette.
6. Dimensions, Rules & Psychology of Advocacy

Course Outline-Part 2

7. Preparation for trial (pre-trial advocacy)

8. Skeleton Arguments

9. The Opening Statement

10. Examination-in -Chief.

11. Cross- Examination.

12. Re-Examination.

Course Outline-Part 3

13. Closing Argument.
14. Objections.
15. Contempt of Court.
16. Appellate Advocacy.
17. General Strategy and Tactics
18. Alternative Dispute Resolution

Curriculum Requirements

Project work-20%

Oral examination-20%

Written examination-60%

Q and A

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