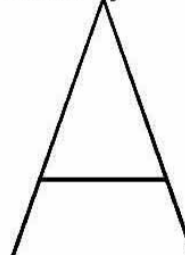




# Ethical Advocacy

## Advocacy



Advocacy in this context covers all aspects of pleading a client's cause in the litigation process. An advocate therefore is someone who assists, defends, pleads or prosecutes for another. In Nigeria, lawyers are both

Solicitors and Barristers, invariably we are all advocates. As advocates we should always be mindful that we have a threefold duty, first we owe a duty to court, then to our clients and to our colleagues in the profession.

The role of an advocate in the legal profession was elucidated by Lord Denning in his book titled "The Discipline of Law" and I quote.

"An advocate is a minister of justice equally with a Judge. No one save he can address the Judge, unless it be a litigant in person.

This carries with it a corresponding responsibility. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouth piece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court. The code which requires a barrister to do all

this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

Such being his duty to the court, the barrister must be able to do it fearlessly. He has time and time again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve: and he should not be under pressure to decide it wrongly."

### Some Ethical considerations Duty to court

As mentioned earlier an advocate owes a duty to court. Rule 3a of the Rules of Professional Conduct enjoins lawyers to show respect for the court, not for the sake of the judges but for the edification of the profession as a whole. Rule 3b further provides that lawyers should be punctual to court and inform the court and opposing counsel in circumstances where they are unavoidably late. Rule 3c states that lawyers should fully prepare for all court appearances and inform the court of any settlements with any party. Incidental to proper case preparation, the Court of Appeal in **GUINNESS NIG PLC v S.K.A.(NIG.) LTD** 2012 18 NWLR P1 1331 advised that "Counsel should go the extra mile of cross checking citations in law reports before using them in their briefs"

In **LASACO ASS.PLC v DESERVE SAVINGS & LOANS LTD** 2012 2 NWLR pt 1384. The court highlighted the duties counsel owes to the court stating that "Counsel owes the court the duty of respect to attend court on dates which, to his knowledge, a case in which he acts as counsel, is set down for hearing. The rules of court and the professional ethics of the legal profession require that if for any cogent reason, counsel and his client are unable to appear or to proceed with a trial on a date

the suit is fixed for trial, counsel has a duty, to notify the registrar of the court, and the opponent party in reasonable time before the date of his inability".

The use of delay tactics should be avoided by well-meaning advocates who have regard for the justice system as "justice delayed is justice denied". Several notable legal practitioners have expressed their disapproval for this sort of behaviour. Justice Olubunmi Oyewole in promoting the use of fast track system was of the view that.

"Apart from the natural slow pace of the judicial process which has to accommodate the convenience of the multitude of sectors involved, parties sometimes deliberately slow down the process. It is unfortunate that a proportion of the Bar in Nigeria perceive of delay as tool in litigation but delay occasions cost and result in injustice.

"My experience on the Bench has been that when counsel believes that they have a strong case, they strike lightning and move at rocket speed. It is always a shock to see the 'dame rocket launcher' turn into snail when he is not standing on sure footing."

### Duty to opposing counsel

The rules of professional conduct impose a duty on advocates to be fair to opposing counsel during litigation. Rule 4a states that "The conduct of the lawyer before the Court and with other lawyers should be characterised by candour and fairness; and the lawyer should in court inform the presiding judge of subsisting decided cases even where the decision is against his client. The lawyer is however entitled to distinguish any such case".

On this duty Rule 16b provides that "A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom.

When he knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is unethical to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel, which cause delay and promote unseemly wrangling, should also be carefully avoided".

Rule 17 further states that "A lawyer should not ignore known custom or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients should be reduced to writing; but it is dishonourable to avoid performance of an agreement fairly made, merely because it is not reduced to writing as required by rules of Court".

The interpretation of these provisions combined precludes lawyers from engaging in sharp practices. Sharp practices are wrong and lead to a gradual undermining of the profession. An example of such practices include lawyers trying to persuade the administrative Judge to assign a matter to a particular Judge. It could also be in form of solicitation for briefs for example hanging around the Corporate Affairs Commission (CAC) for quick briefs or touting and ambulance chasing in the Court premises.

In conclusion in Nigeria we are in dire need of advocates with integrity, it seems the rules of professional ethics are ignored or at best glanced through hastily by most legal practitioners. The adherence to the rules of professional ethics would lead to a gradual moral revolution in the legal profession which we all desire.