

FOUR IMPORTANT RELATIONSHIPS OF A LAWYER

My Learned Friends, the journey ahead of you is going to be challenging and arduous. You will have to be both mentally strong and healthy for this new career that you have embarked upon and which will now be your life.

Let me share my experience of close to 25 years practicing law in Alberta, Canada and provide you with some important practice pointers which may assist you tremendously on your journey to becoming a good lawyer. I want to speak to you about the following four relationships of a lawyer.

1. **YOUR RELATIONSHIP WITH THE ADMINISTRATION OF JUSTICE.**

Admission to the Kenya Law Society gives you a certain status in society, but it does not come without responsibilities. You are first and foremost an officer of the Court. Make sure whatever you do, you do not bring the administration of justice into disrepute. Here are some words of advice:

- Always come prepared when you come to court. Do not waste the court's time by seeking adjournments in order to delay matters;
- Do not mislead the court or submit something to the court that you know is not true;
- If you lose your argument before a judge, withdraw gracefully from the court-room. Do not slam your law books or close your brief-case loudly to demonstrate disgust with the judge's decision. Remember the judge is watching you from his high perch. Politely say "Thank you My Lord" and leave the court-room quietly together with your client. Do all your crying, swearing etc. when you get back to your office;
- When in court watch the judge. You have to be alert to the signals the judge is trying to communicate to you. Do not belabor the point you are trying to make. Do not be a slave to your prepared script. If you come prepared to court you should know your script very well and should be able to go where the judge wants you to go;
- When a judge asks a question – you stop, you listen and you answer the question. If he needs clarification you must respond right then. Do not say to the judge I will "get to it later". Go to your script right away and find the answer that he wants and if you have come prepared, you should be able to respond immediately;

- Never argue with a judge. If you want to tell him something when you disagree with him, you can still state it, but politely in the following manner: “With all due respect My Lord it is my view.....” And make your contrary point;
- Never display or convey to a judge that you are unhappy with his decision. Remember if it is an important legal point, there is still the written decision to come from the judge. So do not upset him;
- Watch your body language in court. Our bodies convey a lot about how we are feeling about certain things. Keep it in check;
- Go with your best three arguments. Possibly four but no more. Remembering the doctrine of recency and primacy, your best two arguments should be the first and the last. People only remember your first and last argument. Hide the weak ones in between the first and the last argument; and
- It is your duty as a lawyer to speak up if something is wrong with the profession or the administration of justice.

2. YOUR RELATIONSHIP WITH THE OPPOSING COUNSEL

Remember counsel on the opposite side is “Your Learned Friend”. The phrase suggests that opposing counsel is “learned” and he is your “friend”. It implies that you will deal with him in a respectful manner. He is not your enemy. All he is doing is articulating the case on behalf of his own client. The two of you are expected to work together using your legal training to assist the litigants to come to a resolution. Here are some words of advice:

- Be polite and civil in your communication with opposite counsel. Lawyers sometimes are under the impression that writing a letter to the other counsel is an opportunity to scold or berate him or display their proficiency with the English language;
- Do not try to ambush the other counsel with new evidence that comes into your possession. Bring it to his attention early so that he can assess his position on the matter;
- If you have become aware of some recent case law and the other counsel does not know about it, it is your ethical duty to bring it to his attention. It will resolve the

matter faster. Do not wait to go to court and ambush counsel. You will develop a reputation as a “sharp practice” lawyer;

- When you intend to bring an interlocutory application in an action, advise the other counsel about your intention to do so. Do not fax or email applications in the night to the office of the other counsel to surprise him the next day;
- Accommodate the other counsel’s schedule in order to set applications at a mutually convenient time; and
- Apologise to other counsel as soon as it comes to your attention that you have done something wrong or stupid. This small gesture will garner you a lot of respect and enhance your reputation at the Bar.

3. YOUR RELATIONSHIP WITH YOUR CLIENT

Law is a business and you, like everyone else, has to pay bills. This is how you earn a living and provide for your family. However, what you charge your clients should be commensurate with the nature, importance, urgency of the work, skill etc. The most important thing about your relationship with your client is your Retainer Arrangement. Be very clear and always have a written Retainer Agreement with your client. The client must clearly understand how he is going to be charged for the services you are going to provide to him.

Remember the Retainer your client gives you is not your money. You hold these funds in trust and you only have a right to draw from these trust funds as the matter progresses based upon the legal work you do for your client. You must render an itemized account every time you transfer money from trust to your account that provides the client a picture of what you have done for him. Any funds not used and remaining in your trust account must be returned to the client. Here some pointers:

- Do not promise anything to you client. Give him a fair assessment of his case and explain to him the possible outcomes in court;
- Explore settlement not litigation;
- You are not your client’s friend. Do not socialize with them and always keep them at arm’s length. See them only at the office;

- Fire painful clients as soon as they start causing you pain and refuse to take your advice; and
- Remember you are not your clients' hired gun. If the client is asking you to do something that is in conflict with your conscience and is unethical, tell him you will not do it. If he insists, tell him to go find another lawyer.

4. YOUR RELATIONSHIP WITH YOURSELF

Finally I want to speak about your relationship to yourself. The two most valuable assets you have as a lawyer are your reputation and dignity. Guard them like jewels. If you lose them, no esteem or respect will flow your way. Keep in mind the following:

- Do not behave in a disgraceful manner in public or within the profession. You will become a news item and bring disrepute to both yourself and the administration of justice.
- Work hard and do your legal research. There is no excuse not to research legal issues in this age of the cyberworld where jurisprudence can be so easily accessed. If there is no jurisprudence in Kenya, look elsewhere to see how other jurisdictions have dealt with the legal issue you are considering;
- You must put in your time. Always prepare 110%. In order to become a good lawyer, you will have to invest hours and hours in your office. Once you become experienced, you will see the legal issues in your first interview with your client;
- Do not give up till you have a complete understanding of the Facts, the Law and how the law applies to the Facts;
- Understand jurisdiction. Does the judge have the jurisdiction to grant you the relief that you are seeking from the court. Where does this jurisdiction come from – is it inherent or in the statute;
- Treat your own staff and court staff with respect. Most importantly do not cross or intimidate the court staff;
- Use plain English in your discourse with clients and society generally;
- Pro-bono work is an obligation upon all lawyers. Some people do not have the money to come to court, but need justice;

- Be yourself and develop your own Brand. Do not try to imitate another counsel. Observe and learn from experienced senior counsel, but at the end of the day you have to have your own Brand;
- Remember your family is very important. Take care of them and make time for your spouse and children. In this profession it is always easy to say “ I am busy”; and
- Finally, look after your health. It is very important. If your health deteriorates then you will not be able to practice law and you will not be able to provide for your family. Make sure you exercise regularly and watch the foods you eat.

In conclusion, I hope what I have shared with you becomes useful in your career. I want to wish all of you the best.

Thank you for listening.

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