

Kenya School of Law

ADVOCATES TRAINING PROGRAM

2015-16 ACADEMIC YEAR

Trial Advocacy

PREPARATION FOR TRIAL

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OUTLINE

Client Interview
Research and Documentation
The Demand Letter
Negotiations
Case Analysis

Client Interview

Objectives of interviewing

Why is client here?(What happened to them?

What do they want to achieve?)

Basic info to open a file, advise on costs.

Is not just information gathering.

Is not just dealing with the legal problem.

It's about responding to the person.

It's a professional but personal relationship.

Functions of the interview

Establish the inter personal dimensions between lawyer and client.

Identify issues and obtain sufficient information.

Determine client's objectives and advise on them.

Prepare way for further action on client's behalf.

Interview Process

WASP

Maughan and Webb, “Laywering Skills and the Legal Process”, 2nd Ed.

- ❖ Welcome
- ❖ Acquire information
- ❖ Supply information
- ❖ Part

Importance of client participation

- ❖ Reduces potential of client-lawyer conflict of interest.
- ❖ Increases client satisfaction.
- ❖ Enables client perform better in outcome.

Interview environment

- ❖ One that avoids interruption.
- ❖ Lawyer should appear organised and uncluttered.
- ❖ Have a comfortable seating arrangement, not one that is intimidating.

Welcome

Meet, greet, seat.

Take notes but maintain eye contact.

Explain to client why need to take notes.

Discuss costs up front.

Acquiring Information

Listen. Let the client do the talking.

Questioning:

Basic, to establish a rapport.

Avoid closed questions(Did? Are?)

Use: “Tell me”?

Be empathetic.

Probe for detail.

Check the facts.

Supply Information

Advise; Give counsel.

From:

- ❖ Prior book knowledge.
- ❖ Experience.

Use language client understands.

Give structured advise.

Confirm with client that they got the advice.

Parting

Agree on an action plan.

Establish channels for further contact.

Explore Legal and non-legal alternatives. May refer client.

File to have:

- ❖ Details of client's personal information.
- ❖ Events leading to the consultation.
- ❖ Work to be done by lawyer and client.
- ❖ Advice given and to be confirmed.

Part-contd.

Action plan:

- ❖ Next contact
- ❖ Deadlines for tasks

Research and Documentation

Questions to Ask:

- ❖ Who has the information I need?
- ❖ In what categories can the information be classified?
- ❖ Who are the potential witnesses?(Eye witness; Expert)
- ❖ Does the other party have a lawyer?
- ❖ Are there forensic aspects to the case?
- ❖ What physical evidence is available?

Information categories

1. Personal information
2. Other parties (lawyers who have previously acted for the client)
3. Witnesses
4. Events
5. What client wants.
6. Previous advice and assistance.
7. Existing Legal proceedings.

Research and Doc.-contd.

Research

- ❖ Keep it within reasonable time frame.
- ❖ Restrict scope to client's need.
- ❖ Be relevant within local jurisdiction.
- ❖ Anticipate the adverse side

Documentation

- ❖ Store the information securely
- ❖ Categorize it. Label or classify. Have sub-folders.
- ❖ Determine what needs extra security(safe; strong room)
- ❖ Have a cover report/summary

Demand Letter

Ref: Principles in Civil litigation.

- ❖ Summarise what client's case is.
- ❖ Substance of claim are making.
- ❖ What are demanding from addressee.

Same principles will apply in opening statement; submissions; Theme and theory.

Determine mode of delivery.

Next step, in case of :

- a) Letter being ignored.
- b) Offer for negotiation is made.

Negotiations

Be covered substantially when discuss ADR.

Principles:

- a) What is your client's case?
- b) Your client remains your client.
- c) Are they required by the applicable law/rules?
- d) The cost/benefit analysis for choosing negotiations.
- e) Have a time frame: cannot go on forever.
- f) Plan B in case they fail.

Case Analysis

READ

❖ Desmond Peters Case

❖ Faith Mueni case

Come up with (After lecture on Theme and Theory)

❖ Theme

❖ Theory

Q and A

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