

Towards a Powerful Legal Advocacy

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In preparing this paper, I assumed the following points: first, we live with the legal ethical standards required of us as lawyers. Second, our academic preparation in our undergraduate programs in the art of writing was sufficient. Third, we acquired the desired technical knowledge of legal writing while we were still in law school.

A. The Legal Profession

Cocquia claims, "Lawyers belong to a privileged class of professionals which constitutes the natural bond between the people and their government."² We are instrumental in getting things done as we cut across practically all levels and types of activities in the community. Many of us are politicians, lawmakers, government administrators, business executives, industrial entrepreneurs, labor leaders, trial lawyers, writers, or researchers. We make our work susceptible to controversies and suits. "It [makes] the practice as wide as the human spirit, as multi-faceted as human society, and as dynamic as life itself."³ We do counseling and protecting; we contribute in ameliorating the risk of life; we are in the midst of conflict by championing a case, defending the oppressed, or by mediating family conflicts. We educate society with our lectures, opinions, and legal writings.

As professionals, we have responsibilities arising from our relationship with our clients, the courts, the profession, and society. Yet, many criticize us with the way we serve our clients and our general relationship with them. We know that "the idea of professional loyalty to one's client permits, nay, even demands an allocation of the lawyer's time, passion, and resources in ways

¹ Dean of the College of Law, Cor Jesu College, Digos City, Davao del Sur (2003 – 2008).

² J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003) p. 120.

³ Jeremias Montemayor, *New Problem of an Old Profession* (1952), at Chapter VII, p. 193, J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003)

that are not always maximally conducive to the greatest good of the greatest number."⁴ Consequently, "this loyalty appears to authorize tactics which procure advantages for the client at the direct expense of some identified opposing party."⁵

Former Chief Justice Roberto Concepcion, during the First Convergence of Law School Deans in the UP Law Center in 1976, remarks that lawyers have two-fold functions: counseling and advocacy. "The legal profession has no reason to exist except to see to it that justice be done within the law. The *immediate objective* is to promote compliance with the law. The *ultimate goal* is to promote justice."⁶ We are in a profession associated with advocacy and counseling. Not only that, we are identified as "officers of the court" on whose shoulders rest the grave responsibility of assisting the courts in the proper, fair, speedy, and efficient administration of justice.⁷ We are not only advocates or defenders but we are also organizers. Our basic function is to encourage, establish, and maintain order in various, and perhaps divergent ways to produce a single unifying result – the common good. We are "oath bound servant(s) of society whose conduct is clearly circumscribed by inflexible norms of law and ethics and whose duty is the advancement of the quest for truth and justice."⁸

To act effectively as counselor and advocate, Chief Justice Concepcion points out some qualities every lawyer must possess:⁹

1. A rather broad literary background, for a lawyer is an advocate, and, as such, he must read and write a lot in

⁴ Charles Fried, 'The Lawyer as Friend: The moral foundation of the Lawyer-Client Relationship' (1976) 85 *Yale L.J.* at 1060-62, reprinted in J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003) at page 144-163.

⁵ *Ibid*, p. 145.

⁶ Roberto Concepcion, *The Lawyer's Role in Society*, reprinted at p. 164 of J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003).

⁷ J. Fred Ruiz Castro, 'Apostasy in the Legal Profession', reprinted at p. 136-143 of J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003).

⁸ Jeremias Montemayor, *New Problem of an Old Profession* (1952), at page 195, J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003).

⁹ Roberto Concepcion, *The Lawyer's Role in Society*, p. 165.

- order to express his thoughts in a language adequate enough to persuade and convince others;
2. A good knowledge of the history of civilization, in general, and of the political development of mankind, in particular, inasmuch as history supplies the events of the past, which are the basis of philosophy;
 3. Some proficiency in philosophy, especially, in logic and mathematics, because a lawyer must think a good deal and draw valid conclusions, for which he needs the power of analysis and the ability to engage in inductive, deductive, and analogical reasoning; and,
 4. A substantial cultural foundation since law demands a great capacity for understanding and a suitable appreciation of moral values.

Justice Benjamin Nathan Cardozo explains that

As long as you live, and surely as long as you practice law, an examiner will dog your footsteps. When you enter some law office, an apprentice to some older lawyer, there will be someone looking over your shoulder, criticizing your work, pointing out its defects, cheering you, once in a while, by concession of its merits, educating, examining, testing – the process repeated without end. When a little later you start for yourselves, there will be trial judges and appellate courts, all examining, testing, approving or rejecting, just as in the days of adolescence which you thought were left behind. Sometimes, when these critics are compassionate and silent, you will have to meet a test still sterner, a scrutiny yet more rigid: the merciless test and scrutiny of a defeated and reproachful client. As years go by, some of you may cease to be advocates and gain a seat upon the bench. You may think then that you are safe, but alas! It is not so. Examiners will crowd about no longer are they to be propitiated by the invocations of a patron saint. If you happen to be a trial judge, there are your colleagues, ever lying in ambush vigilant and keen, and perhaps some other court yet higher than your own. If you live through all these dangers with reason unimpaired there are other trials as searching. The Bar, with its associations and committees, and, worse than these, the law schools and the law reviews, are still waiting at the door. Let there be a joint in your armor, a flaw in your opinion, it will not be long

before probe and scalpel will expose a gaping wound. The examiner is near at hand.¹⁰

Dean Irene Cortez of the UP College of Law believes that

a practicing lawyer may have to act in many different capacities. He is counselor or legal adviser to those who want to know their rights and duties under a given law and set of facts. For a party who may want to have his rights vindicated, he becomes an advocate before the courts. For the businessman interested in tax and other consequences of a merger, he acts as tax expert and legal consultant, besides drafting the articles of merger.¹¹

This necessitates our development of legal expertise to handle any legal problem in the future.

Fortunato Gupit comments that

if you are dreaming of becoming a lawyer and you wonder whether you can become a good one, let it be said that anyone with a fair amount of intelligence and a good deal of industry can succeed. Lawyerdom is so varied nowadays that a lawyer can always fit somewhere, depending upon his inclinations and his personality... A lawyer who is good in speech and human dealings can more quickly plow through it with immediately favorable results. These abilities are readily discernible from his actuations. They nevertheless take root at an early age in life and develop through proper upbringing, a wholesome environment, and a sound college education. If you do not have such abilities, then you should seriously take remedial measures.¹²

Communication skills, however, are not enough. A client selects a lawyer based on the lawyer's stature or

¹⁰ Cardozo, *Selected Writings*, 414-415 (M.E. Hall ed., 1947) cited in J. Coquia, *Legal Profession*, p. 201.

¹¹ Irene Cortez, *Academic Preparation and Practical Training for a Profession*. Essays on Legal Education, UP Law Center, reprinted at Chapter VII, page 217, J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003).

¹² Fortunato Gupit, Jr., "How to be a Lawyer", reprinted in J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003), p. 228-246.

prominence. Atty. Ricardo B. Teruel suggests that a good lawyer must appear to:

1. *Have territorial knowledge.* Know the offices you are dealing with and be friendly with those manning said offices as those functionaries could promote goodwill and good public relations that will enhance one's reputation and credibility. Knowing various professional and civic organizations will enhance prospects of sourcing clients. Knowing your colleagues will help you in securing second opinion. Most of all, knowing the judges and being known to them would help prevent being embarrassed in the presence of your client as such acquaintance will prevent reprimand or being ask "what is your name". What impact would it have on your reputation?
2. *Have peer counseling:* Bar organizations are avenues for interactions with peers and the social activities of the organization enhance friendship and brotherhood making a pool of second and third opinion provided on your legal dilemmas.
3. *Have a continuing legal education:* Considering that the legal practice is a lifetime career it demands constant study. The learning process is enhanced by attending seminars, conventions, and lectures. Of course, keeping abreast with current rulings of the Supreme Court would be a great advantage.
4. *Have a research data:* For lawyers, our data are laws and cases decided by the Supreme Court and textbooks of various authors. It will help one advance a strong argument if the same is back-up with authorities. The selection of books and the volumes stocked in the bookshelves will be indicative for the clients on the extent of one's practice and the fairness of one's substantial billings.
5. *Have sufficient technological advancement:* A lawyer should not only have an exploring mind but must also be attuned to developments. In this time of iPod, cell phone, MP4, computer, internet, and e-book, current lawyers must join the wagon and learn at least the usefulness of computer. Editing pleadings in a computer is a beauty. Sourcing authorities from CD-ROM materials is faster and efficient. Just look at the

difference of pleadings written 20 then 15 then 10 years ago and those made presently by lawyers. A client seeing documents prepared with the tools of the current times would surely not mind paying a higher premium. A judge reading a well-printed memorandum or brief will be enticed to read the same¹³.

Fr. Joaquin Bernas, SJ, Dean of the Ateneo de Manila College of Law, citing Dean Bayless Manning, enumerates the internal qualities of a lawyer.

1. Analytical skills - capacity to examine, distinguish, sort out and to separate the relevant from the irrelevant;
2. Substantial legal knowledge - general knowledge of most laws and knows very much the laws on the field he has specialized;
3. Basic working skills - acquisition of information and effective communication of ideas;
4. Familiarity with institutional environment - familiarity with the institutional environment in which the problem arises;
5. Awareness of Total Non-legal Environment - comprehend the non-legal environment of the problem at hand; sees the larger picture; knows when to seek others whose expertise can help him and his client;
6. Good Judgment - innate knack to perceive and decide what is good for the case or the client.¹⁴

Indeed, our profession is associated with advocacy and counseling, we write a lot and express our thoughts to persuade and convince others. The next question that needs a response is this: how do we write?

¹³ Ricardo B. Teruel, "Some Random Thoughts on How to be a Good Lawyer" reprinted in J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003), p. 247-257.

¹⁴ Joaquin G. Bernas, S.J., "Preparatory Bachelor of Arts and the Professional Legal Training", reprinted in J. Cocquia, *Legal Profession, An Introduction for Law Students and Young Lawyers of the 21st Century* (2nd ed, 2003) pp. 110-118.

B. Legal writing

We write as required by the Rules of Court. Specifically, Rule 7 and Rule 8 provide the general guide on writing pleadings. Rule 7, Section 2 (a) of the Rules of Court states that "the allegations in the body of a pleading shall be divided into paragraphs so numbered as to be readily identified, each of which shall contain a statement of a single set of circumstances so far as that can be done with convenience."

Note that legal writing is highly organized and structured to ensure an effective communication of any complex subject matter of the law. The common format for a structured legal writing is the IRAC process¹⁵. The IRAC (Issue, Rule, Analysis, and Conclusion) format when followed in the preparation of legal memorandum guarantees clear communication of the complex subject matter of analyzing a legal issue.

With the outline system and the IRAC process of writing, one can come up with the following legal writing format:

- I. Introduction
- II. Issue
- III. Analysis
 - A. Rule of Law
 - B. Case Law
 - 1. Title of the Case
 - 2. Facts of the Case
- IV. Conclusion

The above format though, needs some filling in of details; hence, it necessitates expanding some portions such as the Analysis section.

- I. Introduction
- II. Issue
- III. Analysis
 - A. Introduction
 - B. Rule of Law
 - C. Case interpreting the Rule of Law
 - 1. Title of the Case

¹⁵ William Putman, *Pocket Guide to Legal Writing*, West Legal Studies, Thomson Asian Edition, p. 160.

- 2. Facts of the Case
- 3. Rule of Law or legal principle presented in the case that applies to the client's facts
- 4. Application of rule or principle from the case that applies to the client's facts

IV. Conclusion

When two aspects of the rule of law apply to the same legal issue and two court opinions need to be included in the analysis, expand the outline.

- I. Introduction
- II. Issue
- III. Analysis
 - A. Introduction
 - B. Rule of Law
 - C. Case interpreting the Rule of Law
 - 1. Title of the Case
 - 2. Facts of the Case
 - 3. Rule of Law or legal principle presented in the case that applies to the client's facts
 - 4. Application of rule or principle from the case that applies to the client's facts
 - D. Case interpreting the Rule of Law
 - 1. Title of the Case
 - 2. Facts of the Case
 - 3. Rule of Law or legal principle presented in the case that applies to the client's facts
 - 4. Application of rule or principle from the case that applies to the client's facts
 - 5. Conclusion

How can we use any one of these formats in our legal writing?

First, convert the outline to a usable form. Take several pieces of papers and write the caption of each section and subsection of the outline on the upper right-hand corner of every separate page: Issue, Statement of Facts, Analysis - Rule of Law, Analysis - Case, Analysis - Application of the Case to Client's Case, Counter-Analysis, and Conclusion.

When more than one rule of law applies, there should be a separate page for each rule of law. Likewise, when several cases apply, write each case on separate pages. When there are separate issues involved, research and analyze each issue separately. Prepare a separate expanded outline for each issue.

Second, integrate all research, analysis, and ideas into the outline. Many ideas usually come in the conduct of research. Write them in the page of the expanded outline that had been specially marked for them.

Third, provide a separate page for the citations, references, and bibliography. The writer usually refers to the legal authority to support a statement, paraphrased or quoted. A citation provides the information necessary for the reader to locate the reference (i.e. the specific statute, court opinion, law review, encyclopedia, and the like) and allows him to check the content of the reference. The lists should be in accordance with the weight of the authority cited in-text¹⁶, as follows:

1. Constitution. Cite the Philippine Constitution and, if applicable, the Constitution of other countries;
2. Statutes. Start with Philippine laws, and where applicable, cite foreign laws;
3. Cases. Decided cases should begin with the Supreme Court then to the lowest court. When necessary, cite foreign cases;
4. Administrative and Executive Issuances;
5. Legislative materials. Include the proceedings of Congress that explain the spirit and intent of the laws.

What is the practical way of presenting our arguments before the Courts? We present them in the style and format that the Supreme Court expects the Judges to pen their decisions. Section 1, Rule 36 of the Rules of Court on Civil Procedure provides that "a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the clerk of court."

¹⁶ William Putman, *Pocket Guide to Legal Writing*, West Legal Studies, Thomson Asian Edition, p. 160

In *Mariano Velarde vs. Social Justice Society*¹⁷, the Court presents the essential parts of a good decision. It must include the following:

1. Statement of the Case

The Statement of the Case consists of a legal definition of the nature of the action. At the first instance, this part states whether the action is a civil case for collection, ejectment, quieting of title, foreclosure of mortgage, and so on; or, if it is a criminal case, this part describes the specific charge – quoted usually from the accusatory portion of the information – and the plea of the accused. Also mentioned here are whether the case is being decided on appeal or on a petition for certiorari, the court of origin, the case number in the trial court, and the dispositive portion of the assailed decision.

In a criminal case, the verbatim reproduction of the criminal information serves as a guide in determining the nature and the gravity of the offense for which the accused may be found culpable. As a rule, the accused cannot be convicted of a crime different from or graver than that charged.

Also, quoting verbatim the text of the information is especially important when there is a question on the sufficiency of the charge, or on whether qualifying and modifying circumstances have been adequately alleged therein.

To ensure that due process is accorded, it is important to give a short description of the proceedings regarding the plea of the accused. Absence of an arraignment or a serious irregularity therein, may render the judgment void, and further consideration by the appellate court would be futile. In some instances, especially in appealed cases, it would also be useful to mention the fact of the appellants' detention, in order to dispose of the preliminary query – whether or not they have abandoned their appeal by absconding or jumping bail.

Mentioning the court of origin and the case number originally assigned helps in facilitating the consolidation of the

¹⁷ G.R. No. 159357, April 28, 2004, the Supreme Court of the Philippines.

records of the case in both the trial and the appellate courts, after entry of final judgment.

Finally, the reproduction of the decretal portion of the assailed decision informs the reader of how the appealed case was decided by the court a quo.

2. Statement of Facts

There are different ways of relating the facts of the case. First, under the objective or reportorial method, the judge summarizes – without comment – the testimony of each witness and the contents of each exhibit. Second, under the synthesis method, the factual theory of the plaintiff or prosecution and then that of the defendant or defense is summarized according to the judge's best light. Third, in the subjective method, the version of the facts accepted by the judge is simply narrated without explaining what the parties' versions are. Finally, through a combination of objective and subjective means, the testimony of each witness is reported and the judge then formulates his or her own version of the facts.

In criminal cases, it is better to present both the version of the prosecution and that of the defense, in the interest of fairness and due process. A detailed evaluation of the contentions of the parties must follow. The resolution of most criminal cases, unlike civil and other cases, depends to a large extent on the factual issues and the appreciation of the evidence. The plausibility or the implausibility of each version can sometimes be initially drawn from a reading of the facts. Thereafter, the bases of the court in arriving at its findings and conclusions should be explained.

On appeal, the fact that the assailed decision of the lower court fully, intelligently and correctly resolved all factual and legal issues involved may partly explain why the reviewing court finds no reason to reverse the findings and conclusions of the former. Conversely, the lower court's patent misappreciation of the facts or misapplication of the law would aid in a better understanding of why its ruling is reversed or modified.

In appealed civil cases, the opposing sets of facts no longer need to be presented. Issues for resolution usually involve questions of law, grave abuse of discretion, or want of jurisdiction;

hence, the facts of the case are often undisputed by the parties. With few exceptions, factual issues are not entertained in non-criminal cases. Consequently, the narration of facts by the lower court, if exhaustive and clear, may be reproduced; otherwise, the material factual antecedents should be restated in the words of the reviewing magistrate.

In addition, the reasoning of the lower court or body whose decision is under review should be laid out, in order that the parties may clearly understand why the lower court ruled in a certain way, and why the reviewing court either finds no reason to reverse it or concludes otherwise.

3. Issues or Assignment of Errors

Both factual and legal issues should be stated. On appeal, the assignment of errors, as mentioned in the appellant's brief, may be reproduced in toto and tackled seriatim, so as to avoid motions for reconsideration of the final decision on the ground that the court failed to consider all assigned errors that could affect the outcome of the case. But when the appellant presents repetitive issues or when the assigned errors do not strike at the main issue, these may be restated in clearer and more coherent terms.

Though not specifically questioned by the parties, additional issues may also be included, if deemed important for substantial justice to be rendered. Note that appealed criminal cases are given de novo review, in contrast to noncriminal cases in which the reviewing court is generally limited to issues specifically raised in the appeal. The few exceptions are errors of jurisdiction; questions not raised but necessary in arriving at a just decision on the case; or unassigned errors that are closely related to those properly assigned, or upon which depends the determination of the question properly raised.

4. The Court's Ruling

This part contains a full discussion of the specific errors or issues raised in the complaint, petition or appeal, as the case may be; as well as of other issues the court deems essential to a just disposition of the case. Where there are several issues, each one of them should be separately addressed, as much as practicable. The

respective contentions of the parties should also be mentioned here. When procedural questions are raised in addition to substantive ones, it is better to resolve the former preliminarily.

5. The Disposition or Dispositive Portion

In a criminal case, the disposition should include a finding of innocence or guilt, the specific crime committed, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs. In case an acquittal is decreed, the court must order the immediate release of the accused, if detained, (unless they are being held for another cause) and order the director of the Bureau of Corrections (or wherever the accused is detained) to report, within a maximum of ten (10) days from notice, the exact date when the accused were set free.

In a civil case as well as in a special civil action, the disposition should state whether the complaint or petition is granted or denied, the specific relief granted, and the costs. The following test of completeness may be applied. First, the parties should know their rights and obligations. Second, they should know how to execute the decision under alternative contingencies. Third, there should be no need for further proceedings to dispose of the issues. Fourth, the case should be terminated by according the proper relief. The "proper relief" usually depends upon what the parties seek in their pleadings. It may declare their rights and duties, command the performance of positive prestations, or order them to abstain from specific acts. The disposition must also adjudicate costs.

The foregoing parts need not always be discussed in sequence. But they should all be present and plainly identifiable in the decision. Depending on the writer's character, genre and style, the language should be fresh and free-flowing, not necessarily stereotyped or in a fixed form; much less highfalutin, hackneyed and pretentious. At all times, however, the decision must be clear, concise, complete and correct."

When we combine both formats, the outline appears this way:

<ul style="list-style-type: none"> I. Introduction Issue II. Analysis <ul style="list-style-type: none"> A. Introduction B. Rule of Law C. Case interpreting the Rule of Law <ul style="list-style-type: none"> 1. Title of the Case 2. Facts of the Case 3. Rule of Law or legal principle presented in the case that applies to the client's facts 4. Application of rule or principle from the case that applies to the client's facts D. Case interpreting the Rule of Law <ul style="list-style-type: none"> 1. Title of the Case 2. Facts of the Case 3. Rule of Law or legal principle presented in the case that applies to the client's facts 4. Application of rule or principle from the case that applies to the client's facts III. Conclusion 	<ul style="list-style-type: none"> I. Prologue (nature of the controversy) II. Assignment of Errors III. Analysis <ul style="list-style-type: none"> A. Statement of the Case & Statement of Facts B. Rule of Law C. Issues or arguments <ul style="list-style-type: none"> 1. Name of the case 2. Facts of the case 3. Rule of Law or legal principle presented in the case that applies to the client's facts. 4. Court Ruling D. Issues and arguments <ul style="list-style-type: none"> 1. Name of the case 2. Facts of the case 3. Rule of Law or legal principle presented in the case that applies to the client's facts. 4. Court Ruling IV. Conclusion (Disposition & Epilogue - summation of principles)
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My suggestion, of course, is purely for practical reason. If we format our arguments in the way the court writes its decision, we will help the Court speedily dispose of the case.

It is a basic rule of writing that the document must be clear, concise, complete, and correct. Lawyers are always tempted to put more words or sentences to their arguments. The best restraint therefore is to adhere to the limitation first mentioned - clear, concise, complete and correct.

Finally, for one to have a powerful legal advocacy the lawyer must be extrinsically equipped; likewise, he must be intrinsically prepared. Extrinsic endowment refers to good office, good books, good office equipment, and a good vehicle. Intrinsic preparation requires his/her acquisition of good skills in both spoken and written communication.