

COUNCIL OF LEGAL EDUCATION



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES**

ATP 105: PROFESSIONAL ETHICS & PRACTICE

THURSDAY 26TH NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates **MUST** answer **FOUR** Questions
- (b) **Question ONE is compulsory**
- (c) All questions carry **15 marks** each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

1. Roy is a newly qualified and recently employed advocate. A few days after reporting for work he was summoned to the Senior Partner's office. The Senior Partner handed to Roy a brief about a case that was coming up the following day in court. Their client Mteja Asiyechoka has given firm and mandatory instructions about how his case is to be conducted.

Roy is required to:

Urgently file an application for the trial judge to excuse himself. The grounds upon which the application is to be filed are that the client is apprehensive about the fairness of the trial judge who comes from the same ethnic community as the defendant in the case.

File an a plication for defense counsel to disualify himself on the grounds that there is a conflict interest. The basis of the application is that the defense counsel had unsuccessfully solicited for im Kichwa Baridi to compromise the case.

If none of the application is granted, We an appeal and application of sta pending appeal and drag on the of the appeal until such a time as Kichw Baridi advises that there is "more favourable litigation climate".

Roy is far from impressed by the ferocity of Kichwa Baridi's allegations and is concerned about the instructions given to him by his employer.

- (a) Identify the ethical issues arising and propose a resolution of the same. (10 marks)
- (b) Suppose Roy unsuccessfully files the applications as instructed and the trial judge found that the applications were in fact actuated by bad faith, what options does the trial judge have in sanctioning the behavior of Roy and his employer.

Support your answer with a statutory provision and illustrate your answer with a decided case. (5 marks)

2. "From the moment that any advocate can be permitted to say that he will not stand between the crown and the subject arraigned in court where he daily sits to practice from, that moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or of the defense, he assumes the character of the judge: may he assume it before the hour of the judgement and in proportion to his rank and reputation put the heavy influence of perhaps a mistaken opinion into the scale against the accused in whose favour the benevolent principles of English law make all assumptions and which commends the very judge to be counsel" *Per Thomas Erskine (1750-1823)*

- (a) Find a constitutional and statutory basis for the above statement in Kenya. (3 marks)
- (b) Identify situations where an advocate may be excused from acting for a client. (5 marks)
- (c) Use your answer in (b) to evaluate the correctness of the statement by Thomas Erskine. (3 marks)
- (d) Mgaidi is charged with various offences arising from brutal massacre of 148 students of Garissa University. Mgaidi cannot afford legal services. The registrar of the court requests Okil Masira