

**THE PROSECUTOR'S  
HANDBOOK**  
*for the Ministry of Justice,  
Enugu State.*

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## **PREFACE:**

### **PURPOSE OF THE HANDBOOK**

This handbook for prosecutors is intended to enable speedy and unimpeded prosecution of criminal cases; to reduce the time it takes for the Department of Public Prosecutions to complete the various prosecution stages. We hope that as a corollary to the speeding up the prosecution process this handbook will lead to general improvement in the quality of legal services delivered,

The handbook has provided a clear guidance to prosecutors on the discharge of their prosecutorial duties, which include:

Preparing legal opinions;

Preparing information and proof of evidence;

Preparing for and conducting prosecutions (including attendance at court, pre-trial proceedings etc.);

Synergy with key justice providers the police, courts, suspects, witnesses, defence lawyers, etc.;

Handling case files;

Ethical issues in relation to the prosecutorial function.

The responsibility for any errors found in this handbook is mine.

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***CHAPTER ONE***  
***THE MINISTRY OF JUSTICE***

## **1.1. OVERVIEW**

The Ministry of Justice is a government department charged with the administration of justice. Nigeria is a federal republic, with a Ministry of Justice in every state of the federation and a Federal Ministry of Justice at the centre. At the federal level, the ministry is headed by a lawyer designated “Attorney-General of the Federation and Minister for Justice” and in Enugu state as in each state of the federation, by a lawyer designated “Attorney-General and Commissioner for Justice”.

## **1.2. RANK STRUCTURE OF THE MINISTRY OF JUSTICE ENUGU:**

- Attorney-General/Commissioner for Justice
- Solicitor-General/Permanent Secretary
- Directors: DPP/Civil Litigation/AGPT/Legal Drafting/CRMC/Law Reporting
- Deputy Directors
- Chief Legal Officer
- Assistant Chief Legal Officer
- Principal Legal Officer
- Senior Legal Officer
- Legal Officer

## **1.3. OFFICE OF THE ATTORNEY-GENERAL**

The office of Attorney-General is created, in the case of the Federal Attorney-General, s.150, and in the case of State Attorneys General,

s.195, of the 1999 constitution of the Federal Republic of Nigeria (as amended).

In most common law jurisdictions, the "Attorney-General" is the main legal adviser to the government, and in some jurisdictions s/he may also have executive responsibility for law enforcement or responsibility for public prosecutions. In Enugu State like the rest of Nigeria, the Attorney-General has the responsibility for public prosecutions not law enforcement, which rests in the State Commissioner of Police or Inspector-General at the federal level.

In Enugu State as in other states in Nigeria, the office of Attorney-General is vested in the Commissioner for Justice. Indeed, it is not unusual to hear lawyers and judges saying "the Attorney-General is in court" in reference to the presence in court of prosecutors from the Ministry of Justice.

Specific duties of the Attorney-General and Commissioner for Justice include organizing the justice delivery system, overseeing the Director of Public Prosecution (DPP) and Director of Civil Litigation (DCL), and maintaining the legal system. Some Ministries of Justice have additional responsibilities in related policy areas.

In Enugu State, additional responsibilities include overseeing the Department of Citizens' Rights and Mediation Centre (CRMC), Administrator General/Public Trustee (AGPT), and Department of Legal Drafting. Law Reform is also under the remit of the Commissioner for Justice, Enugu State. Enugu State does not have an office of the Public Defender like some states.

#### **1.4. SOLICITOR-GENERAL/PERMANENT SECRETARY**

The Solicitor-General can act as Attorney-General in the Attorney-General's absence<sup>1</sup>. In Nigeria's civil service culture, the chief accounting officer and administrative head of government ministries is the Permanent Secretary. In the Ministry of Justice, the Solicitor-General wears two hats, the other hat being Permanent Secretary. However, when the Solicitor-General/Permanent Secretary appears in court for a case, the Solicitor-General announces his/her name and thereafter, designation simply as 'Solicitor-General' and not 'Solicitor-General/Permanent Secretary.' This is because the rank of Permanent Secretary is administrative and not court-room related. When government functionaries are to take their oaths of office before the State Governor as provided under the Oaths Law Cap 119 Laws of Enugu State of Nigeria, the Solicitor-General it is who administers the oath of office. Under the supervision of the Attorney-General, the Solicitor-General directly oversees civil litigation in the Ministry of Justice but does not oversee criminal litigation. The Attorney-General is directly in charge of criminal litigation and relates with the DPP directly in this regard. The Solicitor-General may act as Attorney-General in the Attorney-General's absence<sup>2</sup> but does not issue fiats. Fiats are authorisations to prosecute issued by the Attorney-General to private legal practitioners.

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<sup>1</sup> Wikipedia – the free encyclopedia

<sup>2</sup> Wikipedia – the free encyclopedia

## **1.5. DIRECTOR OF PUBLIC PROSECUTIONS (DPP)**

The "Director of Public Prosecutions" (popularly called 'DPP') is the office or official charged with the prosecution of criminal offences in several criminal jurisdictions around the world. The title is used mainly in jurisdictions that are or have been members of the Commonwealth of Nations<sup>3</sup>

Each state in Nigeria has its own DPP. The Office of DPP operates independently of Government. Ultimate authority for authorising prosecutions lies with the Attorney General. However, since that is a political post, and it is desired to have a non-political (public service) post carry out this function in most circumstances, the prosecutorial powers of the AG are normally delegated to the DPP.

Since this is a manual on criminal prosecution, no further attention will be given to the other directorates under the attorney-general. Emphasis henceforth shall be on criminal prosecutions.

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<sup>3</sup> Ibid.



**CHAPTER TWO**  
**THE NIGERIAN CRIMINAL**  
**JUSTICE SYSTEM**

## 2.1. OVERVIEW

The legal foundation for the criminal justice system is the constitution especially those sections relating to the powers of the court, and fundamental rights. In addition to the constitution, the criminal justice system in Nigeria embodies the laws, institutions and social and moral mores of the various regions and religions.

The Nigerian criminal justice system also encompasses the various laws in force at federal and state levels. These laws establish and define crimes, prohibited behaviour, and sanctions for breach thereof. Sanctions include jail terms and/or fines, forfeiture, restitution or community service. In some northern Nigerian jurisdictions, sanctions include amputation of the arm or wrist!!!

The constitution has direct control over the definition of what constitutes a crime and places restrictions on the scope of the application of a penal law<sup>4</sup>. In other words, the constitution ensures that a person can only be punished for actions prescribed by “existing” law as offences.<sup>5</sup> For example, the law defining the crime ought to have been enacted before the commission of the offence, as no one can be punished retrospectively for an offence.

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<sup>4</sup>*Nigerias-Criminal-Justice-System-Problems-and-Challenges-* Emeka  
*Ugwuonye* Dec. 11, 2011  
[http://elombah.com/index.php?option=com\\_content&view=article&id=9135:nigerias-criminal-justice-system-problems-and-challenges&catid=25:politics&Itemid=92](http://elombah.com/index.php?option=com_content&view=article&id=9135:nigerias-criminal-justice-system-problems-and-challenges&catid=25:politics&Itemid=92)

<sup>5</sup> Sections 36(8) and (12) 1999 Constitution of the Federal Republic of Nigeria cap C23 LFN 2004

Note that the constitution does not out-rightly control the kind of punishment that the law can impose<sup>6</sup> but provides that no punishment greater than that prescribed by the law establishing an offence should be meted out on an offender<sup>7</sup>.

Hence, even though the state has the power to implement its laws by prosecuting and punishing violators of the laws, in exercising the right, it must comply with the constitutional provisions on the rights of its citizens.

## **2.2. PROCESS OF CRIMINAL JUSTICE DELIVERY**

### **2.2.1. COMMENCEMENT OF CRIMINAL JUSTICE DELIVERY**

Criminal justice delivery commences when a person is reasonably suspected to have either committed a crime or is in the process of committing the crime and continues through to the end of trial. Where it results in a conviction, it continues through sentencing, imprisonment and release upon the completion of sentence. In other words, if a police officer believes that a person has committed or is committing a crime, an arrest occurs. The processes that such a person goes through all the way to conviction or acquittal in court or release after his jail term or completion of alternative punishment constitute the criminal justice system<sup>8</sup>.

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<sup>6</sup>Op.Cit. Emeka Ugwuonye

<sup>7</sup> Section 36((12) 1999 Constitution of the Federal Republic of Nigeria Cap C23 LFN 2004

<sup>8</sup> Op cit; Emeka Ugwuonye

In Nigeria, the process of criminal justice involves several distinct stages, which takes an offender from the stage of arrest to re-entry into the society.<sup>9</sup> This process normally includes the following important stages:

- Arrest;
- Arraignment and trial,
- Sentencing; and
- Corrections.

### **2.2.2. POWERS OF ARREST**

Arrest is part of a process involving the custody, detention, or deprivation of the liberty of a suspect, for the purposes of investigation into the alleged crime. The person arrested shall not be subjected to unnecessary restraint, except where there is recognizable apprehension of violence or there has been attempt to escape from custody or where restraint is necessary for the safety of the person arrested. The person arrested must be told of the reason for his arrest<sup>10</sup>.

The police are thus generally vested with the powers of arrest by virtue of the following statutes:

Criminal Procedure Act<sup>11</sup>;

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<sup>9</sup>ibid

<sup>10</sup>Section 36(6)(a) CFRN 1999

<sup>11</sup>Section 10 Criminal Procedure Act

Criminal Procedure Code<sup>12</sup>; and

The Police Act.<sup>13</sup>

Similar but narrower powers of arrest may be exercised by private individuals in certain circumstances.<sup>14</sup> However, any person arrested by a private individual on suspicion of the commission of an offence must be taken immediately to the police station.<sup>15</sup>

The constitution of the Federal Republic of Nigeria, 1999<sup>16</sup> as well as a good number of statutes<sup>17</sup> makes provisions for the release on bail of suspects, pending investigation. After investigation, if the police fail to find incriminating evidence the suspect is allowed off but where there is sufficient evidence, the suspect is charged to court.

### **2.2.3. ARRAIGNMENT**

Arraignment is the first public appearance of the accused person (called defendant in some jurisdictions) in an open court with the jurisdiction to try the alleged offence. During arraignment, the accused person must stand and listen while the indictment or charge/information is read out to him/her in a language s/he

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<sup>12</sup>.Section 26 criminal procedure Code

<sup>13</sup>Section 24 Police Act

<sup>14</sup> Section 12 Criminal Procedure Act and section 28(d) Criminal Procedure Code;

Nweke V State (1965) 1 all NLR 114

<sup>15</sup>Section 14 CPA and Section 39 CPC.

<sup>16</sup> Section 34(4) CFRN 1999

<sup>17</sup>Section 17 CPA, section 129 CPC, Section 27 Police Act.

understands<sup>18</sup>, after which the accused person shall enter a plea. Where the accused person pleads 'guilty', s/he shall be sentenced without trial, except in cases of capital offences where the court is required to enter a (statutory) plea of 'not guilty' for the accused even when he pleads "guilty."<sup>19</sup> However, if s/he pleads not guilty, s/he shall be scheduled for trial.

#### **2.2.4. TRIAL**

Trial involves the examination of fact for the purpose of reaching a finding (judgement) of either 'conviction' or 'acquittal'. The judge sits as an impartial arbiter. The trial stage is governed by strict rules of procedure, evidence and precedent, with the court bound to adhere strictly to the rules of fundamental rights as enshrined in the constitution<sup>20</sup>. The standard of proof is beyond reasonable doubt and the onus is upon the prosecution to prove the case beyond reasonable doubt<sup>21</sup>. Where any doubt arises in the mind of the court, it shall be resolved in the favour of the accused person.

After trial, the Court will either convict or acquit the accused person, depending on the evaluation of the law and evidence before the court.

**There are three possible outcomes in any trial:**

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<sup>18</sup>Section 36(6)(a) CFRN 1999

<sup>19</sup>Chukwu V State (1994) 3 NWLR (pt 335)640 p.655

<sup>20</sup>Section 36 chapter 4 CFRN 1999

<sup>21</sup>Section 132 Evidence Act Cap E14 LFN (Revised Edition) 2011; Nigerian Airforce V Obiosa (2003) 4 NWLR (pt 810) 233 at p. 275

**Discharge:** If trial is discontinued for reasons other than merit and the accused person has to be let off as a result of the frustration.

**Discharge and Acquittal:** Where trial results in an acquittal, the accused person will be discharged and acquitted.

**Conviction:** Where a trial results in a conviction, the court will sentence the accused person in accordance with the prescribed penalty for the offence.

Offenders found guilty on more than one charge may serve sentences consecutively (one at a time) or concurrently (all at the same time) subject to the discretion of the sentencing officer, the magistrate or judge.

### **2.2.5. CORRECTION**

Correction is the process of:

spending time in prison,

being classified according to local procedures

being housed in an appropriate facility

being assigned to an adequate treatment program<sup>22</sup>

Prisons are also sometimes known as correctional institutions. The process of correction is a vital part of our criminal justice system.

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<sup>22</sup>. Op cit. Emeka Ugwuonye.

**CHAPTER THREE**  
**IMPACT OF DELAYS IN**  
**JUSTICE DELIVERY**



Effective dispensation of criminal justice includes prompt hearing and dispensing of criminal cases. The Court has the duty to ensure that justice is not only done, but timeously done. Take note however that although speed is critical to effective criminal justice delivery, it is not the only indicator of quality justice. Thus, equating speed with effectiveness would be inappropriate as a certain magnitude of delay may be necessary for effective administrative functioning of the courts. Indeed, a speedy trial may result in the denial of due process, illustrated in the trite aphorism 'justice rushed is justice crashed'. Therefore, the task of the courts and the criminal justice delivery personnel is to control delay in such a manner that only that which is necessary may be countenanced for example, time spent in securing witnesses and exhibits.

### ***3.1. CASUALTIES OF DELAYED CRIMINAL JUSTICE DELIVERY***

Immediate casualties of delay in criminal justice delivery are:

**The Accused Person**, usually detained in dehumanizing conditions without trial;

**The State** whose scarce resources are spent maintaining suspects in detention with attendant negative reputation for human rights violations and damage to the nation's human rights record;

**The Complainant/Victim** who wants justice as quickly as possible in order to move on with his or her life. When trial eventually commences, it is marred with innumerable

adjournments leading to the possibility of loss of interest in the case by the complainant as often is the case<sup>23</sup>.

### **3.2. DELAY IN CRIMINAL PROCEEDINGS**

Delay in criminal trials is counter-productive for the judicial system and economy and undermines the aims of the criminal justice system.

Some of the consequences of delayed justice delivery include:

#### **3.2.1 UNDERMINING PUNISHMENT AS AN EFFECTIVE DETERRENT**

When a person is released on bail and goes through a never-ending trial it sends a psychological message to victims, society and even accused persons that crime has no sanction.

Also, when punishment takes place at some time in the future it lowers the deterrent and retributive effect of punishment than the same punishment implemented immediately. For example, in cases where the prescribed penalty has an option of fine, it is trite that the monetary value depreciates with time. Thus, it might be more burdensome to pay a fine of say, three thousand naira in 2013 than it would be in say, 2015.

In addition, where an accused person has spent a long time awaiting trial in detention, the time spent in detention may be considered upon conviction during sentencing, leading to shorter sentences than that

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<sup>23</sup>*Professor Bolaji Owasanoye and Dr Chinyere Anī ; Case management amongst the police, prosecution and court*

prescribed in the statute books. In such an instance, the penalty loses its psychological and deterrent effect. People who do not understand the calculations which went into the shorter sentence may see the law as an ass, as the trite aphorism goes; and that committing offences has no real consequence besides meagre penalties.

### **3.2.2 WEAKENS THE PROSECUTIONS' CASE**

Delay in justice delivery frustrates the case for the prosecution through the **viscerally** negative impact on the quality of witness evidence and witness motivation as are shown hereunder:

- Witnesses to the commission of a crime may lose vivid memory of the incident or crime, and where the offence allegedly committed is such that requires corroboration of testimony for conviction, doubts arising from inconsistencies (even if the result of failed memory), will be resolved in favour of the accused person;
- Witnesses to a crime may die or relocate to distant places from which it will be too burdensome to attend court trial in order to testify;
- From frustration at the endless adjournments, witnesses or even victims of crimes may decide to drop out of the court process in order to concentrate on their jobs, businesses and schooling;
- In the course of prolonged criminal trials, some evidence against the accused person may become lost or unavailable. And even when still available, may become useless to the case. For example, in sexual offences it is

often difficult to keep the blood stained dress of the victim (where applicable) in good condition for say, three years of court attendance amidst innumerable adjournments.

### ***3.2.3. WEAKENS THE CERTAINTY AND FINALITY OF SANCTIONS***

Sanction is uncertain, indeterminate and interminable where there is prolonged and unnecessary delay in the appellate process.

### ***3.2.4. LOSS OF INCOME AND EMPLOYMENT FOR ACCUSED PERSONS***

Because they may spend months in jail awaiting resolution of their trials the cost of delay may include the loss of income and employment for the person accused. While in detention some fall ill and die.

### ***3.2.5. HARDENING OF SUSPECTS IN MINOR OFFENCES***

In the course of prolonged or delayed commencement of trial, minor offenders are often forced to mingle with serious or violent offenders for extended periods, thus exposing, hardening and indeed, distorting their psychology.

### ***3.2.6. HARDENING OF YOUNG OFFENDERS***

As a result of the absence of borstal facilities and the consequential lumping of young offenders with adult offenders in police detention facilities and awaiting trial prison facilities, young offenders get exposed to adult criminals and this exposure is made the worse because of the lengthy periods of time they have to spend in consequence of the delay in the trial process.

### **3.2.7. INTERFERES WITH THE GENERAL EFFECTIVENESS OF THE COURTS**

Long processing delays and case backlogs overburdens the work-load of trial courts and may make courts reluctant to engage in full-length trials, leading to undue leniency in sanction, thereby reducing the overall deterrent effect and purpose of the criminal trial. The quality of justice reduces.

### **3.2.8. WASTE IN RESOURCES AND MANPOWER**

The state prosecutorial team, counsel to the accused persons, and the court often all suffer waste of time resources and manpower because of undue delay and especially where cases have to be discontinued for insufficient evidence, insufficient evidence often being the consequence of delay as some crucial witness might have lost interest or exhibits tampered with, etcetera, as is often the case.

### **3.3. WHO IS A PROSECUTOR?**

The prosecution or prosecutor is the legal party responsible for presenting the case in a criminal trial against an individual accused of breaking the law<sup>24</sup>. S/He prosecutes another for a crime in the name of the government. A prosecutor is usually the chief legal representative of the State in countries with either the common law adversarial system, or the civil law inquisitorial system of jurisprudence.

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<sup>24</sup>*Wikipedia, the free encyclopedia* [answers.yahoo.com/question/index?qid](https://answers.yahoo.com/question/index?qid)

### **3.3.1. DIFFERENT CATEGORIES OF PROSECUTORS**

The prosecutor may be a public or a private or special prosecutor. The Attorney-General is the chief public prosecutor in which capacity s/he delegates the responsibility of prosecuting criminal trials permanently to a Director of Public Prosecutions (DPP) under the general oversight of his/her office. The Director of Public Prosecutions (DPP) is the departmental head in charge of prosecution appointed by the government to prosecute all offences; usually undertaken by him/her and other legal officers in the Ministry of Justice.

A Private Prosecutor on the other hand obtains an authority to prosecute, called a **fiat**, from the Attorney General, and prosecutes the trial in court of an alleged criminal, with reports submitted to the Attorney-General regarding the progress of trial.

Take note however that for criminal trials in the Magistrates' Courts, subject to issuance of the Attorney-General's fiat, police prosecutors are utilised for prosecution. In some jurisdictions, non-police prosecutors are involved in the investigation of crime. In Nigeria, the police used to be strictly for investigation in the case of offences before superior courts of record and for both investigation and prosecution in the Magistrates' courts. However, the police in Nigeria are allowed to prosecute in all superiors courts of record as held by the Nigerian Supreme Court in **Lufadeju v Johnson**<sup>25</sup>.

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<sup>25</sup> (2007) 8 NWLR (Pt. 1037), (2007) 3 S.C. (Pt. II) 134

Private prosecutors usually only become involved in a criminal case after identification, arrest and proffering of charges against one or more suspects, that is to say, when a case is in court.

State counsel or state prosecutors from the Ministry of Justice however get involved after police investigation but before charge to court. They are required to write legal opinions on each police investigation report and to confirm thereby if there is a prima facie case established against the suspects. The state prosecutor also prepares the information or statement of allegations against the accused person and files in court.

### **3.4. MAJOR REQUIREMENTS FOR EFFECTIVE PROSECUTING**

The job of prosecutor is mentally tough and requires the following:

#### **3.4.1. CRITICAL THINKING**

This is a type of reasonable, reflective thinking aimed at deciding what to believe and what to do.<sup>26</sup> With critical thinking, the prosecutor decides whether a claim or piece of evidence is always true, sometimes true, partly true, or false. The prosecutor should be able to look at the facts of a case and decide whether or not prosecution would be worthwhile. The ability to think quickly and critically and then dispassionately sift the wheat from the chaff is a prerequisite.

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<sup>26</sup> Ennis, R.H. (1987) A taxonomy of Critical Thinking Skills and Depositions. In JB Baron and RJ Stenberg (Eds), Teaching Thinking Skills: Theory and Practice (pp.9126). New York Freeman. ISBN 9780716717911

### **3.4.2. GOAL ORIENTED**

Neither **conviction** nor **persecution** but **justice** is the goal of the effective prosecutor. A good prosecutor must know this purpose, never forget and work towards it.

### **3.4.3. PASSIONATE**

“Nothing great in the world has ever been accomplished without passion” – Georg Wilhelm Friedrich Hegel

If you do not enjoy your job you have had it. As Greek philosopher Aristotle put it: “Pleasure in the job puts perfection in the work.” Passion for justice is a prerequisite. The prosecutor has to enjoy the prosecutorial duty, that is to say, enjoy preparing for, and being at criminal trials.

### **3.4.4. INTEGRITY:**

Honesty, sincerity and integrity are fundamental to the character of every lawyer not only the prosecutor.

For example,

In the course of writing the legal opinion to determine whether there was a prima facie case made out or not from the police investigation report, the prosecutor’s latitude to recommend whether to try an accused person or not could be and is sometimes abused.

So although the prosecutor’s recommendation is subject to the approval of the Attorney-General, both Attorney-General and DPP may be swayed by the prosecutor’s recommendation one way or the other. This is more so in the light of the sheer volume of recommendations



awaiting the Attorney-General and DPP's assent and other responsibilities which make thorough review of those recommendations sometimes well-nigh impossible.

On integrity:

The prosecutor must never engage in the perversion of justice;

The prosecutor must never suppress any indicting facts for monetary or other gain in favour of accused persons;

The prosecutor must not be a tool for the oppression of innocent and or indigent citizens.

### **3.4.5. GOOD COMMUNICATOR:**

What is good communication? Good communication is the soul of effective prosecution and includes:

Listening;

Speaking; and

Body language.

#### **a). Listening;**

Cultivate listening skills by listening intently to the alleged victim, witnesses, accused persons and the police.

#### **b.) Speaking;**

Two broad points -

Be articulate: Not everyone is born articulate but articulate speaking can be learned;

read widely to improve vocabulary;

Learn to marshal your points in orderly fashion;  
learn deliberate, calculated speaking;  
listen to good speakers and adapt their style.

In the light of the important information typically in the possession of prosecutors, a prosecutor cannot afford to talk randomly or carelessly.

### **C. Body Language**

When interacting with the alleged victim, witnesses, accused persons and even the police, you must learn to read non-verbal cues. Non-verbal cues include but are not limited to the demeanour of the alleged victim, witnesses, accused persons and even the police. They help the prosecutor gain facts which cannot be easily verbalised.

### **THOROUGH KNOWLEDGE OF LAW & FACTS**

Effective prosecution requires prosecutors to know the applicable law, the facts and the evidence in each case they evaluate. In cases where the stakes are high for the victim, the accused and the community, for example. sexual or economic crimes, prosecutors must act timeously and take every step necessary to access all legally available information and evidence to evaluate the case.

### ***3.5. DUTY OF THE PROSECUTOR IN THE ADMINISTRATION OF CRIMINAL JUSTICE***

Prosecutors in the Ministry of Justice are responsible for presenting criminal cases in court on behalf of the government and people of the State;

Prosecutors are thus obliged to enforce the Constitution of the Federal Republic of Nigeria, and other laws of the State touching on crime and criminal proceedings;

The prosecutor is neither a relentless defender of the state's case good or bad, nor one who must ground a conviction at all costs;

Indeed, a dispassionate prosecutor may be the only hope for an innocent person who has been maliciously incriminated!

Duties:

**3.5.1 DUTY TO ENSURE THAT JUSTICE IS DONE IN CRIMINAL CASES;**

**3.5.2 DUTY TO ENSURE THAT THE LAW IN CRIMINAL PROSECUTION WORKS EFFECTIVELY;**

**3.5.3 DUTY TO ENSURE THAT ETHICAL STANDARDS ARE MAINTAINED AS THESE RESPONSIBILITIES ARE CARRIED OUT;**

**3.5.4 *DUTY TO INFORM AND EDUCATE THE VICTIM ABOUT THE CASE:***

- In this regard, the prosecutor ought to work with the police to guide the victim through the legal process;
- work with other victim service providers to guide the victim through the legal process;
- let the victim/complainant know that s/he does not have to finance the prosecution process;
- communicate with the victim/complainant with the aim of making the victim understand:

- that even though the commission of the crime affects the victim directly, s/he is not a party to the case but a witness for the State;
- that the prosecutor while working to get justice for the victim/complainant, works primarily for the larger society the State;
- that the criminal prosecution process is not determined by how far a victim wants to go with it but how far the State wishes to, as prosecution will continue whether or not the victim/complainant wants to drop charges;
- that this is because as long as evidence is found to ground a charge against an accused person, the prosecutor has the duty of ensuring that the offender is brought to book not only for the wrong done to the victim/complainant, but the protection of the larger society;
- that the victim's co-operation is imperative if justice would be achieved;

The Prosecutor's duty to inform and educate also encompasses the following duties:

- To explain to the victim/complainant at the preliminary stages whether the state has decided to prosecute the case or not;
- To notify the victim/complainant of any progress or delays in court proceedings;

- To ensure that the victim/complainant and potential prosecution witnesses are aware of the trial date when fixed, and to attend hearing and trial proceedings.

However, it is the duty of the court registrars not prosecutors to issue production warrants to compel the accused persons to come to court.

### ***3.5.6 DUTY TO BE PROMPT***

“Promptitude is not only a duty, but is also a part of good manners; it is favourable to fortune, reputation, influence and usefulness; a little attention and energy will form the habit, so as to make it easy and delightful”—Charles Simmons

Mediocre prosecutors are distinguished by the swiftness with which they ask for adjournments or fail to be in court without cogent excuse. In particular, the fact that the State cannot be damnified in costs makes this course of conduct inexcusable.

Thus, the prosecutor shall, as much as possible, avoid asking for adjournments. The prosecutor shall not contribute to delays by failing to attend court or being unprepared for court under any pretext.

### ***3.5.7. DUTY TO MAKE INFORMED DECISION AS TO WHETHER OR NOT TO PROSECUTE:***

In taking the decision whether or not to prosecute, take note that Prosecution is discretionary in that prosecutors have the discretion to recommend whether to prosecute an accused person at all, or charge for a lesser offence where the available evidence can only ground a conviction for a lesser offence;

Not all allegations of crime should be prosecuted.

In order to make informed decisions as to prosecute, a prosecutor ought to do the following:

Thoroughly review facts of the case, the available evidence and the applicable law;

Diligently compare the evidence with the elements of the crime and determine whether or not the evidence is sufficient to sustain prosecution;

Discreetly scrutinize all police reports, statements of victims, witnesses and suspects;

Review and evaluate the physical evidence as well as meet with the victim and witnesses;

Where sufficient evidence exists the prosecutor should proceed to file information;

Provided that where there is enough evidence, the prosecutor should also decide whether or not the matter can be prosecuted with respect to the limitation of time for prosecuting such offences if in fact there is a limitation of time.

### ***3.5.8. DUTY TO AMEND THE CHARGE:***

A prosecutor has a right to amend the charge in favour of the person on trial, or to withdraw the charge in court if there is a reason or ground for doing so. However, this right must be exercised within the confines of justice to avoid abuse.

### ***3.5.9. DUTY TO BE ADEQUATELY PREPARED:***

“if you fail to prepare you prepare to fail”

The success or failure of prosecution depends largely on preparation.

- The effective prosecutor needs to ensure that all evidence is available and ready for presentation at trial;
- After gathering and analysing evidence, the prosecutor should identify the elements of the crime;
- And then devise a strategy to prove each of the elements beyond reasonable doubt;
- A diligent prosecutor should interview and prepare the victim and other witnesses to testify at the trial, bearing in mind that any inconsistency in the testimony of the witnesses shall be resolved in favour of the accused person.<sup>27</sup>

### ***3.5.10. DUTY TO APPEAL CASES OR REPRESENT THE GOVERNMENT ON APPEAL.***

In our criminal jurisprudence, all capital offences carrying the death sentence are automatically appealed. Prosecutors are required to represent the state in appeals to the High Court, Courts of Appeal and the Supreme Court or where necessary, file and argue appeals on behalf of the state, from preliminary rulings to final decisions. Final decisions from the appellate courts become law. Therefore, prosecutors need knowledge of the rules and procedure at appeal and to present their case in such a way as to prevent “bad law” from being made through appellate decisions<sup>28</sup>.

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<sup>27</sup>ibid.

<sup>28</sup>ibid.

### ***3.6. PROSECUTORIAL INTERFACE WITH THE POLICE***

No matter how competent a prosecutor is, many criminal cases fail in court because of incompetent police investigations if the police are unable to grasp what elements of a crime are needed to be established to ground a conviction, that a defence of alibi requires investigation and how to gather and preserve the right type of evidence to establish the crime.

One of the solutions to reversing this distressing situation would be a prosecutorial interface with the police. Prosecutors must be in continual communication and cooperation with police and other security agencies.

From the time the police investigation report is turned in and the prosecutor is appointed to write a legal opinion to determine the advisability or otherwise of trial until final resolution of the matter in court, communication with the police assists the prosecutor get sometimes overlooked details about a case, and enables him guide the police to collect evidence needed to build a strong case.

### ***3.7. NATURE OF INTERFACE***

- Institutionalised monthly interactive seminars between senior prosecutors from the Ministry of Justice and police investigators for the purpose of educating the police on the precise requirements for proving cases in court. Over time, a paradigm shift would have occurred. This process will educate the police as to difficulties with proving poorly investigated cases. It is



Important that both parties do not reduce the seminars to mutual recrimination exercises;

- Weekly meetings between the designated prosecutors and the lawyer policemen for the purpose of reviewing cases. It is hoped that this process will educate the police as to difficulties with proving poorly investigated cases. Important both parties do not reduce the meetings to mutual recrimination exercises;

When prosecutors and the police work within their respective roles, as a team with victims and witnesses, they build strong cases supported by reliable evidence and where these strong cases result in conviction, they build public confidence in the criminal justice system as a whole<sup>29</sup>.

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<sup>29</sup>Prosecuting sexual violence in Liberia  
[http://www.cartercenter.org/resources/pdfs/peace/conflict\\_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf](http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf)

**CHAPTER FOUR**  
***IDENTIFYING DELAYS AND THEIR CAUSES IN  
THE PROSECUTION PROCESS***

## **4.1. INADEQUATE PREPARATION**

“If you fail to prepare you prepare to fail” (anonymous)

Introduction:

The success or failure of prosecution depends largely on preparation. In the task of prosecution, the State is represented by a prosecutor from the Federal or State Ministries of Justice, National Drug Law Enforcement Agency (NDLEA) or Economic and Financial Crimes Commission (EFCC) as the case may be. Consequently, the burden of proving the guilt of an accused person rests on the prosecutor.

**Unpreparedness of prosecutors:**<sup>30</sup> After trial commences, cases may suffer incessant needless adjournments, simply because, counsel are not ready with their evidence or lack the basic requirements to prosecute the case.

### **4.1.1. ELEMENTS OF PREPARATION**

- Careful study of the Police Investigation Report;
- Diligent preparation of the Information;
- Collating evidence already visible from the Police Investigation Report;
- Analysing evidence gathered;
- Identification of the elements of the crime if any;

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<sup>30</sup>*This has been discussed before in detail.*

Criminal prosecution often turns on witnesses' testimony. So, guided by the elements of the crime and evidence, the prosecutor ought to make a list of the following:

- Questions to be posed by the prosecutor to each prosecution witness during evidence-in-chief;
- Likely questions to be posed to prosecution witnesses by defence counsel at cross-examination;
- Without teleguiding the witness towards the answers, preparing the prosecution witnesses for possible questions at cross-examination;
- Identification of the necessity for expert witnesses and making adequate arrangements for such witnesses;
- Ensuring that all documentary and non-documentary evidence and proposed exhibits are available and ready for tendering at trial;
- All documentary exhibits proposed to be tendered through prosecution witnesses should ideally be filed in a separate file to be tagged to the main cause file for security and ease of production in court;
- Set out a day each week for in-house conferences with members of the prosecutorial team and other prosecutors to devise strategies to prove each of the elements beyond reasonable doubt;
- A diligent prosecutor should interview and prepare the victim and other witnesses to testify at the trial, bearing in mind that

any material inconsistency in the testimony of the witnesses shall be resolved in favour of the accused person.<sup>31</sup>

## **MORE ON THE ELEMENTS OF PREPARATION:**

### **4.1.2. PREPARATION: THE INGREDIENTS OF THE OFFENCE REQUIRED**

Guilty-mindedness is a necessary element of some crimes. The standard common law test of criminal liability is usually expressed in the Latin phrase, *actus non facit reum nisi mens sit rea* meaning “**the act is not culpable unless the mind is guilty**” in this regard, the prosecutor needs to set the goal of probing the guilty-mindedness of the accused person so to speak. In doing so, the prosecutor ought to be asking the following critical questions – **who** committed the offence? **What** crime was committed? **Where** was the offence committed? **When** was the offence committed? **How** was the offence committed?

Failure by prosecutors to diligently sift the wheat from the chaff in order to distil the ingredients of the offence and the required evidence causes delay in the criminal justice system.

“The burden of proving the charge preferred against an accused is on the prosecution and it never shifts. In discharging the burden of proof, the prosecution must prove all the

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<sup>31</sup>*Adefi Matthew Olong: The Administration of Criminal Justice In Nigeria: [http://dspace.unijos.edu.ng/bitstream/10485/1412/1/The%20Administrati on%20of%20Criminal% 20Justice%20in%20Nigeria.pdf](http://dspace.unijos.edu.ng/bitstream/10485/1412/1/The%20Administrati%20of%20Criminal%20Justice%20in%20Nigeria.pdf)*

**essential ingredients** of the offense as contained in the charge.”<sup>32</sup>

“The burden (of proving the charge) is only discharged when the **essential ingredients** of the offence charged have been established and the accused person is unable to bring himself within the defences or exceptions allowed under the law generally or the statute creating the offence”<sup>33</sup>

“if there is any element of doubt in relation to any of the **ingredients**, the doubt is to be resolved in favour of the accused person”<sup>34</sup>

#### ***4.1.3. PREPARATION: NATURE AND SUFFICIENCY OF EVIDENCE REQUIRED***

“The **nature of the corroborative evidence** required does not need to be direct evidence that the accused person committed the offence; it is sufficient even if only it is **circumstantial** connecting or tending to connect him with its commission”<sup>35</sup>

To avert delay, a prosecutor should diligently scrutinize the following:

- all police reports;

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<sup>32</sup> Alor v The State (1997) 4 NWLR (Pt. 501) Per Adio JSC

<sup>33</sup> Okoro v The State (1988) LPELR 2494; (1988) NWLR (Pt. 94); (1988) 12 SC (Pt. II) 88

<sup>34</sup> Okoro v The State (supra)

<sup>35</sup> Durugo v The State (1992) NWLR (Pt. 255) 525 per Wali JSC

- statements of victims, witnesses and suspects;
- review the physical evidence;
- meet with the victim and witnesses.

After thorough review of the facts of the case, the available evidence and the applicable law, the prosecutor should compare the evidence with the elements of the crime and determine whether or not the evidence is sufficient to prove the charge beyond reasonable doubt.

#### **4.1.4. PREPARATION: THE LEGAL ADVICE (LEGAL OPINION)**

The Legal Advice is the professional opinion of Legal Counsel put in advisory form as to the chances of a case from the facts placed before him or her by the police information report.

After conclusion of investigation into a case, the police will send the case file containing the Investigation Report to the Director of Public Prosecution for advice. The Director of Public Prosecution (DPP) then assigns the file to a lawyer or lawyers in the ministry. Legal Advice has been known to delay for several months before submission although admittedly the newly introduced Case Management System with its computer assisted time-lines has vastly improved the speed at which Legal Advisories are churned out. To avert delay in the area of Legal Advisories then, the Case Management System must be adhered to.

Failure to turn in the Legal Advice within the stipulated time are traceable to any or more of several factors:-

- the laziness of the individual prosecuting counsel;

- genuine overwork load on the part of the lawyer to whom the case file has been handed. Sometimes too, certain lawyers who are diligent are given the bulk of work to do while others are left underutilised, leading to a traffic snarl in the work of the more diligent prosecuting counsel; or
- lack of research materials;
- lack of computer typing skills by counsel and too much work to type by the secretaries.

#### **4.2. FAILURE TO ENSURE ATTENDANCE OF WITNESSES AT TRIALS**

**Witnesses** are needed to give **evidence** in court.

**Evidence** is the life blood of court trials, criminal or civil and no case can be established without **witnesses**. Currently in this regard, no budgetary provision exists for the police, public prosecutors or courts to facilitate the attendance of witnesses to court. In many cases where victims are unable to pay for the transport expenses of would-be witnesses, and the witnesses themselves are either unable, or refuse to bear the transportation and general logistical expenses for their day in court, such cases remain in court for a long time until struck out for want of diligent prosecution<sup>36</sup>.

Although primarily a function of the courts to issue **production warrants** and **witness' summons**, the diligent prosecutor will add to the repertoire of his/her responsibilities the burden of ensuring that

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<sup>36</sup> *Adefi Matthew Olong: Op Cit*



whoever is responsible issues the necessary **witness' summons**. In this regard, defence counsel already take up the responsibility of ensuring that their cases go on by ensuring service of hearing notices on the other side, for instance.

Ordinarily in criminal proceedings, there are two categories of witnesses: special witnesses and ordinary witnesses. Special witnesses include experts for example medical doctors, handwriting experts and forensic experts. While ordinary witnesses are witnesses other than the special witnesses for example, eyewitnesses to the crime, bank clerks who are merely called upon to tender documents, etc.

#### ***4.2.1. WHY WITNESSES DO NOT COME TO COURT:***

a) Absence of a Witness Support Scheme: witnesses need funding if they will leave their businesses to come to court each adjournment date.

b) To concentrate on their jobs, businesses and schooling: witnesses and even victims of crimes often drop out of the court process because of the incessant adjournments associated with it in order to concentrate on their jobs, businesses and schooling.

#### ***4.2.2. CONSEQUENCES OF DELAY ON WITNESSES***

- Witnesses to the commission of a crime often lose vivid recollection of the incident or crime, and where the offence allegedly committed is such that requires corroboration of testimony, inconsistencies (often the result of failed memory), are resolved in favour of the accused person<sup>37</sup>

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<sup>37</sup> Okoro v The State (Supra)

leading to acquittal (or reduction of sentence for persons who ordinarily should be behind bars for long). Thus, the psychological weight of the law is diminished and the saying, 'the law is an ass' takes on truer hue;

- Witnesses to a crime may die or relocate to distant places from whence it will be too burdensome to attend court trials to testify;
- Some pieces of evidence against the accused person may become lost or unavailable. And even when still available, may become useless to the case. For example, in sexual offences, the blood stained dress of the victim (where applicable) for say, three years of court attendance amidst innumerable adjournments.

#### **4.3. CONSTITUTIONAL, STATUTORY AND INSTITUTIONALISED CONSTRAINTS TO SPEEDIER TRIAL:**

##### **a) Trying co-accused persons compulsorily together**

- The compulsory statutory plea of 'not-guilty' for accused persons in all capital offences;
- Compulsory appeals for trials in capital offences up to the Supreme Court whenever there is a death sentence by the lower courts<sup>38</sup>;
- The de novo rule; and

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<sup>38</sup> Abiodun Odeiran v The State [2006] 18 NWLR (Pt. 1012) 671

- Reading Judgements aloud in Court as opposed to simply issuing certified true copies or referring counsel and parties to a functioning court website for download of comprehensive judgement.

#### **4.4. FORCE MAJEURE**

Force Majeure, French for “chance occurrence or unavoidable incident” is when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or ‘act of God’ (such as hurricane, flooding, earthquake, volcanic eruption, etc.) prevents a planned event from taking place. The phrase takes its roots from the Law of Contract and is a common clause in contracts that essentially frees one or both parties from liability from not fulfilling their obligation timeously under the contract. In practice, most force majeure clauses do not excuse a party’s non-performance entirely, but only suspends it for the duration of the force majeure<sup>39</sup>.

Force majeure in the court process would include:

- Unscheduled public holidays\*

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<sup>39</sup> Principle of Force Majeure (including international references) Trans-Lex.org

\*some religious holidays have no fixed dates but depend on sighting of the moon. Invariably, court fixtures on those days will be rescheduled thus accumulating delay.

\*\*In some jurisdictions, notably Enugu, deceased lawyers also benefit from valedictory court sessions.

\*\*\*AWOL – Away With Out Leave – occurs less in jurisdictions with strict Chief Judges

- Industrial action, strikes, etc.
- Valedictory court sessions in honour of retiring or deceased judges, held on normal court sitting days\*\*
- Judges and Magistrates simply going AWOL\*\*\*.

#### **4.5. INFRASTRUCTURAL AND LOGISTICAL CONSTRAINTS:**

Inadequate infrastructural facilities and poor working conditions impede the smooth administration of criminal justice in Nigeria. The trial of accused persons, who are remanded in prison custody, are often adjourned due to:

- Difficulties in transporting accused persons to and from court
- Failure to allocate adequate housing in rural areas to prosecutors, judges and magistrates<sup>40</sup>
- Archaic equipment in the courts
- Inadequate library and research facilities
- Dilapidated courts

#### **4.6. DELAYS CAUSED BY DEFENCE COUNSEL**

The-Longer-The-Case-The-More-My-Fees-Syndrome<sup>41</sup>

Failure By Senior Counsel To Employ Junior Counsel<sup>4243</sup>.

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<sup>40</sup> Adefi Matthew Olong: *Op Cit.*

<sup>41</sup> Adefi Matthew Olong: *Op Cit.*

<sup>42</sup> Udo V State(1988) 3NWLR (pt 82) p.316 or (1988) 1 N.S.C.C

<sup>43</sup> Idirisu V State (1967) 1 all NLR P.32

#### **4.7. DELAYS CAUSED BY THE BENCH**

- a) Haphazard Sitting-Days In Court
- b) Needless Adjournments
- c) Weak knowledge of the law

#### **4.8 DELAY OCCASIONED BY SUPPORTING STAFF OF COURTS**

- a). Cases may be omitted in the day's cause list or cause files misplaced;
- b). Failure to file affidavits of service of court processes;
- c). Omissions to serve hearing notices on parties;
- d). Failure to serve Witness Summons on witnesses;
- e). Failure to serve production warrants on accused persons;
- f). Improper interpretation of testimonies of witnesses leading to difficulties for the judge who does not understand the local language of the witness;
- g). Lateness to work;
- h). Earlier-than-official-time closure from work.

#### **4.9. DELAYS ARISING FROM THE CRIMINAL INVESTIGATION PROCESS**

Criminal justice administration process can hardly function effectively without efficient, well trained police officers. Often times, proper investigation of cases are hampered by a number of factors<sup>44</sup>:

#### **4.10. FREQUENT TRANSFER OF POLICE OFFICERS AND IMPLICATIONS**

Nigerian Police officers are for now, federal agents and so subject to transfer to any part of the federation at any time. It does happen that police officers do get transferred in the middle of an investigation;

If the transferred police officer had started investigations the cases may be handed over to another police officer, but if investigations are completed, the transferred officer would have to apply for permission to return to the court at his former serving post to which the case was charged for trial, to testify whenever required to do so;

This seldom happens or happens upon the complainant shouldering the financial cost of transporting the transferred officer to court from the new post to the former with wider implications for the dispensation of justice.

Sometimes, the officer is tied down with other pressing tasks in his new station and cannot attend court even when the complainant is willing to pay his/her way.

Police Working Conditions and Equipment

#### **4.11. DELAYS ARISING FROM PRISON AUTHORITIES**

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<sup>44</sup> Adefi Matthew Olong: Op Cit.

Some of the reasons responsible for trials being held up for days, weeks and even months because of the unavailability of accused persons in court to stand their trial<sup>45</sup> are:

- a) Failure on the part of court registrars to prepare production warrants compelling production of accused persons in court as well as informing prison authorities and accused persons of trial dates;
- b) Lack of vehicles to convey accused persons to court;
- c) Poor medical facilities available to pre-trial detainees which result in constant break down in health while awaiting trial. Thus accused persons are often reported ill at trial;

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<sup>45</sup> Ibid.

**CHAPTER FIVE**  
**DECIDING WHETHER TO PROSECUTE**



## **5.1. INTRODUCTION: PRELIMINARY STEPS IN PROSECUTION**

**First step:** The arrest or apprehension of suspected offenders by the police or a private citizen;

**Second step:** Investigation by the police into the alleged crime;

**Third step:** The police sends the Investigation Report to the Attorney-General and Commissioner for Justice if in their opinion there is a prima facie case;

**Fourth step:** The case file is assigned to a prosecutor to review and write his/her legal advice or opinion based on the police investigative report and the prosecutor's own dispassionate evaluation of the police investigation report *vis-a-vis* the law of evidence.

**Fifth step:** The Legal Advice is turned over to the Attorney-General within a specified period of time;

**Sixth step:** The Attorney-General (or by delegation to the DPP or some other senior officer) evaluates the Legal Opinion;

**Seventh step:** If after reviewing the Legal Advice the Attorney-General is of the view that the Legal Opinion as to whether to prosecute or not is sustainable, the Attorney-General gives consequential directives to prepare and file the Information in court or order a discontinuance of any further action against the suspect.

## **5.2. THE LEGAL ADVICE (LEGAL OPINION)**

The Legal Advice is critical in determining whether to prosecute or not. It is written by a prosecutor upon the instructions of the Attorney-General to dispassionately evaluate a police investigation report in order to resolve the question whether to prosecute or not. Preparation of legal advisories or opinions is a skill the prosecutor needs.

## **5.3. GUIDELINES FOR DRAFTING THE LEGAL ADVICE**

To prepare the legal advice, the prosecutor needs to have the following:

- a) Firm knowledge of the law;
- b) Firm understanding of the case on hand;
- c) Firm understanding of the applicable laws;
- d) Frankness

The prosecutor must be frank in writing his Advice and should avoid a balance of argument otherwise the aim is defeated. The prosecuting counsel should provide specific answers to issues raised and avoid general discussion. For instance, where the issue is whether the ingredients of an offence can be proved, the prosecuting counsel should be able to state that from the available evidence, the ingredients of the offence cannot be proved, therefore the accused person should not be charged or otherwise. The prosecuting counsel

should support his argument with relevant authorities as that is the hallmark of a lawyer.

Summarily, when drafting a legal opinion, the prosecuting counsel should take in to account the following points:

- a) Issues for determination
- b) Specific answers to the issues.
- c) Avoid general discussion
- d) Avoid balancing argument
- e) Be clear, simple and comprehensive
- f) Back argument with relevant authorities.

#### **5.4. *FORMAT OF A LEGAL OPINION***

It is suggested that a legal opinion should be drafted following this format with necessary modification to suit the circumstances of the case:

**Introduction:** this should contain the background of the case.

**Facts:** the facts should be stated accurately and objectively. This forms the bedrock on which the case stands as the issues to be determined emanates from the facts of the case.

**Issues:** the issues are raised in such a way that will finally determine whether or not it is proper to prosecute the case.

**Evaluation:** the prosecuting counsel should appraise the issues vis-à-vis the applicable law and authorities. A balanced

argument should be avoided. The prosecuting counsel must be firm in its argument and should always watch out for exceptions. In the end the argument must be for or against the issues under consideration. Here the prosecuting counsel should also consider whether it is in the public interest to prosecute.

**Recommendation:** it is important that the prosecuting counsel gives his candid advice devoid of bias and sentiment. The strength of his argument will give credence to the action he now wants the State to take.

### ***5.5. THE DECISION TO PROSECUTE***

The law empowers the Attorney-General to institute and discontinue criminal actions<sup>46</sup> which powers are exercised through the Director of Public Prosecutions and other State Counsel in the Ministry of Justice.

The decision to prosecute or discontinue prosecution is the most important decision the prosecutor makes in the criminal justice process. This is because prosecutions which

- are not sufficiently supported by law or evidence; or
- which do not serve the public interest;
- are a total waste of time and state funds;

On the other hand, failure to effectively prosecute guilty parties can impair public safety. Therefore, a decision whether to prosecute or not

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<sup>46</sup> Section 174 and 211 of the constitution of the Federal republic of Nigeria 1999.

ought to be based on: knowledge of the relevant laws; and careful consideration of the interests of victims, accused persons and the public at large. The decision whether or not to prosecute cannot be lightly made, must demonstrate fairness and consistency<sup>47</sup> and requires:

- Integrity;
- Professionalism; and
- Courage

Because often times, the appropriate decision may not be the decision desired by investigators or interested parties.

In making these decisions, prosecutors bear continually in mind the effect of their decisions on relationship with the police, witnesses, the courts, and the public at large. In deciding to prosecute or not to prosecute, a prosecutor must consider the following:

### ***5.5.1. PRIMA FACIE CASE & THE PUBLIC INTEREST***

The two broad issues to consider when deciding whether or not to prosecute are

- a) Whether there is a Prima Facie case?
- b) Whether the Public Interest is best served by prosecution of the case?

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<sup>47</sup> The Decision To Prosecute(Charge Screening) :Nova Scotia Public Prosecution Service ; DPP Directive Edited / Distributed: February 1, 2011, pg. 2

### **5.5.1.1. PRIMA FACIE CASE**

#### **The Law:**

- Is there an offence punishable by law in Nigeria, and is there a prescribed penalty for the alleged offence?<sup>48</sup>
- Has any section of the law been contravened?
- Does the Police Investigation Report credibly ground a charge?

#### **The Evidence:**

- Is there any evidence to charge for an offence?
- Does the evidence support charging for a lesser offence than hitherto thought?
- If a charge is filed on the available facts and evidence, would an acquittal be more probable than a conviction?<sup>49</sup>
- Vis a Vis admissibility of evidence sought to be tendered, how strong is the case likely to be? In this regard, prosecutors should avoid dubious generalities such as “the court always believes children”.
- Is evidence sought to be relied upon clear, corroborated, simple and believable?
- Are there grounds for believing that some evidence may be excluded?

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<sup>48</sup> Section 36(8) (12) 1999 CFRN, Aoko V Fagbemi (1961) 1 All NLR 400; Isong v AGF (1986) QLRN

<sup>49</sup>Professional misconduct to do otherwise;R37 (5) RPC 2007

- If the case depends in part on admissions by the accused, are there any grounds for believing that they are unreliable having regard to the age, intelligence and apparent understanding of the accused person?
- Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?
- Has a witness a motive for telling less than the whole truth?
- How the witness is likely to stand up to cross-examination; and in this regard, are there matters which might reasonably be put to a witness by the defence to attack his or her credibility?
- Based on objective indicators, what sort of impression is the witness likely to make?
- If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?
- Is there anything which causes suspicion that a false story may have been concocted?
- Are all the necessary witnesses competent to give evidence?
- Where child witnesses are involved, are they likely to be able to give sworn evidence or to give evidence based upon a promise to tell the truth?
- If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the accused?

- Where two or more accused persons are charged together is there a reasonable prospect of the proceedings being severed? If so, will there be sufficient evidence against each accused person if separate trials be ordered?
- Where the accused person flatly denies the allegations and the only evidence against him is uncorroborated evidence of a single witness?
- If reasonable doubt cannot be eliminated, it would be proper for the prosecutor to conclude that there was no realistic prospect of conviction.

However, it would be wrong for the prosecutor to automatically reject such a case for want of sufficient evidence to ground conviction. If it is clear, based upon objective indicators within the case, that reasonable doubt could not be raised from the single witness's evidence, prosecutor may proceed to prosecute. For example, if the single witness had a good opportunity to observe the events, give a detailed account without unexplainable inconsistencies, had no history of dishonesty or motive to lie, and was not improperly influenced by third parties, it might be open to the prosecutor to conclude that the anticipated evidence provided a realistic prospect of conviction.<sup>50</sup>

### **Possible Defences**

Is there for instance a successful defence of alibi, for example unimpeachable evidence that an accused person was hospitalized at the time of the commission of the alleged offence?

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<sup>50</sup>Ibid pg. 7



### **5.5.1.2. PUBLIC INTEREST**

Every criminal case is unique. The factors which can properly be taken into account, and the importance of particular factors in deciding whether the public interest requires a prosecution, will vary from case to case. Some of the factors to consider include<sup>51</sup>:

- Whether the **public interest is better** served by the prosecution of the offence?
- The prevalence of the alleged offence and the need for general deterrence;

Generally, the more grave the incident, the more likely that the public interest will require prosecution. For example, the 2012 murder of four university undergraduates in Aluu, Rivers state by a mob requires prosecution in the public interest to send a strong message to society about mob justice. Also, the London riots of August 2011 and the swift arrest and prosecution of culprits using technology such as CCTV sent home a strong message in the public interest.

- The age, intelligence, physical health, mental health or special infirmity (if any) of the alleged offender, a witness or victim;
- The staleness of the alleged offence;
- The obsolescence or obscurity of the law;
- Whether prosecution would bring the law into disrepute;
- The availability and efficacy of any alternatives to prosecution;

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<sup>51</sup> Ibid

- Whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- Any entitlement of people or agencies to compensation, reparation or forfeiture if prosecution action is taken;
- The attitude of the victim of the alleged offence to a prosecution;
- The likely length and expense of a trial;
- Whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- The necessity to maintain public confidence in the judiciary and the administration of justice.

## ***5.6. THE STATUTE OF LIMITATIONS IN THE PROSECUTORIAL PROCESS***

The statute of limitations is an enactment that sets the maximum time after an event that legal proceedings based on that event may be initiated<sup>52</sup>. Limitations begin when a cause of action is deemed to have arisen or when the aggrieved party had reason to know of the harm, rather than at the time of the original event. This distinction is

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<sup>52</sup> Wikipedia, the free encyclopedia

significant in cases where an earlier event causes a later harm (e.g. when a surgeon negligently operates on a patient, who subsequently suffers the consequence of the negligence years later).

### **5.6.1. REASONS FOR STATUTES OF LIMITATIONS**

- Evidence may be corrupted or disappear, memories fade, crime scenes are changed, and companies dispose of records;
- The best time to bring an action is while evidence is not lost and as close as possible to the alleged illegal behaviour;
- People on all sides of the case, including the accused and witnesses, want to get on with their lives and not have legal battles from their past come up unexpectedly;
- The injured party has a duty to bring charges as quickly as possible so that the process can begin.

### **5.7. TRANSPARENCY AND ACCOUNTABILITY OF DECISION PROCESS.**

Generally, prosecutors should make a note in the prosecution file of any consultations and investigations carried out with regards to the decision to prosecute or to discontinue a case. The note should reflect public interest considerations which influenced the decision.

This act of transparency and accountability keeps any other prosecutors who needs to take over prosecution up to speed on what steps had hitherto been taken. Where a charge involves an identifiable victim, the prosecutor should ensure that the victim is notified and that the rationale for any decision is explained to him, preferably

before any public revelation of the decision is made.<sup>53</sup>The greater the degree of threat, injury or financial loss to the victim, the greater the obligation on the prosecutor to keep the victim informed of the decision.

### **How to notify the court of discontinuance:**

It is appropriate to place on the record in court brief reasons why a prosecution is being discontinued. In doing so, the prosecutor must be careful not to embarrass the accused or his witnesses by disclosing information that will otherwise not be made public. Usually, a simple statement referring to public interest factors will suffice<sup>54</sup>.

### **Case Management Tips for Preparing Legal Opinion:**

- New Case Files, on arrival at the Ministry, must be first taken to the Registry to be registered on the Case Management System (CMS), so that at every point in time it can be monitored.
- Registry sends the Case File to DPP, who reviews and then assign Case File to a Lawyer for Legal Opinion.
- The assigned Lawyer researches the case and prepares a written Legal Opinion, and sends same for typing.
- The documentation/typing unit receives the draft Legal Opinion, produces a typed version (four copies) and sends them to the lawyer.

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<sup>53</sup>*A withdrawal of prosecution in court amounts to a public announcement of the decision.*

<sup>54</sup> Op cit. pg 14

- The Lawyer reviews the typed Legal Opinion, signs all copies, one of which he/she retains and sends the File (via Registry) to DPP for review.
- DPP reviews the Legal Opinion, comments as necessary, and then forwards the File (via Registry) to the Attorney General for decision.
- The Attorney General reviews the case and the Legal Opinion and makes a decision on what action should be taken; he returns the Case File to DPP for action.

**CHAPTER SIX**  
**PREPARING A CASE FOR TRIAL**

## 6.1. FILING THE CASE

The commonly used procedure for charging a criminal case to court is by filing an **Information**. However, legislation setting up some crime-deterrent agencies <sup>55</sup> permits those agencies to file criminal cases in court by means of a charge sheet rather than the **Information**. This is because only the Attorney-General can file an **Information**.

Once sufficient evidence has been gathered and the prosecutor decides to prosecute, s/he will have to prepare the information. The information is the first identification of the crime. It serves to inform the defendant of the allegations of which s/he is accused.

Therefore, it should be detailed, including the fact that it should be sufficiently descriptive to allow the defendant to prepare a defence. For example, it is insufficient to merely state in the **Information** that:

“Okeri Otudo caused the death of Michael Inyang.”

Rather, It should be stated that:

“At about 9pm on Friday October 12, 2007 in Agbani in Nkanu west Local Government Area Enugu judicial division, Otudo Inyang used a stick to hit Michael Inyang behind the head, ultimately causing his death.”

Where the accused person has committed more than one offence, it is important for the prosecutor to charge **all offences**. For example, a person accused to have committed rape, may have also forced the victim out of her home and raped her in captivity. He will have

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<sup>55</sup> National Drug Law Enforcement Agency (NDLEA); Economic and Financial Crimes Commission (EFCC), etc.

committed kidnapping in addition to the rape, and therefore he should be charged with both offences.

## **6.2. PREPARATION OF INFORMATION AND PROOF OF EVIDENCE:**

What is the information?

The information is a formal criminal charge made by a prosecutor. The information is one of the oldest common law pleadings, first appearing around the 13<sup>th</sup> century.

### **6.2.1 CONTENTS OF AN INFORMATION**

Heading

Reference Number

Parties

Preamble

Counts(Charges)

Date and Signature of the drafting Authority

#### **Heading:**

Section 337 of the CPA provides that every Information must bear a heading. A prosecutor must ensure that a charge is accurately headed, because the power of a court to try a matter is first reflected in the heading of the information.

#### **Reference Number:**



Information must bear a charge number. However, it should be noted that this is merely for administrative convenience and not a rule under the law.

**Parties:**

The parties to a criminal proceeding are the state and the offender. In the High court of Enugu state, it is the Attorney General who prosecutes on behalf of the state. However in drafting an information, the parties are usually indicated as “the state” as the complainant and “the Name of the Accused person” as the defendant/accused person. The name of accused person must be sufficiently and accurately provided to avoid ambiguity. Thus, it will not suffice to use only the first name or surname of an accused person. The name used must be such that affords a detailed description of the accused person.

**Preamble:**

Information filed against an accused person must contain a preamble, which is also known as an information, and which precedes the actual offence with which the accused person is charged. It is usually stated as follows:

“At the session holding at Enugu on the .....day of ....., 2013 the court is informed by the Attorney General of the state on behalf of the state that:

Obinna Ogbonna is charged with the following offence(s):.....”

**The count:**

The count is the actual statement and particulars of the offence with which the accused person is charged. Each count on a charge sheet must contain the following:

**1. The name of the accused person:**

The name of the accused person will usually precede each count in the information and as indicated earlier, the name of the accused person must be accurately and sufficiently provided;

As prosecutor you want to be exact with the name of the accused person in order to avoid objections from the defence counsel on the grounds that the charge is preferred against another person other than his client (the accused person).

**2. The date the alleged offence was committed:**

Under the law, this is a very important requirement of a charge.<sup>56</sup> However, the date must not be exact but must as near as possible, reflect the actual date the offence was committed. Where a prosecutor is in doubt as to the exact date an offence was committed, it is advisable that the expression “on or about” be used, in stating the date. For example, “on or about the 15<sup>th</sup> day of March 2012”.

The date of commission of an offence is very significant especially with respect to offences which the law provides must be prosecuted within a given time frame.<sup>57</sup> Thus, a mistake in date of commission of an offence on the information may undermine effectual prosecution of

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<sup>56</sup> Section 152(1) CPA & Section 261 CPL Enugu State

<sup>57</sup> Bob Osamor; Fundamentals of Criminal Procedure Law in Nigeria pg. 173

the offence, and any conviction based on such a charge sheet likely to be quashed on appeal.

### **3. The time the alleged offence was committed:**

It is not mandatory that the time the alleged offence was committed be stated, unless time is an element of the offence. For example, in the offences of house breaking and burglary, the time of commission of the alleged offence is a vital element which distinguishes housebreaking from burglary.

### **4. Place of commission of the offence:**

This is another important requirement<sup>58</sup> because it touches on the power of a court to hear a criminal matter; any person accused of committing an offence can only be tried by a court within the judicial division in which the offence was allegedly committed.

### **5. Particulars of the alleged offence and the name of the person or the thing against which the offence was committed<sup>59</sup>:**

Sufficient particulars of an alleged offence must be given; this will include the name of the person against whom or the thing in respect of which the offence was committed.

Stating the value of the thing stolen is very important where the law prescribing the offence so stipulates or where the value of the property is an element of the offence.

### **6. The name of the alleged offence:**

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<sup>58</sup> Section 152(1) CPA & Section 261 CPL Enugu State

<sup>59</sup> Section 152 CPA & Section 261 CPL Enugu State

This is a compulsory requirement of the information. Where the law creating the offence does not give it a name, the definition of the offence must be so explicit as to give the accused person adequate notice of the offence for which s/he is charged<sup>60</sup>.

But where the law gives it any specific name, it is advisable that the exact name used by the law be used in the charge<sup>61</sup>. However, departure from the exact words or name used will not be fatal to the case of the prosecution, so long as it does not mislead the accused person.<sup>62</sup>

#### **7. Statute and particular section of the statute allegedly violated:**

The written law and the section allegedly violated must be stated<sup>63</sup> so as to conform to section 36(12) of the 1999 constitution which ensures that no one is punished for an offence not known to law.

#### **8. Date and signature of the person drafting the information:**

The information must be dated and signed by the person who drafted it. Where a person other than the Attorney General drafts the information, s/he must state his/her designation and the fact that s/he is signing for and on behalf of the Attorney General<sup>64</sup>.

***A typical example of the information to be filed in the high court is hereunder contained:***

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<sup>60</sup> Section 151 (2) CPA & Section 257 CPL Enugu State

<sup>61</sup> Section 151(1) CPA & Section 256 CPL Enugu State

<sup>62</sup> Asuquo V State (1967) 1 All NLR p. 123; Mgbemene v Inspector General of Police (1963) 2 SCNLR p. 261

<sup>63</sup> Section 151(3) CPA & Section 258 CPL Enugu State

<sup>64</sup> Op Cit. Bob Osamor, P. 180

IN THE HIGH COURT OF ENUGU STATE  
IN THE ENUGU JUDICIAL DIVISION  
HOLDEN AT ENUGU

CHARGE NO.....

BETWEEN

THE STATE.....Complainant

AND

PETER KAKA..... Accused

At the session holding at Enugu on the 9th day of January 2013, the Court is informed by the Attorney General of the state on behalf of the state that:

PETER KAKA is charged with the following offence:

STATEMENT OF OFFENCE:

Murder, contrary to section 319(1) of the Criminal Code Law, Enugu Sta

PARTICULARS OF OFFENCE

PETER KAKA on or about the 9th day of January, 2013 at Nza Street, Independence Layout in the Enugu Judicial Division murdered one Ade Akeem (M) by hitting him over the head with an iron rod.

this .....day of .....2013.

.....

Ellen Adu (Miss)  
Senior State Counsel  
For: Attorney-General  
Enugu State

## **6.2.2. DRAFTING THE INFORMATION: FOUR CARDINAL PRINCIPLES**

The rule against **ambiguity**

The rule against **duplicity**

The rule against misjoinder of offenders

The rule against misjoinder of offences

### **6.2.2.1. THE RULE AGAINST AMBIGUITY**

To ensure clarity of the charge to the accused person and the court, all the particulars of alleged offences required by law to be stated in a charge or count must be so stated<sup>65</sup>. They are:

- The name of the accused person;
- The offence for which the accused person is charged;
- c) The written law and section of the law allegedly violated;
- d) Particulars of the date and place of commission of the alleged crime;
- e)The person against whom the offence was committed

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<sup>65</sup> S. 151 CPA

The rule against ambiguity is rigid and admits no exception. A violation of this rule will quash a conviction where shown that the ambiguity misled the accused person<sup>66</sup>.

### **6.2.2.2. THE RULE AGAINST DUPLICITY**

Section 156 CPA provides that:

“For every distinct offence with which any person is accused, there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 157 to 161 of the Act”.

This rule applies to each count of an offence in an information sheet. The effect of this is that each count in an information sheet must disclose the commission of only one offence. However, the following are some exceptions to this rule:

- Where the **information sheet** is in accordance with the precedent forms set out in the schedule to the CPA, it shall be good and sufficient in law.<sup>67</sup>
- **General deficiency of money:** section 152 (2) CPA provides that where offences of general deficiency of money are committed over a period of time, the monies so misappropriated may be summed up and contained in one count of information<sup>68</sup>. However, this exception applies only to misappropriation of

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<sup>66</sup> Section 166 CPA & Section 288 CPL Enugu State

<sup>67</sup> Section 463 CPA; willie John & Anor V State (1967) NMLR p.101.

<sup>68</sup> R V Nwankwo (1962) 1 All NLR (pt. 4) p. 64

money and not goods<sup>69</sup>. Also, the monies misappropriated must be the property of the same person.

- **Identical offences:** where an accused person is alleged to have committed offences of the same kind in a single transaction, s/he may be charged with the commission of all the offences in one count.<sup>70</sup>
- **Offences defined in the alternative:** where a written law creates an offence that may be committed by the omission or commission of different acts or in different capacities or with different intentions in the alternative. An example of this is section 356(2) Criminal Code Act which creates the offence of serious assault and creates three alternative ways of committing the offence namely to: (a) assault (b) resist (c) wilfully obstruct a police officer in the execution of his duty.
- **Overt Acts in the offence of treason or treasonable felony:** everything done by an accused person in the planning and prosecution of the offence of treason or treasonable felony, if charged in one count of offence will not violate the rule against duplicity<sup>71</sup>

### **6.2.2.3 THE RULE AGAINST MISJOINDER OF OFFENDERS:**

This rule states that every accused person should be charged separately in a charge or information sheet and tried separately for

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<sup>69</sup> R V Aniemeke (1961) 1 All NLR. 43 p.44

<sup>70</sup> Commissioner of police V Oyewusi (1952) 1 All NLR p.81

<sup>71</sup> R V Omisade (1964) 1 All NLR p.233



any offence alleged against him.<sup>72</sup> However, section 155 CPA and 276 CPL Enugu State provides exceptions to this rule as follows:

- Where more than one person is accused of the same offence, they may be charged in one information sheet and even in one count.<sup>73</sup>
- Where more than one person commits different offences but in the course of the “**same transaction**”. For this exception to apply, the offences must all arise from the same transaction. For a series of criminal activities to be classified as one transaction, any of these under listed factors need to be established:

- The accused persons must have committed the different offences contemporaneously and at same place or places close to each other;

The different offences must occur in a continuous flow of criminal activities from the first offence to the others.

- Persons who commit an offence may be charged together on the same information sheet with persons who aided, abetted, counselled or procured the commission of the offence;
- Also, a person who commits an offence may be charged together with persons caught trying to commit the same offence;

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<sup>72</sup> Section 155 CPA

<sup>73</sup> Okojie & ors V Commissioner of Police (1961) WRNLR p. 91

- Commission of related offences: a person who commits an offence may be charged with another person who commits another offence in the same information sheet, so long as such offences are related in nature. For example, stealing and receiving of the same stolen goods if committed by different persons, may be charged in the same information sheet;
- A person accused of any offence of theft, criminal misappropriation or criminal breach of trust may be charged together with another person accused of receiving or retaining or assisting in the disposal or concealment of the subject matter of such offence<sup>74</sup>.
- Persons who allegedly commit a crime during a fight or series of fights arising out of another fight may be charged in the same information sheet<sup>75</sup>.

It should be noted that of all the exceptions, it is only when accused persons commit the same offence that they can be charged in the same count, and in the same information sheet. However for the other exceptions, accused person may be charged in the same information sheet but not the same count.

It should also be noted that the Criminal Procedure Law of Enugu State leaves the application of the above exceptions to the rule against misjoinder of offenders, to the discretion of the courts.<sup>76</sup>

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<sup>74</sup> Section 276 CPL Enugu State

<sup>75</sup> This exception is not contained in the CPL of Enugu State.

<sup>76</sup> Section 276 CPL Enugu State.

#### **6.2.2.4. THE RULE AGAINST MISJOINDER OF OFFENCES<sup>77</sup>**

Every distinct offence with which an accused person is charged should be charged in a different count and tried separately.

**EXCEPTIONS: The following constitute exceptions to this general rule:**

- Where the accused person allegedly commits more than one offence within 12 months, not more than three of the offences may be charged together in one count.<sup>78</sup> It is immaterial whether or not the offences are committed against the same person, or are of the same kind;
- Where the accused person allegedly commits series of offences in the same transaction, all the offences may be charged in the same count in an information sheet;
- Where an accused person commits offences that are defined by different laws but committed during the same act or omission, such offences may be charged together in the same information sheet, by virtue of section 159 CPA;
- For example, a person who causes the death of another while driving recklessly may either be charged with manslaughter under the Criminal Code Act or dangerous driving under the Road Traffic Law. A prosecutor may however charge such alleged offender with both offences in the same information sheet. This will not violate the rule against misjoinder of offences. However where this happens, the court only convicts

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<sup>77</sup> Section 156 CPA & Section 277 CPL Enugu State

<sup>78</sup> Section 157 CPA & Section 278 CPL Enugu State

for one of the offences, because a person cannot be punished for the same offence twice;

- A suspect may commit an offence where it is doubtful which of several possible offences are applicable. Where such happens, s/he may be charged with;
  - ✓ Having committed all of such similar offences
  - ✓ Having committed some of such similar offences
  - ✓ Charged in the alternative with having committed one or other of the said offences.<sup>79</sup>

For example, If Ike was caught in possession of Uche Nwatu's bicycle, which had been reported to be stolen, and he claims that Obinna, Uche Nwatu's gateman gave it to him. The facts may establish stealing, receiving stolen goods, or criminal breach of trust. Ike may therefore be charged in one information sheet with:

- Stealing, receiving stolen goods and criminal breach of trust; or
- Two out of the three offences; or
- Stealing and criminal breach of trust; or
- Receiving stolen goods in the alternative.

All the above listed offences may be contained in the same charge sheet without violating the rule against misjoinder of offences. However in such instances, the court will convict for only one of the

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<sup>79</sup> Section 283 CPL Enugu State

offences, because as aforesaid a person cannot be punished twice for the same offence.

### **MORE EXCEPTIONS:**

- In cases where time is a relevant ingredient of an offence<sup>80</sup>, and a prosecutor is unsure of the time the suspect committed the offence, s/he may be charged with both offences in the same information sheet
- Where a suspect allegedly commits several offences in which each on their own constitutes separate offences; and together constitute another offence he may be charged with each of such offences in one information sheet<sup>81</sup>.

For example, Indecent assault, wrongful confinement, and rape, all constitutes abduction. In the scenario described above the alleged offender may be charged with four counts of indecent assault, wrongful confinement, rape and abduction in the same information sheet.

Despite the foregoing, the Criminal Procedure Law of Enugu state by virtue of Section 209 makes an overriding provision with respect to joinder of offences in a charge sheet *to wit*:

**.....no other charge shall be joined with a charge punishable with death and not more than one**

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<sup>80</sup> For example in the case of house breaking which is from 6am-6pm and burglary which is from 6pm -6am.

<sup>81</sup> Section 282 CPL Enugu State

**charge punishable with death shall be charged in the same information.**

The above provision connotes that the exceptions to the rule against misjoinder of offences will not apply to capital offences.

However, it should be noted that no error or omission in stating the offence or the particulars required to be stated in a charge is fatal to the case of the prosecution unless the accused person was in fact misled by such error or omission.<sup>82</sup>

Also, the court may permit or direct the framing of a new charge or add to or alter the original charge when any person is arraigned for trial on an imperfect or erroneous charge<sup>83</sup>.

It is however submitted that the above provisions of law is to enhance speedy trials and avoid situations where criminal cases are struck out and made to start *de novo* on account of defective charges.

### **6.3. OFFENCES CHARGED AND RELEVANT SECTIONS**

#### **Identifying the offences for the information sheet:**

In drafting an information sheet, a prosecutor should identify the offences s/he wants to charge the suspect with and carefully select the relevant section of the law with which to charge the accused person (s).

#### **The relevant section of the law;**

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<sup>82</sup> Section 166 CPA & Section 288 CPL Enugu State

<sup>83</sup> Section 162 CPA & Section 284 CPL Enugu State

In all cases, a prosecutor must include the section of the law which contains the penalty for the alleged offence in the charge; whether or not the definition of the offence and the penalty for the offence is contained in one section of the law.

For example, the offence of stealing is defined by section 383(1) of the Criminal Code while section 390 prescribes the penalty for the offence. In charging a suspect for stealing, section 390 is the relevant section to be used.

### **Same offence, different penalties**

There are instances where the law prescribes a penalty for an offence, and then goes further in another section of the same law, to prescribe another penalty for the same offence if committed in a different manner. In such a case, where a prosecutor intends to charge a suspect for the latter offence, the relevant section of the law to be used is the section which prescribes a different penalty for that offence committed in a different manner.

For example, section 383 of the criminal code defines the offence of stealing while section 390 prescribes its penalty. However, the same section 390 by virtue of subsection 1-3, defines other forms of stealing and prescribes special penalties for each of them thus:

“Any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.

Punishment in Special Cases Stealing wills.

(1) If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for life.

Stealing Postal Matter, etc.

(2) If the thing stolen is postal matter or any chattel, money, or valuable security, contained in any postal matter, the offender is liable to imprisonment for life.

Stealing cattle.

(3) If the thing stolen is any of the things following, that is to say: a horse, mare, gelding, ass, mule, cancel, bull, cow, ox, ram, ewe, whether, goat or pig, or the young of any such animal, the offender is liable on conviction to pay a fine of two hundred naira or to imprisonment for two years.”

In such a situation, a prosecutor who wants to charge for the offence of stealing cattle must use section 390(3) in preparing the information sheet. The prosecutor who wants to charge for stealing postal matters will prepare the information sheet to look like this:

## **“COUNT 1**

### **STATEMENT OF OFFENCE**

#### **Stealing contrary to section 390(2) of the Criminal Code Act.”**

It should be noted that in the above example the relevant section is not section 390 of the Act, which states the general penalty for stealing, but section 390(2) which particularly states the penalty for stealing postal matters.



There are also situations where a section or several sections of law define various offences without prescribing penalties for their violation in the same section or sections of law but rather in another section of the same law, the penalties for violating any of such offences defined in the previous sections is stated.

For example, section 32 of the Road Traffic Act<sup>84</sup> defines five possible offences relating to the misuse of identification mark or licence, without stating the penalty for any of them. However, the same law by virtue of section 45 provides a general penalty for all the offences for which no special penalty is provided.

A prosecutor who wants to charge an offender for committing any of the offences in section 32 of the Act, must state both the particular section of the law which defines the particular offence, and the latter section of law which prescribes the penalty for the offence.

For example: a person, who forges or fraudulently defaces or alters anything to a licence, is guilty of an offence under section 32(a) of the Road Traffic Act. The charge will look like this:

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<sup>84</sup> Cap R Laws of the federation 2004

## “COUNT 1

### STATEMENT OF OFFENCE

#### **Forgery of licence contrary to section 32(a) and punishable under section 45 of the Road Traffic Act.”**

In this regard, do not state only the section of the law prescribing the penalty for the offence, because the offender must be made aware of the particular offence he is charged with. This is to ensure that the information sheet is not vague or ambiguous.

#### ***6.4. PRE- TRIAL CONFERENCES***

In order to have a full grasp of the case, in addition to the police investigation report, a prosecutor ought to meet with and interview victims, and prospective witnesses, including the investigating police officer.

#### ***6.4.1. PRE-TRIAL CONFERENCES BETWEEN PROSECUTOR AND VICTIM - GUIDELINES***

- The victim ought to be principal witness of the Prosecution;
- The prosecutor should arrange **pre-trial** interview(s) with the victim, where the victim has been identified<sup>85</sup>.
- Pre-Trial interview(s) ought to be held in a neutral location where the victim will be relaxed, secure and free to talk:

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<sup>85</sup>With exception to murder cases

The Pre-Trial interview(s) should not:

- be held in a custodial environment (such as an interrogation room at a police station or a prison);
- be held at a location where the perpetrator has access to the victim;
- be used for other purposes;
- be accessed by any except those directly responsible for the interview<sup>86</sup>.

#### **6.4.2. PREPARING THE VICTIM FOR TRIAL**

##### **Explain the victim's role in the legal process:**

A prosecutor should patiently explain to a victim, why s/he has been called for the interview, the importance of his statements and the benefits others may gain as a result of his/her courage. A victim should also be made to know that he/she is not 'taking revenge' but assisting in ensuring that the government successfully prosecutes crimes to protect citizens from harm.

##### **Explain the court process:**

- Let the victim know that s/he will be asked to appear before a court to repeat whatever s/he has said during the pre-trial interview;

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<sup>86</sup>Prosecuting sexual violence in Liberia

[http://www.cartercenter.org/resources/pdfs/peace/conflict\\_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf](http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf), 0pg.

- Explain the process and rationale of examination in chief and cross-examination to him and that the accused person will have access to the statement and may ask questions based on the statement.

#### **6.4.2.1. GUIDELINES FOR THE PREPARATORY MEETING:<sup>87</sup>**

##### **Introduction**

- If you are not acquainted with the witness, introduce yourself and describe your role in the legal process;
- explain the role and rights of a witness;
- thank the witness for serving the State and the victim. Ask whether s/he has any safety concerns. (If s/he is concerned about his/her own safety, contact the police and discuss a safety plan with the witness.);
- explain witness tampering;
- explain that witnesses are not to accept bribes, and that it is a crime<sup>88</sup> to lie on oath;
- advise the witness about how to answer questions;
- encourage the witness to respond to questions with truthful answers to the best of his or her knowledge and memory;

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<sup>87</sup>Prosecuting sexual violence in Liberia

[http://www.cartercenter.org/resources/pdfs/peace/conflict\\_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf](http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf),

<sup>88</sup> Perjury by virtue of section 117 Criminal code Act.

- it is important to let them know that there is no right or wrong answer;
- where the witness does not understand any question, s/he can ask for a repeat of the question;
- when preparing the victim-witness, let him or her know that the questioning by defence counsel may become intense and upsetting and that whenever s/he becomes upset by a question, s/he may notify the court;
- practice the testimony;
- without attempting to tutor a witness, a prosecutor ought to practice the whole testimony with the witness at least once, and several times where possible;
- beginning with the oath, a prosecutor should explain what the oath means, and its importance;
- it is also advisable to act out the role of the defence counsel and practice cross examination, where possible;
- practice sessions are also advisable.

### **Who conducts the practice-direct-examination?**

It is generally advisable that during the practice session, the prosecutor performs the direct examination of the witness as this will improve the familiarity between prosecutor and witness;

### **Who conducts the practice-cross-examination?**

It is usually ill-advised for same prosecutor to conduct the practice cross examination<sup>89</sup>. This is better left to a colleague within the same office (who is not involved in the matter) to play out;

- The practice cross examination should be as close as possible to what a witness would expect in court from the defence counsel. This is not in terms of exactness of questions with what defence counsel will ask, but rather has to do with the tone and fierceness of cross examination. It does not pay to pamper a witness and give him a false sense of security, during practice session of cross examination, when in fact s/he will probably undergo aggressive questioning by an aggressive defence barrister in court. The closer the actual experience is replicated, the more beneficial the practice session is to the witness;
- Important also to enlighten the witness to the effect that the defence counsel no matter how “brutish” is just doing his/her job.
- To avoid appearing scripted or rehearsed in court, a prosecutor should refrain from asking the same questions in the same order over and over during the practice session.
- Questions should be rephrased and their order altered in different ways to prevent the witness from anticipating questions or answering anticipated questions before they are asked. The danger involved in a witness anticipating questions

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<sup>89</sup> Brad Bradshaw, Op Cit page 1

is that where the prosecutor is forced to omit certain questions during trial (for example where the judge sustains an objection raised by opposing counsel), the witness may be thrown off-balance and not be able to answer other questions coherently;

- A prosecutor must also discourage the witness from writing out answers, and bringing to court. To achieve this, the witness should be reassured that s/he will be asked follow up questions, if s/he forgets to mention something important. This helps to take pressure off the witness and prevents the desire to write out answers.

### **Basic logistics**

- Tell the witness what time they should arrive in court and where they should wait;
- Advise the witnesses and complainant to be punctual to court – never later than 8.30 am since proceedings begin at 9.00 am.
- Where the witness (and complainant) has never been to a court before, s/he may be advised to visit the courthouse before the trial if they would like to see what a trial is like;
- You may wish to explain who the various players in the court are (the judge, defence counsel, defendant, court clerks, and so on).

### **6.4.3. PREPARATION OF WITNESSES FOR QUESTIONING**

- A diligent prosecutor would prepare the witnesses for trial. A prosecutor however must not tutor the witness;
- The essence of preparation is that it helps a witness be more confident and relaxed during examination. If a witness can honestly answer questions during examination, it adds to his/her credibility;
- Where the witness is jittery or provides vague, misleading answers, the court may get the wrong impression;
- Unprepared witnesses tend to look to the counsel who invited them for prompting in court, an unacceptable practise because during examination, a witness is meant to face and address the judge not counsel;
- It is not unethical to prepare a witness to testify. It is in fact unethical to let a witness who is not prepared testify in court<sup>90</sup>;
- Witnesses ought to be prepared, in order to answer the questions put to them honestly, and with confidence;
- Tutoring witnesses unethical: Tutoring a witness occurs when the prosecutor reconstructs a witness's story preparatory to testimony in court and tells the witness which answers to give in court, irrespective of whether the answer is correct or not;

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<sup>90</sup> Brad Bradshaw, Ph.D. President & Senior Consultant Bradshaw & Associates Trial Consulting, LLC; *The Importance of Witness Preparation*. [www.litcounsel.org/november%20newsletter/Bradshaw.pdf](http://www.litcounsel.org/november%20newsletter/Bradshaw.pdf)



**Helpful advice to witnesses:** It may also help to advise the witness in the following manner, with respect to cross examination:

- To carefully consider questions before answering;
- To indicate whenever s/he does not understand a question;
- To take time in answering questions, so as to give a complete answer;
- To avoid guesses; where s/he is not sure about an answer, it is okay to say so;
- “since the judge has to record you long hand, speak slowly, not too fast when giving evidence,”
- “keep your answers short and to the point,”
- “address your answers to the court,”
- “address the court as ‘sir,’ ‘your lordship’ or ‘my lord,’ your ladyship’ etc.
- ‘on no account should you get quarrelsome or abuse with lawyers however rude they get,’
- ‘unless you have something to hide, always maintain eye contact with the court, so it does not appear as if you have something to hide’
- Never to say what someone else has told him/her (as it would amount to hearsay), unless asked what someone else said;
- To speak clearly and audibly in court;

- The cross-examiner may irritate the witness, but is only doing his or her duty;
- To be relaxed and calm, because the more relaxed you are, the more persuasive your evidence is likely to be.

The importance of preparing witnesses for questioning during trial is that the witness' confidence will be strengthened, and this will in turn enhance performance in court.

### **EXPLAIN THE FACT THAT THERE WILL BE A DEFENCE EVEN WHEN THE FACTS ARE VERY CLEAR TO THE VICTIM**

- Explain to the victim in advance that the legal process allows the defendant to present a defence and that the process could be uncomfortable for a victim;
- For example, In sexual offence cases, the accused person may testify and argue that the victim consented to sexual intercourse;
- The defence may point to a previous sexual relationship the victim had with the accused person; or
- To the behaviour of the victim before or after the offense to prove that she wanted to have sexual intercourse with the defendant;
- Make the victim understand that s/he should not be perturbed; defences such as these, however misconceived being part of the process.

### **6.5. PRE-TRIAL MEETINGS WITH WITNESSES:-**

- Always notify witnesses of the trial date, as soon as known;
- Fix appointments with witnesses to prepare their testimony;
- To make the most of the time, prepare the questions for direct examination before the meeting;
- Any other information needed from the witness, should also be identified;
- For the umpteenth time, it is crucial that you do not tutor the witness during the preparation. Tutoring the witness is to suggest answers irrespective of whether they are true or not, to the witness;
- Conversely, preparation of a witness consists of acquainting the witness with the court procedure as exhaustively described under the section on '**explain the court process**' above.

Besides the guidelines referred to above, the prosecutor prepares witnesses by listening intently to the witnesses and suggesting to the witnesses, which pieces of testimony may be repetitive, time-wasting and irrelevant and which are not.

### **6.6. PREPARATION OF EXHIBITS**

To successfully introduce exhibits at the trial a prosecutor will have to plan ahead and be prepared. A piece of evidence will not be helpful to a prosecutor's case unless the prosecutor can:

- a) get them before the Court;
- b) present them in a way that allows the court to recognize their value.

According to Ann Gronninger<sup>91</sup>

“Exhibits are wonderful. They break up the monotony of testimony and they allow the court to visualize the case in a way that verbal testimony does not by transporting it to mentally to the scene of the crime or the accident, where they can see the evidence for themselves, instead of having to take a witness’ word for it”.

### **6.6.1. TIPS FOR PREPARING EXHIBITS**

#### **List documentary exhibits:**

Make a list of each document, photograph, deposition and anything else that the court needs to see.

#### **Identify best witnesses to introduce evidence through:**

Decide through which witnesses’ testimonies the exhibit can be introduced into evidence. There may be more than one witness who can do the job. If so, choose the best one and have the other ones as back up. There is always the possibility that, despite your best effort at preparation, the witness will not say what s/he needs to say to get the exhibit introduced. It is always best to have alternatives available.

#### **Purpose for which evidence would be used:**

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<sup>91</sup>Introducing Exhibits at Trial: A Review of the Basics

Determine the purpose for which the exhibit will be used. If the exhibit itself contains information that proves a fact at issue in the case and will be introduced for substantive purposes, then the lawyer needs to think about evidentiary matters such as relevance, authenticity, and hearsay.

**Write out your questions:**

Have the precise questions you will use to lay the foundation for the exhibit written out, with a few alternatives, in the event of an objection. Having a backup question or two helps restart the mental juices and prevents a major crash. Note that the written questions are only a guide. You may not stick rigorously to them as oftentimes the witnesses answer determines the next question.

**Anticipate Objections:**

When preparing to introduce an exhibit a prosecutor should anticipate objections from the opposing counsel and prepare on how to address them. It is advisable to prepare a neat and comprehensive outline of the law and arguments to envisaged objections, just in case.

**Brevity! Brevity!! Brevity!!!:**

Be brief. No rigmarole. No circumlocution. Follow the K.I.S.S principle- Keep It Short, Stupid!

***6.7. CONSIDERATION AND PREPARATION FOR POSSIBLE DEFENCES.***

In preparing a case for trial, a prosecutor must anticipate and fully prepare for all possible defences that an accused person may raise.

This does not mean that the prosecutor must think of all the possible defences available to an accused person in criminal trial. What it simply means is that the prosecutor carefully examines the charge against the accused person and then envisages only, the defences available to that particular offence.

For example, in a case of **murder**, a prosecutor should prepare for possible defences of insanity, insane delusion, provocation, intoxication, alibi, accident, and self-defence.

## EXCEPTIONS

In considering the possible defences, pay earnest heed to the circumstances or facts surrounding a case.

For example: it will be improper for a prosecutor to consider the defence of provocation or alibi, in a case for manslaughter, where the accused person having been caught in the act, is being charged for causing the death of another by **reckless driving**.

Also, in preparing for possible defences available to an accused person, a prosecutor should not be ignorant of the implications of a successful plea of a defence to the charged offence. This is because some defences, where successful, have more drastic implications than others.

For example: a successful plea of self-defence may generally acquit an accused person of the charge of murder<sup>92</sup> while another like

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<sup>92</sup> Section 286 criminal code.

provocation may only reduce the conviction of murder to manslaughter<sup>93</sup>. Thus, a prosecutor must give attention and seek to rebut those defences with drastic implications while preparing for trial within the limits of ethical and professional practice.

### **6.8 ENVISAGING ALIBI AS A DEFENCE**

A prosecutor ought to envisage the defence of alibi, and liaise promptly with the police investigators to ensure that alibi is investigated. Failure to investigate a defence of alibi when raised at the earliest possible time by an accused person is fatal to the case of the prosecution.<sup>94</sup>

#### **Case Management tips for drafting Information and proof of evidence**

- Registry sends the File to the assigned lawyer for preparation of the Information and Proofs of Evidence, upon DPP's advice.
- Lawyer on receiving the File drafts an Information and Proofs of Evidence and sends them to Documentation/typing unit (with the Case File) for typing.
- Documentation/typing unit produces typed versions of the Information & Proofs of Evidence and returns them to the Lawyer.

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<sup>93</sup> Section 318 criminal code .

<sup>94</sup> Ozaki v. State (1990) 1 NWLR (Pt.124), Aiguoreghian v. State (2004) 3 NWLR (Pt.860), and Alamu V State (2009) 4 SCM 40.

- Lawyer reviews and signs the Information & Proofs and sends them to Registry (with the File) for dispatch to the Court.
- Registry stores the File and sets a 'bring up' date in case there is no response from the Court in a certain time.
- If a reply is not received before the 'Bring Up' date;
- Registry brings up the File and decides whether to send a reminder to the Court.
- Registry drafts a reminder letter to the Court and sends it to Document Production.
- Document Production produces a typed version of the reminder letter and sends it to Registry.
- Registry dispatches the letter to the Court and set a new Bring Up date.
- But if Notice of Hearing is received from the court before the bring up date;
- File is sent to DPP for assignment of Lawyer to prosecute the Case.



**CHAPTER SEVEN**  
**TRIAL- ADMITTING EVIDENCE AT TRIAL**

## **7.1. WHAT IS EVIDENCE?**

Evidence may be termed as legally admissible facts into which the court will enquire the legal means of attempting to prove or disprove those facts before the court, and the resultant "corpus"<sup>95</sup> of rules of law attaching thereto<sup>96</sup>. It is the means by which facts in issue are established before the court or any other judicial tribunal. Evidence can either be oral, documentary or real.

**Oral evidence:** Consists of the verbal or spoken testimony of a person who actually perceived the facts of an event in issue;

**Documentary evidence:** Is the production of documents to prove facts in issue;

**Real evidence:** Is the inspection by the court of material objects other than documents.

### ***7.1.1. LAW/RULES OF EVIDENCE AND THE PROSECUTOR.***

It is critical that all prosecutors understand the law and rules of evidence. Failure in this regard contributes to delayed trials and needless adjournments in court.

### ***7.1.2. INTRODUCING EVIDENCE AT TRIAL***

In introducing evidence in trial, a prosecutor will have to know:

- how to authenticate the evidence;
- how to lay proper foundation for admission of evidence;

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<sup>95</sup> "corpus" means "body"

<sup>96</sup> The Nigerian Law School- Electronic Handbook on the law of Evidence.

- the sequential steps for handling an item of potential evidence in the courtroom; and
- the appropriate responses to objections that may be made to the evidence

Under the Nigerian justice system, evidence can only be introduced by a party during the party's case i.e. during examination-in-chief.

### **7.1.3. AUTHENTICATING EVIDENCE**

A piece of evidence is said to be authenticated where it is proved that it is the same item that was obtained by or known to the authenticating witness. A piece of evidence must be authenticated to show that it is what it purports to be.

Authentication is also a basis for any expert testimony concerning the analysis of the contents of the evidence.

An example of authentication would occur when a prosecutor is trying to have an expert witness make handwriting identification. For example, Section 61 (1) of the Evidence Act provides that:

“when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, as to whether or not it was written or signed by that person is a relevant fact. “

Section 61 (2) provides that:

“A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that

person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.”

Thus, a prosecutor would have to establish the underlying facts as provided by the Act, to authenticate the handwriting identification. S/he may do that by having the authenticating witness testify that the document to be tendered in court as evidence is a document duly filled and signed by the purported maker (the person whose writing is in question) upon employment in the organization where he (the person whose writing is in question) had worked or is currently working, and that by virtue of his (the witness) position in the said organization, s/he is in custody of the said document.

#### **7.1.4. PROBATIVE VALUE VS. PREJUDICIAL EFFECT**

**Probative** in law means "tending to prove"<sup>97</sup>- If a piece of evidence is said to be 'probative', it means that it reasonably makes a fact relevant to a legal issue more or less likely. For example if a person is accused of a theft that was carried out in a unique manner, the fact that such a person has been convicted of a string of thefts carried out in the same manner with the present case, in the past is probative, as it rationally makes it significantly more likely that he committed the present theft as well.

#### **Prejudicial**

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<sup>97</sup> [http://en.wikipedia.org/wiki/Relevance\\_\(law\)](http://en.wikipedia.org/wiki/Relevance_(law))

However where a piece of evidence is said to be '**Prejudicial**' it means that it will do some harm to a party in a way unrelated to the particular legal issues. Suppose in the above example of theft, the accused person is being tried in a socially conservative jurisdiction, and the fact comes to light that he had previously beaten his pregnant wife, and walked out on her. This is an unrelated fact, which does not make it more or less likely that he is guilty, but will weigh somewhat on the mind of the court if adduced in court, and thus be more likely to find him guilty simply because he thinks the accused person is an antisocial sort (and not necessarily because he thinks the accused committed the offence).

### **Both Probative and Prejudicial Value**

Quite often, a fact has both probative and prejudicial value, and it falls to the court to determine if its probative value outweighs its prejudicial effect. Where the probative value is outweighed by its prejudicial effect, the court may exclude such evidence. Thus, the court must determine the value of the evidence based on reliability and the strength of the inference it leads to, against the cost presented by such evidence, including things as diverse as the practicalities of its presentation, the fairness to the parties and to witnesses, and the potentially distorting effect the evidence can have on the outcome of the case.<sup>98</sup>

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<sup>98</sup> *ibid*

### **7.1.5. LAYING PROPER FOUNDATION FOR ADMISSION:**

Unnecessary delay in criminal justice delivery is also occasioned by a lack of know-how in the critical skill of laying proper foundation before a document is admitted in evidence. A hypothetical example of laying proper foundation and handling Defence Counsel Objections is now set out:

#### **EXAMPLE**

Prosecutor: Do you know Ikechukwu Nnaji?

Witness: Yes I do. We worked together at the finance department as clerk.

Prosecutor: What do you do exactly as clerks?

Witness: We prepare salary vouchers payment vouchers and record incoming monies.

Prosecutor: Would you recognize some salary and payment vouchers prepared by you both if you saw them?

Witness: Yes I would.

Prosecutor: Are these some of the salary and payment vouchers recorded by Ikechukwu Nnaji and your good self?

Witness: Yes, they are.

Prosecutor: By the way, what periods do they cover?

Defence Counsel: Objection my lord! The documents speak for themselves. The dates are clearly stated I suppose.

Prosecutor: My lord, it is critical for the witness to give evidence as to dates since the alleged fraud occurred only within a specified time frame.

Court: Objection overruled.

Witness: The vouchers cover the periods 1st September 2012 – 1st December 2013.

Prosecutor: And Ikechukwu Nnaji and your goodself made entries for the vouchers throughout the said period?

Witness: I was on leave between 1st December 2012 and 15th January 2013 otherwise both of us made those entries throughout.

Prosecutor: For clarity, are you suggesting that Ikechukwu worked as a cashier alone between 1st December 2012 and January 2013?

Witness: Yes, My lord.

Prosecutor: You were not relieved by another staff?

Witness: No, my lord.

Prosecutor: May I seek to tender salary and payment vouchers covering 1st September 2012 – 1st December 2013.

Defence Counsel: My lord, we object to the tender of these photocopies.

Court: Yes Prosecutor, what is your response to learned counsel's objection?

Prosecutor: Sorry my lord, I will get the witness to explain. Ngozi Udeafor, are these photocopies or originals?

Witness: They are photocopies sir.

Prosecutor: Where are the originals?

Witness: They were burnt in the fire incident already testified about as suspected to be the handiwork of the accused person led by Ikechukwu Nnaji.

Prosecutor: Did you report the fire incident to the police?

Witness: we did and we have a police extract from the crime diary to prove that we did.

Prosecutor: Is this the Police extract?

Witness: Yes it is.

Prosecutor: My lord, I wish to tender the Police extract.

Defence Counsel: (after careful scrutiny of the Police Extract): No objection.

Prosecutor: My lord, pursuant to Section 89(c) of the Evidence Act which allows tender of copies of documents whose originals have been destroyed



or lost, I seek to tender the salary and payment vouchers as well as records of incoming cash.

Defence Counsel: My lord, at the stage of final address we shall show that no weight whatsoever should be attached to those documents or the contumelious testimony of this witness. However, we withdraw our objection to the tender of these spurious documents.

Court: Admitted and marked Exhibits Y1-Y16.

A person seeking to tender a piece of evidence before the court has a duty to qualify the evidence for admission or use. This means establishing the proper foundation for the admissibility of the piece of evidence.

#### **Four Cardinal Factors for Establishing a Proper Foundation:**

As seen from the hypothetical example above, four factors are involved in establishing a proper foundation and it will be crucial for the prosecutor to develop a checklist around these factors in order to minimize avoidable delays<sup>99</sup>:

- Competence of the Witness;
- Relevance of the Evidence;
- Authentication or Identification;
- Trustworthiness of the Exhibit.

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<sup>99</sup> *Impact Exhibits in Criminal Cases* copyright © 2000 Ray Moses

### **7.1.5.1. COMPETENCE OF THE WITNESS**

“Every person shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years; extreme old age, disease, whether of body or mind, or any other cause of the same kind”.<sup>100</sup>

A witness may only testify to a matter for which there is sufficient evidence to support a finding that s/he has personal knowledge of. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself<sup>101</sup>.

### **7.1.5.2. RELEVANCE OF THE EVIDENCE TO A MATERIAL ISSUE:**

Relevance is the basis for admissibility of any evidence.<sup>102</sup> Thus, knowledge of sections 1-27 of the Evidence Act by prosecutors is indispensable. A piece of evidence must be logically connected to the dispute and must have probative value.

If a piece of evidence is relevant to one issue, for example, credibility of a witness, and inadmissible for other purposes, the evidence is admissible only for a "limited purpose".<sup>103</sup>

Relevance is a necessary condition, but not a sufficient condition, for the admissibility of evidence. This is because not all relevant evidence

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<sup>100</sup> Section 175 Evidence Act

<sup>101</sup> *Impact Exhibits in Criminal Cases copyright © 2000 Ray Moses*

<sup>102</sup> Section 1 Evidence Act, 2011.

<sup>103</sup> **Ray Moses OP Cit.** (A good example of this is the police extract tendered in the hypothetical example earlier in the chapter)

is necessarily admissible. For example, Section 1 (a) Evidence Act allows exclusion of relevant evidence where, the evidence appears to be too remote to be material in the circumstances of the case.

***7.1.5.3. AUTHENTICATION OR IDENTIFICATION OF THE EVIDENCE: -***

A piece of evidence must be authenticated or identified in a manner that distinguishes it from other things, so that it is seen by the Court to be what it purports to be. The authenticating or identifying witness must have knowledge sufficient to recognize the piece of evidence and state what it is in a way that distinguishes it from other similar things.

This applies to both tangible objects and to certain testimonial evidence. For example a document (e.g. a survey plan) alleged to be made by a person may be authenticated, for example, by the person who says he made it or by someone who was present and saw the person make the document.

Failure to certify documents requiring certification will inevitably lead to adjournments for the purpose if that document is critical to the case.

***7.1.5.4. TRUSTWORTHINESS/ACCURACY OF THE EVIDENCE:***

The exhibit must be trustworthy. There may be grounds to question the trustworthiness of an exhibit, for example a material and misleading change of condition in a photograph.

As mentioned above, there may be situations where the probative value of relevant evidence is substantially outweighed by countervailing dangers of confusion, unfair prejudice, and misleading

the court all of which will interfere with the Court's fact-finding purpose.

#### **7.1.6. STEPS FOR INTRODUCING EVIDENCE:**

##### **Orderly Arrangement of Exhibits:**

For the purpose of orderly and swift reproduction, list the exhibits in a file in the order you wish to tender them.

##### **Laying the Foundation:**

Show by Question & Answer how the witness through whom a piece of evidence is to be tendered knows enough about the piece of evidence to be qualified to tender it. This process is called **laying the foundation** and can be seen from questions 9-13 in the hypothetical example earlier in the chapter.

##### **Tender The Exhibit Through Your Witness:**

After the witness confirms the evidence, tell the court in words to the following effect:

“My Lord I seek to tender the (document dated 11<sup>th</sup> march 2013/gun/machete, etc.) as an exhibit in the proceedings”.

##### ***The court's reaction:***

*If there are no objections or objections are overruled, the exhibit is admitted in evidence by the court and marked with a number, Exhibit 1 or 12 or A, B, C etc.*<sup>104</sup>

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<sup>104</sup> The clerk of court, usually called 'registrar', sits in front of the judge facing the court. s/he arises as soon as counsel indicates an intention to

You Tender, you do not submit, etc.:

It is advisable to use the word "Tender when you are placing a document for the consideration of the court." you do not "move it" or "submit it" or "admit it" into evidence. You tender it as evidence.

### **7.1.7 DEALING WITH DEFENCE COUNSELS' OBJECTION(S)**

The hypothetical example earlier in this chapter shows how an objection was made and the grounds for the objection; and how the prosecutor defused the time-bomb of the objection by going back to lay a proper foundation and by relying on S. 89(c) of the Evidence Act.

Defence counsel may object to the admission of a piece of evidence sought to be admitted as evidence by a prosecutor.

At this point, the prosecutor has to respond to an improper objection made by the opposing counsel, provided that the court has granted leave to respond.

### **7.1.8 POTENTIAL OBJECTIONS TO THE TENDER OF EXHIBITS**

- The exhibit is or contains hearsay evidence;

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*tender a piece of document or other evidence; collects the evidence or other document from the counsel, gives to the witness who confirms the piece of evidence. The clerk then takes the piece of evidence (usually a document) to the other counsel who either pronounces the word "no objection" or raises an objection. If any objection raised is overruled by the court, the clerk takes the document to the judge who writes down any specifics like the date on the document and announces thereafter words to the following effect, "letter dated 11<sup>th</sup> February 2013 is hereby admitted in evidence and marked exhibit D" to which the lawyers and audience respond in unison, "as the court pleases".*

- The exhibit, if documentary, is not certified or is a secondary not primary piece of evidence; The exhibit should be excluded because its probative value is substantially outweighed by the danger of unfair prejudice.

It is advisable to always prepare to respond to potential objections to a piece of evidence, long before it is raised. This means putting yourself in the shoes of the opposing counsel, so to speak, and anticipating objections. It also means that the rules of evidence must be studied and mastered.

Knowledge and anticipatory skills by a prosecutor speeds up trials. Inability to anticipate leads to innumerable adjournments.

Keep a record of all the evidence tendered as evidence and their status (whether admitted or rejected) as well as the opposition's on an evidence list.

## ***7.2. TECHNIQUES TO EFFECTIVE, YET SPEEDY EXAMINATION OF WITNESSES***

Examination in Chief, Cross Examination, and Re-examination of witnesses are major components of trial.

They are the fulcrum upon which the outcome of a trial depends.

Cross-Examination especially, is a skill upon which many a case depends. To become an effective cross-examiner, prosecutors need the following:

- thorough knowledge of the facts of the case;
- critical thinking;

- if we form the habit of listening to other lawyers in court we will quickly discern between good and bad lawyerly styles and avoid the bad. Consequently, good cross-examination skills can be picked up through the good habit of listening attentively in court;
- read up good books - on cross-examination especially.

### **7.3 EXAMINATION IN CHIEF**

Examination-in-chief is the method of putting questions to witnesses with a view to obtaining material evidence from them. It is the examination of witnesses by the party who calls them;<sup>105</sup> usually through the witness' counsel. A witness must firstly be examined in-chief before s/he is cross-examined by any other party who so desires<sup>106</sup>.

The purpose of examination-in-chief is to elicit from witness's story, testimony in support of the facts for which the party calling that witness is contending. Examination-in-chief must be strictly on relevant facts and leading questions are not allowed.

**Leading questions** are those which suggest the intended answers<sup>107</sup>. For Example – “Did you see Adam hit Eve?”.

#### **Non-leading questions:**

“When you got to Artisan market at that hour did you observe anything between Adam and Eve?”

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<sup>105</sup> Section 214(1) Evidence Act

<sup>106</sup> S.214(2) Evidence Act

<sup>107</sup> Section 195 Evidence Act.

Answer: "I saw them arguing".

Or

"I observed something between both of them."

In the event of the latter answer, a follow-up question becomes necessary:

"What did you observe?"

However, leading questions may be allowed in examination in chief where not objected to by the adverse party and where the court permits it.

Also the court shall permit leading questions as to matters which are introductory or undisputed, or which have, in the court's opinion, been already sufficiently proved<sup>108</sup>.

A witness who has been allowed to be treated as a "hostile" witness can be asked leading questions.

#### **7.4. CROSS EXAMINATION<sup>109</sup>**

The main purpose of cross-examination is to extract from the witness, evidence which is favourable to the party cross-examining or which tends to destroy the case for the party producing the witness<sup>110</sup>.

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<sup>108</sup> Section 196 (1) and (2) Evidence Act.

<sup>109</sup> S214(2) Evidence Act, 2011.

<sup>110</sup> The Nigerian Law School- Electronic Handbook on the law of Evidence.



It is intended to cast a doubt upon the accuracy of the evidence already given by the witness –

Section 223 of the Evidence Act provides:

"When a witness is cross-examined he may, in addition to the questions herein being referred to, be asked any question which tend –

to test his accuracy, veracity or credibility, or

to discover who he is and what is his position in life, or to shake his credit, by injuring his character.... "

Thus, the basic goals of cross-examination include:

- Discrediting the witness and impeaching the testimony given in examination in chief;
- Reinforcing the State's version of events; and
- Creating doubt about the position of the defence.

## **7.5. RE EXAMINATION**

This arises wherever there has been cross-examination. Re-examination is usually done by the party calling a witness<sup>111</sup>, for the purpose of explanation of matters referred to in cross-examination and for the introduction of new matters subject to the proviso that the permission of the court must be sought before introduction of new

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<sup>111</sup> See Section 214(3) of the Act

matters, with the proviso that the adverse party may further cross-examine after introduction of new matters at cross-examination.

Re-examination is often erroneously and time-wastingly restricted to clarifying ambiguities.

The restriction of re-examination to ambiguities arising from cross-examination emanated from the adaptation and incorporation of English Case law decided on English statutes, into the Nigerian Case Law without regard to the express provisions of Nigerian Law of Evidence.

## **7.6. FINAL ADDRESS**

Each party is entitled to a closing argument called the “final address”.

The final address is a combination of facts, law and emotion to tell a compelling story to guide the court to arrive at its judgment. In the high court, a final address must be in writing.

Below are some tips for writing a written address.

- **Brevity:**

Keep it short and sharp. The Judge has a lot to read. Don't risk losing the judge's attention with a long-winded thesis.

- **Argue:**

A closing argument is not a summation of evidence, but rather an opportunity to argue one's case. So a prosecutor should take the themes and theory of the case, and the supporting evidence, and mould them into a coherent whole.

- **Draw the testimony and evidence together in a story:**

There is no set structure for a closing argument, but the goal is to take the Court through the state's theory of the incident.

Thus, the prosecutor should refer to witness testimony, and if possible, quote them directly.

- **Highlight strengths:**

The prosecutor should argue the strengths of the case for the State, and not just the weaknesses of the defence's position. Since there is a very high burden of proof to be satisfied, proof beyond a reasonable doubt and focus must be on the evidence that meets this burden.

- **Confront weaknesses in your case:**

Where the defence has introduced evidence that raises doubts in the mind of the Court, the Prosecutor has to confront those weaknesses by presenting the state's own interpretation of these particular facts that raise doubt in the mind of the Court.

- **Focus on the Accused person, not the victim:**

The Court might not be as sympathetic to the victim's plight as expected. Hence, the better strategy is to build the case and closing argument around the wrong that the accused person committed. Explain the law and how the accused person's actions broke that law, placing society and this particular victim in danger. Make the case about the violence of the offender that deserves retribution, and not the victim's poor state.

- **Conclude:**

It is important to end the argument on a strong note, not forgetting to clearly ask the court for the verdict needed.

### **CASE MANAGEMENT TIPS FOR TRIAL**

- DPP reviews the File and decides which Lawyer to assign to prosecute the Case.
- DPP Returns the File to Registry for processing, indicating the lawyer that has been assigned to prosecute the case.
- Registry places the appropriate endorsement forms in the case file and forwards it to the assigned lawyer
- Lawyer receives the File, researches the Case, prepares for Hearings and represents the State in Court
- Lawyer endorses the file appropriately after every court hearing and ensures that the endorsements are recorded by the registry.

### **When the Case is finalised and the Judgement issued;**

- Lawyer drafts a Case Report, which should include all the key information about the way the case was conducted, highlighting any particularly successful strategies and any difficulties encountered.
- Documentation/typing Centre produce a typed version of the Case Report and forward it to the lawyer.
- Lawyer reviews the typed Case Report, signs it and sends it to DPP with the Case File.

- DPP receives the Case Report and File and reviews the outcome of the Case. He decides if any action is necessary to deal with shortcomings in the prosecution process and issues instructions to Registry on the final disposal of the case.
- Registry closes the Case and store the File.

***CHAPTER EIGHT***  
***PROFESSIONAL CONDUCT AND ETHICAL***  
***ISSUES IN THE PROSECUTION PROCESS***

The **Rules of Professional Conduct for Legal Practitioners 2007 (RPC)**, sets out the professional responsibility for lawyers generally and like other Legal Practitioners, prosecutors in the Ministry of Justice are bound to uphold the highest standard of professional conduct, at all times.

### **8.1. PRIMARY DUTIES OF PROSECUTING COUNSEL**

- Duty to uphold the law and promote the cause of justice - **Rule 1 RPC 2007**.
- Duty to see that justice is done, not to convict. Therefore, it is unethical to suppress facts or hide witnesses capable of establishing the innocence of an accused person. **Rule 37(4) RPC 2007** Rand J. in the Canadian case of **Boucher v. R.**<sup>112</sup> offers complimentary opinion on the duty of a prosecuting counsel as follows:

"It cannot be over emphasized that the purpose of a criminal prosecution is not to obtain a conviction. It is to lay before the court what the crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel has a duty to see that all available legal proof of the facts is 'presented, it should be done firmly and fairly. The role of prosecutor excludes any notion of winning or losing, his function is a matter of public duty than which in civil life there can be none, charged with greater personal responsibility. It is to be efficiently performed with an

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<sup>112</sup> 1955 SCR 6 at p. 23

ingrained sense of the dignity, the seriousness and the justness of judicial proceedings".

This position has been upheld by the Nigerian courts in the cases of Atanda v. Attorney General<sup>113</sup> \_ Layonu v. State<sup>114</sup> , Odofin Bello v. State<sup>115</sup> and Enahoro v. The State.<sup>116</sup>

## **8.2. DUTY TO THE STATE**

A public prosecutor shall not institute a criminal charge if he knows it is not supported by probable evidence. - R37 (5) RPC 2007. Where this duty is adhered to, it will help decongest the workload of the courts, and aid the speedy dispensation of criminal matters.

### **8.2.1. DUTY TO ACT WITHIN THE BOUNDS OF LAW – Rule 15 RPC 2007.**

A lawyer is a helper in the administration of justice. S/he has a duty not to advise or assist in violation of the Law, and also to avoid behaviour capable of dragging the noble profession into disrepute. Thus, attempts to win a case by all means may result in the violation of state laws by counsel. For example, it is unethical and a crime for a prosecuting counsel to advise a victim or witness to lie on oath, and thus commit the crime of perjury, just to secure the conviction of an accused person at all costs.

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<sup>113</sup> 1965 NMLR 225

<sup>114</sup> 1967 1 ALL NLR 198

<sup>115</sup> 1967 NMLR 9

<sup>116</sup> 1965 1 ALL NLR 125



In the light of the above, it has been stated that<sup>117</sup>:

"No attorney or counsel has the right in discharge of his professional duties to involve his client by his advice in a violation of the laws of the State, and when he does so, he becomes implicated in the client's guilt if, when by following the advice, a crime against the laws of the State is committed. The fact that he acts in the capacity and under the privilege of counsel does not exonerate him from the well-founded legal principles which render all persons who advise and direct the commission of crime guilty of the crime committed by compliance with the advice".

### **8.2.2. DUTY TO PRESERVE CONFIDENTIAL COMMUNICATION- RULE 19 RPC 2007**

A Lawyer must not disclose any confidential communication made to him by his client without the client's knowledge and consent. **In Criminal Cases** all personal information of a victim must be kept confidential. This means that:<sup>118</sup>

1. The prosecutor should never disclose information about the victim to outsiders, the press, family members, or even psycho-social or healthcare providers without the victim's

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<sup>117</sup>*Goodenough v. Spencer: 1874 46 How. Pr. 347 (Howard's New York Practice Reports) at pp.350-351: )*

<sup>118</sup>Prosecutors' Manual developed by and for the Ministry of Justice of Liberia.

([http://www.cartercenter.org/resources/pdfs/peace/conflict\\_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf](http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf))Pg.24)

or victim's guardian's written permission (in the case of a minor).

2. The prosecutor shall keep records confidential: maintain all records of crimes in a secure area (such as a locked filebox) and never leave files unattended to in the office or at court.

3. The prosecutor should retract personal information (such as the address of the victim) from any court documents that will be filed and made public.

However, this duty does not exist when the communication relates to an unlawful transaction such as the commission of a crime or a fraud<sup>119</sup>.

### **8.2.3. DEDICATION AND DEVOTION – RULE 14(1) RPC 2007**

A prosecutor must be diligent in the discharge of his duties. By virtue of Rule 14(1), it is the duty of a lawyer to devote his/her attention, energy and expertise to the service of his/her client and subject to any rule of law, to act in a manner consistent with the best interest of his/her client.

Rule 14 (5) of the RPC states that negligence in handling of clients' affairs may be of such a nature as to amount to professional misconduct. In the light of the forgoing, a prosecutor must always be fully prepared to go on with the case and not seek unnecessary adjournment thereby wasting the court's time. In **Awolowo V.**

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<sup>119</sup>Rule 19(3)(c) RPC

**Takuma**<sup>120</sup>, it was held that the Court may refuse application for unnecessary adjournment and proceed with the case.

The prosecutor must also conduct his case in logical sequence thereby assisting the court to follow the case with ease.

Enjoy your job as a prosecutor; the best way to achieving maximum devotion to duty is enjoying what you do. A prosecutor who enjoys his job as a minister in the temple of justice will easily be dedicated.

#### ***8.2.4. DUTY TO BE CANDID AND FAIR - RULE 32 RPC 2007.***

- A prosecutor (or defence counsel) is an officer of the court and as such, the court is entitled to rely upon him/her for assistance in ascertaining the truth.
- A prosecutor must make the fullest disclosure of evidence to the Court whether for or against his/her case and must not knowingly suppress a material fact.
- The prosecutor must also not fail to cite a decided case that is against him/her although s/he is entitled to distinguish such case.
- S/he must neither knowingly mislead the court nor stand by and allow the court to be misled.
- A prosecutor (or defence counsel) must display a high level of honesty and integrity. Therefore, by virtue of Rule 32(3) he should never:

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<sup>120</sup>FCA/L149/82

“(a) state or allude to any matter which he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence;

(b) ask any question that he has no reasonable basis to believe is relevant to the matter and that is intended to degrade a witness or other person;

(c) assert his personal knowledge of the facts in issue except when testifying as a witness, or assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant or as to the guilt or innocence of an accused, but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein;

(d) fail to comply with known local customs of courtesy or practice of the Bar or of a particular Tribunal without giving to the opposing lawyer adequate notice of his intention not to comply;

(e) intentionally or habitually violate any established rule or procedure or of evidence;

(f) knowingly misquote the content of a paper, the testimony of a witness, the language of the argument of the opposing counsel, or the language of a decision or a textbook;

(g) with knowledge of its invalidity, cite as authority, a decision that has been overruled, or a statute that has been repealed with intent to mislead the Court or Tribunal;

- (h) in argument, assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing argument, to mislead his opponent by concealing or withholding in his opening argument positions upon which his side intends to rely;
- (i) produce evidence which he knows the Court should reject;
- (j) promote a case which to his knowledge is false; or
- (k) in any other way do or perform any act which may obviously amount to an abuse of the process of the court, or which is dishonourable and unworthy of an officer of the law charged, as the lawyer, with the duty of aiding in the administration of justice”.

### **8.3. DUTY TO COURT**

#### **8.3.1. RELATION WITH JUDGES - Rule 34**

“A lawyer shall not do anything or conduct himself in such a way, as to give the impression, or allow the impression to be created, that his act or conduct is calculated to gain, or has the appearance of gaining special personal consideration of favour from a Judge.”

Thus, a prosecutor or defence should not converse privately with a judge about a case that is either on trial or pending trial, and never attempt to gain professionally from a personal relationship with a judge. The prosecutor or defence counsel should never bribe a judge.

### **8.3.2. PUNCTUALITY:**

A prosecutor must attend all sittings of court unless s/he had obtained leave of court to be absent, and must be punctual to court. S/he should aim at getting to court about 30 minutes before court sittings. This will enable him/her get composed and possibly rehearse with his/her witnesses who should also be advised to come early. Where a prosecutor is not punctual, or is absent from court, the Court may strike out or adjourn the case or on the application of defence counsel, strike out or dismiss the case and consequently discharge the accused person. Where a prosecutor for unavoidable reason cannot be punctual, s/he should write to court and copy the opposite counsel requesting that the case be stood down or adjourned. It is the discretion of court to grant the request.

Also a prosecutor should be prompt in filing motions, and avoid tardiness in all of his or her responsibilities.

### **8.3.3. MUST BE PROPERLY DRESSED TO COURT. - 36 of RPC 2007.**

Counsel should always be attired in a proper and dignified manner and must abstain from any apparel or ornament calculated to attract attention to him.

### **8.3.4. MUST KNOW AND MAINTAIN THE CORRECT DECORUM IN COURT- RULE 36 RPC 2007.**

- A Lawyer should rise when addressing or being addressed by the judge. See Rule 36(c) RPC 2007.
- S/he should never talk when the Judge is talking.

- While the court is in session, s/he should not assume an undignified posture, for example reading newspapers, chewing gum, sleeping, chatting with other lawyers, giggling, etc.

### **8.3.5. MAINTAIN A RESPECTFUL ATTITUDE TO THE COURT IN WORDS AND DEED - RULE 31(1) RPC 2007.**

A lawyer shall always treat the court with respect, dignity and honour. If counsel has a proper ground for complaint against a judicial officer, he shall make complain to the appropriate authorities (like the State Judicial Commission or National Judicial Commission. Rule 31(2) RPC.

Rule 35 mandates Counsel to accord due respect, courtesy, and dignity to judicial tribunals.

### **8.4. SECURING THE RIGHTS OF ACCUSED PERSONS**

A prosecutor being an officer of the court has the duty along with judicial officers, to ensure that the rights<sup>121</sup> of accused persons are protected throughout the prosecution process. This is because a violation of such rights will compromise the case for the state and may result in a successful appeal against conviction.

### **8.5. TRIAL PUBLICITY - Rule 33 RPC.**

“A lawyer or law firm engaged in or associated with the prosecution or defence of a criminal matter, or associated

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<sup>121</sup>These rights are enshrined in Section 36 of the constitution of the Federal Republic of Nigeria, 1999 Cap C23 LFN 2004.

with a civil action shall not, while litigation is anticipated or pending in the matter, make or participate in making any extra-judicial statement that is calculated to prejudice or interfere with, or is reasonably capable of prejudicing or interfering with, the fair trial of the matter or the judgment or sentence thereon. “

A prosecutor or defence counsel shall not discuss a pending or anticipated criminal prosecution with a reporter or the public. In the rare event that extreme circumstances justify a statement to the public, the prosecutor shall only refer to the facts and the papers on record with the court.

## **8.6. ENFORCEABILITY OF THE RULES**

**Section 11 of the Legal Practitioners Act<sup>122</sup>** provides for disciplinary measures against legal practitioners who violate the rules thus:

Where—

(a) a person whose name is on the roll is judged by the Disciplinary Committee to be guilty of infamous conduct in any professional respect;

the Disciplinary Committee, may, if it thinks fit, give a direction—

- (i) ordering the Registrar to strike that person’s name off the \_\_\_\_\_ roll; \_\_\_\_\_ or*
- (ii) suspending that person from practice by ordering him \_\_\_\_\_*

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<sup>122</sup>CAP L11 Laws of the Federation of Nigeria 2004.



*not to engage in practice as a legal practitioner for such period as may be specified in the direction;*

or

(iii) admonishing that person and any such direction may, where appropriate, include provision requiring the refund of moneys paid or the handing over of documents or any other thing as the circumstances of the case may require.

(2) Where a person whose name is on the roll is judged by the Disciplinary Committee to be guilty of misconduct not amounting to infamous conduct which, in the opinion of the Disciplinary Committee, is incompatible with the status of a legal practitioner, the Disciplinary Committee may, if it thinks fit, give such a direction as is authorised by paragraph (c) (ii) or (iii) of subsection (1) of this section; and any such direction may, where appropriate, include provision requiring the refund of moneys paid or the handing over of documents or any other thing, as the circumstances of the case may require. Where an appeal is brought, on the dismissal of the appeal) the legal practitioner fails to comply with the direction, the Disciplinary Committee may deal with the case as one involving misconduct by the legal practitioner in his professional capacity.

The above shows that the provisions have been made for the enforceability of the rules. In times past, examples abound of legal practitioners against whom disciplinary actions were taken.

EXAMPLES:

**Eriobuna V Ezife**<sup>123</sup>, where the court sternly admonished counsel for using lurid languages unbecoming of counsel.

**Pere Roberto (Nig). Ltd V Ani**<sup>124</sup> where the court condemned sharp practices by counsel.

**Re Abuah**<sup>125</sup>, where the name of counsel was struck off the roll of legal practitioners for misconduct.

**Iteogu V LPDC**<sup>126</sup> where the name of counsel was also struck off the roll of legal practitioners for misconduct in professional respect.

It therefore suffices to say disciplinary actions against legal practitioners must not be wielded sparingly, if the dignity of the noble profession will be safeguarded and upheld. It should also be noted that where counsel adhere strictly to the rules of professional conduct in the discharge of their duty, speedy and quality criminal justice dispensation will be enhanced.

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<sup>123</sup> Suit NO. CA/E/32/92; (1992) 4 NWLR(pt. 236) 417 at 434

<sup>124</sup> (2009) 13 NWLR (Pt. 1157) 522 at 525.

<sup>125</sup> Suit No. FSC 24/1962; (1962) All NLR 279 at 284

<sup>126</sup> (2009) 17 NWLR (pt. 1171) 614 at 619

***CHAPTER NINE***  
***CASE MANAGEMENT PROCESS***

### **9.1. CASE MANAGEMENT SYSTEM (CMS).**

Case Management is a business plan for more efficient handling of court cases by a law chambers or court. In this case, we are focusing on the Ministry of Justice, also known as Attorney General's Chambers.

It involves monitoring:

- The Legal Advice;
- Time-lines for turning in the Legal Advice;
- Faithfulness to attending court;
- Cases assigned to lawyers;
- Time-line for concluding prosecutions;
- Number and frequency of adjournments and reasons thereof;
- Typing of court processes, legal opinions, and ancillary documents for filing in court; Proper filing of court processes into the cause files; Proper storage of Court files; Electronic backup for each file;
- Typing of Court Processes, Legal Opinions, and Ancillary
- Documents for Filing in Court

A prosecutor who wishes to be effective is advised to be computer-literate and plan towards having his/her own computer/laptop in

order to circumvent potential delays and do his/her own typing of the legal advice and the like.

## ***9.2. THE ROLE OF THE MINISTRY OF JUSTICE REGISTRY/DPP***

Register of cases

A register of the cases in which the progress of each case is recorded is an essential part of **Case Management**. To be contained in the register are the following:

- each date the cases are adjourned to;
- reasons for each adjournment;
- what the case should come up for on the next date fixed.

Number of frequency of Adjournments and reasons thereof

- Why is the suit adjourned?
- Was the counsel absent?
- Or the court did not sit?
- Was the matter heard and then adjourned?
- Did learned counsel for the defence write a letter of adjournment?
- Were the accused persons absent and if so, were reasons proffered for their absence?

If there are too many adjournments at the instance of the prosecutor, defence counsel or court, an evaluation ought to be done to see how to reduce the number of adjournments, (if at the instance of the

prosecutor) or how to engage the head of the court in the state (if at the instance of the court perhaps for transfer of the suit to another court) or to bring to the attention of the court, the fact of incessant applications for adjournment by Defence Counsel however reasonable it may appear on the surface & the need for the court to do justice by refusing to grant further adjournments since justice is a three-directional highway:

- To the Court;
- To the Plaintiff/Prosecution, and
- To the Defence.

Adjournments are at the discretion of the court, not the parties.

Information for the register will be obtained from the prosecuting counsel's endorsements on the **Endorsement Sheet** in the cause file; and thereafter the file shall be returned to storage until a day before the next date or until required or returned to the prosecutor through the D.P.P assuming the matter comes up the following day.

### ***9.2.1. FAILURE TO FAITHFULLY MONITOR***

- Prosecutor's faithful attendance to court;
- Number of frequency of Adjournments and reasons thereof
- Time-line for concluding prosecutions
- Turn-over or swiftness of concluding cases by each prosecuting counsel are reasons for delayed trials.

### **9.3. THE ROLE OF THE DOCUMENTATION AND TYPING UNIT**

- Typing of Court Processes, Legal Opinions and Ancillary Documents for filing in court;
- Proper filing of court processes into the cause file;
- Proper storage of court files;
- Electronic Backup storage for Each File

The sheer amount of time required to get necessary documents ready is a major cause of delay. Reducing the time spent would amount to eliminating significant delay.

These necessary documents include the following:

- Legal Opinion
- Information
- Motions

The specific reason for delays is traceable to

- The amount of typing to be done;
- The fewness of secretarial staff;
- Inadequate education and skill of typists leading to continued repetition of typing.

#### **9.4. CMS PERFORMANCE DATA AS A PERFORMANCE MONITORING AND SUPPORT TOOL:**

Evaluation of the performance of counsel in the Ministry of Justice is an absolute necessity. However, it should not be based primarily on personal contact and complaints or praises received from judges, defence counsel and others but on a system developed for monitoring the performance of counsel. This handbook has attempted to design a system especially in this chapter, without prejudice to any other system which may also be designed.

The system designed takes into consideration, the quality of counsel's work, how well they manage their caseload, and how fast they dispense with cases.

This will enable effective evaluation of the case handling abilities of counsel and make room for special counselling, assistance or training to be given to those with less encouraging output and or who are most prone to promoting delay.

Whether manual or automated, case files should be designed to record each court transaction identifying: courtroom, prosecuting counsel, defence counsel, case status, next court date, type of hearing, results of hearing and finally disposition. This is the essence of the **Endorsement Sheet**.

Also designed is a system of monthly reporting by counsel about the number of times a case did not advance to the next court hearing and the reasons.

#### **Case Management Rules**



Effective “speedy” case management rules with sanctions for violating prosecuting counsel should be put in place by the Attorney-General.

### **9.5. BENEFITS OF THE CASE MANAGEMENT SYSTEM**

- Improves management and tracking of cases, the accused persons, witnesses and counsel, including the psychological disposition of counsel;
- Establishes standards for locally issued documents and procedures, such as subpoenas, indictments in the Legal Opinions, petitions, and warrants;
- Allows individual offices to customize office-specific documentation;
- Reduces paperwork and multiple data entry through improved access to data already recorded;
- Increases efficiency of information transfer between prosecutors, victims, witnesses and Court Administration;
- Eliminate prolonged pre-trial detention due to poor inter-agency co-ordination or loss of case files;
- Enhances the speedy disposal of criminal matters.

***CHAPTER TEN***  
***CRIMINAL APPEALS***

## **10.1. WORKING TOOLS AND MATERIALS FOR CRIMINAL APPEALS**

Three major categories:

a. Legislations:

- Sections 6, 230 - 248 of the 1999 Constitution of the Federal Republic of Nigeria (as amended);
- Sections 18, 19 and 20 of the Court of Appeal Act;
- Sections 6, 230 - 248 of the 1999 Constitution of the Federal Republic of Nigeria (as amended);

b. Procedural Laws

- The Rules of the Court of Appeal;
- The Rules of the Supreme Court;
- Criminal case law decisions of the Courts of Appeal and the Supreme

c. Formats and copies of

- Notices and Forms supplied by the rules of court referred to above, for adaptation;
- Briefs of arguments prepared by experienced counsel for guidance and to learn from the ingenuity and industry of individual counsel.

## **10.2. NOMENCLATURE**

When a criminal case is called up in the Magistrates Courts, the police prosecutor or Barrister prosecuting by fiat would announce

him/herself as appearing for the **Prosecution**, while the defence counsel would announce him/herself as appearing for the **Accused Person**. In the High Courts, the prosecutor from the Ministry of Justice would describe him/herself representing **The State**, while the defence counsel would announce him/herself as appearing for the **Accused Person**.

Counsel in criminal appeals would introduce themselves as appearing for the **Appellant** in the case of the appealing party and as appearing for the **Respondent** in the case of the party whose victory in the lower court was being appealed against.

Sometimes, the **Respondent**, although s/he substantially won the case in the lower court did not get a complete victory and is desirous of appealing against parts of that same judgement, which has been appealed against by the Appellant. The Respondent in such a case is called the **Cross-Appellant** and learned counsel would introduce him/herself as appearing for the **Respondent/Cross-Appellant**.

### **10.3. NOTICE OF APPEAL**

In order to pull the trigger of the appellate process you first of all file a Notice of Appeal, which must be filed (in the case of appeals to the Court of Appeal) ninety days from the date of the decision appealed against<sup>127</sup> and in the case of appeals to the Supreme Court, thirty days from the date of the decision appealed against;<sup>128</sup>

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<sup>127</sup> S. 24 (2) (b) of the Court of Appeal Act;

<sup>128</sup> S. 27 (2) (b) of the Supreme Court Act.

A respondent who proposes to cross-appeal shall file a notice of cross-appeal: Order 9 rule 2 court of appeal rules.

#### **10.4. GROUNDS OF APPEAL**

The notice of appeal must state the grounds of appeal which grounds must state particulars of appeal. The **grounds of appeal** must be elegantly couched as any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not be permitted, save the general ground that the judgement is against the weight of evidence:<sup>129</sup>

To be competent, the **ground of appeal** must also flow from the judgement/decision of the court of appealed against.<sup>130</sup>

#### **10.5. MOTIONS FOR LEAVE TO APPEAL**

Where a party fails to appeal within time, s/he may come by way of motion for leave to appeal out of time. Irrespective of whether an appeal is within time or not, interlocutory appeals require motions for leave to appeal<sup>131</sup>

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<sup>129</sup> Order 6 Rule 3 Court of Appeal Rules 2011.

<sup>130</sup> *Kotoye v Saraki (1992) 11/12 SCNJ (pt.1) 26 ratio 5.*

<sup>131</sup> Order 7 Court of Appeal Rules 2011

## **10.6. RECORDS OF APPEAL**

The **records of appeal** are the record of proceedings including all processes filed in the lower court <sup>132</sup> provides for the compilation of the record of appeal at the lower court. The lower court will thereafter transmit the records to the Court of Appeal;

The **records of appeal** must contain the following:

- An Index;
- A statement giving brief particulars of the case and including a schedule of fees paid;
- Copies of the documents settled and compiled for inclusion in the record of appeal; and
- A copy of the notice of appeal and other relevant documents filed in connection with the appeal: **Order 8 Rule 7 Court of Appeal Rules**;
- It is the duty of the Appellant and Cross-Appellant to facilitate the compilation and transmission of the records to the higher court;
- Where the registrar of the lower court fails to do so at the expiration of sixty days from filing of the notice of appeal the Appellant is allowed to compile and transmit the **records of**

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<sup>132</sup> Order 8 of the Court of Appeal Rules

**appeal** to the appellate court, within thirty days of the registrar's failure to do so<sup>133</sup>

- Every record or additional record of appeal compiled by a party to an appeal must be certified by the registrar of the lower court provided that it shall not be necessary for copies of individual documents to be separately certified, but the registrar of the court below shall certify as correct each copy of the record transmitted in accordance with these rules<sup>134</sup>;
- Any party who complains about the authenticity of **records of appeal** has the duty of compiling another one;

Failure to compile and transmit valid/competent records of appeal is fatal to the appeal, as there cannot be an appeal without a valid/competent **record of appeal** on which the appeal can be found<sup>135</sup>

## **10.7. BRIEFS OF ARGUMENT**

**Briefs of argument**<sup>136</sup> The rules of the Court of Appeal and Supreme Court provide for filing of briefs of arguments;

- The Appellants: Appellant's Brief (of Arguments);
- The Respondents: Respondent's Brief (of Arguments).

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<sup>133</sup> Order 8 Rules 2 to 4 Court of Appeal Rules

<sup>134</sup> Order 8 Rule 9 Court of Appeal Rules

<sup>135</sup> Order 8 Rule 18 Court of Appeal Rules.

<sup>136</sup> Order 18 Court of Appeal Rules; Order 6 Rule 5 Supreme Court Rules.

- In the **Court of Appeal**<sup>137</sup>, the Appellant has 45 days from the date of service on him/her of the records of appeal, to file the Appellant's Brief of Arguments, while the Respondent has 30 days from service on him of the Appellant's brief to file the Respondent's brief.
- In the **Supreme Court**<sup>138</sup>, the Appellant has ten weeks from service of the records of appeal upon him/her to file his/her **Appellants brief of arguments**; while the respondent has eight weeks from service of the appellants brief to file his/her **Respondents brief of arguments**;
- Twenty copies of all briefs shall be filed in the Court of Appeal<sup>139</sup> and ten copies in the Supreme Court<sup>140</sup>;
- Be precise. Briefs or argument should be brief and not copious and voluminous<sup>141</sup>;
- **Writing skills are essential for the prosecutor:** In this regard, study of other well-written briefs should assist the prosecutor who is willing to learn.

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<sup>137</sup> Order 18 rules 2 & 4

<sup>138</sup> Order 6 rule 5

<sup>139</sup> Order 18 rule 8 court of appeal rules

<sup>140</sup> Order 6 rule 5 (5) Supreme Court Rules

<sup>141</sup> Order 18 rule 6



## **10.8. WRITING & FORMULATION OF ISSUES FOR DETERMINATION**

An important aspect of brief writing is the need to formulate or distil issues from grounds of appeal for the determination of the appeal, and that the argument of counsel must be on the issues distilled: Order 18 rule 3 (1), (2) and (3) of the rules.

- Appeals are argued on the issues not on the grounds of appeal<sup>142</sup>;
- By law and practice an issue must be distilled from the ground of appeal formulated, otherwise the ground would be deemed abandoned;
- Not more than one issue can be distilled from a single ground of appeal, although a combination of grounds of appeal can give birth to a single issue for determination;
- Counsel therefore has the duty to relate or marry the issue formulated to the ground (s) of appeal formulated as failure to do this will be fatal to the appeal<sup>143</sup>;
- On the principle that evil association corrupts good character, counsel must be careful not to distil any issue from defective grounds of appeal and not to argue any issues jointly with defective grounds as the virus of the incompetent ground/issue

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<sup>142</sup> CBN v Amao (2007) All FWLR (pt.351) 1490;

<sup>143</sup> Afribank Nig. Plc. V Yelwa (2011) All FWLR (pt. 585) 299 “ 309-310

will corrupt the competent grounds/issues and the arguments thereunder<sup>144</sup>;

- There cannot be more issues formulated than grounds of appeal or appeal would be incompetent.

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<sup>144</sup> *Idaayor v Tigidam* (1995) 2 NWLR (pt 377)