



## Lawyers as Advocates by Jodi L. Wyman

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A lawyer is supposed to be an advocate for their client in court, but what does that really mean? Are there limits on how vigorously a lawyer can fight for their client?

The Code of Professional Conduct for lawyers says that in court they must raise every issue, advance every argument and ask every question that will help the client's case. The lawyer is also however required to treat the court with respect, and must always behave with honour and fairness.

What a lawyer can actually do when fighting for their client is usually very different than is seen on legal television shows. There, the dramatic effect is more important than ethics.

Lawyers are of course not allowed to let a witness lie while they are testifying, or to sign a false statement. What happens if the lawyer finds out later that a statement was false, or that they have accidentally misled the court? They must do everything they can to disclose the misstatement, and try to fix the situation, but of course they have to follow the lawyer/client confidentiality rules as well. This can be a difficult dilemma.

The rule also states that lawyers

are never to try to influence a witness or a Judge, except through making good arguments in court. They are not to abuse, hector or harass a witness, or try to talk someone out of testifying. Lawyers are not allowed to speak with alone with someone who is represented by another lawyer.

Television lawyers regularly express their personal opinions or beliefs in court, and make themselves witnesses for the case. This is not allowed in real life. The lawyer's opinion is irrelevant, and he or she is never to be a witness and an advocate at the same time. The Judge does not care if the lawyer thinks their client is innocent or has a good case.

Prosecutors in real life have a duty not to seek a conviction, but to ensure all the evidence is presented to the court so there is a fair trial. They not only have to provide all relevant facts and witness evidence to the defence counsel, but also do so in a timely fashion.

Defence lawyers have a fine ethical line to walk. They are allowed to use "technicalities" to defend their clients, but they cannot use false evidence in court or mislead the Judge. Also, if a client tells their lawyer that they are guilty, the lawyer of course does not have to disclose the

information, but they cannot argue in court that the client is innocent. They cannot present alibi evidence. They have to limit their defence to the fact that the prosecutor has not proved the case beyond a reasonable doubt.

Lawyers are not to talk with witnesses during breaks while they are testifying, even if it is tempting to help them out.

Sometimes, very angry clients will ask lawyers to file a lawsuit that is motivated purely out of malice or revenge, and has no real merit. The client just wants to create stress and cost for someone else. Lawyers are supposed to refuse. If, during a case, the client insists on taking a step that is illegal or dishonourable, the lawyer is to withdraw from the case. They are not just a mouth-piece for the client.

Lawyers are to treat their colleagues with respect and courtesy at all times, something else not always seen on television.