

In re C. L. SIMPSON, Counsellor at Law.

DISCIPLINARY PROCEEDING ON CHARGES OF PROFESSIONAL MISCONDUCT
AND CONTEMPT OF THE SUPREME COURT.

Decided May 19, 1961.

It is mandatory for a counselor at law to comply with a request by the Supreme Court to serve as *amicus curiae*, and refusal to do so constitutes professional misconduct in contempt of the Supreme Court.

On charges of professional misconduct constituting contempt of the Supreme Court in refusing to serve as *amicus curiae* in another disciplinary proceeding (*In re Cassell*, 14 L.L.R. 391 [1961]) respondent was *suspended* from practice of law.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

When charges for contempt were prepared against Counsellor Cassell, the following counsellors of the Supreme Court bar were assigned to serve as *amici curiae*: Counsellor C. L. Simpson, Counsellor O. Natty B. Davis, and Counsellor Momolu S. Cooper. Our appointment of these lawyers grew out of respect for their integrity and legal ability, our belief in their loyalty to the country and its institutions, and our belief that they had respect for their obligation as sworn officers of this Court to obey all mandates directed to them from the Court, legal disabilities conceded by the Court and so expressed being the only exceptions.

Counsellors Davis and Cooper acknowledged the assignments and undertook to serve in obedience to this Court's order. Counsellor Simpson acknowledged receipt of the assignment, but notified the Court by letter that, for reasons which he stated therein, he did not find it possible to serve. The body of this letter reads, word for word, as follows:

“Undersigned, a counsellor at law and member Supreme Court Bar, hereby acknowledges the receipt from the Honorable, the Supreme Court of Liberia of a copy of the aforementioned document.

“Undersigned further notes his appointment as an *amicus curiae* in the aforementioned matter, and is highly honored by the said appointment on part of His Honor, A. Dash Wilson, Sr., Chief Justice, Supreme Court of Liberia.

“Undersigned would, however, like to observe that, upon his return from the conference of the International Commission of Jurists which convened in Lagos, Nigeria, in January of this year, Counsellor C. Abayomi Cassell who is charged with contempt of court called upon undersigned and intimated to him as a colleague that he (Counsellor Cassell) had learned upon his arrival home that there had been certain criticisms levelled against him by reason of the paper which he delivered at the conference hereinabove mentioned, and that he had also heard, through unconfirmed reports, that certain drastic steps might probably be taken against him because of the aforesaid paper he read at Lagos; whereupon he requested undersigned as a colleague to kindly make a check for the purpose of ascertaining whether or not the unconfirmed report that certain drastic steps would actually be taken against him had any basis in fact. Under the circumstances, undersigned made inquiry concerning the matter, and reported the facts he discovered to Counsellor Cassell.

“In view of the foregoing, undersigned, as an honest and conscientious lawyer, is firmly of the opinion that his services as *amicus curiae* in the above matter would probably be unethical to both the Supreme Court and Counsellor C. Abayomi Cassell, now charged with Contempt of Court.

“Wherefore it is respectfully requested that under-

signed be relieved from the appointment as *amicus curiae* in the above and foregoing matter.”

When this letter refusing the assignment reached the clerk's office in the Supreme Court, we addressed the following letter to Counsellor Simpson, registering our surprise at such deliberate disobedience of this Court's order:

“We have read your letter in answer to our letter of Court assignment, making you one of the lawyers appointed as *amicus curiae* in the contempt proceedings filed against C. Abayomi Cassell.

“The Court views with grave concern, and with disfavor, your refusal to serve as a ‘friend to the Court,’ on the grounds which are neither feasible nor tenable. The Court's request that a lawyer serve as *amicus curiae* is not discretionary with the lawyer to accept or to refuse, and should be respected and obeyed except where reasons in keeping with the Rules of Court can be shown to prevent such lawyer from serving.”

We felt that this letter was a sufficient indication of this Court's displeasure at the rebuff it had suffered at the hands of one of the oldest counsellors of the bar, and one of the most respected citizens of the country; and we had expected that the said counsellor would, after receipt of our letter, have at least realized the necessity of withdrawing his refusal to serve the Court, thereby showing an attitude devoid of any intention to be disobedient and defiant. But, instead, Counsellor Simpson undertook to attempt to justify his refusal of the Court's assignment in another letter, the relevant portions of which read as follows:

“I beg to submit that, in view of the fact that Counsellor Cassell had discussed with me as a lawyer what he considered his point of view on the Lagos paper which he read at the conference of the Commission of Jurists, and certain unconfirmed reports at home against him which he had confided to me, as an honest

lawyer, I felt it would be unethical on my part to serve as a 'friend to the Court' in the contempt proceedings filed against him on a matter affecting him which he had unbosomed to me, whether he was right or wrong.

"I would also like to observe, if I may, that after a careful perusal of Your Honor's letter under reply, it occurred to me to make some research with a view to ascertaining whether or not my interpretation of the term *amicus curiae* was misconceived by me. After making some research I beg leave of Your Honor to kindly permit me to quote the following definitions:

" '*Amicus curiae* has been defined as one who . . . when a judge is doubtful or mistaken as a matter of law, may inform the court.' 1 R.C.L. 1051 *Amicus Curiae* § 2.

" 'The phrase *amicus curiae* means one who gives information to the court on some matter of law in respect of which the court is doubtful. . . .' *The Claveresk*, 264 F. 276, 279 (2d Cir. 1920).

" 'An *amicus curiae* is a bystander, usually a lawyer, who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or mistaken, or upon a matter of which the court may take judicial cognizance.' 2 C.J. 1322 *Amicus Curiae* § 1.

" 'An *amicus curiae* is one not a party to the proceedings who advises or informs the court, or who is allowed to appear to protect an interest he represents.' 3 C.J.S. 1046 *Amicus Curiae* § 1.

" 'That term, in its ordinary use implies the friendly intervention of counsel to remind the court of some matter of law which has escaped its notice, and in regard to which it appears to be in danger of going wrong. It is not ordinarily the function of an *amicus curiae* to take upon himself the management of a cause.' *Taft v. Northern Transportation Co.*, 56 N.H. 414, 416 (1876).

"It is also my firm belief that I should, with propriety, cite Rule 29 as found on page 9 of the Code of Moral and Professional Ethics, with which Your Honor is so well conversant. Notwithstanding the foregoing observation, should Your Honor and the full bench maintain the opinion that I must serve as a 'friend to the Court' in proceedings against Counsellor C. Abayomi Cassell, I shall in such circumstances have no alternative but to obey the order of Court and serve."

We have wondered if the tenor of this last letter could be taken as an indication that the writer intended to show any regard for the Court's order, or in any way exemplify an attitude of regret for his own insult to this Court by refusing its assignment; or could it in any way excuse such behavior of a lawyer to the court of which he is a part? However, to continue, we would like to refer to Rule 29 of the Ethics Code, which the Counsellor made mention of in his letter just quoted above. That rule reads, word for word, as follows:

"It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that his obligation prevents the performance of his full duty to his former or to his new client. If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation. The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as may be necessary to prevent a criminal act,

or protect those against whom it is threatened.”
RULES FOR GOVERNING PROCEDURE IN THE COURTS
AND FOR REGULATING THE MORAL AND ETHICAL CON-
DUCT OF LAWYERS IN THE REPUBLIC OF LIBERIA, p. 9
(1958).

We do not feel that this rule is relevant, or that reliance thereon could justify Counsellor Simpson's attitude to the Court, for reasons stated *infra*. Perhaps it did not occur to the learned counsellor that, in matters of contempt where an *amicus curiae* is appointed by this Court, he does not and cannot represent either the respondent or the Court; he is merely asked to advise the court as to the legality of its position against the respondent. In that capacity his sympathy for either side does not come into the picture. He is expected only to give conscientious legal advice for or against the Court's position, and thereby justify the confidence reposed in his integrity and ability in being asked to serve. And further, although this Court is not bound to heed the advice of an *amicus curiae*, it is nevertheless the duty of every lawyer who might be sufficiently honored with such an appointment to give conscientious professional advice, whether for or against the Court's position. In that light, it is not discretionary with a lawyer appointed as *amicus curiae* to say whether or not he will serve, to the same extent that it is not discretionary for other officers of court to refuse to obey orders given by the court. As an officer of Court, he only obeys the command for him to serve, unless illness or physical inability prevent. It is contemptuous for any officer of court to disobey an order of the court; and Counsellor Simpson, being an officer of the Supreme Court, could not escape censure for having refused to serve the Court as a "friend."

We have well noted Counsellor Simpson's explanation to the effect that Counsellor Cassell had asked him to ascertain the truthfulness of a certain rumor, and that, because of his having done so, he felt bound to Counsellor Cassell by lawyer-client obligation. But it has not es-

caped us that Counsellor Simpson has admitted that his investigation showed that there was no case pending against Counsellor Cassell in which a lawyer's services could have been employed; therefore no lawyer-client obligation or relationship could possibly exist between them; hence the irrelevancy of Rule 29 of the Ethics Code, which Counsellor Simpson has relied upon in defense of his position.

We have quoted the legal authorities Counsellor Simpson has relied upon to support his refusal to serve; but we cannot see how these authorities support him in his attitude. It is clear that an *amicus curiae* is not necessarily the legal representative of a party litigant; so even if there were a lawyer-client relationship between the two counsellors, as he has tried to infer, that could not have legally disqualified him from serving as *amicus curiae*. Even if he were Counsellor Cassell's lawyer in any action that had been brought against him growing out of the subject paper, he still could have served as *amicus curiae*, and have advised whether it was right or wrong for this Court to have charged Counsellor Cassell with contempt. Obeying an order to serve as *amicus curiae* is a duty owed by every lawyer, the performance of which is not optional, and an appointment as such is a sufficient demand.

In addition to the citations already made by Counsellor Simpson and quoted herein, we shall also rely on other authorities as follows:

"The court may request an attorney to appear in a case as an *amicus curiae* and to make suggestions and argument as such, or the court may ask information of counsel upon a doubtful point; and, it has been held, the court may appoint an attorney to appear in a case as *amicus curiae*. . . ." 2 C.J. 1322 *Amicus Curiae* § 2. "The appearance of an attorney as *amicus curiae* is not an appearance for a party, although he may be the regularly retained attorney of the party." 2 AM. JUR. 681 *Amicus Curiae* § 4.

We have taken personal exception to Counsellor Simp-

son's attitude, and even though we gave him an opportunity to reconsider his refusal of our assignment, he has persisted in his attitude attempting to justify his position in the letter he wrote, quoted herein. We would like to mention that the counsellor's offer to serve only if we insisted is not lost on us in meaning. Lawyers who refuse to realize their duty to this Court must be disciplined, irrespective of who they may be. Respect for constituted authority has been the foundation of stability in our government up to the present time; and maintaining the authority of and respect for the Supreme Court is the obligated duty of all who have in the past, who do now, and who may in the future occupy seats on this bench. Disobedience of orders given from this bench is a defiance of the authority of the Supreme Court, and that shall not be tolerated.

In view of the foregoing, we find Counsellor Simpson's disobedience of our orders contemptuous, and this Court adjudges that, as punishment for the contempt of which we find him guilty, he should be, and is therefore suspended from the practice of law, directly and/or indirectly in any of the courts of this Republic, for a period of one calendar year, as from the date of this ruling. And it is so ordered.

Respondent suspended.