Drafting an Appeal Petition for Jordanian Courts: Controls and Prohibitions

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Abstract
The study presents the stylistic of the judicial petition of appeal before the Jordanian courts, based on the terms and phrases used in the appeals submitted by some lawyers to the Court of Cassation and the Court of Appeal. In some of these appeals, there were inappropriate words and phrases that undermine the court prestige and respect, which violates the applicable controls and ethics in addressing the judicial body. Based on presented proven (real) examples, the study concluded by that these abusive words and phrases are wrong behaviors that lawyers should avoid, and improve their discourse style in order to preserve the prestige of the judiciary and respect its decisions. The study also concluded that the court has the right to liable the lawyer and hold him accountable for his use of such words and expressions, and sentence him if necessary, and that the lawyer must choose his words and phrases carefully without resorting to defamation or slandering in order to preserve the prestige of the law and those in charge of it.

Key Words: Drafting, Procedure law, Jordanian law, Judicial petition, Appeal.

1 Introduction
During his pleadings with his clients before the judge in various cases, the lawyer is keen to win his case because he believes in achieving justice in a way that serves his client. Therefore, the lawyer seeks to choose a style or method that has a strong and convincing impact on the judiciary, based on appropriate and polite language and agile words that are far from defaming, offending, or belittling the judge himself or the place that hosts court sessions. And as they say: every context a saying; The discourse status that challenges the court decisions calls for careful
selection of what to be stated, because it is a status and a place to achieve justice and lifting injustice, and accordingly it is not appropriate or acceptable under any circumstances to undermine the prestige of this status by misusing words and expressions while writing appeals against court decisions. The first thing that a lawyer should identify and take into account before proceeding to construct his discourse is the type or nature of the addressee.; The addressee here is considered one of the elite ones who should not be addressed in the manner of addressing the public, due to the different cultural level and the privileged position enjoyed by the judiciary . By reviewing and examining a number of appeals that are filed by some lawyers before the judges, it appeared that harsh or inappropriate words were used against the judge or the court. This prompted the judiciary to confront such rhetorical methods that violate lawyers’ ethics of and are far from the ethics of litigation, and to take strict decisions, sometimes against some erring lawyers.

Based on this observation that are repeated by some lawyers, we dedicate this study to diagnose the nature of the method used in the judicial discourse, and to stress them in adopting more tactful and polite rhetorical methods with the court body. Here lies the impact of this study in studying and examining some of the rhetorical styles in the courts, then searching for some stylistic defects in them and examining them, indicating its impact on the possibility of corrupting the opinion of the judge or underestimating that court status, the researchers may suggest linguistic alternatives that are suitable to be an alternative to those undesirable words that may anger the judiciary or offend a particular judge.

2 Research Methodology

In order to achieve the research objectives, the researchers will rely on a descriptive analytical approach. It proceeds from describing some of these methods by some lawyers and monitoring some linguistic uses that are inappropriate with public morals and prevailing judicial customs, and then studying those words in a precise semantic linguistic study, leading to a statement of the impact of these words on the recipient, and their impact in many cases in delaying the case or stopping Considering them, or directing a penalty to the lawyer who used these words in his appeals lists. The researchers will rely on examples of appeals petition collected by the courts that included such rhetorical methods, and it is necessary to rely on some relevant references, in order to achieve important results and recommendations.
3 The Language of Judicial Discourse

Language is the carrier of thoughts and feelings and the change maker for many human convictions and judgments. When drafting a legal or judicial document, its writer must choose his words carefully and deliberately that commensurate with judicial customs and traditions, whether he is a legislator, a judge, or a lawyer. If we stand at the legal language specifically, then it must follow a special linguistic method that enables him to formulate its written and spoken pleadings, and this is something that many lawyers almost ignore and drown in the mud of linguistic confusion and the ignorance of linguistic and stylistic facts while preparing their pleadings. Therefore, many of them fall into judicial predicaments that led them to accountability from higher judicial authorities. Most of the stylistic fallacies practiced by lawyers are the violation of the judicial authority with words that are inappropriate related to the status of the discourse addressed to the court. Thus, we notice the prevalence of expressions of slander or defamation, or expressions indicating prejudice and harsh criticism of the court and its decisions, forgetting that the language of his discourse requires him to investigate words that carry the meaning of the petition, and mentioning the laws and legal regulations related to the case or the ruling without defaming or accusing the court of weakness, negligence or inability sometimes; and that in response to its unacceptable decision to the lawyer, accordingly, the lawyer is required, while drafting his appeals petition, to avoid phrases and expressions that indicate imposing his opinion on the court panel or obliging it to take an action or decision that pleases and suits the lawyer.

At the same time, the lawyer must not resort to the use of words and phrases that carry the meaning of groveling and weakness towards the court panel in order to get close to it and win its sympathy, because this reduces the prestige and respect of the court. Therefore, it is not advisable for a lawyer to care excessively about the judge or to surround him with extraordinary care and honor by using words and phrases that indicate that interest.

It must not be forgotten that the petitioner is pleading. His language must be a language surrounded by respect for the panel before which he pleads. He may be more knowledgeable than those who hear him, and his words may be an instruction to them, but his expressions must be an expression of veneration and dignity, while respect and admiration do not require groveling or humility in addressing the discourse. What is most disliked is the expressions of groveling and flattery phrases directed by some lawyers to a judge who does not need a rank to be stripped from him as a matter of excessive discipline, and its removal may be interpreted as flattery and closeness.
4 The Legal Rules Governing the Drafting of a Judicial Appeal:

The procedural laws referred to some of the rules that must be followed when writing a judicial appeal. We summarize these rules as follows:

a- Addressing the Appeal Against the Judgement:

According to this rule, the lawyer must, when writing the reasons for the appeal, limit them to the errors contained in the judgement. As it was said, appealing the judgement means trialing the judgement. This means that it is not permissible to direct the appeal to the judge or the panel issuing the verdict. One of the common mistakes in which the appeal regulations are formulated is to mention: (The court erred...), and this rule is derived from the texts that regulate the appeal procedures, whether in the Code of Civil procedures or the Code of Criminal Procedure, as it is understood from them that the appeal is against the judgment only.

b- Writing the Reasons for the Appeal that is Clear and Free of Controversy, and in Separate Numbered Items:

Article 181/4 of the Code of Civil Procedure requires that the appeal statement include (all reasons for appeal are mentioned in the petition in a concise and free from controversy and in separate clauses numbered with serial numbers), and Article 193/5 requires that the cassation statement include (the reasons for cassation appeal are clear and free from controversy, and in separate numbered clauses, and the appellant must indicate his requests and he may attach to the cassation statement an explanatory memorandum regarding the reasons for the appeal). since the Code of Civil Procedure is the mother law of all procedural laws, so that it refers to its provisions to supplement any deficiency in other laws and in a manner consistent with the nature of the case, the Court of Cassation decided that the reasons for criminal appeals should be written clear, free of controversy, and in separate clauses. One of the applications of this rule is that one of the lawyers mentioned in the reasons for his appeal that: (The decision subject of the appeal explicitly contradicts with the provisions of Articles 266 and 267 of the Civil Code regarding the determination of the nature of the damage as one of the civil liability pillars), so the Court of Cassation decided: (Whereas what was mentioned for this reason is general talk, and is not based on a specific appeal, and does not explain how the decision, subject of the appeal, violates the provisions of Articles 266 and 267 of the Civil Code, he contented himself with saying that the decision expressly contradicts the provisions of the aforementioned two articles, thus him his saying this, remains just an argument, for which this reason must be ignored and refuted).

In application of this rule as well, it is not permissible to write in the appeal statement: (that the appellant repeats all his previous statements) or (that the appellant repeats all of his pleadings and
previous requests). As the Court of Cassation resolved that: it is supposing that the repetition of the reasons for statements, pleadings, and requests is not a valid reason for appeal according to the concept of Article (193/5) of the Code of Civil Procedure, which requires the discerning person to state the reasons for cassation appealing in a clear manner, free of controversy, and in separate numbered clauses, which has to be reputed.

However, it must be noted that the legislator did not stipulate a penalty for violating this rule. Therefore, writing the reasons for the appeal without being restricted to writing it clearly and free of controversy and in separate numbered clauses, which does not result in the refusal of the appeal or the invalidity of the appeal petition.

5 The method of judicial appeal in the Jordanian courts

Some lawyers abused while submitting their appeal petition to some Jordanian judicial bodies, by using words and phrases that are outside the rules of etiquette and ethics that is generally known within the judiciary body, and by extrapolating a sample of these abuses, we notice the diversity of the appeal patterns against the judgements issued by the court; whatever the appellant's status, his goal, and psychological state that prompted him to use these words or phrases, this does not excuse him at all from distorting the bright image that the judicial discourse should have. In order to clarify the scene further, we present a number of decisions issued by some courts expressing their opinion on what the lawyer presented in his appeals petition.

a- Using the transcendence Language and Ordering the Court:

From that: “The appellant has exceeded the limits set by the law to challenge the judgements by saying (it was obligatory for the Court of Appeal and before it the First instance Court) such an expression is unacceptable and it is not permissible to address the courts and the judiciary in this way, because it undermines its prestige and dignity, as the appellant must identify the legal violations and errors contained in the appealed judgment without prejudicing the prestige of the court”.

Considering what the appellant mentioned in the previous appeal petition, the transcendence and superiority language appears clear towards the court; it is a kind of dictation and imposition on the court panel to take an appropriate decision for the appellant, thus the use of the phrase (it was obligatory for the Court of Appeal...) presupposes the inability of the court and its lack of capacity to apply the law and take sound decisions, and this is an explicit offense and a egression from the required public morals to respect the judiciary body.
b- Accusing the court of error and lack of understanding:

By examining another judgement, we find a pattern of appeal drafting that stems from the use of inappropriate words and descriptions, in which the court panel is accused of error and grave mistake; from that decision issued by the Court of Cassation: “However, our court finds that the cassation statement presented by the discerning attorneys included phrases and descriptions that are not required by the necessities of the defense, such as the phrase: The judgement of the Court of Cassation No. 54 dated 11/5/1997 and the judgment of the Court of Appeal are contrary to the law and they contain great legal errors, as well as the phrase: He must issue a decision from an expanded public panel ..... etc. and moreover, that they say at the end of their petition: There is no doubt that the Court of Appeal and the majority of the Court of Cassation panel have made a grave mistake in applying the law.

This is also what we see in the judgement of the Amman Court of Appeal 13018/2021: “The appeal petition included, and in many of the reasons it included, the phrase (the court erred in understanding the subject matter of the case and structured it on this misunderstanding), we find that what was mentioned by the appellant’s attorney deviates from the defense limits and requirements and the proper addressing manner, which requires addressing the court with appropriate expressions, may not be addressed to any court, regardless of its level, because if the attorney can support his opinion with what the first instance court judgement, he does not have the right to describe it as a “misunderstanding of the subject matter of the case.” Therefore, our court shows that addressing the courts should be in decent terms even if they have committed legal errors in their judgment.

The previous decisions of the Courts of Cassation and the court of appeal included mentioning the lawyer’s use of phrases in which he accuses the court of making a mistake in applying the law, as the lawyer describes this mistake as an obscene mistake once and a grave mistake at the other time without the slightest doubt, and with a wrong understanding of the case subject matter. These descriptions deviate from the respect and courtesy circle for the court, and in that it points out the accusation of error in applying the law to the majority of the court of cassation panel, ignoring the opinion of the court members and accusing them of great error. Expanded general;

The decision also included the lawyer’s phrase in the same petition, which requires the court to issue a decision from an expanded public body, and this rhetorical method in itself is considered an outrageous interference in the court’s work, and also reveals a state of transcendence and arrogance over the judicial authority.
Using Words and Expressions Accusing the Court of Injustice, Lack of Justice Observance and Arbitrariness:

This appears as stated in Judgment by the Court of Cassation, saying: “We must point out that the attorney of the Distinguished Deviated greatly from the ethics and behavior of the lawyers’ profession by saying (The Court of Appeal did not seek justice...) . This also includes what was stated in Judgment issued by the Amman Court of Appeal, by saying: “We do not fail to point out as what was stated in the appellant’s lawyer mentioned in the introduction to his appeal petition, of the phrase (..The appealed decision is contrary to the spirit of justice..) deviates from the limits and requirements of the defense in this case, it is not commensurate with the requirements and principles of decency and professional ethics that the lawyer must observe in addressing the courts, and he must commit to presenting his defense in a manner consistent with the need for respect for courts, and that such a description should not be directed to any court, regardless of its degree, because even if it is the representative attorney has the right to express his opinion regarding the court’s judgement during the challenge against it with the legal aspects of appeal, so he does not have the right to describe the court’s decision as violating the spirit of justice .

d- Using Words and Phrases That Accuse the Court of Error, Neglect, and Failure to Assume Due Responsibility; and the Existence of a Legal Defect or lack in the enforcement of the Law:

This appears in what was included in Judgment of Civil Cassation Court: We find that the summoned attorney mentioned in the second and third reasons of his request the following phrases: (The Court of Cassation erred in rejecting the cassation petition submitted by the summoned in form, by not applying the provisions of the law and without having it bothers itself to respond in accordance with the principles and the law, which has created lack and a legal fragility in the application of the principles and the law) . And that our court, in its general panel, finds that what was stated by the summoned attorney in terms of stated phrases, deviates from the boundaries and requirements of the defense in this case and the proper method of addressing that requires addressing the Supreme Court with appropriate expressions that may not be addressed to any court, regardless of its level.

That is though if the lawyer has the right to express his opinion on what the Court of Cassation has judged, he does not have the right to describe the Court of Cassation as (rejecting the cassation in form without bothering to respond in accordance with the rules and the law). This also includes what was stated in the judgement issued by the Court of Civil Cassation that the phrase (...which was ignored by the Court of Appeal....) which the attorney for the distinction wrote it down on the copy of the document that he attached with his appeal petition included an abuse and an accusation of the Court of Appeal that is beyond the
ethics and traditions of the legal profession when addressing the courts and challenging their decisions.

The use of the phrase (without bothering to respond) against the court, is an explicit accusation of neglect and ignorance in following up the course of appeals, and underestimating the efforts of the court and considering it incapable of assuming its legal responsibilities to the best possible way, as if there was prior enmity between the court and the lawyer.

e- Using words and expressions accusing the court of overstepping/overriding its powers:

An example of this is what was stated in the judgement of Amman Court of Appeal, the Amman Court of Appeal, saying: “First of all we should not miss to indicate that what the representative of the appellants mentioned in the appeals petition the phrase (with respect, the esteemed court did not observe that it has surpassed its powers by considering itself an opponent in the case when I tended to amend the conditioning of the case...) which goes beyond the limits and requirements of the defense in this case and is not commensurate with the requirements and principles of decency and professional ethics that the lawyer must observe in addressing the courts, and he must be committed to presenting his defense in a manner consistent with the need for respect toward the courts, and for that, such description should not be directed to any court, whatever its level, because even if the representative has the right to express his opinion on what the court ruled during the appeal against him regarding the legal aspects of appeal, he does not have the right in this way to describe the court as opposing or transgressive, especially since the issue of court adaptation to the case is merely a matter of court’s jurisdiction”.

f- Use of Words and Phrases Accusing the Court of Negligence:

This appears in the Judgment example issued by the Amman Court of First Instance in its appellate capacity: “We find out that it is not permissible and unacceptable for the appellant’s attorney to describe the court of first instance as (it missed keeping the memorandum...) and we find the phrase mentioned by the appellant’s attorney is off the limits and requirements of the defense and does not agree with what the law requires related to addressing the courts in a way that befits them with respect and appreciation”.

g- Use of Sarcastic/Mockery Expressions Against the Court:

In its Decision No. 554/2016, the Court of Cassation established an important principle, it implies: that addressing the courts should be with words and expressions that involve tact and politeness without offense or ignorance, because the method of addressing should be limited to
legal scientific facts with impartiality and not in mocking terms that are far from these facts.

Examples of mocking expressions are what the Court of Cassation stated in its Decision No. 844 of 2014, saying: “As for the fifth reason involved, the court erred in terms of the evidence weight by saying that it is not permissible for a party (defendant) to present an evidence, then the court weighs it in the absence of the defendant’s evidence, and that the evidence weight is the measurement of something by something. Thus, is it permissible to be a one-handed scale other than the electronic scale? This is a deviation from the etiquette/decent of addressing the court and from the legal context in dealing with the judiciary.

6 Conclusion

Lawyers are judicial assistances who have made it their profession to provide judicial and legal assistance to those who request it in return for a fee. A lawyer must adhere to the ethics and traditions of his profession, as Article 54 of the Jordanian Bar Association Law stipulates that: (The lawyer must adhere in his behavior to the principles of honor, integrity and honesty, and to carry out all the duties imposed on him by this law and by the regulations and traditions of the association), as stipulated in Article 56, The Jordanian Bar Association Law stipulates that: (The lawyer must act towards the court in a manner consistent with the dignity of the legal profession and avoid every action or statement that impedes the course of justice).

It was concluded through the study that there are phrases that the lawyer may use while writing the judicial appeal that are contrary to the ethics of litigation and violate the traditions of the legal profession and underestimate the respect of the court.

Regarding the court’s authority concerning these expressions, we find that the text of Article 75 of the Code of Civil Procedure gave the court the authority to delete any inappropriate expressions, as the aforementioned article stipulated that: (The court may, even on its own initiative, order the deletion of offensive expressions or that in contrary to morals or general system from any of the pleading papers or memorandums).

The lawyer may be subject to disciplinary accountability, because he violated the provisions of Articles 54 and 56 of the Bar Association Law, and in violation of Article 44 of the Bar Association bylaws, which requires: (A lawyer must adhere in all circumstances to the principles of honor and integrity and maintain the duties imposed on him by virtue of the principles and traditions of the legal profession and the decisions of the Bar Council). Additionally, the Code of Ethics and Code of Conduct requires the lawyer to: (Respect the courts, and this is not limited to the
person of the judge, but it must also include the judge status and the preservation of his prestige and dignity).

Also, the use of some phrases may lead to criminal accountability of the lawyer, if they constitute defamation, as Article 191 of the Penal Code stipulates that: (defamation shall be punished by imprisonment from three months to two years if it is directed at the National Assembly or one of its members during his work or because of what he did by virtue of his work, or to one of the official bodies, courts, public administrations, the army, or to any employee while performing his job, or because of what he did by virtue of it).

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