Papillae and Law Office Management in Nigeria: The Way Forward

by

Yusuf O. Ali Esq., SAN

Introduction

Lord Mansfield in 1778 declared that a lawyer's business is with words, since they are raw materials of his trade.

Lord Denning the most popular common law jurist of this Century in his usual lucid manner stated the same position thus in his book *The Discipline of Law!*

> "The reason why words are so important is because words are the vehicle of thought. When you are working out a problem on your own at your desk or walking home you think in words, not in symbols or numbers. When you are advising your client – in writing or by word of month – you must use words. There is no other means available. To do it convincingly, do it simply and clearly. It others find if difficult to understand you, it will often be because you have not cleared your own mind upon it. Obscurity in thought inexorably leads to obscurity in language".

In order therefore, to make myself clear and obviate been misunderstood, I take liberty to identify and proffer the meanings of what appear to me to be the key words of this paper.

Pupilage: A direct search in most of the common dictionaries did not yield any direct definition of the word pupilage but in Blacks Law Dictionary 6th Edition Centennial Edition the following definition of the word Pupillus appears: "a person under the authority of tutor" If we therefore juxtapose the above definition with that of pupil, we get a fair idea that pupilage means the act of working under a person for the purpose of acquisition of better knowledge and experience. It connotes and conveys the idea of someone that works under another either with a view to better his knowledge, understanding and grasp of a profession or field of knowledge or to earn a living or both.

Management: The word management luckily does not suffer from the fate of the last word; it is defined in Blacks law Dictionary (supra) as:

> "Government, control, superintendence physical or manual handling or guidance; act of managing by direction or regulation, or administration, as management of family, or of household or of servants, or of great enterprises, or of great affairs.

An interested reader is referred to Stroud's Judicial Dictionary 4th edition Vol. 3 at pages 1612-1613 for a more comprehensive definition of the word. Allam Pannett in his book Managing the Law Firm[2] has provided new vistas on the issue of management with particular emphasis on law firms. From the foregoing, one clear picture that comes to light is that pupilage in a law office draws attention to the existence of at least two parties, a dominant party who is the principal and the junior who is the pupil. It also evokes the existence of at two legal practitioners practising together in the same law office. At this stage, mention must be made of the fact that the rule of professional ethics for lawyers expressly prohibits us from forming any type of partnership with non-lawyers with a view to subordinate our calling to any other profession.

The Setting of a Law Office

Ideally, a law firm or chambers as it is commonly called where there is at least a junior should have the following minimal space for effective operation.

(a) an office for the principal
(b) an office for the junior
(c) an office for the secretary
(d) a conference room
(e) a reception area
(f) a room for conveniences.

The need for adequate and befitting office space cannot be over-emphasized. Clients demand the utmost confidence. There could be cases where a client demands to talk to the principal alone on some very intimate matters. It the principal shares office with his secretary or junior, inconveniences set in. Privacy is also the hallmark of legal practice and of clients' confidence. The security of the facts of the client's matter will be better assured if the secretary or secretaries have a semi-private office where secretarial work is done.

In modern day practice of the law, the practitioners cannot afford not to take

advantage of modern day innovative technological devices in their offices. One has in mind computers, fax machine, telephones, dictaphones, email, Internet. A rich library which can be taken for granted is daily becoming a mirage, no thanks to the valueless Nigerian currency. Law books are about the most expensive items in the Nigerian market today.

For a practitioner that can afford all or some of the above, they not only promote the well being of his practice but it serves as a role model for others and an elevating tonic for the respect of the clients for our profession.

Reasons for Pupilage

Without an attempt at exhaustiveness, some of the underlisted points are the ones that make the pupilage of a new entrant to the profession inevitable.

To Garner Experience and Exposure

The basic subjects in the various law faculties in the Universities and the law school are meant and designed to highlight salient areas of the law. They a means to an end. As the saying goes, a good lawyer is not the one that knows all his law off head but the one knows where to find his law. These various trainings are designed to assist anyone that aspires to be a lawyer to activate his instincts in that regard. Thus all that is taught in these places are the raw materials that are needed which pupilage helps to refine. This also depends on the chambers of such pupilage .The maxim in that respect is caveat Junior.

Economic Hardship

The times are hard and only very few practitioners can disagree with this. In these times when a manual typewriter costs a fortune, office rent is Jumbo, Law Books are rare to come by and when all other inputs that go into setting up a law office are astronomical, it makes a lot of economic sense for a new entrant to serve pupilage with a senior so that he uses the time as a period of economic stabilization.

Policy Directive

In the late seventies, the profession sponsored a law that restricted the right of appearance of junior counsel at the Court of Appeal and the Supreme Court. Anyone that had less than five years post call experience could only appear in those courts with a senior. This rule was designed to save those courts the burden of the inexperience of the green wig. This “high standard” had to be jettisoned later due to the

reality of economics. At the inception of the "belt tight" economy of the Obasanjo regime, it was thought that the rule hindered many young practitioners from setting up their own practice thus leading to unemployment. In order to stem the tide and gale of unemployment, the law has since been put in abeyance. Thus at the time when the restriction lasted pupilage became a virtual compulsion in the profession.

Added to the above is the dwindling fortune of lawyers in today's Nigeria. The clientele is shrinking and the well established practitioners have "cornered the market" as it were thus a new wig except he or she is the child of the privileged few, finds it very difficult to get briefs. This has made it necessary for new entrances to queue in other offices in order to get known before putting up their own sign boards. A corollary of this point is of poverty. Except a new lawyer has well-to-do parents, to set up a new firm, that can qualify as a law entails the application of fortunes. The man from a humbly background is virtually hopeless in that regard.

Types of Professional Relationship in Law Offices

The rules of professional ethics acknowledge the need and necessity for lawyers to bind together to run law offices. It recognises the age long institution of partnership. But partnership is not the only mode of working together of lawyers in the same office.

Master/Savant or Principal / Junior

The commonest and the most prevalent type of relationship that exists between lawyers in this country is the principal/junior relationship. This entails the salaries employment of a junior by a principal. This system is getting more and more institutionalized. The system in Nigeria even though slightly different from the practice in England, is well exemplified by Glanville Williams in his masterpiece titled "Learning the Law" where he stated the position of a would be lawyer and a new lawyer din England thus[3]:

> "At the time of writing (1978) there are severe discouragements to new entrants for practice at the bar. First, you will need (unless you are a "mature student") an approved degree (not necessarily a law degree, thought that gives you the advantage of providing you with examination exemptions). Then you will have to pay fees, eat dinners and pass at least par II of the Bar examination. (If you have an approved degree but not in law, you will first need to study law for a year at the polytechnic of Central London or the City University). So far, it is only a matter of funds and conscientious work;

and some financial assistance is available. After or shortly before taking your call, if you intend to practice, you will read in the chambers of a junior barrister. This is called pupilage, and arranging it may present a problem. But the end of pupilage is likely to be only the beginning of your real difficult: “no room in the Inns.”

One must state that this system has presented may problems which Include low pay, inhuman treatment by seniors, lack of interest by the juniors and so on.

Associateship

This is a system where a dominant practitioner engages some other Counsel by firming out cases or briefs to them and they are paid according to an agreement or other arrangement. Such associates to all intents and purposes are on their own. They take their own briefs and are seen like principals. The uncoordinated nature of the relationship is a flaw that can lead to misunderstanding between the parties. Allegations of cheating,

exploitation and iniquities are readily raised when there is misunderstanding by the parties.

Loose Partnership

This has many things in common with the earlier highlighted mode of relationship. In this instance however, some element of profit sharing may be involved. The loose partners may also share in the proportion agreed, to the running cost of the practice. It should be stated that to succeed, utmost good faith and total disclosure is called for. Since the relationship is ad-hoc, the perimeters of the right and obligations of each partner is buried in their bosoms. Enforcement of infringement is difficult. A cheating partner could get away with “blue murder” if he wishes.

Formal Partnership

This is a deliberate formalized arrangement between two or more legal practitioners where the duties and obligations of each partner is well set out. Provisions are made in the partnership deed for the contribution of each partner, his duties and obligations, sharing of profits and liabilities, transfer of the shares of a partner in case of dissolution or death of partner and sundry other matters. This mode of relationship is no doubt the best but sadly it is the least favoured in Nigeria.

Whereas in the advanced countries of the world, the practice of the law is fusing, it is fission that is taking place in Nigeria. These reasons for the unwillingness and failure of lawyers to form durable partnership are as varied as the number of lawyers. Sometimes the reason border on the ridiculous. Whatever may be the reason, it does not take away the fact that law practice will be the better for it if partnerships are allowed to mushroom unlike the mushroom of one man practice which is the vogue today. In order to drum home this point, the disparity of the development of law offices and partnership in Nigeria and elsewhere, it may be rewarding to refer to two countries where partnership is the rather than the exception.

In the Lawyer International Bulletin[4] of 19th April 1994 the leading Law Firms in Germany were identified by number of lawyers. The leading firms goes by the name of Bruckhaus Westrick Stagemann, there are 136 lawyers with 74 equity partners and a total of 310 members of staff. The smaller of the Firms was Slaughter and May which had 2 lawyers, 1 equity partner and 4 members of staff.

In Italy[5] the leading Firm as at February 16th 1995 was Pavia Ansaldo & Verusio which has 104 lawyers, 16 equity partners and 159 members of staff. The smallest firm was that of Studio Associato Legale & Tributario Murino-Masuri with 2 lawyers, 2 equity partners and 4 members of staff.

Be have highlighted above that the institution of pupilage envisages that there is a dominant party and a junior. If that is the case, there are certain duties and obligations that the parties own one another. It is that issue that will be addressed presently.

Duties of the Junior

(a) The Junior owns his principal the duty of loyalty, dedication and absolute confidence. He must not deliberately or otherwise leak or publicise matters concerning his principal's office without prior consent of the principal. He must exert his best endeavours in all assignments given to him. He must be loyal, dedicated and trustworthy.

(b) The Junior must do his best at all times in carrying out all legitimate assignments given to him by the principal. If he has to prepare papers, he must be painstaking and careful. If at the Court to prosecute matters, he must show seriousness and a willingness to excel. One may even venture to say that a

> Junior will be acting to his utter professional detriment if he is not serious with cases assigned to him.

For one, the Courts now hold any counsel appearing in a matter responsible for the conduct of the matter. Unlike before, a junior cannot now hide under an avoidable mistake to seek for indulgence of the Court. Seniors must also be aware of this problem. That is, it is not all the mistakes of a counsel whether junior or senior that will avail counsel in asking for favours of the court. The apex Court in the case of Akanbi V. Alao[6] made the point thus:

> "I think it would be extending Ibodo v. Enarofia case beyond reason if every considered or assumed considered professional decision of a counsel which has gone wrong should qualify as ground of appeal. We did say once, and I am still of the firm view, that the conduct of a case lies wholly with counsel. The rule really should be "caveat client". If you choose a counsel, you should permit him, once seized of the case, to conduct the case in the manner of his professional ability. Indeed, that is part of the independence of the Bar! If there is lapse in his office, his clerk forgetting to file some papers, he, forgetting the date of hearing or such like procedural errors, of course, the client should not be made to suffer – U. Ibodo v. Enarofi. If however, he takes a deliberate decision and loses thereby, then, it is his privilege to lose and that will not constitute a right for the client for utilization as a ground of appeal. For, if it were not so, the profession would be in Jeopardy".

Earlier in the case of M.G.M. Ltd. v. N.S.P. Ltd.[7] the Supreme Court per Eso JSC had occasion to discuss the general authority of counsel handling a matter in the following words:

> "A counsel who has been briefed and has accepted the brief and also has indicated to the court that he has instruction to conduct a case has full control of the case. He is to conduct the case in the manner proper to him; so far he is not in fraud of his client. He can even compromise the case. He can

> submit to judgment Sometimes, he could filibuster, if he considers it necessary for the conduct of his case but subject to caution by the Court. The only thing open to the client is to withdraw instructions from the counsel or if the counsel was negligent sue tort for professional negligence. Such are the powers but such are also the risks"

In order to underscore the seriousness that is attached to counsel handing a matter to do diligently, especially in criminal cases. The same Supreme Court in Udo v. State[8] had stated the position in the following manner:

> "Sometimes one wonders what is happening to the legal profession. In the tradition of the profession, one of the reasons for its being termed honourable is that counsel never complains of his fees. The tradition of having small pockets in the Barrister's gown is that litigants used to put money there when argument proceeded in court. It used to be five shillings and it was honourable to receive such recognition. Here we have a murder trial. For counsel to be briefed by the state or the Court is usually and should always be regarded as honour itself. It is deemed to be recognition of the ability and the honourable bearing of counsel. Fees paid some two decades ago were only three guineas per case and it was an honour to receive such briefs. I am happy to state that we still have some learned counsel, including Senior Advocates, who regard this as an honour in this Court. Those who spend their own money in research into the conduct of appeals assigned to them rather than depend on such fees as a living. That honour must be brought back to the profession, and in my view, no counsel who does not regard State or Court brief as an honour should ever be so honoured with such briefs!

A litigant is entitled to counsel of his own choice. See s.33 (6) of the Constitution of the Federation. If this Appellant really had a choice, would he have chosen Bassey? I

> seriously doubt it! If he would not have chosen the counsel who more or less was indifferent to the case, but more interested in his fees, could he be said to have had a fair trial! Could any onlooker in court have concluded that the Appellant had a fair trial? This is a most unfortunate situation and I do hope the Bar Association should take it up with counsel in Cross River State where matters of this nature are becoming contagious".

Principal should at all times bear it in mind that his junior is a mirror of his person. If he dresses well, the principal has a share of it. If he eats well, the principal reaps from his good health. If he lives in a comfortable accommodation, the work of the principal benefits. In short the well being of the junior translates into the well being of the principal and his practice.

Duty to Provide Leadership

The principal must as a matter of commonsense provide legal, social and if I may say so, spiritual leadership to be the junior. He must not leave the junior to wander in the wilderness of legal research unaided. He must provide the basic infrastructure that will enable the, junior to perform well. The days are gone when a principal will not properly instruct his junior and after the junior has made a mistake especially in litigation, to go forward to disown his act in order to persuade the court to undo what the junior did.

The case of Edozien v. Edozien[9] is quite instructive in this regard. The facts are quit short and interesting. In a chieftaincy preceding before a High Court in Bendel State (now Delta State) an interlocutory ruling was made against a party. He appealed to the Court of Appeal. Having lost there, he further appealed to the Supreme Court. Before the appeal was called for hearing at the Supreme Court, a junior counsel apparently without consultation with his senior filed a notice of withdrawal of the appeal. The leading counsel now brought a motion to the Supreme Court seeking leave to withdraw the notice of withdrawal of the appeal filed by his junior on the ground that the junior had no authority to withdraw the appeal. The Supreme Court dismissed the application. At page 702 of the report Karibi-Whyte JSC made the following point:

> "It is well settled that the relationship between counsel and client arises from contract. The contract is with respect to the service or services which counsel

has agreed and undertaken to render in respect of his client. The general and accepted view is that counsel acts on the general instruction of his client. He must adhere to any special instructions given by or on behalf of his client. Counsel however, as a general rule has complete control over how these instructions are to be carried out. There is the usual dominant and general instruction to Counsel to conduct the litigation in court to finality. In carrying out this instruction, counsel functions as an independent contractor who exercise his skill and judgment and is free to act as he considers fit within the instruction in the interest of his client, - See performing Right Society Ltd. v. Mitchell & Booker Palais de danse Ltd. (1924) 1 KB 762.

Counsel acting within the scope of his authority express or implied can bind the client. This was the position in Mathews v. Munter (1888) 20 QB.D. 141 This was an action for malicious prosecution against the Defendant. Counsel in the absence of the Defendant and without his express authority assented to a verdict for the plaintiff for S350 with costs upon the understanding that all imputations against the plaintiff were withdrawn. He applied to the Queen's Bench to set aside the verdict. His reason was that he neither consented to the concession nor gave authority to consent to any terms of settlement. The Court of Appeal held that the settlement was within the apparent general Authority of Counsel and binding. In defining the scope of authority of Counsel, Lord Esher said; at p. 143:

> "But when the client has requested Counsel to act as his advocate, he has done something more, for he thereby presents to the other side that counsel is to act for him in the usual course and he must be bound by that representation so long as it continues, so that a secret withdrawal of the authority unknown to the other side would not affect the apparent authority of counsel. The request does not mean that of advocate or to do any other character than that of advocate or to do any other act than such an advocate usually does. The duty of a counsel is to advise his client out of Court, and to act for him in Court, and until his Authority is withdrawn, he has

with regard to all matters that properly relate to the conduct of the case, unlimited power to do that which is best for his client". There is no question that the instruction of learned Counsel who filed the notice of withdrawal of the appeal was neither limited nor was it withdrawn. He was still acting for Appellant at the time he filed the notice".

Earlier at page 693 of the report Olatawura JSC made a poignant point on the issue thus:

> "The right to appear in a case is an authority conferred by law on a counsel properly briefed. The authority or right of the leading counsel in a case to address the court where there are junior counsels is a rule practice which has the force of law. If however the leading counsel announces that one of his junior counsels will address the court to conduct the case, the senior is equally bound by the result of the case. To shift responsibility thereafter is to engage in a game of hide and seek in legal practice. No court should be put in a straight jacket. A client who briefs a counsel. This presumed to have confidence will continue for the entire duration of the case unless the brief is withdrawn. The number of counsel that appears in a case sometimes depends on the complexity of the case. All those briefed have right to conduct, settle or compromise. The question of fair hearing does not arise in matter. It can one only avail the applicants if the court has forced the applicants to withdraw the action"

It can be seen that a principal that fails to properly instruct his junior is at a peril.

Duty to pay Promptly

The junior must be promptly paid his entitlements. It is none of his business once he discharges his duties as agreed that clients have not paid. He cannot be made to suffer for the "father Christmas" nature of the principal. That a labourer must be paid his wages before the sweat of this labour dries off is a saying well known to many of us. Not only should the junior be paid promptly, it must be done without unnecessary deductions. The payment must not be scattered

nor staggered. No matter the amount Agreed to, it should be paid as and when due. It should not be tied to the financial convenience of the principal.

Duty of providing opportunities

The principal should assist the junior to develop professionally by providing him the opportunities to develop. He should be given assignments but must be guide properly. He should be told be told to do things but must be given the wherewithal. He should be exposed to the best in legal practices with little professional peril. Good manners, decency, neatness and courtesy are to be taught with all sense of responsibility. In the case of Cross Lines Ltd. V. Thompson[10] the Court of Appeal admonished a lawyer for lack of punctuality and attendance at the Court.

A senior should not encourage his junior to make a habit or take the position of attacking the character of judges at the least provocation. The appellate courts frown at this. In the case of Igiehon v. Omoregie[11] Adia J.C.A (as he then was) made the point in the following words:

> "It has to be pointed out that there is nothing wrong with a learned counsel for an appellant criticizing or showing that a finding made by the learned trial Judge is wrong or that it is not supported by the evidence before him. However, it does not appear to be proper to suggest, without concrete reason that the learned trial judge was biased or was prejudiced. If High Court Judges are regarded as not being capable of making mistakes, then there will be no necessity for a court vested with jurisdiction to hear and determine appeals against their judgments. That jurisdiction is vested in the Court of Appeal. The mistakes, if any, can be corrected without their being, without justification, accused of bias or prejudice. Further, one does not by reason only that one is a trial judge deserve insult from learned counsel for the parties. An example of an improper remark made in the brief of the Appellants, at page 5 lines 30 to 34, is as follows: 'For some unknown reason all the learned trial judge did was to make himself look like the defence counsel setting out the areas in the plaintiff' case which did not accord with his "Statement" of the law".

What we are saying in a nutshell is that seniors should only provide positive opportunities to their juniors not the one that can send them to jail or ruin their career.

Duty of Humaneness

The senior should exhibit the highest regard and respect for his junior his friends and relations where they are known. Juniors should not be treated as a piece of disposable syringe. Their good health, appearance, mannerisms, behaviour and others should be of concern to the senior. The personal problem of the junior should not be treated as unimportant or inconsequential. Where a junior has a nuclear family they should be the concern of the senior. It is our submission that the duties identified in this paper are by no means exhaustive. They are merely highlighted to underscore the point that in any from of professional relationship, the parties have duties and correlating obligations.

General

There can be no gainsaying it that legal practice in Nigeria is at the threshold of evolution. The Computer will ensure that the future belongs to the big partnership. But no matter the advance of science both the pupil and principal in legal practice must continually strive to excel. Especially all those lawyers that path of advocacy; it is path strewn with intellectual landmines for the unwary.

All the points that have been made earlier had been well articulated by an Indian author B. Malik in his book: Practical hints on Cross examination: where he declared as follows:

"There is no short-cut, no royal road to proficiency, in the art of advocacy. It is experience, and one might almost say experience alone that brings success. I am not speaking of that small minority of men in all walks of life who have been touched by the magic wand of genius, but of men of average endowments and even special aptitude experience advocate can look back upon those less advanced in years or experience, and rest content in the thought that they are just so many cases behind him; that if he keeps on with equal opportunities in Court, they can never overtake him"...There is no other relation in human affairs exactly analogous to that of attorney and client. It is a relation that in its intimacy and responsibility is an example of supreme trust and confidence. By it we ask another for the time and the occasion to be ourselves. It is as if for the time being we transfer our individuality to another who then becomes our mind, or voice, and even in degree, our conscience. It is not strange that this relation from the earliest times has been most closely guarded,

and that there are inseparably connected with it certain rules of honour which to disregard puts the brand of infamy upon the transgressor.

To violate this sacred trust and be disloyal to a client is deservedly the unpardonable sin of an attorney. By this betrayal he sinks lower than by any other act of dishonour."

Conclusion

What we have tried to do in this chapter is to highlight the content and context of the management of a law office where there is a principal and at least a junior. The content of this paper may not be too useful to a one man practitioner. Albeit all lawyers own duties to their clients and the Court. To that extent the paper may still be relevant to the one man practitioner. Where the relationship of principal and junior exists however, the duties and obligations identified in the paper, come into play. In this paper, we have deliberately run away from the controversial issue of how an office should be run. There are as many styles as there principals. But it should be noted that there is a minimum irreducible standard of all maters in the world. Each principal should fee to do unto the junior what he prays others should do to his own siblings. The law of retribution to exist after all.

Whichever side of the divide a legal practitioner falls, the interest of the profession should be jealously guided. The whole world looks up to us as the only learner and honourable profession in the world.

Notes

1. Pg 5.
2. Legal Practices Handbook Series 1992 Edition.
3. Chapter 13 from Learning to Earning: PF 160 etc.
4. Pages 9-11.
5. Lawyers International June 1995 pages 9-11.
6. (1989) 3 NWLR (Pt 108) 118 at 143.
7. (1987) 2 NWLR (Pt 55) 110 at 121.
8. (1988) 3 NWLR (Pt. 82) 316 at 337.
9. (1993) 1 NWRL (Pt. 272) 678.
10. (1993) 2 NWLR (Pt. 273) 74 at 80.
11. (1993) 2 NWLR (Pt. 296) 398 at 405.
12. 3rd Edition pages 32-33.