

## **THE FUTURE OF LEGAL PRACTICE IN NIGERIA: REGULATION AND DISCIPLINE IN THE LEGAL PROFESSION**

***Presented by Yusuf Ali SAN, at the 8<sup>th</sup> Annual Business Luncheon of S. P. A. Ajibade & Co., Held in Lagos, on 26<sup>th</sup> November, 2015***

### **Introduction**

The exceptional advancement in technology and attendant globalization of the 21<sup>st</sup> century has made lawyers more accessible and available, forever altering the rhythm of law practice and allowing Firms and clients to impose extraordinary demands on lawyers.<sup>1</sup> The manifest increase in the pace of legal practice and client expectations is forcing lawyers in every clime to adapt or face extinction. To be able to roar and speed like steamship in the globalization ocean, legal practitioners in Nigeria must maintain the highest standard of legal practice.

However, it is quite unfortunate, that the legal profession in Nigeria has in recent years, witnessed escalating reports of professional misconduct, corruption and sharp practices with attendant negative consequences on the standard of practice.<sup>2</sup> From my privileged and vantage position as a member of the Legal Practitioners' Disciplinary Committee, one has witnessed many of our erstwhile colleagues, whose cases were concluded within the last two years, being debarred, while others were suspended for a number of years. The decline in the standard of practice constitutes a threat to the future of legal practice in Nigeria.

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<sup>1</sup> Sally Kane, '8 Ways to Jump Start a Legal Career' <<http://legalcareers.about.com/od/jobsearch/tp/Jump-Start-Your-Legal-Career.htm>> accessed on 01 May, 2015

<sup>2</sup> Fatima Kwaku, 'What is wrong with the Rules of Professional Conduct for Legal Practitioners?'

The thrust of this paper is therefore, to examine the role of regulation and discipline in safeguarding the future of legal practice in Nigeria. In so doing, this paper elucidates the significance of regulation and discipline in the legal profession. It equally highlights the code of ethics which regulates the conduct of lawyers in Nigeria and the disciplinary sanction attached to its breach. It then enumerates the challenges affecting the regulation and discipline of lawyers in Nigeria. Ultimately, this paper concludes that efficient and effective regulation and discipline of lawyers is needed to uplift the standard of legal practice in Nigeria. Accordingly, there is need to enhance the enforcement capacities of the NBA and LPDC for more efficient and effective regulation and discipline of lawyers in Nigeria.

### **The Significance of Regulation and Discipline in the Legal Profession**

The legal profession has an ancient history and universal penchant. It has always been one of the most respected and loved professions.<sup>3</sup> Hence, the regulation and discipline of lawyers as personal service providers has always been a core issue in the legal profession, considering the level of trust and confidence reposed in them by the society. This is because the legal profession is one that seeks to convince the public that professional service is delivered, not only by properly qualified or technically sound persons, but also by persons whose professional standards equals the high degrees of public trustworthiness required of professionals.

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<sup>3</sup> Aare Afe Babalola SAN, 'Challenges of Nigerian Bar Association in 21st Century', <<http://thenationonlineng.net/new/challenges-of-nigerian-bar-association-in-21st-century/>> accessed on 01 May, 2015

The legal profession is guided by rules, principles of engagement and professional ethics. This code of ethics regulates and controls the affairs of the members of the profession. It expresses in the broadest of terms, the standards of professional conducts expected of lawyers in their relationship with the public, the legal system and the legal profession.<sup>4</sup> It is very important that the ethics of the legal profession is persistently upheld by the way and manner erring lawyers are disciplined.

### **The Code of Ethics Regulating the Conduct of Lawyers in Nigeria**

The main legislations which set out the code of ethics to regulate the professional conduct of lawyers in Nigeria are the ***Legal Practitioners Act 1975*** (as amended) CAP L10 Laws of the Federation of Nigeria 2004 (LPA) and the ***Rules of Professional Conduct 2007*** (RPC). We shall now allude, albeit briefly, to some of the duties imposed on legal practitioners under the RPC.

### ***Duty of Lawyers to the Court***

The lawyer is regarded first and foremost as an officer in the temple of justice before being an advocate representing his client. The importance of the duty of Lawyers to the court, as an officer in the temple of justice, is made clearer by the fact that it is set out by the very first rule in the RPC, which imposes on a lawyer, the duty to maintain towards the Court respectful attitude at all times. Judges, not being wholly free to

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<sup>4</sup> Fatima Kwaku, ‘What is Wrong with the Rules of Professional Conduct for Legal Practitioners?’ paper presented at the NBA Academic Forum Working Session of the NBA Annual General Conference in Calabar, Cross River State on 28 August, 2013

defend themselves, are peculiarly entitled to receive the support of the Bar.<sup>5</sup>

Accordingly, a lawyer should always maintain a respectful attitude to the court in words and deed;<sup>6</sup> be properly dressed and maintain the correct decorum in Court;<sup>7</sup> and refrain from doing anything, or conducting himself in such a way as to give the impression that his act or conduct is calculated to gain or has the appearance of gaining special personal consideration or favour from a judge.<sup>8</sup>

Likewise, the conduct of a lawyer before the Court should be characterized by candour and fairness no matter the situation.<sup>9</sup> A lawyer should inform the presiding judge of subsisting decided cases even where the decision is against his client. The lawyer is however entitled to distinguish any such case. A lawyer should not offer evidence which he knows the Court should reject, nor should he promote a case, or file a pleading or other document, which to his knowledge is false, or which is intended to delay the trial.<sup>10</sup>

In the same vein, the primary duty of a prosecutor is not to secure a conviction at all costs but to see that justice is done.<sup>11</sup> Hence, a prosecutor must not suppress facts or witnesses capable of establishing

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<sup>5</sup> See Rule I of the Rules of Professional Conduct 2007 (hereinafter referred to as the RPC)

<sup>6</sup> See Rule 31 of the RPC

<sup>7</sup> See Rule 36 of the RPC

<sup>8</sup> See Rule 34 of the RPC

<sup>9</sup> See Rule 32 of the RPC

<sup>10</sup> See Rule 4 of the RPC

<sup>11</sup> See Rule 37 (4) of the RPC.

the innocence of the accused.<sup>12</sup> He shall make timely disclosure to the defendant or his counsel, of the existence of evidence or authorities, that may negate the guilt of the accused, mitigate the degree of the offence, or reduce the punishment. He shall not institute a criminal charge, if he knows it is not supported by probable evidence.<sup>13</sup>

Where a lawyer undertakes to defend a person accused of a crime, he shall exert himself, by all fair and honourable means, to put before the court, all matters that are necessary in the interest of justice. A confidential disclosure of guilt alone does not require a withdrawal from the case. But if the accused who has confessed, insists that he shall give evidence (of innocence) or call positive evidence to establish, falsely, his innocence, the lawyer must refuse to represent him.<sup>14</sup> However, there is no impropriety in fighting to show that the prosecution's evidence has fallen short of proof.<sup>15</sup>

Unfortunately, the legal profession has witnessed greater failure in compliance with the above mentioned rules of ethics in Nigeria. From experience, it is apparent that lawyers, especially those who feel they have a bad case, engage in various unethical conducts in order to win. While some maintain unhealthy social contact with Judges in a bid to gain favours, others engage in outright bribery. Others still, resort to filing of frivolous applications and seeking for unnecessary adjournments in a bid to delay the cause of justice, in the hope that the

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<sup>12</sup> See Rule 37 (6) of the RPC.

<sup>13</sup> See Rule 37 (5) of the RPC.

<sup>14</sup> See Rule 15 (3) (f) of the RPC.

<sup>15</sup> See Rule 37 (3) of the RPC.

other party will be frustrated and eventually abandon the case. The issue of proper dressing appears to be going towards gradual extinction with the rate of flagrant violations that we witness nowadays.

### ***Duty of Lawyers to the Client***

The lawyer has a duty to accept any brief in any area in which he practices subject to payment of proper professional fees. However, counsel is not absolved from bringing questionable actions.<sup>16</sup> Besides, a lawyer shall not do any act whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client.<sup>17</sup> The lawyer is also under obligation to disclose at the time of retainer, conflicting interest, including any interest in or close connection with any person or the subject of retainer which might influence the client in the selection of counsel. In some cases of conflicting interest; the brief must be refused.<sup>18</sup>

Likewise, a lawyer should accept no compensations, commission, rebates or other advantages from a person against whom he has been retained without the knowledge and consent of that person after full disclosure.<sup>19</sup> Where a lawyer collects money for his client, or is in a position to deliver property on behalf of his client, he shall promptly report and account for it and shall not mix such money or property with

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<sup>16</sup> See Rule 24 of the RPC

<sup>17</sup> See Rule 23 of the RPC. See also NBA v. Kalu BB/LPDC/124 and NBA v. Ahembe BB/LPDC/116

<sup>18</sup> See Rule 17 of the RPC

<sup>19</sup> See Rule 54 of the RPC.

or use it as, his own. He can only deal with such money or property in accordance with his instructions.<sup>20</sup>

Furthermore, a lawyer should not buy his client's property and at the same time, act as solicitor in the sale. He should disclose his interest to his client; ask him to retain another solicitor for the transaction and ensure that the price paid is fair. A lawyer must equally maintain separate bank accounts for keeping clients' money and should make no withdrawal from it unless permitted by the Rules. A lawyer who breaches this provision could have his name struck off the roll even though there has been no criminal trial or conviction.<sup>21</sup>

This is one rule that we are yet to give teeth to in the disciplinary machinery of the legal profession in Nigeria. The logic of the Rule under consideration is to ensure the integrity of the lawyer that client's money or property is safe with him. From experience, what is prevalent is that lawyers will take to the age long Yoruba adage, "ati owo olowo ati owo eni ki ikanmati won wa ni nibe" (may we not lack either our money or somebody else's money). Hence, some may spend the money and ensure that it is refunded when demanded. It is our view that it is not enough to repay clients' money when requested, but you must have the discipline and integrity to properly keep such money. In other climes, spending client's money is a serious act of misconduct. That is the expectation of our Rules, but that is not how we have been implementing it in Nigeria.

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<sup>20</sup> See Rule 23 of the RPC. See NBA v. Eseyin BB/LPDC/114

<sup>21</sup> See Rule 20 of the RPC

### ***Relationship with other lawyers***

Lawyers are to treat one another with respect, fairness, consideration and dignity and shall not allow any ill-feeling between opposing clients to influence their conduct and demeanour towards one another.<sup>22</sup> Lawyers should also adhere strictly to all express promises to and agreements with each other, whether oral, in writing, or implied by the circumstances or local customs, as well as avoid sharp practices.<sup>23</sup> No member of the Bar irrespective of his rank or title, shall regard himself as superior or inferior to any other member. Denigration of other members of the profession is infamous conduct, punishable by the LPDC.<sup>24</sup>

It is indeed a bounden duty on lawyers to respect each other and not to denigrate themselves in order to achieve any advantage, which appears to be prevalent now.

### **Sanction for Breach of Professional Ethics**

There are four types of professional misconducts for which a Legal Practitioner can be duly punished and sanctioned if found guilty. These are:

- (1) ***Infamous conduct in a professional respect:***<sup>25</sup> What constitutes "infamous conduct" usually depends upon the norms of each profession and the facts of each case should be considered.

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<sup>22</sup> See Rule 26 of the RPC

<sup>23</sup> See Rule 27 of the RPC

<sup>24</sup> See Rule 38 of the RPC

<sup>25</sup> See Section 12 (1) (a) of the LPA

Accordingly, breach of any of the RPC could be held to constitute infamous conduct in a professional respect.<sup>26</sup> But the infamous conduct must be a serious infraction of acceptable standard of behaviour or ethics of the profession.<sup>27</sup> Where an infamous act is not done in a professional respect, it would not come within the provision of Section 11 (1) (a) LPA. But it may come within the provisions of Section 11(2).<sup>28</sup>

It must be noted however, that there is need to expand this position to accommodate conducts which are becoming more rampant among lawyers. For instance frivolous appeals and applications are being filed on regular basis on settled issues and this will eventually lead to the congestion of our courts. This attitude ought to be regarded as a variant of misconduct which should be sanctioned with at least warning in the first instance and then stiffer punishment afterwards.

(2) *Conviction by any court in Nigeria, having power to award imprisonment, for an offence which is incompatible with the status of a legal practitioner.*<sup>29</sup> The offence in question need not be committed in a professional respect and it need not be a serious offence. For instance, offences involving financial dishonesty<sup>30</sup> and offences which endanger the welfare of human beings or society generally

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<sup>26</sup> See Onitiri v. Fadipe Charge No. LPDC/IP/82 decided by LPDC in 1991

<sup>27</sup> See Re: A Solicitor Ex parte Incorporated Law Society (1894) 1QB 254. In M.D.P.T. v. Okonkwo (2001) 7 NWLR (Pt 711) 206

<sup>28</sup> See Re. Idowu Legal Practitioner (1971) 1 ALL NLR 126 and In the matter of Thomas James Wallace (1886) 16 ER 26

<sup>29</sup> See Section 12 (1) (b) of the LPA

<sup>30</sup> See Sagoe v R (1963) 1 ALL NLR 290 (293) and R v. Abuak (1962) 1 ALL NLR 279

have always been regarded as incompatible with the status of a legal practitioner. For this provision to be invoked, the material consideration is whether the person who commits the offence should still remain a member of a learned profession,<sup>31</sup> the conviction must be by a Court in Nigeria and no appeal must be pending against the conviction and/or the time of appeal must have elapsed.

- (3) ***Obtaining enrolment by fraud:***<sup>32</sup> This provision may be invoked where a person obtained enrolment by a misrepresentation of facts and if the true facts had been known he would not have been enrolled. This would cover any of the conditions that must be fulfilled to be called to the Bar since this is a precondition to enrolment.<sup>33</sup> It will also cover cases where a person obtained admission to the Nigerian Law School by fraudulent misrepresentation of academic status e.g producing forged Law Degree Certificate or representing that he possessed a Law degree when he did not.
- (4) ***Conduct incompatible with the status of legal practitioners:***<sup>34</sup> This is an omnibus ground and covers all residual cases where conduct complained of could bring the profession into dishonour or dispute. Cases like habitual drunkenness in public, employment of

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<sup>31</sup> See Re Weare (1893) 2 QB 290

<sup>32</sup> See Section 12 (1) © of the LPA

<sup>33</sup> See Sections 4 (1) and 7 (1) of the LPA

<sup>34</sup> See Section 12 (2) of the LPA

very foul language in public, and taking part in street brawl would appear likely to bring the profession into dishonour or disrepute.<sup>35</sup>

Once a complaint is made against a lawyer to the Nigerian Bar Association (NBA), the complaint will be juxtaposed with the rules of professional ethics to see if it amounts to a misconduct, in which case, the lawyer will be brought before the Legal Practitioners' Disciplinary Committee (LPDC) for disciplinary sanctions. Where the LPDC finds that the allegations have been proved, it may give a direction:

- i. Striking out the person's name off the roll or;
- ii. Suspending the practitioner from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction; or
- iii. Admonishing the practitioner.

Any such direction may, where appropriate, include a direction requiring the refund of moneys paid or the handing over of documents to a client or any other thing as the circumstances of the case may require.<sup>36</sup>

A legal practitioner who is aggrieved by the decision of the LPDC may appeal to the Supreme Court.<sup>37</sup> Besides, a Legal Practitioner whose name has been struck off the roll or who has been suspended may appeal for his name to be restored to the roll or that suspension be cancelled.<sup>38</sup> In deciding whether a name which was struck off should be

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<sup>35</sup> See NBA v. Monyei BB/LPDC/091

<sup>36</sup> See Section 11 of the LPA

<sup>37</sup> See Section 10 (e) of the LPA

<sup>38</sup> See section 14 of the LPA

restored or that a suspension be cancelled, the following factors are taken into consideration:

- (i) The gravity of the offence or offences necessitating the striking off of the applicant's name in the first place.
- (ii) Whether there is sufficient evidence of genuine remorse shown by the applicant in the period between the striking off of his name and the submission of the application.
- (iii) Whether in all the circumstances of the case, the Tribunal is satisfied that the applicant has in the intervening years become a fit and proper person to be re-absorbed as a member of the legal profession.<sup>39</sup>

The Court and the Committee would usually exercise a high degree of care before ordering restoration or cancellation of a suspension.<sup>40</sup>

### **Challenges of Regulation and Discipline in the Legal Profession in Nigeria**

Regrettably, the legal profession in Nigeria has always been plagued with a myriad of problems when it comes to the regulation and discipline of lawyers. These problems seem to have become more daunting in recent years and have prevented Nigerian lawyers from maximizing the numerous potentials of law practice. These challenges include:

- ***Incursion of other professionals into the space of legal practice:*** The indirect practice of the profession by entity and persons that are not lawyers, such as accountants, chartered secretaries, surveyors and others is a serious mitigating factor. This is made possible because of

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<sup>39</sup> See Re A.B. Abuah (1973) II SE 41 at 43 and Adesanya v. AG Fed Unreported Suit No. SC 130/1964.

<sup>40</sup> See Fobur v. NBA BB/LPDC?103M

the unholy alliance of some of our colleagues with these professionals. Unfortunately, the individuals coming into the legal practice zone are not those who have gone through the same fit and proper test hurdle as lawyers. Aside from draining the limited legal work that is available, this unholy alliance has the tendency of bringing down the already falling standard of the profession.

- **Obsolete laws:** Our laws are not a match for the challenges of ensuring discipline in the legal profession in the 21<sup>st</sup> century. For instance, the RPC is presently tailored more in line with the practice of private lawyers in litigation, leaving out to a large extent, the solicitors and lawyers in politics and in government. Likewise, it fails to address some prevalent concepts of legal practice in the 21<sup>st</sup> century, such as advertising, out-sourcing and Pro-bono services.<sup>41</sup>
- ***The disciplinary process of erring members of the Bar:*** One of the major causes of the sad decline in ethics of the profession is the absence/lack of enforcement of our Rules of Professional Conduct.<sup>42</sup> The disciplinary process of erring lawyers have hitherto been ineffective. With the ever increasing population of those being called to the Bar and corresponding high ratio of professional ethics transgressors, the disciplinary proceedings before the LPDC suffered enormous delay until 2013, when the current LPDC came on board. This had the effect of frustrating the complainants to abandon same. Likewise, it was not uncommon to find lawyers who are sympathetic

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<sup>41</sup> Fatima Kwaku, ‘What is wrong with the Rules of Professional Conduct for Legal Practitioners?’

<sup>42</sup> Ibid.

to our errant or recalcitrant colleagues sweeping complaints of professional misconduct against lawyers under the carpet in the name of professional solidarity.

### **Conclusion and Recommendations**

As earlier alluded to, the legal profession has, since time immemorial, been regarded as a profession of highly qualified people and therefore, desires at all times, to prove to the end users of their services, that the members of the profession are not only professionally sound, but morally upright. This is more so, in the 21<sup>st</sup> century, when Firms and clients impose extraordinary demands on lawyers. To survive, lawyers must adhere to set standards and practices that do not impair the rendering of professional services of the highest skill and ability at all times.

Conversely, the legal profession in Nigeria is witnessing increasing reports of professional misconduct, corruption and sharp practices with the attendant negative consequences on the administration of justice. To show the level of the rot in the profession and the amount of work done so far by the LPDC since 2013, the following statistics is revealing.

2013- 37 cases were inherited.

2013- 16 new cases were filed.

2014- 13 new cases were filed.

2015- 17 new cases have been filed. 34 cases are pending as at the time this paper was written.

From the foregoing, it is apparent that there is an urgent need to exhibit the highest level of proficiency and diligence in the battle against indiscipline within the legal profession in Nigeria to prevent it from facing extinction. It is strongly believed that the following suggestions will be of great assistance in achieving this.

- The legal space should be sanitized to ensure that non-lawyers do not make illegal incursions into law practice. Lawyers who collude with non-professionals to undermine the profession should be seriously sanctioned.
- Rule of law and professional ethics should be taught as a core course in all universities. Undermining of rule of law should be a specie of professional misconduct for which a lawyer can be sanctioned.
- The RPC should be amended to accommodate new concepts of legal practice, such as advertising, out-sourcing and Pro-bono services, which were hitherto not provided for.
- The investigating powers of the NBA should be strengthened and enhanced to be more effective.
- A database containing the names of lawyers who have been sanctioned for misconduct by the LPDC should be created and made easily accessible so that they will be identifiable.
- The LPDC should, in addition to any of the sanctions which it may impose, have the power to recommend in appropriate cases, that lawyers liable should be prosecuted if the act of misconduct amounts to a crime.

- The act of sweeping complaints under the carpet should be made a misconduct under the RPC. Anyone found engaging in such acts should also suffer the same fate like the person who has committed the misconduct.
- The RPC should be amended to make specific rules spelling out the acts of misconduct for lawyers who are not private practitioners, such as company secretaries, law teachers and lawyers holding public offices, especially the office of Attorney General.

All stakeholders must realise that effective and efficient regulation and discipline of lawyers is required for sustainable growth and development of legal practice in Nigeria. We must all be guardians of the legal profession, ensuring that the rules of professional ethics are complied with. We must always be ready to expose the unsavoury conducts of colleagues. We cannot afford to allow primordial sentiments or filial relationships to becloud our sense of justice or our love for the profession.