

## ETHICS, RULES OF PROFESSIONAL CONDUCT AND DISCIPLINE OF LAWYERS IN NIGERIA: AN OVERVIEW

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### Abstract

*Over the last decade in Nigeria, societal interest in the ethical aspect of the legal profession has been on the increase. The question of protection of the individual client, fellow professional lawyers, courts and the legal profession itself have become paramount. There has been lately, a significant increase in the frequency with which litigants have written petitions against lawyers and judges and in the case of lawyers, with a view to suing them. Professional misconduct tends to have profound effect upon the way in which law is practiced in Nigeria. It is in the execution of this responsibility that Chief Bayo Ojo – the then Honourable Attorney General of the Federation and Minister of Justice/ Chairman, General Council of the Bar carried out in the year 2007 a comprehensive review of the Rules of Professional Conduct for legal Practitioners in Nigeria. This paper examines the Ethics, Rules of Professional Conduct and Discipline of Lawyers in Nigeria and concludes that the 2007 Rules have succeeded in embodying the ideal human conduct required of a legal practitioner. What remains is in trying to enforce the observance of these rules which had largely been curtailed by the “brother’s keeper syndrome” as much breaches of the rules of professional conduct are not reported to the appropriate authority. This has largely being the reason why there have very limited erring legal practitioners been punished for contravening the rules of professional conduct.*

**Keywords:** *Ethics, Legal Practitioner, Rules of Professional Conduct and Discipline*

### 1.0 Introduction

People resort to various kinds of rules to guide their lives. This may either be moral or ethical rule. Moral rules and ethics remind us that it is immoral or wrong to covet, tell lies or engage in any activity, which we have pledged not to engage in. Every society may well disapprove the transgression of these moral or ethical precepts<sup>1</sup>. Over the last decade also, societal interest in the ethical aspect of legal profession has been on the increase. The question of protection of the individual client, fellow professional lawyers, courts and the legal profession itself becomes paramount. There has been lately, a significant increase in the frequency with which litigants have written petitions against lawyers and judges and in the case of lawyers, with a view to suing them.

Professional misconduct tends to have profound effect upon the way in which law is practiced by lawyers. The Legal Practitioners Act<sup>2</sup> assigns to the Bar Council the responsibility amongst others to: “...Prepare, and from time to time revise, a statement as to the kind of conduct which the Council considers to be infamous conduct in a professional respect...”

It is in the execution of this responsibility that Chief Bayo Ojo – the then Honourable Attorney General of the Federation and Minister of Justice/ Chairman, General Council of the Bar carried out in 2007 a comprehensive review of the Rules of Professional Conduct for legal Practitioners in Nigeria.

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<sup>1</sup> Abdullahi I, “The Marriage of Convenience between Medical Ethics and Law” Published in Suleiman Ikpechukwu’s Oji’s Edn of *Philosophical Legacy on Issues in Nigerian Public Law*, Faith Printers and Publishers, 2008, p. 255.

<sup>2</sup> Section 12(4) Laws of the Federation of Nigeria 1990 (as amended).

This article takes an overview of the ethics of the legal profession, rules of professional conduct as adumbrated under the new 2007 Rules and also looks at the discipline of lawyers generally in Nigeria.

## 2.1 Ethics in the Legal Profession: History, Nature and Meaning of Ethics

The legal profession is an imported vocation. It had its origin in ancient Greece and Rome. In its modern form, it is British.<sup>3</sup> It comprises of the lawyers and judges (Bar and Bench) and the duo are generally regarded as instruments of justice, honoured and honourable.

According to Honourable Justice Kayode Ezzo<sup>4</sup>, ethics commenced with creation. That man was given leave to dwell; for his life only, to die in it was ordained for him; he must, and so was he meant to be in the theological Garden of Eden for that life. He was given dominium over everything; Animals, Vegetables, Minerals therein, with only one obligation on his part, and that was to refrain from eating fruits from just one tree. Ethics<sup>5</sup> demanded that Adam should keep his own part of the bargain. He did not; that was unethical and there came his fall. Ethics demanded the best of man, that is, obedience and decency and that, having been given free sojourn in the Garden of Eden, he should leave by the tenets and conditions as enunciated by his creator. Man failed and that was the first known breach of ethics. Man was thereby ejected from the cherished garden for not keeping to the ethics attendant thereto, and that to his chagrin. This constitute the first sanction for failure of ethics.

In ancient Rome, they talked about *exadiligentia*, especially when it involves the business of others. Ethics demands *exata deligentia* in regard to everything. It could not be less for it to be ethical. Ethics consist of what ought to be – *deferenda*. It is objective as against its subjective counterpart “What is” – *de lata*. What ought to be, also deals with common sense ethics viz; what do we expect will be done in the circumstances? Ethics in its wider sense affects princes, and slaves alike, it has neither physical nor class boundary, it is universal<sup>6</sup>. It postulates that no man is an island of himself entirely<sup>7</sup>. Ethics may be defined simply as the performance of excellence, doing the right thing, at the right time, be it in business, profession or even in ordinary day life<sup>8</sup>. Ethics demands a round peg in a round hole and will have nothing to do with a spare peg in a round hole.

Ethics craves for the perfectionist; it comprises of the study of the nature of concepts – *the good, the bad and the ugly*<sup>9</sup>. However, ethics, within which the Rules of Professional Conduct 2007 is concerned, crystallizes in the good, positively rejecting the bad and the ugly and dwelling on the mores in the acts or actions of lawyers (Legal Practitioners) in all they do. With ethics, there is no partiality, no scapegoat and no sacred cow.

Ethics by the above definition generally craves for honesty, decorum, reliability, trust and reliance to deserve the appellation – ethics. Ethics indeed deals with ideal human conduct.

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<sup>3</sup> Akinjide R. (SAN), “Advocacy, Ethics and the Bar” Published in J. Olakanni & Co Edt of *Legal Ethics* (Lawyers handbook) Law lords Publication, 2007, p. 87.

<sup>4</sup> “Ethics in Business and Profession: Yesterday, Today and Tomorrow”, In *Further Thought on Law and Jurisprudence*, Spectrum law publishing, 2003, p. 3.

<sup>5</sup> In this regard; regarded as common sense morality.

<sup>6</sup> *Ibid* at p. 4.

<sup>7</sup> For instance in ancient Rome, it was permissible, and therefore ethical, for Ceaser to wear his crown everywhere except Italy. Thus, there was no breach of ethics in him wearing the crown in every country, but he was however prevented by agreement and in reciprocity for the honour done him by having a crown in every zone, from wearing it in Italy, which at the time was conterminous with Rome. It was therefore, unethical for him to wear it in Rome. It was imagined that the great Julius Ceaser was not likely to conform even just for that imagination only, he paid the ultimate price therefore.

<sup>8</sup> *Ibid* at p. 3.

<sup>9</sup> *Ibid* at p. 3.

The above sketchy details reveals that ethics is not a recent invention, not born in literal yesterday, nor is it a born again phenomenon, for it has been uninterruptedly continuous, it has existed from time and propelled through time.

### 3.1 What is required of a Professional in Ethics?

The legal profession is ideally not open to all manner of persons because in the words of the Supreme Court of Nigeria:

*Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country*<sup>10</sup>

Ethics demands from a lawyer that his client must have absolute confidence in him. Ethics demands that he knows his duty to the court. On these issues, Honourable Kayode Ezzo<sup>11</sup> enunciated two commandments:

- a. **A lawyer shall never be rude, insolent or insulting to the court.** The above commandment however imports respect to judges but not a commandment for lawyers to fear judges or be intimidated by them. This is because part of the qualities a judge expects from an advocate is:
  - (i) Simplicity of presentation i.e. lucidness.
  - (ii) Selectivity i.e. ability to separate the relevant from the irrelevant.
  - (iii) Straight forwardness – ability to go straight to the point. Avoiding being garrulous).
  - (iv) Brevity.
  - (v) Candour (Court detests deceitful counsel).
  - (vi) Resilience (ability to argue with conviction)
  - (vii) Proper presentation (court must perceive you as thorough in your presentation)
  - (viii) Courage, but not recklessness<sup>12</sup>.

In the case of ETIM VS OBOT<sup>13</sup> the Court of Appeal deprecated counsel's use of the words 'strange' and 'mysterious' in describing the judgment of the lower court as not only inappropriate but also inconsistent with high ethical standard of the profession.<sup>14</sup>

- b. Secondly, a judge shall never be rude, even as a result of, or over sensitive to remarks made about or against him in the court. In this respect, it is the ethics of the legal profession that insults are better treated with disdain. The legal practitioner's duty to the court is higher and more important than his duty to his client. Therefore misleading the court to obtain a judgment for a client is seen as a miscarriage of justice. General knowledge of almost all aspect of practice is advocated while pomposity is to be eschewed.

The dress a legal practitioner wears in and out of the court is a reflection of his state of mind. A legal practitioner in Nigeria is expected to be tidy, respectable and sober not necessarily flamboyant. Lateness to court is unethical. A legal practitioner is expected to wait for the court and not the court to wait for him. The responsibility of a legal practitioner to his client and the court extends to knowing the facts of his client's case, relevant laws, statutes, rules of court, case law, strength and weakness of a client's case and trying as much as possible to avoid mistakes. To put in another way a lawyer must "shine his eyes".

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<sup>10</sup> See N.B.A vs. Ohioma (2010) 14 N.W.L.R (PT. 1231) 641 at 680

<sup>11</sup> "Thoughts on law and jurisprudence"; M. I. J. Professional Publishers Ltd, p. 14.

<sup>12</sup> Akinjide R, 'Advocacy' Ethics and the Bar" *op cit* at p. 14.

<sup>13</sup>(2010) 12 N.W.L.R (PT 1207) 108.

<sup>14</sup>See also Amaechi vs Omehia (2013) 16 NWLR (PT 1381) 417at 434.

It is ethical for a legal practitioner to know his judge. The rule is that no two human beings are the same. By extension also, no two judges are the same, each judge has his or her own sensitivity, peculiarities of approach and attitude. One must therefore learn how to adopt.

It is unethical to allow or encourage a client to disobey a court order. It is part of the ethics of the legal profession in Nigeria for lawyers to accept briefs *pro-bono public (for public good)*, that is without charging any professional fees. Though this is a matter of professional judgment for each legal practitioner, most *pro-bono* cases in court matters in some states like Sokoto State are now complimented with the payment of fees by the Attorney General. Though this is a salutary effort and need to be commended, however, the modus operandi with which these *pro-bono* cases are been assigned need to be reviewed to ensure equilibrium of distribution.

It must be stressed that it will nonetheless do damage to the image of the profession if the legal profession is seen as no fee no work<sup>15</sup>. Refusal to briefs or the grounds of race, political difference, religion, sex or fear of authorities is unethical. The last mentioned ground i.e. fear of authorities appears to be the order of the day in Nigeria. The **CAB RANK doctrine** must be observed<sup>16</sup>. It is a professional misconduct to violate it.

It is part of the ethics of the legal profession for lawyers, working in the Attorney General's Chambers whether at the State or Federal Level, to be guided by the "**SHOWCROSS DOCTRINE**" and not to allow external influences or politics or money considerations to influence their decisions in "whether or not to "prosecute". Yielding to any of these considerations may have a catastrophic effect. Some States in Nigeria are already experiencing the heat.

It is unethical for a lawyer in Nigeria to advertise himself in any shape or manner nor seek briefs from clients of other lawyers on the basis that he is the "most senior" or that he is the most qualified person in that area of the law. This ethics it is argued is unique to the legal profession as other professions are exempted from this rigidity.

Judges in Nigeria are required to be impartial unto dismal and even unto death. Honourable Justice Kayode Ezzo remarked as follows:

*... It is the duty of every Judge, after his appointment, conscientiously, to stand clear of all odium. In this sense, he gives no cause whatsoever to be suspected of a process to anything that is shady. He, like linen, remains stainless but more so he guards against stain...<sup>17</sup>.*

This is indeed setting up a very high standard for a judge. This standard is necessary as it is the only way one can stand up and be counted with the crowd in our various professions. The stage is now set for us to attempt to look at the aids to the achievement of ethics.

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<sup>15</sup> *Ibid* at p. 95.

<sup>16</sup> An epitome showing compliance with the Cab rank doctrine was **Sir, Hartley Show cross** famous warning as Attorney General of the UK when he heard that certain English barristers were reluctant to accept the brief for the defence of Jomo Kenyatta in Kenya on criminal charges of managing the *Mau Mau* brought against him by the British Government. To the credit of the legal profession in Nigeria, Chief H. O. Davies and Chief Kola Balogun flew to Kenya and joined Denis Pratt Q.C in the defence.

<sup>17</sup> Akinjide R, "Advocacy, Ethics and the Bar" *op cit* at p. 7.

#### 4.1 Aids to Achievement of Ethics

In sketch, the aids to achievement of ethics are as follows:

##### a. Learning

To strive or aim at the preservation of ethics of the legal profession, one must be well read. One need not be restricted to his profession only. He should always aim at being a leader. This however does not imply that he must reach the pinnacle of his profession – far from it, but the least a person who believe in the ethics of his profession should aim at the top and strive for the fulfilment of such ethical cultures that will lift him to the top.

In this regard the observation of Chief Richard Akinjide SAN is apt when he said:

*...Practically in all jurisdictions, the legal profession is like a pyramid. Nigeria is no exception... The base is very crowded but there is plenty of room at the top. The top is refreshing and succulent. You have to work hard to get there; and you need to work even harder to remain there...<sup>18</sup>.*

##### b. Leadership by Example

Ethics demands that a leader strives to lead by example and not on precepts such as; Do as I say, and not as I do.

##### c. Order and Decorum

For Ethics to be established in the legal profession, order and decorum must co-exist. A lawyer's chambers must have order and decorum and where order and decorum is absent, ethics cannot have a habitat.

##### d. Merit

Merit is an important attribute of ethics. No one who seeks ethics or to preserve same can claim a position which is not his by merit be it in public or private sector. One should therefore be able to lose his position on merit but never to keep it by some god fatherism howsoever nicknamed.

Having discussed Ethics, it is now apt to see how these ideal human conduct and/or conducts and many more expected from a legal practitioner have been incorporated into the Rules of Professional Conduct for Legal Practitioners 2007 in Nigeria.

#### 5.1 Rules of Professional Conduct for Legal Practitioners

The General Council of the Bar in Nigeria is one of the controlling bodies in the legal profession<sup>19</sup>. Part of the functions of the General Council of the Bar includes amongst others; the making and revising of rules of Professional Conduct for Legal Practitioners. In accordance with the legal practitioners Act,<sup>20</sup> the Council made the Rules of Professional Conduct at its General meeting in Lagos on the 5<sup>th</sup> of December, 1967, and amended same on the 15<sup>th</sup> of January, 1979. The Council has also recently made new rules of Professional Conduct in 2007 to replace the old one (herein after referred to as the RPC 2007 for short).

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<sup>18</sup> *Ibid* at p. 88.

<sup>19</sup> See the Legal Education (Consolidation) Act 1962, as well as Cap 206 Laws of the Federation of Nigeria 1990 and Cap 210 Laws of the Federation 2004. (See equally the establishment of General Council of the Bar by Section 1 of the Legal Practitioners Act CAP L11, LFN 2004.

<sup>20</sup> Section 12(4) CAP L11 Laws of the Federation of Nigeria 2004.

The RPC 2007 is made of 56 Rules and is divided into seven segments namely:

- (1) Rules relating to the practice as a legal practitioner<sup>21</sup>
- (2) Rules relating to relationship with clients<sup>22</sup>
- (3) Rules relating to relationship with other lawyers<sup>23</sup>
- (4) Rules relating to relationship with court<sup>24</sup>
- (5) Rules relating to improper attraction of business<sup>25</sup>
- (6) Rules relating to remuneration and fees<sup>26</sup>
- (7) Miscellaneous Rules<sup>27</sup>.

In a sketchy form, it is pertinent to discuss the above rules which will form the necessary springboard for the discussion on discipline of lawyers.

### 5.1.1 Practice as a Legal Practitioner

The legal profession being a noble profession, a high standard of conduct is expected from lawyers, and in the practice of law. Lawyers in Nigeria are therefore expected to maintain a high standard of professional conduct and not to engage in any conduct which is unbecoming of a legal practitioner. Conducts unbecoming of a legal practitioner are myriads. Some of these include:

- a. Knowingly doing an act or omission that may lead to the admission into the legal profession of a person who is unsuited for admission by reasons of his immoral character or insufficient qualifications<sup>28</sup>.
- b. Aiding a non lawyer in the authorized practice of law<sup>29</sup>.
- c. Accepting an employment as an advocate in any matter upon the merits of which he had previously acted in a judicial capacity<sup>30</sup>.
- d. Practicing as a legal practitioner while engaged in the business of buying and selling commodities, the business of commission agent and other business that tends to undermine the high standing of the profession<sup>31</sup>.
- e. Calling at a client's house or place of business for the purpose of giving advice to or taking instruction from client except in special circumstances<sup>32</sup>.
- f. Putting personal benefit or gain or taking advantage of the confidence reposed on him by his client<sup>33</sup>.
- g. Mixing of client money with a legal practitioner's money or making use of same as his own<sup>34</sup>.
- h. Bargaining with a witness either by contingent fee or otherwise as a condition for giving evidence<sup>35</sup>.

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<sup>21</sup> Rules 1 – 13 of the RPC 2007.

<sup>22</sup> Rules 14 – 25, *Ibid*.

<sup>23</sup> Rules 26 – 29, *Ibid*.

<sup>24</sup> Rules 30 – 38, *Ibid*.

<sup>25</sup> Rules 39 – 47, *Ibid*.

<sup>26</sup> Rules 48 – 54, *Ibid*.

<sup>27</sup> Rules 55 – 57, *Ibid*.

<sup>28</sup> Rule 2, *Ibid*.

<sup>29</sup> Rule 3(1) (a) *Ibid*.

<sup>30</sup> Rule 6(1).

<sup>31</sup> Rules 7(2) & 7(3), *Ibid*.

<sup>32</sup> Rule 22, *Ibid*.

<sup>33</sup> Rule 23(1), *Ibid*.

<sup>34</sup> Rule 23(2), *Ibid*.

<sup>35</sup> Rule 23(1), *Ibid*.

- i. Asking questions in proceedings meant to insult or degrade a witness or allow the suggestion or demand of his client influence his action<sup>36</sup>.
- j. Communicating or cause to another to communicate on the subject of the representation with the party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such party or is authorized by law to do so<sup>37</sup>.
- k. While litigation is anticipated or pending in a matter, making or participating in the making of any extra judicial statement that is calculated to prejudice with or interfere with the fair trial of the matter or the judgment or sentence thereon<sup>38</sup>.
- l. Fomenting strife or instigating litigation<sup>39</sup>.
- m. Searching for clients in respect of personal injury causes<sup>40</sup>.
- n. Acceptance of compensation, rebates, commissions, gifts or other advantages from or on behalf of the opposing party except with the full knowledge and consent of his client after full disclosure, etc<sup>41</sup>.

The practice of law in Nigeria normally begins with pupillage and thereafter the setting up of a law firm or associate ship as the case may be. In respect of pupillage, a legal practitioner is expected not to authorize the practice of law by any personnel not qualified to practice law or is disqualified from practice or even share legal fees with a non lawyer<sup>42</sup>. So, the popular 5% or 10% commission that lawyers these days give to registrars of courts or other laymen who bring clients to them as a further inducement to bring more clients is unprofessional and unethical.

Regarding the operation of a law firm, the relevant provisions of the RPC 2007 are to be found in Rules 5(1) – (5), (1)(a – d), 13(d) and 13(4). Of importance is the rule which stipulates that: *Where a lawyer practices alone, he shall not hold himself out as a partner in a firm of lawyers using a firms name such as A, B & Co or such other names as may suggest that he is in partnership with others*<sup>43</sup>.

But in Nigeria today, it is fashionable to find a blatant disregard of the provision of this rule. Most of the law firms in Nigeria use firms name suggesting partnerships, while in actual fact; they are nothing but sole practitionership.

It is expected after setting up a law firm to notify within 30 days after the commencement of legal practice via a notice in the prescribed form, the Branch of the Nigerian Bar Association (NBA) within whose jurisdiction the law firm is to be situate<sup>44</sup>. The Notice to be delivered is expected to contain the following particulars:

- (a) The name of the legal practitioner,
- (b) The addresses where the legal practice is carried on,
- (c) The date when the legal practitioner was called to the Bar in Nigeria, and
- (d) The date when his name was entered in the Role of legal practitioners in Nigeria<sup>45</sup>.

Similarly, any change in address or name is to be equally delivered to the branch of the NBA<sup>46</sup>. It must be stressed that no rule was made prohibiting new wigs (even though he might be a day old at the bar)

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<sup>36</sup> Rule 25(4) , *Ibid*.

<sup>37</sup> Rule 27(5)(a), *Ibid*.

<sup>38</sup> Rule 33, *Ibid*.

<sup>39</sup> Rule 47(1), *Ibid*.

<sup>40</sup> Rule 47(2), *Ibid*.

<sup>41</sup> Rule 54, *Ibid*.

<sup>42</sup> See Rules 3(1) (b) & (c), *Ibid*.

<sup>43</sup> Rule 5(4), *Ibid*.

<sup>44</sup> Rule 13(1), *Ibid*.

<sup>45</sup> Rule 13(2), *Ibid*.

<sup>46</sup> Rule 13(4), *Ibid*.

from operating a law firm. This is perhaps informed by the removal of the restrictions placed on young legal practitioners against private practice<sup>47</sup>. However, caution is advocated here. A good career at the Bar should start with a general knowledge of almost all aspects of legal practice. Too early a specialization is to be avoided.

A responsibility is bestowed on the branch of the NBA to keep a register or database for entering notification of legal practice and changes thereof<sup>48</sup>. Surprisingly, most branches of the NBA in Nigeria do not comply with the requirement of Rules 13(3).

### 5.1.2 Relations with Clients

The relevant rules are as contained in Rules 14 – 25 of the RPC 2007. The hallmark of these rules is a duty bestowed on a legal practitioner to devote his attention, energy and expertise to the service of his client and to act in a manner consistent with the best interest of his client<sup>49</sup>. To strive to archive this duty, a legal practitioner is to be diligent in the prosecution of his client's case by the use of his independent professional judgment when the need arises and at all times to be present to represent his client throughout the proceedings as well as advising his client candidly<sup>50</sup>.

No legal practitioner is entitled to handling any legal matter on behalf of his client without adequate preparations. Doing so is an unprofessional conduct<sup>51</sup>. However, just as a Surgeon does not warrant that he can cure his patient, a Solicitor cannot warrant winning his case. In the case of ABUBAKAR VS YAR'ADUA<sup>52</sup>, the Supreme Court of Nigeria observed that:

*...It is not ethical for counsel to assure his client that 'come rain come sunshine' he will win the case. Counsel is within his professional limits to assure his client that he has good case and that he counsel will do his best to obtain victory, if that is the position. He should stop there and not assure his client that he will win his case. After all, he is an advocate and judgment is that of the court. By assuring his client that he will win, counsel himself is trying to interfere with the work of the judge...<sup>53</sup>*

Respect or honouring of agreements with clients is strongly advocated as it is now misconduct for a lawyer to avoid the performance of a contract made with his client whether in writing or not<sup>54</sup>. Communication between a lawyer and a client are sacred and protected. Accordingly, it is a professional misconduct to reveal oral or written communications made by a client to his lawyer in the course of his professional employment. The RPC 2007 makes them to be privilege<sup>55</sup>. An exception is however created to wit;

- a. Where the client consent to such disclosure,<sup>56</sup>
- b. Pursuant to the provisions of a written and or court order<sup>57</sup>,
- c. Where the communication relates to an intention to commit a crime<sup>58</sup>,

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<sup>47</sup> See The Regulated and other Professional (Miscellaneous Provision) Act 1978 amended by the Regulated and other Profession (Private Practice Prohibition Act) Cap 390 Laws of the Federation of Nigeria 1990, repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999.

<sup>48</sup> Rule 13(3), RPC 2007.

<sup>49</sup> Rule 14(1), *Ibid*.

<sup>50</sup> Rules 14(2), 14(3) and 15(3), *Ibid*.

<sup>51</sup> Rule 16(b), *Ibid*.

<sup>52</sup> (2008) 19 NWLR (PT. 1120) 1.

<sup>53</sup> *Ibid* at p. 177.

<sup>54</sup> Rule 18(1), *Ibid*.

<sup>55</sup> Rule 19(1), *Ibid*.

<sup>56</sup> Rule 19(3), *Ibid*.

<sup>57</sup> Rule 19(3) (b), *Ibid*.

<sup>58</sup> Rule 19(3) (c), *Ibid*.



- d. Communicate necessary to establish the collection of solicitor's fees or in defence of an accusation of a wrongful act<sup>59</sup>.

Dealing honestly with client property is a professional conduct and an abuse of same in an unprofessional conduct.

### 5.1.3 Relation with other Lawyers

The nobility of Legal professional cannot be achieved where members of the legal profession do not display a high standard of behaviour amidst themselves. Lawyers are expected to treat one another with respect, fairness and dignity<sup>60</sup>. It is therefore an unprofessional conduct for a legal practitioner:

- a. To allow any ill feeling between opposing clients to influence his conduct and demeanour, towards another legal practitioner or opposing client<sup>61</sup>,
- b. To refuse to observe amongst one another the rule of precedence as lay down by law<sup>62</sup>,
- c. Not to observe strictly all promises or agreement with other lawyers,
- d. To take undue advantage of the predicament or misfortunes of an opposing lawyer or client. This extends to causing any default or dismissal order to be entered by the court<sup>63</sup>,
- e. To appear in a matter without adequate grasp of the matter therein,
- f. To accept and/or appear in a matter in which a client is already represented by another lawyer without prior notice to the other lawyer. This is in order words means that sharp practices must be avoided,
- g. Not to decline representation when a lawyer is employed by a client to join an original lawyer and it is objectionable to the original lawyer,
- h. Not to give notice of any change of counsel to the court,
- i. Not to in the case of change of counsel to surrender to his client all letters written by him to other person at the instruction of his client, draft and copies made in the cause of representation and documents prepared from such drafts subject to however to the legal practitioner lien on the said documents of a client in respect of unpaid fees,
- j. To abuse and threaten an opposing counsel after a case<sup>64</sup>. This even extends to writing of briefs. Lawyers are always advised when writing briefs of argument or making oral submissions in court to use suitable language and not deeming and derogating remarks on opposing counsel.

### 5.1.4 Relations with the Court

The rules relating to relations with the court are as provided in Rules 30 – 38 of the RPC 2007. By these rules, a lawyer or legal practitioner is first and foremost an officer of the court<sup>65</sup>. A legal practitioner's duty to the court is much higher and more important than his duty to his client. A legal practitioner is expected never to go late to the court. He must at least be present 30 minutes before the court sits. The Rule is that if is the legal practitioners and litigants who wait for the court and not otherwise. But today, it is indeed a sad commentary to see judges waiting in court for counsel and litigants. Some judges are magnanimous even in the absence of counsel and litigants to adjourn their cases at the consequence of

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<sup>59</sup> Rule 19(3) (d), *Ibid*.

<sup>60</sup> Rule 26(1), *Ibid*.

<sup>61</sup> Rule 26(1), *Ibid*.

<sup>62</sup> Rule 26(2), *Ibid*.

<sup>63</sup> See generally Rules 27(2)(a-c), 27(3), 27(4), 28(2), 28(3), 29(2) and 29(3) (a) & (b), *Ibid*.

<sup>64</sup> Re- Johnson (1887) 20 QBD 68.

<sup>65</sup> Rule 30 RPC 2007.

striking out these cases. Punctuality to court is ethical. The cases of OKONOFUA VS STATE<sup>66</sup> and FRN VS ABIOLA<sup>67</sup> illustrate that a legal practitioner must attend to all sittings of the court unless he had obtained leave of court to be absent.

Where for any reason a legal practitioner is to be absent, he is obligated to write to the court and the opposite counsel either requesting for a stand down or an adjournment.

A legal practitioner is expected to dress or be attired in a proper and dignified manner. The dress a legal practitioner wears in and out of court must reflect his state of mind. He is expected to be tidy (not dirty), respectable and sober, not flamboyant<sup>68</sup>. A dirty legal practitioner is not appealing not only to the court but to also to his client. Such legal practitioner naturally incurs the wrath and irritation of judges. It is surprising that lawyers these days happen not to know even the mode of dressing to different courts.

As part of a legal practitioner's duty to the court, he is expected to be thorough in the presentations of his case and not to do anything calculated to be interpreted to mean causing delay in a case. This is particularly the case with holding brief counsel seeking adjournment for their principals to handle cases personally. This is the attitude of most senior lawyers to their juniors in chambers. When some senior lawyers are not ready to conduct a case, a junior counsel is normally sent as a holding brief counsel to handle the case to the annoyance and irritation of the court. This annoyance and irritation have been displayed by the courts in different ways<sup>69</sup>.

This practice is actually unethical. Honourable Justice Niki Tobi JCA in the case of MADU VS OKEKE<sup>70</sup> has very eloquently reinstated the position of the law while carpeting some young lawyers. He stated thus:

*... It is now a fashion for young counsel to ask for adjournment on the ground that a more senior colleague would like to handle the matter personally. Frankly, I do not know what this is all about. It is strange that an advocate of the Supreme Court of Nigeria cannot reply to a simple Motion... and ask for an adjournment for a more senior colleague to handle it... This is very sad.*

And in a more recent decision of the Kaduna Division of the Court of Appeal presided by Hon. Justice Isa Ayo Salami (presiding justice of the Division), in the case of NEPA VS ANGO<sup>71</sup>, the court admonished this practice and stated as follows:

*... I wish to observe for the benefit of Mr. Egwueme and the new wigs being churned from the Nigerian Law School in recent years that once a counsel accepts to hold his learned friend brief he had by his consent accepted full responsibility for the matter. He has no right to choose and pick the extent of his instruction. But if he is incapable of assuming full responsibility for the case either through lack of learning, experience or competence or whatsoever reason, the only option open to him was to decline the brief. It is most unbecoming of counsel to accept the brief only to start shuffling in court to the consternation and embarrassment of the court, legal practitioner and the litigants present in court<sup>72</sup>.*

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<sup>66</sup> (1981) 12 NSCC 233. Also reported in (1981) 6 – 7 SCI.

<sup>67</sup> (1997) 2 NWLR (Pt 488) 444 at 467.

<sup>68</sup> Akinjide R. (SAN); Advocacy, Ethics and the Bar”, op cit at Pg 89. See generally also Rule 36, RPC 2007.

<sup>69</sup> See the case of David Ageli Vs National Electric Power Authority, Suit No. FAC/CS/9/99, whose ruling was delivered on the 8<sup>th</sup> of February, 2001.

<sup>70</sup> (1998) NWLR (Pt 548) p. 159.

<sup>71</sup> (2001) 15 NWLR (Pt 737) p. 627.

<sup>72</sup> *Ibid* at p. 644.

This notwithstanding, what is good for the goose is equally good for the gander. If it is good to reprimand new wigs as was done in the above cases, it is perhaps even better to advise and warn senior members of the bar who are experienced and know better not to unduly and unfairly expose their innocent junior colleagues to this kind of unwarranted judicial assault. Legal practitioners who do this are not dealing with the courts fairly<sup>73</sup>. Perhaps, this explains why some judges cannot condole the presence of lawyers undergoing their youth corps programme on grounds of lack of proper presentation and general deficiency in appreciating courts decorum.

In cases of complaint against judges, a legal practitioner is expected not to be branded or influenced by condonations. A genuine complaint against judicial officers is to be rooted to the appropriate authorities<sup>74</sup>. Therefore the issue of discussing an alleged misconduct with a judge with a view to influencing him to change is not covered by the rules. The rules specifically prohibits a lawyer from doing anything or conducting himself in a way that will give the impression or allow the impression to be created that his act or conduct is calculated to gain special considerations of favour from a judge<sup>75</sup>.

What do we find these days? It is a sad commentary. Some lawyers have now formed the habit of hinging the success of their cases on spiting other lawyers in front of judges and in the absence of opposing counsel. What is more worrisome is the fact that sometimes, what some judges hear and in most cases without verification, often than not have an everlasting influence on the mind of the judge at the detriment of the innocent lawyer.

The duty owed to the court by lawyers extends to bringing all material facts and authorities before the court<sup>76</sup>. Public prosecutors owe a duty to the court not to institute a criminal charge when they know or ought reasonably know that the charge is not supported by probable evidence, nor suppress fact or witness capable of establishing the innocence of the accused person<sup>77</sup>. This particular duty is mostly breached by public prosecutors who sometimes dance to the tune of their political mentors in charging innocent persons even when they know there are no bases for it. This is often done even though their respective Attorney Generals, for political vendetta. Suffices to say that it is the Constitution of the Federal Republic of Nigeria 1999 which vest wide and unfettered discretion on the Attorney General of a state as it relates to prosecution, is now grossly been abused by most Attorney General of states.

#### 5.1.5 Improper Attraction of Business

The Rules of Professional Conduct for Legal Practitioners 2007 appears to have sanctioned advertisement to a certain extent<sup>78</sup>. Now, a legal practitioner may engage in any advertisement or promotion in connection with his practice of law provided it is fair and proper in all the circumstances and it complies with the provisions of the 2007 Rules<sup>79</sup>. The above rule is however subject to the fact that a legal practitioner shall not in any advertisement or promotion of his practice of law involve in any activity which:

- (a) Is inaccurate or likely to mislead,
- (b) Diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute,
- (c) Makes comparism with or criticize other lawyer or other professions or professionals,
- (d) Includes statement about quality of the lawyer work, the size of success of his practice or success rate, or

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<sup>73</sup> Rule 32(1) RPC 2007.

<sup>74</sup> Rule 31(2), *Ibid*.

<sup>75</sup> Rule 34, *Ibid*.

<sup>76</sup> Rule 37(1) & 37(3), *Ibid*.

<sup>77</sup> Rule 37(5) & 37(6), *Ibid*.

<sup>78</sup> Rule 39 of the RPC 2007,

<sup>79</sup> Rule 39(2) & 3(1), *Ibid*.

- (e) Obstruct as to cause annoyance to those it is directed. Similarly, a lawyer is expected not to solicit professional employment either directly or indirectly through the use of:
- i. Circulars, handbills, advertisement, through touts only present communication or interview,
  - ii. Furnishing, permitting, or inspiring newspaper, radio or television comment in relation to his practice of law,
  - iii. By producing his photographs to be published in connection with matter in which he has been or engaged or concerning the manners of their conduct, the magnitude of the interest involved or the importance of the lawyers position, or
- (f) By permitting or inspiring reading in relation to his practice of law, or
- (g) By such similar self aggrandizement.

These prohibitions do not prevent a lawyer from publishing in a reputable law list or law dictionary, a brief biography or informative data of himself<sup>80</sup>. It is not advertisement for a lawyer to print on his note papers, envelopes, and visiting cards his academic and professional qualification and any National Honours<sup>81</sup>.

A hard look at the rules relating to advertisement would reveal that the rules prohibits advertisement rather than enhances it since there is hardly no way a legal practitioner can engage in advertisement without going contrary to the rules.

#### 5.1.6 Remuneration and Fees of Legal Practitioners

The relevant Rules are as provided for under Rules 48 – 54 of the Rules of Professional Conduct for Legal Practitioners 2007. It is a professional conduct to charge fees. Hence a lawyer is entitled to be paid adequate remuneration for his services to the client<sup>82</sup>. Such fees are however not to be excessive but commensurate to the services rendered<sup>83</sup>. No such fee of a lawyer is to be shared for the legal services rendered save with another lawyer based upon the division of services or responsibility<sup>84</sup>. This however should not be taken to mean that lawyers are trained to be selfish. Where a client determines a retainer, a lawyer may have and exercise a possessory lien over the client's papers until payment of the lawyer's fees is made.

For a legal practitioner or lawyer to secure his fees and disbursement, it is imperative that a practitioner keeps his clients bank account separate and distinct from his personal or chambers account. In this respect, professional honesty is crucial.

#### 5.1.7 Miscellaneous

The miscellaneous provisions of the Rules of Professional Conduct for Legal Practitioner 2007 are as provided in Rules 55 – 57 thereof.

By these rules, a contravention of any of the duties imposed by the rules amounts to a professional misconduct and liable to punishment under the Legal Practitioners Act, 1975<sup>85</sup>.

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<sup>80</sup> Rule 39 (4), *Ibid.*

<sup>81</sup> Rule 40, *Ibid.*

<sup>82</sup> Rule 48(1), *Ibid.*

<sup>83</sup> Rule 52(1), *Ibid.*

<sup>84</sup> Rule 53. *Ibid.*

<sup>85</sup> Rule 55(1), *Ibid.*

A duty is imposed on every lawyer to report any breach of any of these rules that comes to his knowledge to the appropriate authorities for necessary disciplinary action<sup>86</sup>.

Who are these appropriate authorities? What are the procedure for discipline of erring legal practitioner and the punishment to be meted out? This brings us to another sub topic relating to discipline of lawyers.

## 6.1 Discipline of Lawyers

The applicable rules relating to the discipline of lawyers is the Legal Practitioners Disciplinary Committee Rules 2006. The Breach of any of the rules of professional conduct in the legal profession could be held to constitute an infamous conduct in a professional respect<sup>87</sup>.

Suffices however to say that any aggrieved party can write a written complaint against a legal practitioner to any of the following:

1. The Chief of Judge of Nigeria,
2. The Attorney General of the Federation,
3. President, Court of Appeal or presiding Justice of the Court of Appeal,
4. The Chief Judge of the High Court of a State or that of the FCT,
5. The AG of a State,
6. Chairmen, body of Benches and;
7. President, NBA or Chairman of a branch of NBA<sup>88</sup>.

### 6.1.1 Procedure for the Discipline of Lawyers

The procedures for the discipline of lawyers are summed up as follows:

- i. Receipt of a complaint or petition,
- ii. Any of the persons authorized to receive the petition or complaint shall forward same to the NBA which shall course the complaint to be investigated<sup>89</sup>,
- iii. Investigation and if a prima facie case is established, the NBA shall forward a report of such a case to the Secretary of the LPDC together and all documents not considered by the NBA and a copy of the complaint<sup>90</sup>,
- iv. Appointment of a legal practitioner by the NBA to present the case before the committee<sup>91</sup>,
- v. Hearing of the case of a party either personally or through a counsel of his choice,
- vi. On the direction of the Chairman of the Disciplinary Committee, the Secretary shall fix a day of hearing and serve notices to parties (either through personal service registered post or e-mail etc)<sup>92</sup>,
- vii. They must be at least 15 days between the services of hearing notice and the date of hearing<sup>93</sup>,
- viii. Except where the services is by publication in the newspaper, the secretary is to serve on parties, other than the complainant, both the hearing notice and copies of the report and the complaint prepared by the NBA<sup>94</sup>,

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<sup>86</sup> Rule 55(2), *Ibid*.

<sup>87</sup> See Onitiri Fadipe, Charge No. LPDC/1P/82 decided by the LPDC in 1991.

<sup>88</sup> See Rule 3(1) LPDC Rules 2006.

<sup>89</sup> Rule 3(2), *Ibid*.

<sup>90</sup> Rule 4,

<sup>91</sup> Rule 6,

<sup>92</sup> Rule 7(1) and 2, *Ibid*.

<sup>93</sup> Rule 7(4), *Ibid*.

<sup>94</sup> Rule 7(5), *Ibid*.

- ix. Upon proof of service, the committee may proceed to hear and determine the case in the absence of the counsel against whom the complaint was made<sup>95</sup>,
- x. An absent party may however within 30 days from the date of the pronouncement of the findings and direction of the committee apply for a re-hearing<sup>96</sup>,
- xi. If the committee is satisfied that it is just to hear the case, it may grant the application upon such terms as to cost or otherwise<sup>97</sup>,
- xii. The committee shall hear witnesses and receive documentary evidence such as would assist it in coming to its conclusion regarding the truth or otherwise of the allegations<sup>98</sup>,
- xiii. The provisions of the Evidence Act is to apply to the committee proceedings<sup>99</sup>,
- xiv. At the conclusion of hearing, the committee may call for written addresses<sup>100</sup>,
- xv. Proceedings and announcement and announcement of the committee decision shall be held in public<sup>101</sup>,
- xvi. If the committee finds that the allegations have not been proved, it shall record its findings<sup>102</sup>,
- xvii. If it finds that the allegations are proved, it may give the following directions.
  - (a) Order the registrar of the Supreme Court to strike off the legal practitioner's name,
  - (b) Suspend the practitioner from practice,
  - (c) Order the practitioner to refund money or hand over documents in his possession,
  - (d) Admonish the practitioner<sup>103</sup>,
- xviii. Directions made by the committee are to be gazetted<sup>104</sup>.

It must be stressed here that where the conduct of a legal practitioner is a conduct incompatible with his status as a legal practitioner, then his name cannot be struck off the roll; the appropriate punishment is either suspension or admonition. Where directions are made by the LPDC, an affected legal practitioner has 28 days within which to appeal. The direction shall not be effective save after the 28 days stipulated for an appeal. Where there is no appeal or where there is an appeal but is withdrawn or struck out or dismissed, the directions become effective.

Appeals from the decision of the Legal Practitioners Disciplinary Committee lie to the Supreme Court of Nigeria<sup>105</sup>. The Supreme Court and the Chief Justice also constitute disciplinary authorities<sup>106</sup>.

Where the name of a legal practitioner has been struck off the role or suspended, an application for restoration can be made to the Disciplinary Committee or the Chief Justice or the Supreme Court depending on who ordered the striking off of the name. The following considerations are normally taken;

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<sup>95</sup> Rule 8, *Ibid*.

<sup>96</sup> Rule 9(1), *Ibid*.

<sup>97</sup> Rule 9(2), *Ibid*.

<sup>98</sup> Rule 10(1), *Ibid*.

<sup>99</sup> See Rules 10(2) *Ibid* and cases of Denloye Vs Medical and Dental Practitioners Disciplinary Committee (1968) 1 ALL NLR 306, In Re – G. Idowu (A Legal Practitioner) (1971) 7 NSCC 142.

<sup>100</sup> Rule 15(1) LPDC 2006.

<sup>101</sup> Rule 13.

<sup>102</sup> Rule 16.

<sup>103</sup> Rule 17(a) – (d), *Ibid*.

<sup>104</sup> Rule 20, *Ibid*.

<sup>105</sup> See Section 10(e) of the legal practitioners Amendment Decree No. 21 of 1994.

<sup>106</sup> See Section 13(1) and 13(2) of the Legal Practitioners Act.

- (i) The gravity of the offence or offences necessitating the striking off or the suspension order as the case may be,
- (ii) Whether there is sufficient evidence of genuine remorse shown by the applicant in the period between the striking off of the name and the submission of the application,
- (iii) Whether in all the circumstances of the case, the court is satisfied that the applicant has in the intervening years become a fit and proper person to be incorporated as a member of the legal profession.

However, it needs to be stated that the Supreme Court rarely restores name.

## 7.1 Conclusion and Recommendations

The Rules of Professional Conduct for legal practitioners 2007 is unique in many respect and innovative rules have been made. The rules have succeeded in encouraging the acquisition of legal professional knowledge and experienced through:

- a. The requirement for any legal practitioner who wishes to practice to satisfy the requirements of the mandatory Continuing Professional Development (CPD) Programme operated by the Nigeria Bar Association such as: attendance and participation in accredited courses, lectures, seminars, workshops, conferences on law approved by the NBA, writing in Law either in books or journals or newspapers approved by the NBA, studies towards professionals qualifications and other approved means of acquiring legal professional knowledge and experience<sup>107</sup>. In all these credit hours are allotted.

### Some other innovative rules include:

1. Introduction of annual practice certificates to be issued by the NBA certifying that a legal practitioner has fulfilled the approved Continuing Professional Development Programme (CPD) under the rules made for the purpose by the NBA<sup>108</sup>,
2. Publication of the names of defaulting members of the bar who had not complied with the requirements of the Continuing Professional Development Programme (CPD) and have paid their annual practicing fees<sup>109</sup>,
3. Notification to the NBA of legal practice of any legal practitioner who opens up a private practice<sup>110</sup>,
4. Requirement of the Branch of the NBA to keep a Register or Database for entering of Notice of Legal Practice etc<sup>111</sup>,

Indeed the 2007 Rules have succeeded in embodying the ideal human conduct required of a legal practitioner. What remains is in trying to enforce the observance of these rules which had largely been curtailed by the “**brother’s keeper syndrome**” as most breaches of the rules of professional conduct are not reported to the appropriate authority. This has largely been the reason why we have very little erring legal practitioners been punished for contravening the rules of professional conduct.

Even though, ignorance of the law is not a defence, it is hereby suggested that lectures on ethics should increase in number. The Akintola Williams series on ethics should for example be emulated by many more organizations. Prizes on ethics should also be given to deserving legal practitioners at each branch

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<sup>107</sup> See General Rules, RPC 2007.

<sup>108</sup> Rule 12(1) (b), *Ibid.*

<sup>109</sup> Rule 2(1) (a), *Ibid.*

<sup>110</sup> Rule 13(1), *Ibid.*

<sup>111</sup> Rule 13(3), *Ibid.*

of the NBA nationwide. One of such valuable prices is the one set up in honour of Honourable Justice Kayode Ezzo by the Nigerian Law School after his retirement from the bench and it is on “ethics in the legal profession”. This should be emulated.

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