

Professionalizing the Legal Profession in a Developing Economy: Ethics, Accountability and Discipline at the Bar

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Abstract

Every profession has its Code of Conduct and Professional Ethics, written or unwritten, for the control, accountability, and management of the conduct of its members. The legal profession, one of the oldest in the world, is not an exception. The publication of the Rules of Professional Conduct for Legal Practitioners in 2007 provides a single document containing the "dos" and "don'ts" of members of the Nigerian Bar. This article evaluates the Legal Profession in a Developing Economy: Ethics, Accountability and Discipline at the Bar. The study found that the role of lawyers in a developing economy, spanning the political, economic as well as social life of the nation. The paper further found that due to the pivotal role of members of the Bar in society, any lawyer who is found wanting in the performance of his/her duties stands the risk of being sanctioned. This analysis shows that discipline procedure is only permitted at the instant of a petitioner, and is limited only to litigation practitioners, leaving out to a large extent the corporate legal practitioners and lawyers in politics. The authors suggest that measurement should be put in place for regulations and discipline of corporate legal practitioners and lawyers in the political arena. The article concludes that there is a need for the members of the Bar to conduct themselves above board; after all, the pivotal role of the legal profession in the National Development of Nigeria cannot be overestimated.

Keywords

Professional Ethics and Accountability, the Bar, Discipline, Development of the Legal Profession, Nigeria

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Introduction

Due to its former colonial connections, the Nigerian legal profession is generally fashioned after that of Great Britain. The Legal Profession is divided into two segments: the first being the Bar and the second the Bench. In the United Kingdom, their Bar consists of Barristers and Solicitors. But, in Nigeria, members of the Bar practice both as Solicitors and Barristers (Awomolo, A. S. 2013). The issue of professional ethics, accountability and conduct are of paramount interest in the practice of any profession because of the impact and consequences of the conduct of such professionals in the practice of their profession to the larger society. Most professions have developed such rules of conduct, accountability and ethics to guide and regulate the professionals in the practice of the professions. As the role of lawyers is pivotal to the maintenance of order, peace and security in society, therefore higher standard of conduct, ethics and accountability is expected of lawyers. The conduct of the lawyers both in and out of the court must conform to reasonably accepted standards. Such conduct, behaviour and disposition of a lawyer as honesty, ability, integrity and even personal standards must be unquestionable as not to reduce public perception and confidence in the legal professional and justice delivery system. A high standard of conduct by a lawyer is imperative to uphold public confidence and respect in the legal profession and the courts as well as protect the reputation of the lawyers.

On other hand, Discipline is described as the control acquired by demanding that rules or commands be followed and disciplining poor behaviour. It is a manner of acting that demonstrates a desire to follow a rule or order and is measured by how well it is followed. (LPA Cap. L11, Laws of the Federation of Nigeria, 2010). Discipline is important in any organisation, group or body because it regulates the behaviour of people, and the fear of sanctions often keep people under control. The importance of discipline cannot be overemphasized as the nature of the profession itself calls for regulation and discipline. The globalization of legal practice with its attendant liberalization has necessitated the need to strengthen discipline in the legal profession to maintain the highest standard of legal practice in Nigeria.

In recent times, the profession has witnessed escalating reports of gross professional misconduct with both the very senior and the younger members of the bar being the culprits. Violation of Rules of Professional Conduct is not restricted to the new entrants alone but involves the very senior members of the Bar as well. According to Ali, the future of legal practice in Nigeria is endangered by a fall in the level of practice. (Yusuf, Ali 2015). It is this unethical conduct, and accountability of members of the Bar and the utilisation of the mechanism put in place by the law for punishing this professional misconduct that is the concerned of this article. This study is divided into nine sections. After the introduction, methodology, and academic literature were discussed. Section four evaluated the role of lawyers in the legal profession and National development. In the fifth section disciplinary bodies in the legal profession was examined. Section six analysed the Acts considered to be professional misconduct. Section seven focused on the procedural steps before the legal practitioner's disciplinary committee (LPDC). In the eight sections, punishment for professional misconduct, and challenges of imposing discipline were examined. The conclusion and recommendations of the study are then provided.

Methodology

The authors adopted historical, expository and jurisprudential analysis research methods in conducting this study with the help of international conference materials, textbooks, journal articles, statutes, Code of Conduct for Legal Practitioners and judicial pronouncements in certain cases.

Literature Review

Conceptual Classifications

It is a well-known fact that words have no real meaning except in the context in which they are used. It would, therefore, be imperative to clarify some of the main concepts upon which this article hangs, they are namely:

a) **The Bar**

The use of the term "the bar" means the whole body of lawyers in the legal profession. The Black's Law Dictionary (Garner, B. A., 1999) defines the bar as the whole body of lawyers qualified to practice in a given Court or Jurisdiction in the legal profession or an 299ikipedia subset of it. In his view, (Hornby A. S. 2000), says the bar is the profession of the barristers and lawyers in a higher Court. The phrase "the Bar" solely refers to the professional organization for barristers in England (advocates in Scotland); solicitors, the second sort of UK lawyer, have their governing organization, the Law Society (en.m.wikipedia.org/wik). In Nigeria, the term "the Bar" refers to the whole body of barristers and solicitors in the legal profession. A legal practitioner is defined as a person who is entitled to practice as a barrister or solicitor in general or for any particular office or proceeding under the provisions of the Act (Section 24 of the Legal Practitioner Act, 2010). Therefore, a legal practitioner in Nigeria is a member of the Bar and a person qualified to practice as a barrister and solicitor (Beredugo, A. J. 2009). A lawyer is a legal practitioner whose function is to represent and argue for a person in a court of law, typically referred to as a client. He is the professional advocate with the right of audience in every court. A barrister's professional responsibilities as a consultant and advocate include producing legal opinions on problems of truth and law, resolving pleadings, and bringing cases to a logical conclusion in court while adhering to the requirements of practice, and Solicitors are legal practitioners who are consulted on matters such as wills. Estate administration forming of companies and drafting leases and conveyances of land instrument registration and other contractual writings agreement and issues. The legal practitioner could be private or public; private when one is self-employed or works for a private law firm or corporation and the public when one works for the government.

b) **Professional Ethics**

The legal practice and profession are rooted in ethics and discipline. Professional Ethics is a branch of philosophy that is concerned with what is morally good or bad, right or wrong. The term ethics is often used synonymously with the word's morals or morality. Although the words *ethics* and *morality* are derived from the Greek word's *ethos* and *mores*, they both refer to habits or practices. It is important to note, however, that a person's or a group's *ethics* or *morals* are based on what they believe is proper or essential, not just what they do regularly (Okutepe, J.S. 2014). The *Black's Law Dictionary* (Bryan, A. Garne, 1999) defines ethics as moral obligations that one person owes to another especially in law or relating to legal Ethics. Ethics connotes moral standards that help guide behaviours, actions, and choices. Those norms are based on the concepts of responsibility and accountability. People, organizations, and society, as free moral beings, are responsible for their conduct, and they should be held accountable to others for the consequences of their actions. In most countries, a legal system codifies the most important ethical norms and offers a means for holding individuals, businesses, and even governments responsible (Laudon, K.C., et al. 1996). The word ethics means rules of conduct about a certain type of human behaviour. Therefore, the conduct of members of the Bar in the fulfilment of their responsibilities or obligations, as well as the exercise of their rights and privileges, are referred to as legal ethics.

Generally, a lawyer that does not show respect for professional ethics and discipline at the Bar is not fit to be a member of the noble profession. Therefore, any violation of rules of professional conduct in the Legal Profession, ranging from unprofessional dealings with clients or misappropriation of client's money and property, filing of all manner of frivolous applications to obstruct the cause of Justice. Some are acting as legal touts for accepting bribes and taking bribes for themselves and on behalf of Judicial Officers, Magistrates, Customary and Area Courts Judges and other personnel involved in the administration of Justice. Yet some lawyers are involved in defamation of learned professional colleagues, obtaining secret commission out of purchase money payable by a client without the client's knowledge, acting willfully without the client's authority. These are all unethical conduct. Some lawyers are outright dishonest and unfit to belong to the noble profession. Some lawyers are in politics and they show great disdain for the rules of professional conduct for legal practitioners. They throw ethics to the dogs and act recklessly as if they were not lawyers. They constantly subject the legal profession to disrepute and contempt in their character, conducts, and behaviours. Whenever the Supreme Court of Nigeria or any Court for that matter delivers a judgment in favour of their political party, they would say the Court has done well to enthrone democracy in Nigeria but the day judgment is delivered against their political party they would say the Nigerian Judiciary is very corrupt. When you see

them it is not difficult to identify them through their demeanours and even the processes they prepare and file in Court. They cut across the board with both the very senior and junior members of the Bar being mostly the culprits. They are also in full-time practice and those who are in academics (on part-time practice). We all know them but we all pretend not to know them (E. Azinge: & ors: 2013). Those who are in positions to expose them hide them either because they are from the same village or town or they attend the same church or mosque. These lawyers are the first to show off (E. Azinge: & ors: 2013). They prefer a solution in public places and love to be addressed as barristers and solicitors of the Supreme Court of Nigeria without having any value to add to the Legal Profession.

c) **Accountability**

Accountability refers to the processes, norms, and structures that hold a person or a member of a group of persons legally responsible for their actions and that impose sanctions if they violate the law (<https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/accountability-the-law.com>). Also, accountability connotes being responsible for your decisions or actions and expected to explain them or answerable when such actions or decisions are questionable. Significantly, lawyers must understand or appreciate various instances of their actions in the discharge of their duties that offence the Rules of Professional Conduct and Legal Practitioners Act and must realise that they must be accountable for compliance. There is a Chinese proverb that says that *"if you do not teach them, do not blame them"* (Umezulike, I. A. 2010). It must therefore be stated that the quality of lawyer's performance in the discharge of their duties either to the court, their clients and the general public must be measured upon their compliance with the Rules of Professional Conduct for Legal Practitioners. Strictly speaking in the performance of their legal function's lawyers are only accountable to their GOD, the NBA branch of the state in which they are serving.

Every religion believes, and the authors do believe, that there is an Almighty God before whom we must give account to for all our actions on earth including these very important legal functions we perform, if you have used your legal position capriciously, corruptly and to settle communal, family, political and private scores, on the last day, you would be unto appropriate divine sanction.

The NBA branch of a State is the only Constitutional body established to superintend the performance of your legal functions in the State. It allocates rewards to resourceful and deserving legal practitioners and sanctions to recalcitrant ones. This is the body that constitutionally evaluates your legal performance in the State. It is to this body that lawyers owe their absolute fidelity and accountability.

The Role of a Lawyer to the Legal Profession and National Development

The question that begs for an answer is: what role should a lawyer play in the legal profession and the national development. As we have earlier stated, the legal profession is a noble profession. It is rooted in ethics and discipline. Lawyers are and should be men and women of honour, character and proven integrity. A lawyer that does not show respect for professional ethics and discipline in the discharge of his professional duties to the Court, client, state, community and Legal Profession is not fit to be a member of the noble profession. Rule 1 of the Rules of Professional Conduct, for example, requires a legal practitioner to respect and observe the rule of law, promote and encourage the progress of justice, maintain a high level of professional conduct, and refrain from any conduct unworthy of a legal practitioner. The above is the first role of a lawyer to the legal profession, society and the nation.

Again, a Lawyer has a special duty to uphold the law because he occupies a quasi-official position and he should not render any service or advice to his client, involving disloyalty to the law or bringing disrespect upon the holder of any judicial office or involving corruption of holders of any public office. The very special responsibility of a lawyer under this sub-heading is to be found under (Rule 1 of the RPC, 2007).

Furthermore, as a member of the legal profession, a lawyer should not be involved in anything that will bring overthrow of government except through democratic means and if the law is being tested in Court, lawyers as social engineers and agents should support and in some cases sponsor or spearhead such testing of the law (Military Governor of Lagos State v. Adeyigan, 2003 1 NWLR). Also, legal practitioners, being custodians of law, must assume total responsibility to guarantee

obedience to the law and to help to check any inconsistencies. Accordingly, any misconduct by a lawyer which holds if committed before he was a lawyer has been sufficient to prevent him from being admitted as a lawyer will be sufficient to warrant his name being struck off the roll or suspended from practice (Re Hill (1868) LR 30 B 545).

Besides, Lawyers can also work as judges, solicitors, professors, company directors or secretaries, civil servants or administrators, and institutional advisers, among other things. They can work in either legal or non-legal capacities (Wole Iyaniwura, 2008). He is also in charge of representing his clients in court.

Lawyers have also taken the Centre, stage in the defence of the rule of law, the promotion of human rights and the sustenance of democracy in Nigeria. It is only natural that when these efforts are consolidated, then the Bar can raise heads high and assume the full leadership role in the sustenance of the rule of law and reduce the social, political and economic problems of our day and age to a tolerable level, thus enhancing their relevance to society.

It is also a fact beyond doubt that lawyers are agents of the administration of justice and promoters of the cause of justice, it necessarily follows that lawyer exist for the good of the rule of law and society. Indeed, the law must underpin civilisation, and if there is law, there must be lawyers. In such conditions, the absence of a law means the enthronement of the rule of might anarchy and jungle justice, and peace and order would simply vanish. Where the law does not exist, such a society will be analogous to Thomas Hobbes' conception of man in his natural condition, where "life of man was solitary poor terrible brutish and short."

Lawyers have a responsibility to educate and advise the public on legal issues, such as the availability of ADR windows and legal assistance (Legal Aid Council Nigeria, 2016). As a result of this condition of affairs, increased and complete legal activity may emerge, culminating in the emergence of strong institutions against powerful persons. Because of its origins, the legal profession is elitist... To be a barrister, you had to be from the upper or upper-middle class. As a result, it is widely assumed that the practice of law is not for touts and layabouts, as it necessitates a high level of decorum. consequently, the training of a lawyer and professional ethics for legal practitioners are brought to the forefront.

Lawyers, as people's watchdogs, must provide the necessary support for an independent and fearless judiciary, which is the last hope of the common man, through their independence and total commitment to social justice.

Disciplinary Bodies in The Legal Profession

Despite its strict code of ethics, the legal profession in Nigeria has been beset by lawyers who have engaged in unethical behaviour, bringing the profession into ridicule. To regulate a form of accountability, order and discipline, the Legal Practitioner Act established disciplinary bodies and created offences on which erring members of the legal profession that are a violation, can be brought before the legal Disciplinary Committee. These Committee are discussed below:

Legal Practitioners' Disciplinary Committee

This committee is charged with the duty of looking into alleged misconduct of legal practitioners in Nigeria and prescribing the necessary punishment where the legal practitioner in question is found liable (Section 11 Legal Practitioners' Act). It is one of the major disciplinary organs of the legal profession in Nigeria (Akinola, O. B). The Legal Practitioners' Disciplinary Committee is made of the following persons:

a Chairman who shall not be either the Chief Justice of Nigeria or a Justice of the Supreme Court; two Justices of the Court of Appeal, one of whom shall be the President of the Court of Appeal; two Chief Judges; two Attorneys-General, who shall be either the Attorney-General of the Federation and the Attorney-General of a State or two State Attorneys-General; four members of the association who were not involved in the investigation of a complaint or the organization's decision to file a complaint against a legal practitioner with the disciplinary committee for review. Legal practitioners and punishment thereof saddle the committee of Legal Practitioners Disciplinary Committee with the responsibility of considering alleged misbehaviour affecting the legal profession.

Section 10 of the Legal Practitioners Act establishes the LPDC. The LPDC's main responsibility is to investigate and decide matters in which it is claimed that a person whose name is on the Roll has

committed professional misconduct or should be the subject of proceedings under the Act for any other reason (Asein, J. O., 2005).

The LPDC is a very vital body considering the role it plays in ensuring the discipline of erring legal practitioners in Nigeria. Whether the Committee has been able to effectively discharge this duty is one of the points for discussion in this paper.

Also, the Supreme Court can exercise disciplinary jurisdiction over legal practitioners only in matters of infamous conduct in professional respect where the court or any other court in Nigeria has the Jurisdiction to hear such a matter in such an instance, the Supreme Court must first hear all representations and consider the evidence adduced by the legal practitioner or by his legal representative from all such persons as the court considers relevant. The Court may then give such direction, which may include any of the penalties prescribed under (section 11 (1), LPA 2010). A directive of expulsion or suspension must be published in a Federal Gazette. Where the directive given is an admonition, it is not required to be published in a Federal Gazette.

The Chief Justice of Nigeria is another disciplinary authority and it appears that his power to give a directive cannot exceed the directive of suspension. First, the Chief Justice must allow the legal practitioner in question to make presentations in the matter against him. If after considering the presentation, the Chief Justice is of the view that such a person should be suspended from practice, he may give a directive of suspension irrespective of whether or not the matter is still pending before the LPDC or in the view of disciplinary proceedings commencing against such a person. He may also give the directive of suspension in respect of a conviction by a court of law of legal practitioner regardless of whether or not there is an appeal pending against the conviction.

Acts Considered to be Professional Misconduct

Misconduct in the legal profession is either statutory misconduct or non-statutory misconduct. Statutory misconduct is a breach of duty or prohibition imposed by statutes or rules made under authority conferred by statute. Non-statutory misconduct, on the other hand, is the conduct which the Court or the Disciplinary Committee has held to conduct unbecoming a solicitor or advocate as an officer of the Supreme Court, and a member of an honorable profession (Thomas-Lund, C.B.E 1960).

The Legal Practitioners' Act, 2007 makes copious provisions on conducts that are considered to be professional misconducts. What constitutes misconduct in professional respect will differ from one profession to another and from one circumstance to another. There are four types of professional misconduct for which a Legal Practitioner can be duly punished and sanctioned if found guilty. There are:

Infamous Conduct in A Professional Respect

What constitutes 'infamous conduct' is not defined in the Act; however, certain decided cases by the Courts both at Common Law and in Nigeria have thrown more light on the definition of the term "infamous Conduct". Thus, in the very old English case of (*Allison v The General Council of Medical Education Registration, 1894 1 Q.B 750*), the English Court of Appeal, considered a similar interpretation of the words "infamous conduct" under Section 29 of the *English Medical Act, 1858* and accordingly stated as follows:

The General Medical Council has the authority to declare a medical doctor guilty of infamous conduct in professional respect if it is shown that he has done something in the course of his profession that would be considered disgraceful or dishonorable by his professional brethren of good repute and competency.

The definition of infamous conduct as enunciated in the case of (*Allison v. the General Council of Medical Education Registration 1 Q.B 750*) has been adopted and followed in several cases in Nigeria. Thus, in the case of (*Re: Abuah, 1962 2 SCNLR 283*). A legal practitioner was convicted of forgery or false pretence- forging document thereby diverting his client's money to his account; evidence before the Court was that the legal practitioner had claimed the same amount in favour of the client at the Aba Magistrate's Court, which money was paid to the Court under the client's name. The respondent then applied to the Court that the money was paid to him, having tendered a document purported to be signed by his client, that the money was paid through him, when in fact it was a false claim. He was accordingly convicted. Thereafter he was arraigned

before the L.P.D.C. and the offence was held to be infamous conduct and accordingly his name was struck out from the roll of the legal practitioners in Nigeria.

Another case worthy of mention is the case of (*Okike v. L.P.D.C.*, 2005 NWLR (Pt. 949) 471; (2006) 1 NWLR (pt. 960) 67), where the respondent/appellant legally represented a foreigner in respect of a claim against a Nigerian company and realized the sum of N14, 500, 000.00 on behalf of the client but refused to pay the money to his client. However, only US \$51, 000.00 was remitted while US \$ 121, 000.00 was held unto. After considering the uncontested evidence, the LPDC determined that the allegation of infamous conduct in a professional capacity had been proven against the respondent/appellant, and ordered that his name be struck from the Supreme Court's roll and that the complainant be given a refund of US \$121, 000.00. The respondent/appellant filed an appeal, but the Supreme Court dismissed it and upheld the Committee's directive or decision.

Furthermore, in (*NBA v. Alabi*, 2006 14 NWLR (Pt.1000) LPDC 841 at 857) Mr *Kayode Alabi*, a legal practitioner, was appointed as a receiver/manager by his client, a bank, over all the assets of a debtor company. Mr *Alabi* recovered some money from the company but instead of paying it over to the client, he lodged it in his account. He was subsequently charged before the legal practitioner's Disciplinary Committee for infamous conduct in professional respect. There have also been other cases of conviction of lawyers for acts considered to be professional misconduct including that of (*Iteogu v LPDC* (2009) 17 NWLR pt 1171 SC 24), (*Ndukwe v. LPDC* (2007) 5 NWLR pt 1026 SC 1), (*Reg. Idowu* (1971) 1 ALL NLR 218)

According to Yusuf Ali SAN, there is a need to expand the issue of infamous conduct to accommodate conducts that 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 practice ought to be sanctioned with at least a warning in the first instance and then stiffer punishment afterwards (Yusuf Ali, 2015). Any behaviour is considered unbecoming of a legal practitioner either because it offends a particular law or Rules of the profession or it is connected with the performance of the legal practitioner's duties in his professional respect.

In the light of the above, it is clear that infamous conduct has two arms. The first one is committed under the lawyer's professional duties, which can reasonably be regarded by his competent and reputable professional colleagues as disgraceful and dishonorable. The second one is the act or omission which, in the opinion of the Disciplinary Committee is such that will bring the profession into disrepute (*Okike v. LPDC*, 2005 NWLR (Pt. 949) 471) that is to say, conduct in professional respect.

Conviction by a Court in Nigeria of an Offence which is Incompatible with the Status of a Legal Practitioner

Under this arm of the law, the offence in question need not be committed in professional respect and it need not be a serious offence. For example, offences involving financial dishonesty (*A. C. Abuah v LPDC*, 1962 2 NSCC 175), Public fighting, defaming other professional colleagues, lack of Courtroom decorum, lack of professional good manners and offences which endanger the welfare of human beings or society generally, have always been regarded as being incompatible with the status of a lawyer. For this provision to be invoked, the material consideration is whether the person who commits the offence should remain a member of the learned profession (Yusuf Ali, 2015); the conviction must be by a Court in Nigeria and no appeal must have been disposed with and the conviction must have been disposed with and the conviction must have been upheld.

The implication of Section 11 (1) (b) LPA, 2010 is that a conviction by American Court outside Nigeria will not come within this provision. Secondly, such a Court must be vested with penal jurisdiction to impose imprisonment, even if it did not involve its power to imprison the convict. Finally, the offence upon which the legal practitioner was convicted must be incompatible with his status as a legal practitioner (*Orojo, J.O.*, 2008). The opinion of Ademola CJF (as he then was) in (*Abuah v. Legal Practitioners Disciplinary Committee*, 1962 2 NSCC 175) is very instructive and illuminating on this point. His Lordship said:

We think it is plain to common sense that the court is not bound to strike a man's name off rolls unless it is satisfied that the criminal offence of which he has been convicted is of such a nature as to make him unfit to practice without loss of self-respect or whether one can still consider him

a fit and proper person to be entrusted with grave responsibilities which are demanded of a member of the legal profession.

Obtaining Enrolment by Fraud

Rule 2 of the Rules of Professional Conduct for Legal Practitioners is emphatical in its declaration on the duty as to admission into the legal profession thus:

A lawyer may not intentionally do any act, make any omission, or participate in any activity that is intended to lead to the admission into the legal profession of a person who is inappropriate for admission for any reason, including moral character, insufficient qualifications, or other factors (RPC, 2007).

The legal implication of this rule is that a person who seeks admission into the legal profession must be a man or woman of good moral character and must have possessed the required academic qualifications at the point of entry. Accordingly, Section 11 (c) of the *LPA 2010*, may be invoked where a person obtained enrolment by a misrepresentation of facts, which, and if 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 (Section 12(1) 1 (c) LPA, 2010). It will also cover cases where a person obtained admission to the Nigerian Law School by fraudulent misrepresentation of academic status, for example, producing a forged law Degree Certificate or representing that he possessed a Law Degree when he did not. It may also arise where a person misrepresents material facts, which enabled him to secure enrolment in the Supreme Court. Such misrepresentations may be in respect of the false personal data of the candidate or as to his academic qualifications, or presentation of forged certificates of Call to the Bar or the use of non-existent certificates. A person who has obtained enrolment by fraud or through the backdoor would certainly face disciplinary procedure and where such is established would be made to face the consequences of his/her action.

Conducts Incompatible with the Status of Legal Practitioners

These are unprofessional conducts similar to infamous conducts, but they are different, because the conduct of a lawyer is not in pursuit of his profession, and the degree is usually less than that required in infamous conduct. The question is whether the conduct of the lawyer brings down the most cherished novelty of the legal profession in the minds of right-thinking members of the public? Such conducts include touting, sexual violence, rape, indecent assault and prostitution, the seduction of a client's wife, habitual drunkenness in public, employment of very foul language in public and taking part in a street brawl (Nigerian Law School Handbook on Professional Ethics). Where a legal practitioner misappropriates funds not in the course of professional engagement but as a clerk of an association was held to conduct incompatible with the status of the legal practitioner (*Re: Hill*, 1868 3 QB 545). Also, the ownership and management of a brothel have been held to fall under this category (*Re We are*, 1893 QB 439 C.A). This proposition was the underlining factor that influenced the English Court in the case of (*Re We are*, 1893); here, a solicitor was convicted for allowing houses of which he was a landlord to be used as brothels and it was held that his name ought to be struck off the roll. Similarly, convictions for committing acts of indecency, or indecent assault or of importuning for immoral purposes have been held to render a solicitor "unfit to be a member of the profession" (36 Halsbury's Laws of England 3rdedn). A conviction for rape would, of course, be, *prima facie*, incompatible with the status of a legal practitioner in Nigeria.

Also, murder, manslaughter, attempted suicide, assault and negligence which endangers life amount to conducts incompatible with the status of a lawyer. In this (*Re Cooper*, 1898 67 L.J.Q.B. 276) case a solicitor lent large sums of money belonging to his client to a third person for speculative purposes and, in consequence of the money having been lost, became so depressed that he attempted to murder his wife and afterwards attempted to commit suicide, he was convicted, and his name was struck off the roll of legal practitioners.

Procedural Steps before the Legal Practitioners Disciplinary Committee (LPDC)

- (a) The method for filing a complaint with the Legal Practitioners Disciplinary Committee is outlined in Regulations 3 and 4 of the disciplinary committee's rules which state that any aggrieved person may file a written complaint with the Chief Justice of Nigeria, the Attorney-General of

- the Federation, the President of the Court of Appeal, the Presiding Justice of the Court of Appeal, the Chief Judges of all the High Courts, the President of the National Industrial Court, the Attorneys-General of all the 36 States of the Federation, the Chairman of the Body of Benchers, or the President of the Nigerian Bar Association Branches. (LPDC Rules 3(1) 2006)
- (b) Thereafter, the Complaint is then forwarded to the ten Nigerian Bar Association for Investigation (LPDC Rules 3(2) 2006). In practice, committees of respected senior members of the Bar meet to consider the petition. The council against whom the complaint was made is availed a copy to afford him right of reply to the allegation. The committee finds as a fact whether or not a prima facie case has been established.
 - (c) If a prima facie case exists, NBA forwards the complaint and its investigation report (enclosing all the material considered in the course of the investigation) (LPDC Rule 4 2006). The LPDC.
 - (d) NBA then appoints a Legal Practitioner to present the case on its behalf to the Committee. (LPDC Rule 6 2006), (Parties are to be heard personally or through counsel of their choice.
 - (e) The Chairman of the Committee is to cause its secretary to fix a day for hearing and serve notices to parties (either by personal service, registered post, email or any other medium it deems adequate). It must be noted that at least 15 days are allowed between service of hearing notice and return date for the hearing, and except for Newspaper service, a duplicate of the Complaint and the NBA investigation report must accompany the Hearing Notice (LPDC Rule 7 2006). Further, upon proof of service, the Committee may proceed even in the respondent's absence (LPDC Rule 8 2006); (N.B.A. v. Ohioma, Supra). Although within 390 days after its findings, the party absent may apply for rehearing, which application if just to the Committee's satisfaction may be granted; a rant may be on terms of cost or otherwise as the Committee deems fit (LPDC Rule 9 2006).
 - (f) At trial, witnesses may be heard and documents are admissible. The rules of evidence applicable are primarily those of the Evidence Act (Rule 10 2006 Rules; (Denloye v. MDPDC, 1968 1 ANLR 306).
 - (g) Written Address may also be a call for. And after everything, the Committee gives its decision publicly, stating findings.
 - (h) If the allegation(s) is/are found proved, then the Direction comes forth in any of the following ways: (i) Ordering striking of the respondent's name from the Roll by the Registrar of the Supreme Court. (ii) Ordering suspension of the respondent from the further practice of law for the stand duration. (iii) Ordering refund of money or handover of documents unlawfully held by the respondent. (iv) Admonishment (N.B.A v. Koku, 2006 11NWLR (Pt. 991) LPDC 431) the respondent was suspended for 3 years and equally made to refund a given sum to the beneficiaries of a deceased.
 - (i) The Direction of the Committee is then gazetted (LPDC Rules 13-17 2006).
 - (j) Thereafter, an appeal may lie to the Supreme Court against the Direction not later than 28 days from the date when Notice of Direction is served on the respondent.

Punishment for Professional Misconduct

It is worthy to observe that both the *Legal Practitioners Act* and the *Rules of Professional Conduct* for the *Legal Practitioners* have failed to define the 'word' punishment. That notwithstanding, the *Black's Law Dictionary* (Garner, B. A., 1999) defines punishment as a sanction such as a fine, penalty, confinement, or loss of property, right, or privilege assessed against a person who has violated the law, while *Oxford Advanced Lerner's Dictionary* (Hornby, A. S., 2000) defines punishment as an act or a way of punishing, inflicting, or imposing punishment. However, Section 11 (c) of the RPC 2007 is categorical in its declaration that where the allegations against a legal practitioner are established and he is found guilty, the Legal Practitioners Disciplinary Committee, may, if it thinks fit, give the following orders: (a) that the name of the legal practitioner in question to be struck off the roll of a legal practitioners' register in Nigeria by giving a directive to the Registrar of the Supreme Court; (Section 11(1) (c) (i) LPA 2010), (b) suspending the legal practitioner from practice for a period that would be specified by the LPDC in its order, the legal practitioner banned from engaging in any legal practice during this period; (Section 11(1) (c) (ii) LPA 2010) (c) that the legal practitioner may just be admonished and cautioned and allowed to go, and where such is done, the legal practitioner be under surveillance for a time to make sure he does not commit such an act again; (Section 11(1) (c) (iii) LPA 2010)

That the legal practitioner refunds any money misappropriated to the appropriate owner, and

that he may be made to return property or documents to the rightful owner (Section 11(1) (c) (iii) LPA 2010).

The Challenges of Imposing Discipline

The authors were able to discuss the disciplinary regulatory mechanisms as well as the procedural stages for the discipline of a legal practitioner in Nigeria over the course of this study. The question is whether such disciplinary regulating agencies have been successful in achieving their stated goal of maintaining a disciplined, regulated, and rigorously adhering to the standards of the rules of professional conduct. Despite all of the disciplinary mechanisms in place, legal practitioners, even senior members of the Bar and even Senior Advocates of Nigeria, continue to violate our standards of professional behaviour. According to Okutepa, J. S. SAN:

Some lawyers are an instrument for the perversion of justice. They do all manner of dirty jobs just to obstruct the cause of justice and pollute the stream thereof. Indeed, those who are in politics show grave disdain for the rules of professional conduct. They throw ethics overboard and act with reckless abandon. They constantly subject the noble profession to disrepute and contempt in their conduct, character and behaviour (Lilian E. E. et al, 2018).

The incursion of another profession into the legal profession has been identified to be a serious mitigating factor in the area of discipline in the legal profession, 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 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 training, fit and proper test hurdle as lawyers. Aside from draining the limited legal work that is available, this unholy alliance tends to bring down the already falling standard of the profession (Yusuf Ali, SAN 2015).

Another issue is that our laws are out of date; our laws are not up to the task of guaranteeing legal discipline in the twenty-first century. For example, the RPC is now more aligned with the practice of legal practitioners in litigation, excluding to a considerable extent solicitors and lawyers in politics, as well as government organisations and companies. It also ignores some of the most common notions in legal practice in the twenty-first century, such as advertising out sourcing and pro gratis services. (Fatima Kwaku, 2015). Society is dynamic so the law must undergo constant change and reformation to meet up with the changing needs. The problem of obsolete laws in Nigeria is not limited to the legal profession alone but it's one of the major problems in attaining a disciplined legal profession. The two major laws regulating the legal profession are the Rules of Professional Conduct and the legal Practitioner Act these two laws are not current and up to date as to tackle current disciplinary issues.

Also, there is the problem of interference with investigations, where lawyers being investigated try to interfere and influence and prevent proper investigations. The lobby to have the complaint dropped. Some petitions lodged at the branch level are killed there and does not get to the national NBA. At the branch levels, we are. We play politics with discipline.

The length of time it takes to investigate the allegations of misconduct by lawyers is another factor that affects discipline at the Bar (Lilian E. E. et al, 2018). Where complaints are referred to the Nigerian Bar Association for investigation in order to establish a *prima facie* case upon which disciplinary procedure could be commenced, the investigations often takes a long time and as a result that complainants are discouraged and subsequently are not encouraged to bring complaints in the future. Therefore, some misconducts are left unreported and uninvestigated (Lilian E. E. et al, 2018).

Conclusion/Recommendations

This paper tried to state the role lawyers play in society and went further to say that where lawyers exercise such roles under due process of law and rules of professional conduct, this shall be a guarantee to international and national economic development, peace and stability of Nigeria. The study in outline showed the Rules and Codes of Professional Conduct, accountability and self-restraint and ethics below which lawyers must not fall. This is so because lawyers are referred to as learned counsel in the society which acknowledgement symbolises justice and integrity which, according to Francis Bacon are the lawyers' portion and proper virtues. As we have earlier stated in this paper, that the general public expected lawyers to rise above common heads in the society

not only in moral and social perfection and behaviour in the discharge of their duties to the society but in their intellectual grandeur and integrity. After all, a lawyer that is mounted on a solid ground of virtuosity and scrupulously unprejudiced in the way he handles his client matters and his other roles to the society is a pride of her nation.

On the issue of discipline, this paper brings to the limelight that quite a several lawyers in Nigeria have been charged and sanctioned for various offences ranging from infamous conduct, fraud, fraudulent enrolment, sexual violence, the seduction of a client's wife and so on, in the course of the discharge of his/her professional duties. This paper reveals that discipline procedure is only permitted at the instant of a petitioner and is limited only to litigation practitioners, leaving out to a large extent, the corporate legal practitioners and lawyers in politics. The authors suggest that measurement should be put in place for regulations and discipline of corporate legal practitioners and lawyers in the political arena (Mohammed v M. E. Co. Ltd., 2010) 2 NWLR (pt. 1179) 473 at 498).

The authors further recommend that the jurisdiction of LPDC and disciplinary process be expanded to cover all conduct unbecoming of a lawyer whether or not it was misconduct in or outside professional respect. Once the conduct of a lawyer falls short of acceptable conduct, he or she should face the music. After all, a lawyer is a priest in the secret temple of Justice and justice is predicated on confidence and integrity.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this article.

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