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Duties of Legal Practitioners and Challenges of Legal Practice in Nigeria

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Abstract

The thrust of this paper is to appraise the duties of legal practitioner and various challenges confronting legal practice in Nigeria. The pertinent questions which this paper seeks to interrogate are: What is the origin of legal profession in Nigeria? What are the duties and responsibilities of legal practitioners in the society? What is the code of ethics for legal practitioners? What are various challenges confronting legal practice in Nigeria? To resolve these questions, the paper traces the evolution of legal profession in Nigeria. The paper highlights various duties of legal practitioner to his clients and various challenges confronting legal practice in general. The paper concludes with a recommendation among others that a legal practitioner must keep abreast of ethical principles and be creative in the application of his knowledge of legal principles to solve legal issues and real life problems professionally.

Keywords: Appraisal, Duties, Legal Practitioner, Challenges and Legal Practice.

1. Introduction

A legal practitioner is a person who through a regular program of study is learned in legal matters and has been licensed to practice his or her profession. In the United States of America, a legal practitioner is any qualified person who prosecutes or defends cases in courts of

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record or other judicial tribunals.[1] In Australia, a legal practitioner is defined as one who holds a current local practicing certificate or a current intestate practicing certificate. A person who has been admitted to the legal profession under the Act.[2] In Nigeria, a legal practitioner is a person whose name appears on the rolls of Legal Practitioner kept by the Registrar of the Supreme Court.[3] Legal practitioners, in Nigeria are persons entitled to practice either as a Barrister or as Barrister and Solicitor, either generally or for the purposes of any particular office or proceeding.[4]

As a consultant and advocate, the professional duties of a barrister include: the drafting of legal opinions on issues of facts and law, the settling of pleadings, and conducting cases in court to a logical conclusion in accordance with the rules of procedure and evidence while solicitors are legal practitioners who are consulted on issues, such as, the making of wills, administration of estates, formation of companies, drawing up of leases and conveyances, registration of land instruments, writing of contractual agreement and similar issues.[5]

In the traditional English system, he is a member of the recognised branch i.e. he may either be barrister, special pleaders not at the bar, certified conveyancer, or solicitor.[6] In the Nigerian context, a legal practitioner is someone who has received legal education either in

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1 Erwin, N. G. *Law and Lawyers in the United States: The Common Law Under Stress,* (London: Stevens & Sons Limited, 1964), Chapter 3 36-60.

2 See sections 5 and 6 of the Australia Legal Profession Act 2004

3 Adeniyi, A. Your Legal Practitioner's Duties to you (YI Legal) <https://ynaija.com/adeola-adeniyi-your-legal-practitioners-duties-to-you-y-legal/> accessed on 11th August, 2018.

4 See the case of *Oketade v Adewunmi* [2010] 8 NWLR) (Pt. 1195) 74. See further the Legal Practitioner Act, Cap L11, Laws of the Federation of Nigeria 2004 section 24.

5 Beredugo. A. J, *Nigerian Legal system*, (3rd edn. Surulere: Malthouse Limited, 2009) 215-216; Ogwezzy, M. C, 'The Legal Practitioners Act: A Code for Regulating the Conduct of Lawyers in Nigeria' No. 3, (2013) *AGORA International Journal of Juridical Sciences*, 108-119: 108.

6 Bryant A. G. *Black's Law Dictionary*, (8th ed. United States of America: West Publishing Company, 2004) 915.

Nigeria or abroad and has been formally admitted to the Nigerian Bar as Barrister and Solicitor of the Supreme Court of Nigeria.[7] From the moment a lawyer is admitted into the Nigerian Bar and his name listed in the Roll of Legal Practitioners at the Supreme Court of Nigeria, he has a right of audience in all superior courts of record including the Supreme Court of Nigeria.[8] As a ministers in the temple of justice, a legal practitioner shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.[9] A legal practitioner must be honest and not knowingly conceal the truth from the court. He must realize that he owes an allegiance to a higher cause.[10]

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7 Fagbemi, S. A. 'The Roles, Prospects and Challenges of Academic Lawyers in Legal Education in Nigeria' Vol.6 (1&2) Jan/June 2009. *Ibadan Journal of Educational Studies,* 86, 89; Fagbemi, S. A. 'The Role of Litigation Lawyers in Adversarial System of Justice' Vol. 1(1) (2016) *Zambian Open University Law Journal,* 149-181: 154; See also the Legal Education (Consolidation etc.) Act, 1976, which established the Council of Legal Education which is responsible for the legal education of persons seeking to become members of the legal profession.

8 Akinola, B. O. 'Section 12 of the Legal Practitioner's Act Examined' Vol. 12 (2013) *Nigerian Law and Practice Journal*, 94. In this paper the words 'counsel and 'lawyer' are used interchangeably for legal practitioner.

9 In the case of *Nkuma v Odili* [2006] 2-3 SC. 18. The Supreme Court per Oguntade JSC held that: "It is necessary to say here that counsel appearing in matters before the court should see themselves first and foremost as officers of the court and refrain from imposing on the courts the tedium of sending it on a wild goose chase".

10 Fagbemi, S. A. (2016) *op cit* 154; The expected status and roles of legal practitioners was captured by Lord Denning in the case of *Ronald v Worsely* [1967] 1 QB 443 HL. where he put the position in the following terms: 'As an advocate, he is Minister of Justice equally with the judge. He has a monopoly of audience in the higher Courts. No one, save he, can address the judge, unless it be a litigant in person. A Barrister cannot pick and choose his clients. He is bound to accept a brief from any man who comes before the courts, no matter how great a rascal that may be. No matter how given to complaining, no matter how underserving or unpopular his cause. The Barrister must defend him to the end provided that he is paid a proper fee....'. See further the opinion of Crampton J in

A legal practitioner is expected to be a man of integrity, diligent, honest, scrupulous, skilled and partisan - belief in client's case.[11] A lawyer must be dedicated to his client's case and pursue same with vigour and conviction.[12] Ultimately, there is need for legal practitioners to conduct their clients' cases competently albeit within the stipulations of the law and the Rules of Professional Conduct for Legal Practitioners.[13] According to Bello,[14] traditional regulatory controls on the ethics of legal practice, entry to the profession, discipline and liability for breach of fiduciary and other equitable obligations are intended to promote the ideal of the lawyer as adversarial advocate.

The aim of this paper is to appraise the duties of legal practitioner and various challenges confronting legal practice in Nigeria. The pertinent questions which the paper seeks to answer are: What is the origin of legal profession in Nigeria? What are the duties and responsibilities of legal practitioners in the society? What is the code of ethics for legal practitioners? What are various challenges confronting legal practice in Nigeria? To resolve these questions, the paper is divided into seven

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the case of *R v O'Connell,* [1844] 71 L. R. 261 at 312-313; Ahmed, R. I. 'Management and Organisation of Law Firm in Nigeria: The Ethical Trends and Challenges' vol. 17 (1) (2014) *The Nigerian Law Journal,* 213, 214; Akubo, P. A. 'Setting Standards of Best Practice in the Legal Profession as Lawyers,' In Dr. Akin Onigbinde and Seun Ajayi (eds), *Contemporary Issues in Nigerian Legal Landscape,* A Compendium in Honour of Prince Lateef Fagbemi SAN, (Ibadan: Crown Goldmine Communications Limited, Nigeria, 2010) 100, 141.

11 Fagbemi, S. A. (2016) *op cit* 155. In the case of *Akomolafe v Nigeria Exchange Insurance Co. Ltd* [2000] 13 NWLR (Pt. 683) 181 SC. It was held that: "The legal profession is an honourable profession and is expected to be practiced by men of integrity and great honesty".

12 Rules of Professional Conduct for Legal Practitioners, 2007 r 14 (1).

13 *Ibid* rr 15 and 16. See also Leubsdorf, J. 'Using Legal Ethics to Screw your Enemies and Clients' Vol. 11 (1998), *Georgetown Journal of Legal Ethics,* 831, 836-7.

14 See generally Bello, S. R. 'Ethics and Legal Professionalism in Relation with the Courts: A Panacea to Smooth Administration of Justice' <www.unimaid.edu.ng>law> vol2.1> accessed 14th August, 2018 at 12.43pm.

sections. Following this introduction, the paper in section two traces the evolution of legal profession in Nigeria. Section three examines the duties of legal practitioners. In section four, the paper itemises the responsibilities of legal practitioner in the society and ethics in legal profession. Section five highlights challenges confronting legal practice. The sixth section proposes reform to legal profession in Nigerian while the last section concludes among other things that a legal practitioner must keep abreast of ethical principles and be creative in the application of his knowledge of legal principles to resolving legal issues and real life problems professionally.

2. Evolution of Legal Profession in Nigeria

The History of legal profession and legal education dates back to the advent of colonialism in 1860s.[15] Before the introduction of English-type court by the British Colonialist, the pre-colonial communities in what later became Nigeria were based on simple social, political and economic structures. There was no legal education then because there was no need for any, disputes in traditional Nigerian communities between individuals were resolved by traditional heads and rulers who were by virtue of their position charged with the responsibility of maintaining peaceful co-existence in their domains.[16] These traditional rulers in some cases also appointed local chiefs who had no formal training to hear disputes and hand down judgments.[17]

Colonialism had enormous socio-economic and political impact on traditional Nigerian communities. With the introduction of English business modules and practices, traditional dispute resolution mechanisms became largely inadequate to meet the challenges posed

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[15] Onolaja, M. O. 'Problem of Legal Education in Nigeria' < www.alimiandco.com>publication> p. 2, accessed 14th August, 2018 at 1.37pm; Madubuike-Ekwe, N. J. 'Challenges and Prospect of Legal Education in Nigeria, Vol. 8(1) (2017), *Nnambi Azikiwe University Journal of International Law and Jurisprudence,* 128-139: 129-131

[16] Doherty, O. *Legal Practice and Management in Nigeria* (London: Cavendish,1998) p.5.

[17] Fidelis Oditah SAN. 'Legal Practice and Economic Prosperity', (2006), A Keynote Address delivered at the Maiden Seminar of the Section on Legal Practice of the Nigeria Bar Association on 18th July, 2006, p.1.

by increasingly international commerce and trade.[18] Talking about the impact of English business modules on legal profession, Jegede[19] submitted that 'complex commercial transactions and political disputes emerged which were less amenable to traditional modes of disputes resolution, thus, the principles of English common law and equity developed by English courts were relied upon to resolve disputes. In some cases, statutes of general application in England became directly applicable in Nigeria or were relied upon by way of analogy.[20]

Due to socio-economic and political development brought about by colonialism, lawyers were needed to occupy judicial positions in the English-type courts, to advise the colonial administration, to draft agreements and to render advice generally on commercial transactions.[21] They were also needed to plead the case of litigants in the English-type courts. However, there were very few legally qualified persons to render these services. Given account of this era, Adewoye[22] gave the following records:

> Of the seven men who served as Chief Magistrates for Lagos between 1862 and 1905, only three had legal qualifications. Of the remaining four, two were 'writing clerks', one was a merchant and the fourth was a Commander of the West Indian garrison stationed in Lagos.

Also throughout the colonial period, there was no institution for the formal training of lawyers in Nigeria. To fill the vacuum, the Chief

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18 *Ibid.*

19 Jegede, J. K. 'The Legal Profession, Our Noble Heritage' vol. 2 (1) (1998), *Nigerian Law and Practice Journal*, 141-155: 142

20 *Ibid*

21 Doherty, O *op cit*

22 Adewoye, O. *The Judicial System in Southern Nigeria 1854-1954* (Nigeria: Longman, 1977) p.52.

Justice was empowered[23] to appoint fit and proper persons with basic education and some knowledge of English law and practice as attorneys. With this, court clerks who had acquired knowledge of the rudiments of English law were appointed attorneys and granted licence to practice for six months. Their licences were renewable at the expiration of six months, provided they were of good behaviour. These appointed attorneys were known as local-made Solicitors, self–taught attorneys or Colonial Solicitors.[24] These local Attorneys were later joined by legally qualified persons who had gone overseas, mostly Great Britain, to acquire legal education.

Between 1880, when the first Nigerian lawyer Christopher Sapara Williams was enrolled and made his first appearance at the Supreme Court, there was no qualified practising lawyer in Lagos.[25] In general, laymen started the practice of law in Nigeria and this was so until 1913 when the Chief Justice discontinued the issuance of practicing licenses to non-lawyers. At the inception, about 25 overseas trained lawyers enrolled as barristers and joined the profession. From 1913 to 1962, Nigerian lawyers received training abroad and on completion of their study were called to the English Bar. There were, therefore, certain apparent deficiencies in the foreign training of Nigerian lawyers. For one, a lawyer is trained in England to become either a Barrister or Solicitor and after qualification, he only practices in England as such. However, once a lawyer is enrolled at the Nigerian

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23 See Section 74 The Supreme Court Ordinance No.4 of !876; Order xvi r. 1, The Supreme Court (Civil Procedure) Rules 1948.

24 Doherty, O *op cit.*

25 Jegede, J. *op cit.* Although, Williams Nash Hamilton was the first lawyer to be enrolled to practice law in Nigeria in 1886, but the man who is generally believed and accepted to be the first Nigerian lawyer is Christopher Sapara Williams, who was enrolled at the Supreme Court in 1888. See Yusuf Alli (SAN), "Liberalization of Legal Services: Perspective of Nigerian Legal Practitioners and Law Firms. (2017), being a text of paper delivered at the Annual General Conference of the Nigeria Bar Association (NBA) held in Lagos on 23rd August, 2017 and Njoku, H. 'History of the Legal Profession in Nigeria' <http://nm.onlinenigeria.com/templates/?a=5216#ixzz3ZRZtmaW7> accessed on 12th August 2018 at 1.40pm

Supreme Court, he is entitled to practice as Barrister and Solicitor regardless of the fact that his training was limited to only one branch of the Profession.[26] Secondly, the British trained lawyers were trained under an Unwritten Constitution of the Westminster model and a Unitary system of government, whilst he was expected to practice in Nigeria with a Written Constitution and a Federal structure.[27] Also, certain peculiarities of the Nigerian legal system were not taken into account in the training of these lawyers. They were trained based on the English legislations and case law without regard to the local circumstances in Nigeria. They had no knowledge of some important aspects of Nigerian laws like Customary and Islamic Laws. Most of them did not even take the post–call practical course or training in the courts nor were they attached to Chambers for the mandatory Chambers attachment.[28]

In 1959, the Government of the Federation tried to correct these anomalies by setting up the Unsworth Committee to consider and make recommendations for the future of legal profession in Nigeria with particular reference to legal education, admission to practice and the right of audience before the Courts.[29] In the Committee's report published in October 1959, the following recommendations were made:

1. Nigeria should establish its own system of legal education;

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26 Gower, L.C.B. *Independent Africa: The Challenge of the Legal Profession* (Massachusetts: Harvard University Press, 1967) p.108; Alli , Y. *op cit.*

27 Hon. Justice Niki Tobi, 'Meeting the Needs of Profession and the Nation: A View from the Bench, Nigerian Law School, Four Decades of Service to the Legal Profession', (published by the Council of Legal Education to commemorate the 40th Anniversary of the Nigerian Law School Lagos.) p.73

28 To fill this vacuums, the present crops of legal practitioners that have their training abroad are required to start their mandatory vocational training in the Nigerian Law School from Bar Part 1.

29 Onolaja, O. *op cit.*

2. A faculty of law should be established, first at the University College, Ibadan and subsequently at any other University to be established in future;[30]
3. A law school to be known as the Nigerian Law School was to be established in Lagos to provide vocational training of legal practitioners in the work as a Barrister and Solicitor;
4. The qualification for admission to legal practice in Nigeria should be a degree in law of any University whose course for the degree is recognised by the Council of Legal Education, and the vocational course prescribed by the Council;
5. Any person graduating in law from a University, which has not accepted the syllabus recommended by the Council of Legal Education should be required to take such further examination as the Council may prescribe;
6. A Council of Legal Education should be established.[31]

With these recommendations, the structure of legal education in Nigeria became two-tiered: an academic stage and a professional or vocational stage. Premised on the Unsworth Committee, the Nigeria Law School was established to provide vocational training to legal practitioners. It also recommended that certain subjects be taught at the Law School which led to the enactment of the Legal Education Act 1962 and the Legal Practitioner Act of 1962.[32] The Legal Education Act 1962 was re-enacted by the Legal Education (Consolidation, Etc.) Act 1972 and this Act established the Council of Legal Education which is responsible for the legal education of

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30 Contrary to this recommendation, the first faculty of law in Nigeria was established in 1961 at the University of Nigeria Nsukka. This was followed by the University of Ife (now Obafemi Awolowo University) Ile-Ife, the Ahmadu Bello University, Zaria and the University of Lagos, in 1961, 1962 and 1965 respectively. From the 1970s, several Universities were established by Federal and State Governments as well as private organisations and individuals with most of the Universities having law faculties

31 See the Report of the Committee on the Future of Nigerian Legal Profession (Lagos: Federal Government Press, 1959) para.1 p.1

32 Fidelish Oditah SAN *op cit*, 2

persons seeking to become members of the legal profession in Nigeria.[33]

Since the advent of the Nigerian Law School, the legal profession in Nigeria has witnessed substantial growth and development. At first, the Law School consisted of just one campus in Lagos but over the years, there has been a significant increase in the number of campuses to wit: (Abuja (Headquarters), Lagos, Enugu, Kano, Yenagoa and Yola).[34] Likewise, there are presently 55 Law Faculties within various universities in Nigeria where students are prepared for the Nigerian Law School.[35] In addition, the number of persons being called to the Nigerian Bar have also increased and considered very high compared to what it used to be. Now the number of new lawyers at each Call is in the region of 4,000 every year.[36]

Apart from the foregoing progress made in the development of the legal profession in Nigeria, other innovations were made in a bid to ensure that legal practice in Nigeria is more competitive, advanced and up to date when viewed against what obtains in developed countries. For instance, Legal practitioners of not less than 10 years standing, and who have achieved distinction in the legal profession

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33 Fagbemi, S. A. (Jan/June 2009) *op cit* 89.

34 Alli, Y. (SAN) *op cit*, 3.

35 See the List of Accredited/Approved Faculties of Law in Nigeria and the Approved Quota as released by the Council of Legal Education as at 27th April, 2018 <https://www.myschoolgist.com> and <www.nigerianlawschool.edu.ng> accessed on 15th August, 2018 at 11.58am. For the history of Legal Education in Nigeria see further Gadzama, 'Modernizing Legal Practice in Nigeria'. A text of lecture delivered at the 2013 State of the Legal Profession Lecture of the Nigerian Institute of Advanced Legal Studies, Abuja; Gadzama, J. 'The Legal Profession in Nigeria After 50 Years of Legal Education: A Critical Appraisal' <hhttp://www.google.com.ng/url?sa=t&rct=j&q=history%20of%legal%20profession%20in%nigeria> accessed on 12th December 2018 at 1.50pm.

36 Kwaku, F. 'What is Wrong with the Rules of Professional Conduct for Legal Practitioners?' (2013). Being a text of paper presented at the NBA Academic Forum Working Session of the NBA Annual General Conference in Calabar, Cross River State on 28 August, 2013

may be conferred with the Rank of Senior Advocate of Nigeria (SAN) by the Legal Practitioners Privileges Committee.[37] In July, 1990, the guidelines for the conferment of the Rank of SAN as set out by the Chief Justice provides that all former Queen's counsel who apply will be conferred with the title.[38] However, changes have since been made following the guidelines released in 2007. Notable among them is that under the 2007 guidelines, former Queen's Counsel are no longer automatically eligible for the conferment.[39]

From the foregoing, it is evident that the legal profession in Nigeria has endured its ups and downs. Quite a number of innovations have been made in a bid to ensure that legal practice in Nigeria remains competitive and up to date when viewed against what obtains in other countries of the world. Today we have in our Courts all professionally trained and qualified practitioners in a fused profession as Solicitors and Advocates of the Supreme Court albeit with external paraphernalia and trappings of British justice system. In summary, we had copied and applied the outward signs of British justice which had all along, through many years preserved the sanctity of justice in British Courts and had made it the envy of the world.[40]

3. Duties of Legal Practitioners

The relationship between legal practitioners and their clients is fiduciary in nature. The word "fiduciary" is coined from the "Latin" word *'fiducia'* which means trust. It best describes a person who has the power and obligation to act for another with absolute trust, good faith and honesty. This imposes a duty on a legal practitioner to act with utmost honesty and fairness to his client. As a result of heavy responsibilities involved in the office of counsel, he is subject to certain Rules of Conduct which are crucial to the proper performance

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37 See Section 5 of the Legal Practitioners Act

38 The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 23-24

39 Yusuf Alli SAN *op cit*; Aare Afe Babalola SAN, 'Challenges of Nigerian Bar Association in 21st Century', October 8, 2012, <thenationonlineng.net>challenges-of-nigeria-bar-association-in-21st-century> accessed on 10th January, 2019 at 3.10pm

40 Jegede, J. K *op cit,* 143.

of his functions. These rules are known as "Rules of Professional Conduct in the Legal Profession". It is the paramount duty of the Bar to assist the Bench in the administration of justice. Legal practice involves in a representative capacity appearing as an advocate or draw papers, pleadings or documents, or perform any act in connection with proceedings before a court or body, board, committee, commission or officers constituted by law or having authority to take evidence or settle controversies in the exercise of the judicial power of the state or any subdivision thereof. It is also part of a lawyers' vocation to render expert opinions on matters of law and to be engaged as a consultant by public or private bodies to render professional services including drafting of legal or administrative documents, statutes, regulations, etc.[41] The duties of a legal practitioner in the course of his onerous calling is diverse and include the following among others.

3.1. Legal Practitioner to act on Clients' Instruction

The first step toward the resolution of any dispute or grievance is the client instruction phase. Rule 24 (1) of the Rules of Professional Conduct of Legal Practitioners (RPC) 2007 places a duty on legal practitioners to accept any brief in the Court in which he professes to practice provided the proper professional fee is offered and unless there are special circumstances which justified his refusal.[42] The first phase for the performance of legal practitioner's duty in judicial proceeding is wherein the lawyer is briefed by his client. The legal practitioner listens to facts as presented by his client. The first interview with client is very important; many suits are lost or won upon the first interview. A hasty interview with clients, perfunctory grasp of the matters he is trying to lay before the solicitors may be

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41 Abdulkarim A. K. 'Can Law Teachers Practice and Act as Consultants for Free or for a Fee' vol. 19 (1) (2016), *The Nigerian Law Journal*, 35-53:39.

42 The special circumstances in which a legal practitioner may withdraw from his client's instruction is where his duty conflicts with the interest of client or where the brief is outside the sphere or area of his practice. For example, Rule 17 (2) of the RPC states that except with the consent of his client, a lawyer shall not accept a retainer if the exercise of his professional judgment on behalf of his client will be or may reasonably be affected by his own financial, business, property or personal interest.

fatal to the solicitors handling the matter subsequently.[43] At the first interview, the lawyer has his opportunity to lay good foundation for the services he would eventually render. Before the commencement of an action in court, the pre-requisites for the maintenance of the action have to be considered. It is essential to comply with prescribed procedures, either statutory or contractual, or the selection of the particular court may be decisive.[44] The essential factors which a legal practitioner retained to conduct a case must consider at the planning stage of an action include but not limited to the determination of the relevant law, possible parties and their standing,[45] the cause of action,[46] jurisdiction of the subject matter and the appropriate court,[47] statute of limitation,[48] compliance with conditions precedent, immunity of any kind, cost of litigation and ultimately knowledge of the scope and various rules of evidence.

Due to the foregoing, it is the duty of a lawyer to devote his attention, energy and expertise to the services of his client and subject to any rule of law, to act in a manner consistent with the best interest of the client.[49] The legal practitioner acts on the general instruction of his client but he controls how these instructions are to be carried out. For instance, in the case of *Adewumi v Plastex (Nig.) Ltd.*[50] in that case, the respondents as plaintiff filed an action against the defendant at the High court. The defendant did not file any statement of defence

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43 Fagbemi, S. A. (2016) *opc it*

44 *Ibid* 156.

45 *Senator Abraham Adesanya v The President, Federal Republic of Nigeria* [1981] 5 SC 112.

46 *Egbe v Adefarasin* [1985] 5 SC 50 at 87.

47 Jurisdiction is a fundamental pre-requisite in the adjudication of any matter. Jurisdiction has been aptly described as the life-wire of all suits. See the case of *Federal Government of Nigeria & 2 Others v Adams Oshiomole* [2004] 3 NWLR (Pt. 860) 305 at 319 SC.

48 The issue of whether or not an action is statute-barred is one touching on the jurisdiction of the court, once an action is found to be statute-barred, although the plaintiff may still have his cause of action, his right of action has been taken away by statute. See the case of *Emiator v Nigerian Army* [1999] 12 NWLR (Pt. 631) 362 at 372 SC.

49 Rules of Professional Conduct for Legal Practitioners 2007 r 14 (1)

50 [1986] 2 NSCC 852

throughout the hearing. Judgment was entered for the respondent and the defendant appealed to the Court of Appeal. The appeal was dismissed. The appellant further appealed to the Supreme Court. On the day fixed for hearing, counsel for the appellant considering the circumstances of the case, informed the court that he was withdrawing the appeal. This he did contrary to the instruction of his client. It was held *inter alia* that: 'the counsel was right in the circumstances of the case and justified in the decision and his act binds his client; the dominant instruction of the client in all cases where litigation in court is involved, is that a counsel should conduct the litigation in the court to its finality. Hence the actual legal relationship between the counsel and his client is akin to that of employer and an independent contractor. It is not one of principal and agent.[51]

3.2. Legal Practitioner should render Efficient Legal Advisory Services to his Client

A legal practitioner has the duty to render efficient legal advisory services to his client. The lawyer consults with the client on all questions of doubt which do not fall within his discretion.[52] He shall not fail or neglect to inform his client of the options of alternative dispute resolution before resulting to or continuing litigation on behalf of his client.[53] In the course of consultation with his client, the lawyer warns his client against any particular risk which is likely to occur in the course of the matter.[54] Where he considers the client's claim or defence to be hopeless, he must inform him accordingly.[55]

When representing a client, a lawyer may, where permissible, exercise his independent professional judgment to waive or fail to assert a right

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51 See further the cases of *Nigerian National Supply Co. Ltd. v Sabana & Co. Ltd & Ors* [1988] 2 NWLR 23 and *Edozien v Edozien* [1993] 1 NWLR 678.

52 Rules of Professional Conduct for Legal Practitioners, 2007 r 14 (2) (a).

53 *Ibid* r 15 (3) (d).

54 *Ibid* r 14 (2) (c).

55 *Ibid* r 14 (2) (e).

or position of his client.[56] In the case of *Afegbai v A. G. Edo State*[57] the court stated thus:

> The scope and amplitude of the authority of counsel with regards to an action and all matters incidental to it extend to the conduct of trial such as withdrawing the record, calling or not calling witnesses, cross-examining witnesses, consent to reference or arbitration … undertaking to appear; or on hearing of the motion for new trial; consenting to reduction to damages. The client's consent is not needed for matters which are within the ordinary authority of the counsel.

It is therefore sacrosanct that where the nature of the legal practitioner specific instruction conflicts with the manner of discharging of his professional skills and interferes with his control of how to conduct the case of his client, counsel is entitled to return the brief of his client. Furthermore, a lawyer's independence is partly contingent on the freedom of choice in representation, including freedom from fear or prosecution in controversial or unpopular cases. The efficient and predictable application of justice, which is a basic tenet of the rule of law, depends to a large extent on the ability of lawyers to represent unpopular clients, or clients who are critical of, or even hostile to, the government – even in controversial and scandalous cases.[58] To deny the freedom of choice in the context of legal representation poses a threat not only to the independence of the legal profession, but also to the human rights of those who are represented, and offends core principles of the rule of law, such as the principle of equality before the law, and the protection of human rights.

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56 *Ibid* r 14 (2) (d). See also the case of *Festus Adewumi v Plastex (Nig.) Ltd. (supra).*

57 [2001] 14 NWLR 427

58 Hon Michael Kirby, September 2016. The Independence of Legal Profession Threats to the bastion of a free and democratic society *IBA Presidential Task Force – Report on the Independence of the Legal Profession,* 25.

In line with the above, it is crucial that lawyers should be able to perform their duties in an environment that is free from coercion, governmental and societal pressure, and fear of prosecution and persecution, whether by the government or by non-governmental actors. Lawyers should be free to represent their clients without undue hindrance, and should be subject to no discrimination whatsoever.

3.3. Legal Practitioner must avoid Conflict of Interest

Lawyers are duty bound not to accept briefs that conflict with their interest, whether financial, business, property or personal interest.[59] He must, at the time of the retainer, disclose to the client all the circumstances of his relations with the parties, and any interest in connection with the controversy which might influence the client in the selection of the lawyer.[60] Except with the consent of his client after full disclosure, a lawyer shall not accept a retainer if the exercise of his professional judgment on behalf of his client will be or may reasonably be affected by his own financial, business, property or personal interest.[61]

Also, a legal practitioner shall not appear as counsel for a client in a legal proceeding in which the lawyer is a party. Where the lawyer is a party in a particular suit, he is expected not to accept the brief or represent any other person who is also a party in that suit.[62] In similar vein, a lawyer is duty bound not to represent clients where he knows or contemplates that in a pending litigation, he or any lawyer in his firm will be called as a witness.[63] However, he is permitted to testify for the client under the under-listed circumstances:

i. if the testimony will relate solely to an uncounted matter;
ii. if the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

59 Rule 17 (2) of the RPC, 2007
60 Rules of Professional Conduct for Legal Practitioners, 2007 r 17 (1).
61 *Ibid* r 17 (2).
62 Rule 17 (5) of the RPC, 2007
63 Rule 20 (1) of the RPC 2007

iii. if the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; or
iv. as to any matter if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as lawyer in the particular case.[64]

The objective of this rule is to ensure fairness and justice.

3.4. Legal Practitioner must be Diligent

Another major duty of legal practitioner is that of due diligence in the discharge of his professional duties. Negligence in handling of a client's affairs may be of such a nature as to amount to professional misconduct.[65] Negligence is the failure to exercise the standard of care that a reasonable prudent person would have exercised in similar situation; any conduct that falls below the legal standards established to protect others against unreasonable risk of harm except for conduct that is intentionally, wantonly or willfully disregardful of others rights.[66] The term denotes culpable carelessness which means negligence that is though not intentional, involves disregard of the consequences likely to result from one's actions.[67]

In the law profession, once a brief is accepted, a counsel is under an obligation to diligently and faithfully pursue the matter to its logical conclusion. Where he renders a wrong advice or handles a client's case in a manner short of the standard reasonably expected of lawyer and which exposes the client to a loss, will render him liable in negligence.[68] The question to ask is what amounts to the standard of

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64 Rule 20 (2) of the RPC 2007

65 *Ibid* r 14 (5). For instance, under the general common law and the rule in *Hedley Byrne & Co Ltd v. Heller & Partners Ltd.* [1964] A.C 465, the lawyer can be held liable for professional negligence except when conducting a case in the face of the court such as failure to call a witness or to cross-examine a witness. See Legal Practitioner Act, LFN L11 2014 s 9 (3).

66 Ogwezzy M. C. *op cit,* 108-119

67 Bryan A. G. (ed). *Black's Law Dictionary*, 7th ed. (West Publishing Co., 2000), 846

68 *Hedley Byrne & Co Ltd v. Heller & Partners Ltd. (supra)*

care and skill required of a lawyer in the conduct of his client's case? To answer this question, a lawyer is expected to apply his skill and exercise reasonable care in the performance of his duty. In substance, there are two special characteristics to determine negligence. First, where a professional skill is concerned, the test for a breach of duty is not governed by the reasonable man test as such; but it is governed by the standard of the reasonable person exercising that professional skill. The test is the standard of the ordinary skilled man exercising and professing to have that professional skill. An accountant, architect, lawyer or doctor need not possess the highest expert skill; all he or she needs to exercise is the ordinary skill of an ordinary competent man exercising that particular act.[69]

It should be noted that it is trite that the mere infraction of a legal practitioner's duty does not absolutely expose him to liability, however, a lawyer is required to exercise the duty of skill and care that is reasonable expected in the circumstance. A lawyer cannot be expected to know all the law but he is expected to know where to find the law in respect of the matter which he undertakes to handle. The skill and care of the ordinary lawyer cannot be judged by the standards of exceptionally good lawyer. The test is what the reasonable competent practitioner would do having regard to the standard usually adopted in the profession.[70]

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[69] *Bolam v. Friern Hospital Management Committee* [1957] 1 WLR 582; *Phelps v. Hillingdon LBC* [2000] 3 WLR, 776, p. 809; Geoffrey, S. *Law of Obligations and Legal Remedies*, 2nd edn., (London: Cavendish Publishing Limited, 2001), 483.

[70] Orojo J. O. *Professional Conduct of Legal Practitioners in Nigeria* (Yaba: Mafix Books Limited, 2008), 178; in the case of *Montriou v. Jeffresy* 172 E.R. 51, Abbott C.J opined as follows: '*No attorney is bound to know all the law. God forbid that it should be imagined that an attorney or a counsel or even a judge is bound to know all the law, or that an attorney is to lose his fair recompense on account of an error, being such an error as a cautious might fall into" it is sufficient if they have "espoused the interests of their clients in order to defend them as if they were the parties concerned'*. See further the case of *Rondel v Worsley* [1996] 3 All E R 657.

In *Heywood v Wellers,*[71] the plaintiffs, a woman who wanted a legal advice on how to put an end to persistent pestering by a former man friend, went to a local solicitor's office. She was seen by a young unqualified litigation clerk whom she believed to be a solicitor. He suggested that she may apply to the local county court for an injunction against the man. During the following eleven (11) months, the clerk initiated proceedings at the High Court which, because of errors and omissions, prove wholly ineffective, and the plaintiff continued to suffer molestation from the man friend. The plaintiff sued the defendant solicitors claiming damages. She prepared and conducted her own case being of the opinion that it would be impossible to find other local solicitors who put their case properly against fellow solicitors. The court held that the plaintiff was entitled to damages in respect of the solicitors' breach of contract by their negligent conduct of the defendant's case.

Generally, on the subject of negligence, the court has held that counsel is by calling of their profession, responsible men in whom the vice of negligence or inadvertence is a rare attitude. Hence, when in exceptional cases, a counsel is found to be guilty of professional negligence, a situation deserving of most favourable consideration arises if and only if the litigant has not himself been guilty of negligence. If both the counsel and his litigant are guilty of negligence, the burden to be discharged to show that the litigant is entitled to the exercise of the discretion of the court is a heavy one.[72]

In Nigeria, to think that a Legal Practitioner who is incompetent is immune from being sued over the way and manner he or she conducted a case in court or negligently handled a professional duty entrusted onto him or her is a fallacy because the functioning of the tort of negligence and the legal profession has been codified in the Legal Practitioners Act. This is in a bid to regulate the conduct of lawyers in Nigeria and to see that they hold firmly to the tenets of the profession. A solicitor could then be liable for the tort of negligence

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71 [1976] 1 Q.B 446.

72 *Imo Broadcasting Corporation v Iwuke* [1995] 1 NWLR (Pt. 372) 488.

not only to his client but also to others where a *prima facie* duty of care towards them could be shown.[73]

3.5. Legal Practitioner Obligation to Keep Privilege and Confidence of a Client

All oral or written communications made by a client to his lawyer in the normal course of professional employment are privileged. A lawyer shall exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client unless where such is permitted under the rules of law or a court order; the intention of his client to commit a crime and the information necessary to prevent the crime and confidences or secrets necessary to establish or collect his fees or to defend himself or his employees or associates against an accusation of wrongful conduct.[74]

In the case of *Awoniyi v The Registered Trustees of the Rosicrucian Order (AMORC),*[75] the court held that communication between counsel and his client with reference to the matter upon which the client is seeking professional advice are privileged provided that the communication is fairly referable to the relationship of counsel and client. A lawyer must also keep the money of client kept in his custody. He must have financial integrity.

3.6. Duty to inform the client of Alternative Dispute Resolution (ADR) before resorting to Litigation

A lawyer should while considering the client's brief inform the client of the option of ADR before resorting to litigation.[76] Litigation should be seen as the last remedy considering the expensive, rigorous and time-consuming nature of it. When parties first resort to ADR, relationships could still be preserved as against first resolving the case in court which is often time been seen as the "war zone". As important

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73 *Ross v Counters* [1980] 1 Ch. 297; Ogwezzy, M. C *opc it* 113-114; Gururaja, K. C. *Advocacy and Professional Ethics: In Retrospect and Prospect*, (Allahbad: Wadhwa and Co., 2005), 482.

74 Rules of Professional Conduct for Legal Practitioners 2007 r 19.

75 [1990] 6 NWLR (Pt. 154) 42

76 Rule 15 (3) (d) of the RPC, 2007

as ADR is in the peaceful resolution of conflict, many legal practitioners fail and neglect to inform their clients of the option of ADR. They see it as a means which will not be financially beneficial to them and will instead prefer to have the matters litigated in Court for more financial benefits. To legal practitioners, when cases are in court, different channels are opened where he/she can gain financially, ranging from professional fees to appearance fees etc.

In the Lagos State High Court Civil Procedure Rules, 2012, parties are obligated to file the pre- action protocol form 01 as one of the documents accompanying the originating processes while in the Abuja High Court Civil Procedure rules, the certificate of pre-action counseling is required to be filed to accompany the originating processes. These documents provide proof that the clients have been counseled on the relative strengths and weaknesses of their cases before proceeding to Court.[77] Although these documents do not reflect whether ADR had first been resorted to, clients are afforded the opportunity to know their chances of emerging victorious in Court so that they can decide whether or not to explore the ADR option. Even the RPC states that where a lawyer finds the client's claim or defence hopeless, he should be informed accordingly.[78]

3.7. Duty to conduct the client's case in good faith and within the bounds of law:

When handling his client's matters, a legal practitioner is not expected to file suits, assert a position, conduct a defence, delay a trial or take over an action on behalf of his client when he knows or ought reasonably to know that such an action would serve merely to harass or maliciously injure another.[79] A legal practitioner is also precluded from creating or preserving evidence or ought reasonably to know that

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77 A similar Form under the Oyo State High Court (Civil Procedure) Rules 2010 is Form 18 where parties through their legal practitioner are expected to disclose whether or not they have explored alternative means to resolve the matter before instituting the case in the court of during the pendency of the suit in court.

78 Rule 14(2)(e) of the RPC 2007

79 Rule 14 (3) (b), 24.(3) of the RPC 2007

the evidence is false.[80] This could be in the form of procuring witnesses to come and testify falsely in court to prove his client's case or even hiding a piece of evidence that he feels will be prejudicial to his client's case.

Legal practitioners have a duty not to make questionable defenses or give questionable advice on the ground that he is only following his client's instructions.[81] Lawyers are officers in the temple of justice and should only indulge in actions that will genuinely assist the court in the attainment of justice.[82]

4. The Responsibilities of Legal Practitioners in the Society and Ethics in Legal Profession

Ethics refers to a well-based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, and specific virtues.[83] Ethics, for example, refers to those standards that impose the reasonable obligations to refrain from rape, stealing, murder, assault, slander, and fraud. Ethical standards also include those that enjoin virtues of honesty, compassion, and loyalty, it also includes standards relating to rights, such as the right to life, the right to freedom from injury, the right to choose, the right to privacy, and right to freedom of speech.[84]

Legal profession is thus regulated all over the world by certain ethical codes of behaviour or ethics commonly referred to as the rules of Professional Conduct for Legal Practitioners. These rules were drawn with the intention of instilling in members a high sense of discipline, honesty and responsibility so as to maintain the honour, integrity and reputation of the profession. In Nigeria, an in-depth and comprehensive ethical rules of professional conduct in the legal profession were first drafted and adopted by the General Council of the Bar in 1980. The rules were made by the General Council of the bar in 1967 and amended in 1979 and published in the Federal

80 Rule 14 (3) (h) of the RPC 2007
81 Rule 24 (2) of the RPC 2007
82 Ahmed, R. I. *op cit,* 213: 214
83 Ogwezzy, M. C. *op cit,* 108-119: 108
84 *Ibid*

Government Official Gazette dated 18th January, 1980 on the 7th of February, 2007 the existing rules were reviewed and a new set of rules was made for the profession.[85]

The legal profession prescribes Rules of Professional Conduct and Etiquette for its members. These basically require that a legal practitioner should be of good character. According to Adegoke *et al*,[86] these are traits and characteristics becoming of members of the learned profession of noble and gentlemen of honour. The founding fathers of this profession earned for themselves enviable and dignified appellation of "learned and honourable" men. This endurable achievement cannot and must not be lowered down. A lawyer must conduct himself well in court and in the public generally. Again, he must display utmost good character at all times. The society will frown at a lawyer who behaves himself unseemly in the public. A lawyer should not be caught fighting or brawling in streets. Waywardness is unbecoming of members of this respectable profession. It is an age-long phenomenon that, lawyers are known for their nobility.[87]

Premised on the foregoing, the general responsibility of a legal practitioner is to uphold and observe the rule of law; promote and foster the cause of justice, maintain a high standard of professional conduct and shall not engage in any conduct which is unbecoming of a legal practitioner.[88] In legal proceedings, the trial process is very crucial. It involves the examination-in-chief, cross examination and

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85 Ibid; see also Beredugo, A. J. *opcit*, 215-216. See further Agbebaku, C. A. & Omoregie, L. O, 'Teaching Ethics and Values in the Legal Profession: The Nigerian Perspective' <http://www.ialsnet.org/meetings/teaching/papers/Agbebaku.pdf>, accessed on 12 August, 2018.

86 Adegoke, O. A & Akinola, A. 'The Character and Learning of Nigerian's 21st Century Lawyer: Playing a Game by Its Rules' vol. 12 (2013), *Nigerian Law and Practice Journal*, 68-93: 74

87 *Ibid*.

88 See the Rules of Professional Conduct for Legal Practitioner 2007 r 1.

re-examination of witnesses.[89] The delivery of an effective civil justice requires that the system be accessible and affordable, free of discrimination, free of corruption and without improper influence by public officials. The delivery of an effective civil justice also necessitate that court proceedings are conducted in a timely manner and not subject to unreasonable delays.[90]

It is the duty of a lawyer employed in respect of a court case to be personally present or be properly represented throughout the proceedings in court.[91] When a cause on the weekly cause list has been called for hearing and neither party appears, the judge shall, unless he sees good reason to the contrary, strike out the cause.[92] The legal practitioner shall use his best endeavours to restrain and prevent his clients from committing misconduct or breach of the law with particular reference to judicial officers, witnesses and litigants and if client persist in his action or conduct, he shall terminate their relations.[93] The legal practitioner has the responsibility to ensure courtroom decorum when in court. He is expected to be attired in a proper and dignified manner, conduct himself with decency and decorum observing the customs of the practice at the Bar with respect to appearance, manners and courtesy. He should rise when addressing or being addressed by the judge. A lawyer must not remove his wig or/and gown while court is sitting. He should not raise his voice in display of frustration. Making and answering phone calls in court is indecorous, likewise reading of newspaper or magazines when court is

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89 Evidence Act, 2011 section 214. See Fidelis Nwadialo SAN, *Modern Nigeria Law of Evidence*, (Benin City: Ethiope Publishing Corporation, 1981) 550.

90 Okogbule, N. S. 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects' vol. 3 (2005). *Sur, rev. Int. Direitos Human, 15 and* Aguda, T. A. *The Crisis of Justice* (Akure, Nigeria: Eresu Hills Publishers, 1986), 15-16.

91 Rules of Professional Conduct for Legal Practitioner 2007 r 14 (4).

92 Oyo State High Court (Civil Procedure) Rules 2010 Order 30

93 Rules of Professional Conduct for Legal Practitioner 2007 r 15 (2).

sitting.[94] A lawyer should also address his objections, arguments and observations to the judge without any exchange of banter, personality display, arguments or controversy with the opposing lawyer.[95] The legal practitioner is expected to treat the opposing counsel with respect fairness, consideration and dignity, and shall not allow any ill-feeling between opposing clients to influence his conduct and demeanour toward the other or toward opposing clients.[96]

A legal practitioner shall not handle a legal matter which he knows or ought to know that he is not competent to handle, without associating with him a lawyer who is competent to handle it, unless the client objects.[97] He shall not handle a legal matter without adequate preparation.[98] He shall represent his client competently and shall not neglect a legal matter entrusted to him.[99] Neither shall he attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.[100]

The legal practitioner shall be honest, forthright in the discharge of his duties before the court. He shall not do act calculated to mislead the court. He shall not knowingly use perjured or false evidence[101] neither shall he knowingly make a false statement of law or fact. The legal practitioner shall not participate in the creation or preservation of evidence when he knows or ought reasonably to know that the evidence is false. He shall not assist his client in conduct that he knows to be illegal or fraudulent.[102] A legal practitioner shall not be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants or ask any question only to insult or degrade the witness; and

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94 Adegoke, O. A & Akinola, A. *op cit,* 77. See the warning of Onalaja JCA (as he then was) in the case of *UBA Plc v BTL Industries Ltd.* [2006] NWLR (Pt. 1013) 61.

95 Rules of Professional Conduct for Legal Practitioner 2007 r 36

96 *Ibid* r 62

97 *Ibid* r 16 (1) (a).

98 *Ibid* r 16 (1) (b).

99 *Ibid* r 16 (1) (c).

100 *Ibid* r 16 (1) (d).

101 *Ibid* r 15 (3) (f).

102 *Ibid* r 15 (3) (g) & (i). See Adegoke, O. A & Akinola Afolarin (n 90) 78.

he shall not allow the unfair suggestions or demands of his clients to influence his action. In other words, a legal practitioner acts with candour and dignity. He must be polite and candid in his conduct.

In conclusion, absolute respect is the hallmark of the relationship between the Bar and the Bench. Hence, the Bar Council has left no one in doubt as to its significance. The requirement of section 31 (1) of the Rules of Professional Conduct for Legal Practitioner 2007 is that a lawyer shall treat the court with respect, dignity and honour at all times. The salient points that may be gleaned from the issue of respect of legal practitioner to court are: a legal practitioner must ensure that he maintains profound respectful attitude towards the courts in words and seasoned with modesty, politeness and courtesy and in manners of proper comportment, demeanour, disposition and posture.[103]

5. The Challenges Confronting Legal Practice

There is no doubt that there are challenges confronting legal practice in Nigeria. While some of these challenges are substantive in nature, others are procedural and yet others have their roots in the present political, socio-economic and advance in technology. However, since, there is no problem without solution, this section is devoted to highlighting some of the challenges confronting legal practice in Nigeria. The section is followed with suggestions for reform that can enhance the efficacy of legal practice in Nigeria.

5.1. Economic Pressures on the Practice

The legal profession faces unprecedented economic pressures fueled by many factors, including societal changes and economic downturn. These pressures often dovetail to other challenges facing the profession. In today's buyer's market, clients determine what services are needed and at what cost. They will continue to demand efficiency

[103] Adegoke, O. A & Akinola Afolarin, *op cit* 90; Ekundayo, A. 'Hints on Legal Practice' Series No. 5 (1992) *Nigerian Law and Practice Journal*, 51; Adedokun A. A. 'Ethics in Legal Academia and the Profession' in Ayua, I. A and Guobadia, D. A. (eds) *Legal Education for Twenty-Century Nigeria*, (Lagos: Nigerian Institute of Advanced Legal Studies, 2000) 208-212.

and responsiveness from their lawyers – and for less cost.[104] To survive, lawyers and firms are looking for competitive advantages. The legal profession faces unprecedented economic pressures. It faces competitive pressures from accountants, realtors, financial advisors, and title agents, and others – and the internet is making it easier for them to compete. Add to the mix competition from global legal service providers, as the doors to transnational practice by lawyers widen by the World Trade Organization's General Agreement on Trade in Services (GATS).[105]

The primary focus of the WTO is to ensure that trade liberalization and trade agreements are reached based upon a consensus of participating members and ratified domestically by each member. Trade liberalization essentially focuses on removing impediments involved in the provision and procurement of goods and services thereby fortuitously affecting and consequently increasing the wealth of the respective countries.[106] With the spurt of world economic integration, it has become more difficult for lawyers and Law firms to advise clients on international transactions covering a variety of business transactions, including mergers and acquisitions with foreign companies and contractual arrangements for franchises, dealerships and product sales.[107] In addition to the issues discussed below, lawyers and firms are turning to law firm managers and legal information managers to examine trends and identify competitive advantages.[108]

Reason being that the multi-jurisdictional nature of transactions requiring multi-jurisdictional advice, and this underpins the evolution that has occurred in legal practice. Accordingly, multinational companies would rather deal with international law firms with multi-jurisdictional presence than domestic law firms. Such international

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[104] Board of Governors' Challenges to the Profession Committee. 2011. *The Challenges Facing the Legal Profession*, The State Bar of Wisconsin July 2011, 2.

[105] *Ibid*; The World Trade Organization (WTO) as a leading economic institution is in the forefront of championing the cause of globalization.

[106] Alli, Y. (2017), *op cit,* 9.

[107] *Ibid*, p 12.

[108] *Ibid.*

law firms are in a position to operate through two or four modes of service supply, specifically commercial presence and presence of natural persons.[109]

5.2. Technology and the Practice of Law

Advancement in technology are occurring exponentially. These advances increase the pace of practice and client expectations, forcing lawyers to adapt or face extinction. Understanding and implementing new technologies are difficult and time-consuming for lawyers. Clients are often ahead of lawyers in implementing new technologies, and they have increased access to legal information, much of it readily available on the internet.[110] It is therefore imperative that a lawyer develop unequivocal hunger and thirst for knowledge, especially of the law and of general affairs of life. Ability to carry our research would form a veritable tool in acquisition of knowledge needed in practice. The lawyers must read the subject matter *visa-vis* the substantive law; peruse the rules and procedures as well as judicial precedents. It is incumbent on advocate to carry out detailed research into matters involved with the brief given to him by his client. He must master the details of the subject matter and equally become a 'master of it in order to be able to adequately handle the case to the satisfaction of his client.[111]

5.3. Regulation of the Legal Profession

Rapidly evolving technological advances, changing expectations on the part of the public concerning access to information and services, as well as sociologic and economic globalization, combine to require a reconsideration of traditional ethical rules and regulation mechanisms for the legal profession. Ari Kaplan,[112] opines that these issues will

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[109] Desmond Guobadia, 'Globalisation of Legal Services - What Should Nigeria Do? Compiled by IMF Staff April 2000 www.nigerianlawguru.com >article>globalization-of-legal-services-what-should-nigeria-do.pdf> accessed on 24th January, 2019 at 2.00pm.

[110] *Ibid*

[111] Adegoke, O. A & Akinola, A. *op cit* 73

[112] Kaplan, A. *The Evolution of the Legal Profession: A Conversation with the Legal Community's Thought Leaders on the Front Lines of an Industry in Transition*. Rep. Ari Kaplan Advisors, 2010.

force the legal profession to restructure how it delivers legal services. In order for the profession to stay relevant and thrive, lawyers must examine who can invest in firms, models for publicly traded firms, and lawyer partnerships with other professionals.[113] However, it would seem that law practice in Nigeria is synonymous with advocacy. This is reflected in the number of small law practices spread across the country. Also the curriculum of the Law School programme place quite a lot of emphasis on criminal and civil procedures and evidence – in fact court procedures. For instance, law graduates are expected to embark upon court and law offices attachments which expose them to advocacy and solicitor practice. On completion of the law school programme, a lawyer becomes 'a barrister and solicitor of the Supreme Court of Nigeria', also the public perception of the law and lawyers is through trial lawyers.[114]

However, commercial and corporate law practices have continued to grow in view of globalisation of international commerce and trade and legal practice will therefore need to do more than pure advocacy in court. The practice of law in Nigeria should take advantage of its potentiality as a facilitator of successful trade and lawyer should be encouraged to explore new and emerging practices areas. For instance, a good number of law firms in the UK, US as with many others in developed economies are going into partnership and specializing in different areas of practice. Partnerships between lawyers and among law firms in Nigeria should be encouraged.[115] The benefits of partnership are many and obvious. Apart from economies of scale, partnerships encourage capacity building and specialisation as lawyers

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113 Board of Governors' Challenges to the Profession Committee. 2011 (n 108), 2

114 Fidelish Oditah SAN (n 17) 8

115 For instance, the NBA President Abubakar Balarabe Mahmoud (SAN) recently urges lawyers to form larger law firms to improve service delivery to clients in a globalise world. He made the declaration while unveiling a mega law firm Primera African Legal (PAL) in Lagos on Friday 18th August, 2017. PAL is made up of former partners of Sterling Partnership and Wali-Uwais, both very established law firms. See BarNews, A publication of Nigerian Bar Association (NBA) 21 August, 2017: 1

in given fields understand the intricacies of such areas and are able to give first class advice in their areas of specialisation. It will also increase earnings for the firms and the lawyer alike as more income is generated. [116]

5.4. New Lawyer Training and Development

The new trends and challenges facing the legal profession, particularly the evolution of legal services from bespoke to being ultimately 'commoditize' raise concerns that should be quickly brought to the thoughts of the new wig.[117] The reality of today's economy means fewer opportunities for law school graduates. With fewer clerkships, internships, and law firms hiring new graduates – and access to mentors – law schools are graduating more lawyers with less experience. The profession must share the responsibility for assisting these new practitioners, and that support must come from the Bar Association, the bench, and the law schools that produce new lawyers.[118]

The challenges identified by the Board of Governors' Challenges to the Profession Committee has created great difficulties for practitioners, especially those who are new to the profession. This explained why many new wigs avoid legal practice, whether private or public, like plaque. They are ill-equipped for it, ignorant of it, apathetic towards it and must therefore of necessity reject it. Two other complications arise. After graduation, they discover that there is no proper mentoring process. Few, if any young lawyer have any source of role models. There is no custom or practice of senior lawyers choosing junior lawyers to mentor.[119] There is also no process of induction of new wigs into legal profession by the local or national Bar. The Nigeria Bar Association leaves them to discover everything

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116 Fidelish Oditah SAN *op cit* 8

117 Oluwemimo Ogunde SAN. 'The Legal Profession in Nigeria: Service or Business?' (2011), paper delivered at the Annual Lecture in honour of Mr. Layi Babatunde SAN on Wednesday 17th August, 2011 at the Faculty of Law, University of Ibadan, Ibadan. 1.

118 Board of Governors' Challenges to the Profession Committee. 2011 (n 108) 2

119 Oluwemimo Ogunde SAN *op cit,* 2.

by themselves. The result is that the new wigs become free-ranging lawyers, at the mercy of every wind of doctrine. There is no established process of job search or employment, no formal or informal methods of integration into the Bar. They are sent forth as sheep in the midst of wolves.[120] The young, new, or inexperienced practitioner bears the responsibility to conquer these challenges. The challenge for any lawyer is to differentiate themselves from others in the market place. New lawyers will need to develop business skills, language, engineering/science – traits that set them apart from their peers. Many new lawyers are well situated to take advantage of the latest technologies. Change must start with law school education. They must train lawyers for real-life practice challenges, teach entrepreneurial skills, and paint a realistic picture of employment opportunities.[121]

6. Proposals for the Reform of Legal Profession in Nigeria

The legal profession remains a noble profession. The sanctity of this profession will be better preserved by the conduct of the legal practitioner in the discharge of his duties as a minister in the temple of justice both in relations with his clients and members of the public and also in his duty towards the court of law. By virtue of their vantage position, legal practitioners play significant roles in policy formulation and implementation, not only because they draft all laws but also because they interpret and apply the laws. In contributing to the political and social development of our nation, lawyers must be creative and proactive. Reform of our substantive and procedural laws, which has begun should be intensified.

Against this background, a convenient point to start any reform agenda for the legal practice is updating and strengthening our civil justice laws, rules, regulations and institutions. It is desirable to revise our laws regularly so as to bring them in tandem with international standards. However, a word of caution must be sounded at this point. A revision of our laws should not involve a blind transplant of western legal model as hitherto the practice. It really would make no sense to

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120 *Ibid*

121 Board of Governors' Challenges to the Profession Committee. 2011 (n 108) 20.

import laws or regulations which can hardly be operated in view of our peculiar socio-legal and cultural set up. Any law introduced must therefore be suitable to our specific needs without compromising standards. In order for the judiciary to perform its role as the 'handmaiden of justice', civil procedure must be effective and responsive to the needs of its users. This entails three qualities: it should be just, fair and effective in resolving disputes. Reform of our civil justice system is needed urgently and is already in progress in a number of states.[122] Other reforms necessary to the Nigerian legal practice and judicial system include among others:

i. Recognition in the civil procedure rules of the overarching aim of the civil justice system which is to ensure that cases are determined justly and fairly;
ii. Recognition in the civil procedure rules of the central role and responsibilities of key players in legal proceedings – the judge, the litigants and their legal representatives have in a civil justice system;
iii. Introduction of active case management powers by the judges enabling judges to balance the interests of the parties to civil proceedings and the public interest to ensure that parties do not use more than their fair share of public resources – the courts;[123]
iv. More significantly efforts should be made to increase awareness of and resort to arbitration or other methods of alternative dispute resolution mechanisms in the country.[124]

Not only are these mechanisms more cost-effective, they are largely in tandem with the traditional method of dispute settlement, which had served African societies so well before the imposition of the received

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122 For instance, these writers are aware that the Civil Procedure Rule of the High Court of Justice of 2008 in Osun State is currently being reviewed to amend some of its provisions

123 Fidelis Oditah SAN *op cit.*

124 Nwosu, K. N & Chukwu, L. O. C. 'The Role of Lawyers in Multi-Doors Courthouse' (2013) *Nigerian Law and Practice Journal,* 40-50: 43; Rules of Professional for Legal Practitioner 2007 r 15 (3) (d).

English system of adjudication.[125] Happily, there is now a growing trend to formalize and popularize the use of these mechanisms as viable alternatives to the judicial settlement of disputes in Nigeria.[126] It can hardly be disputed that resort to this mechanism coupled with improvement in the socio-economic and political conditions of the masses will go a long way in ensuring increased access to justice by a large majority of Nigerians.

Legal education is important if lawyers are expected to play any real role in our economic development and growth. The quality of the judicial output depends on our legal education and the quality of our lawyers. We see this daily in relation to litigation where the role of lawyers is most visible. The quality of our judicial decisions and the coherence of the reasoning underlying a judgment depend upon the quality of arguments presented to the court and upon the ability of the judge, and these in turn are dependent upon our legal education, especially continuing legal education.

Of more importance is the mentoring of young lawyer or new wigs. Senior members of the profession should invest in the future of the profession. Investing in the career development of young lawyers in terms of money and time would go a long way in professional development and finesse. There should be on-going continuous trainings organised by the association and organised or sponsored by experienced and successful practitioners. Senior lawyers should

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125 Obilade, A. O. 'The Relevance of Customary Law to Modern Nigerian Society' in Osinbajo, Y & Kalu, A. U. (eds.), *Towards a Restatement of Nigerian Customary Laws* (Lagos: Federal Ministry of Justice, 1991) 1-4; Okunniga, A. A. O. *Transplants and Mongrels and the Law: The Nigerian Experiment* (Inaugural Lecture Series 62, University of Ife Press, 1983) 20-21.

126 The advantages of these mechanisms are highlighted in Chukwuemerie, A. I. *Studies and Materials in International Commercial Arbitration* (Port Harcourt, Nigeria: Lawhouse Books, 2002) 1-31; see also Nwakoby, G. C. 'Exploring Arbitration: A Commentary', vol. 8 (1-2) (Jan.-April 2004), *Modern Practice Journal of Finance and Investment Law*, 1: 8-16; Aina, K. 'The Lagos Multi-Door Courthouse and the Judge: A New Beginning' vol. 8 (3-4) (2004) *Modern Practice Journal of Finance and Investment Law*, 340.

monitor the manners, comportment and appearances of the lawyers under their tutelage and branch. By showing good example all the time, it will be easy for young ones watching to imbibe fine character and decorum exhibited by those mentors. The place of hard-work is also importance in legal practice. A lawyer who fails to work hard should be ready to fail. Success in the Bar cannot be attained lying upon the bed of roses, but by application of oneself to hard-work and industry.[127]

7. Conclusion

Remarkably, legal practice is a professional business having an underlying objective of rendering social service with a view to making profits and gains for sustenance. However, lawyers are required to abide by the rules of professional conduct when acting on behalf of clients and when advising on transactions generally. Ethical standards must be imbibed in business transaction and acts which are capable of bringing disrepute to the profession should be shunned and a balance between the carrying on of ethical legal practice and the pursuit of economic gains must be pursued with vigour. A legal practitioner must keep abreast of ethical principles and be creative in the application of his knowledge of legal principles to solve legal issues and real life problems professionally. The tradition of the legal profession as discussed in this paper, is founded on excellence, nobility and hard-work. We should not pretend that all is alright with the profession. Hence, the Bar and the Bench have to more than ever before confront the challenges highlighted in this paper and many more confronting the profession. Doing this, is the only way to save legal profession from imminent disrepute and propel legal practice in Nigeria to its position among the best in the world.

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127 Ekundayo, A. *op cit.*