

## **DECLINE IN ETHICS AND THE LPDC**

**PRESENTED BY YUSUF ALI SAN LL.M, FCI Arb; AT THE ETHICS SECTION OF THE NIGERIAN BAR ASSOCIATION, ILORIN BRANCH, HELD IN THE GOVERNMENT HOUSE BANQUET HALL, ILORIN, ON 20<sup>TH</sup> JULY, 2016**

### **Introduction**

The legal profession has an ancient history and universal penchant. It has always been one of the most respected and loved professions.<sup>1</sup> Hence, regulations and enforcement of professional ethics have always been a core issue in the legal profession, considering the level of trust and confidence reposed in them by the society. This is because the legal profession is one that seeks to convince the public that professional service is delivered, not only by properly qualified or technically sound persons, but also by persons whose professional standards equals the high degrees of public trustworthiness required of professionals.

Accordingly, the legal profession is guided by rules, principles of engagement and professional ethics. This code of ethics regulates and controls the affairs of the members of the profession. It expresses in the broadest terms the standards of professional conduct expected of lawyers in their relationship with the public, the legal system and the legal profession.<sup>2</sup> It is very important that the ethics of the legal profession is persistently upheld by the way and manner erring lawyers are disciplined.

Unfortunately, given the phenomenal growth in the number of legal practitioners in Nigeria and the increasing sophistication of contemporary legal practice today, the legal profession has witnessed increasing reports of professional misconduct, corruption and sharp practices with attendant negative consequences on the administration of justice in our country.<sup>3</sup> From my privileged and vantage position as a member of the Legal Practitioners' Disciplinary Committee, one has witnessed many of our erstwhile colleagues, whose cases were

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<sup>1</sup> Aare Afe Babalola SAN, 'Challenges of Nigerian Bar Association in 21st Century', <<http://thenationonlineng.net/new/challenges-of-nigerian-bar-association-in-21st-century/>> accessed on 01 June, 2016

<sup>2</sup> Fatima Kwaku, 'What is Wrong with the Rules of Professional Conduct for Legal Practitioners?' paper presented at the NBA Academic Forum Working Session of the NBA Annual General Conference in Calaba, Cross River State on 28 August, 2013

<sup>3</sup> Fatima Kwaku, 'What is wrong with the Rules of Professional Conduct for Legal Practitioners?'

concluded within the last three and half years, being debarred, while others were suspended for a number of years.

The crux of this discourse is therefore, to examine the relative decline in ethics recently plaguing the legal profession in Nigeria and what the LPDC is doing to curb same. In so doing, it first elucidates the code of ethics which regulates and controls the professional conduct of lawyers in Nigeria and the sanctions attached to its breach. It then undertakes a short discourse on the role of LPDC in enforcement of professional ethics, before highlighting the challenges of sustaining best ethical practice within the legal profession in Nigeria.

Ultimately, this discourse concludes that the sad decline in adherence to the ethics of the legal profession in recent years is not because of the absence of laws and regulations, but mainly as a result of inefficient and ineffective enforcement. Accordingly, the solution to the problem is not in the enactment of more laws and regulations per se, but the strengthening of the LPDC to enhance its enforcement capacity and the NBA for a more robust thorough, prompt and transparent investigation of complaints against lawyers.

### ***The Code of Ethics for Professional Conduct of Lawyers in Nigeria***

The main legislations which set out the code of ethics to regulate the professional conduct of lawyers in Nigeria are the ***Legal Practitioners Act 1975*** (as amended) CAP L10 Laws of the Federation of Nigeria 2004 (hereinafter referred to as the LPA) and the ***Rules of Professional Conduct 2007*** (hereinafter referred to as the RPC). These rules were made by the General Council of the Bar to further the aims and objects of the Nigerian Bar Association under the constitution of the Association and to maintain the highest standards of professional conduct, etiquette and discipline in terms of that constitution.

It is however, important to point out at this juncture, that unlike what is obtainable in some other countries, like England, where the profession has two sides practiced separately that is, barristers and solicitors, the two sides are fused in Nigeria. Thus anyone called to the Nigerian Bar practices as a barrister and solicitor of the Supreme Court of Nigeria. The profession has always been practiced this way right from the

middle of the 19th century, when the first Nigerian was enrolled to practice law in Nigeria.

Ethics and professional responsibilities are inherent part of practicing Law, whether as a Barrister or Solicitor. Accordingly, the code of ethics and professional responsibilities to be discussed under this head, is applicable to both Barristers and Solicitors, comprising: the duty of lawyers to the court, the duty of lawyers to his clients, as well as the rules governing the fiduciary obligation of lawyers and their relationship with other lawyers. This exercise is being undertaken so that some of the rules whose breach could lead to disciplinary proceedings will be known.

- ***Duty of Lawyers to the Court***

A lawyer is regarded first and foremost as an officer in the temple of justice before being an advocate representing his client. This underlies the fact that there are some duties imposed on him under the RPC and which will attract disciplinary sanction in the event of a breach. The importance of the duty of Lawyers to the court, as an officer in the temple of justice, is made clearer by the fact that it is set out by the very first rule in the RPC, which imposes on a lawyer, the duty to maintain towards the Court respectful attitude at all times. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar.<sup>4</sup>

Rule 4 of the RPC goes further to make specific provisions on candour and fairness by counsel. The Rule provides that the conduct of a lawyer before the Court and with other lawyers should be characterized by candour and fairness even when it may not be favourable to his client. For instance, a lawyer should inform the presiding judge of subsisting decided cases, even where the decision is against his client. A lawyer is however entitled to distinguish any such case. He should not mislead the court or the opposing counsel in any way, promote a case which to his knowledge is false, nor file a pleading or other document that is intended to delay the trial.<sup>5</sup>

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<sup>4</sup> See Rule I of the Rules of Professional Conduct 2007 (hereinafter referred to as the RPC)

<sup>5</sup> See Rule 4 (a) to (f) of the RPC

The RPC also imposes on lawyers, during the conduct of criminal cases, certain duties to ensure that they uphold the cause of justice as officers of the court. Hence, the primary duty of a lawyer engaged in public prosecution is not to secure a conviction at all costs but to see that justice is done.<sup>6</sup> The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is unethical and savors of unprofessional misconduct.<sup>7</sup> He shall make timely disclosure to a lawyer for the defendant or to the defendant if he has no counsel, of the existence of evidence or authorities that tend to negate the guilt of the accused, mitigate the degree of the offence or reduce the punishment. A public prosecutor shall not institute a criminal charge, if he knows it is not supported by probable evidence.<sup>8</sup>

Where a lawyer undertakes to defend a person accused of a crime, he shall exert himself, by all fair and honourable means, to put before the court, all matters that are necessary in the interest of justice, but he shall not stand or offer to stand bail for a person for whom he or a person in his law firm is appearing. A confidential disclosure of guilt alone does not require a withdrawal from the case. But if the accused, who has confessed, insists that he shall give positive evidence to falsely establish his innocence, the lawyer must refuse to represent him.<sup>9</sup> There is, however, no impropriety in fighting to show that the prosecution's evidence has fallen short of proof; that is entirely different from being party to putting before the court, a positive defence known to be false.<sup>10</sup>

More importantly, a lawyer should always maintain a respectful attitude to the court in words and deed;<sup>11</sup> be candid and fair no matter the situation;<sup>12</sup> be properly dressed and maintain the correct decorum in Court;<sup>13</sup> and refrain from doing anything, or conduct himself in such a way as to give the impression that his act or

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<sup>6</sup> See Rule 37 (4) of the RPC.

<sup>7</sup> See Rule 37 (6) of the RPC.

<sup>8</sup> See Rule 37 (5) of the RPC.

<sup>9</sup> See Rule 15 (3) (f) of the RPC.

<sup>10</sup> See Rule 37 (3) of the RPC.

<sup>11</sup> See Rule 31 of the RPC

<sup>12</sup> See Rule 32 of the RPC

<sup>13</sup> See Rule 36 of the RPC

conduct is calculated to gain or has the appearance of gaining special personal consideration or favour from a judge.<sup>14</sup>

- ***Duty of Lawyers to the Client***

A lawyer has a duty to accept any brief in any area in which he practices subject to payment of proper professional fees. However, counsel is not absolved from bringing questionable actions.<sup>15</sup> A lawyer must be briefed in his law office and not in client's house or place of business, except in special circumstances e.g. infirmity or illness of client or other reason which may prevent a client from coming to the law office. Consequently, counsel should always endeavour to maintain very neat law office, recruit smart and efficient staff, and procure good furnishing.<sup>16</sup>

Furthermore, a lawyer shall not do any act whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client.<sup>17</sup> A lawyer is also under obligation to disclose at the time of retainer, conflicting interest, including any interest in or close connection with any person or the subject of retainer which might influence the client in the selection of counsel. In some cases of conflicting interest; the brief must be refused.<sup>18</sup>

- ***Fiduciary Obligation of Lawyers***

The RPC contains provisions that impose fiduciary obligations on a lawyer with respect to his relationship with his client and the members of the public. A legal practitioner should accept no compensations, commission, rebates or other advantages from a person against whom he has been retained without the knowledge and consent of that person after full disclosure.<sup>19</sup> Where a lawyer collects money for his client, or is in a position to deliver property on behalf of his client, he shall promptly report and account for it and shall not mix such money or property with or use it as, his own. He can only do whatever is covered by his instructions.<sup>20</sup>

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<sup>14</sup> See Rule 34 of the RPC

<sup>15</sup> See Rule 24 of the RPC

<sup>16</sup> See Rule 22 of the RPC

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

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

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

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

Likewise, a Legal Practitioner should not buy his client's property and at the same time, act as solicitor in the sale. He should disclose his interest to his client; ask him to retain another solicitor for the transaction and ensure that the price paid is fair. A legal practitioner must also fully disclose to his client the compensation he has obtained on account of the client's brief. He must also disburse such money only on the instructions of his client.<sup>21</sup>

The Rules goes further to impose a duty on legal practitioner to maintain separate bank accounts for the keeping of money received on behalf of a client and should make no withdrawal from it unless permitted by the Rules. A lawyer who breaches this provision could have his name struck off the roll even though there has been no criminal trial or conviction.<sup>22</sup>

This is one rule that we are yet to give teeth to in the management of the disciplinary machinery of the legal profession in Nigeria. It is not enough that a lawyer keeps his client's money and was able to pay it back when demanded but must be able to show through his client's account that he never spent out of it or that the money was actually refunded. The logic of the Rule under consideration is to ensure the integrity of the lawyer that client's money or property is safe with him.

From experience what is prevalent is that lawyers will take to the age long adage "ati owo olowo ati owo eni ki ikanmati won wa ni nibe" (may we not lack either our money or somebody else's money). It is our view that it is not enough to repay the money when requested but that you have the discipline and integrity to keep such money or property. In other climes it is a serious act of misconduct that you spend client's money. That is the expectation of our Rules too but that is not the way we have been implementing the Rule.

- ***Relationship with other lawyers***

Lawyers are to treat one another with respect, fairness, consideration and dignity and shall not allow any ill-feeling between opposing clients to influence their conduct and demeanour towards one

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<sup>21</sup> See Rule 17 of the RPC

<sup>22</sup> See Rule 20 of the RPC

another.<sup>23</sup> Lawyers should also adhere strictly to all express promises to and agreements with each other, whether oral, in writing, or implied by the circumstances or local customs, as well as avoid sharp practices.<sup>24</sup>

In addition, no member of the Bar irrespective of his rank or title, shall regard himself as superior or inferior to any other member. Denigration of other members of the profession is infamous conduct, punishable by the LPDC.<sup>25</sup> It is indeed, a bounden duty on lawyers to respect each other and not to denigrate themselves in order to achieve any advantage which appears to be prevalent now.

Failure to observe the above mentioned duties makes the lawyer liable to be prosecuted before the Legal Practitioners' Disciplinary Committee (LPDC) set up under the LPA. Extensive discussion will be made on the powers and workings of the Committee shortly.

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

The LPA sets out the types of professional misconducts for which a Legal Practitioner can be duly punished and sanctioned if found guilty. These include:

- (1) ***Infamous conduct in a professional respect:***<sup>26</sup> What constitutes "infamous conduct" usually depends upon the norms of each profession and the facts of each case should be considered. Accordingly, breach of any of the Rules of Professional Conduct in the RPC could be held to constitute infamous conduct in a professional respect.<sup>27</sup> For instance, a lawyer will be guilty of "infamous conduct" if he obtains a secret commission out of purchase money payable by his client.<sup>28</sup>

It is important to note that a charge of infamous conduct must be a serious infraction of acceptable standard of behaviour, or ethics of the profession.<sup>29</sup> However, where an infamous act was not done in

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<sup>23</sup> See Rule 26 of the RPC

<sup>24</sup> See Rule 27 of the RPC

<sup>25</sup> See Rule 38 of the RPC

<sup>26</sup> See Section 12 (1) (a) of the LPA

<sup>27</sup> See *Onitiri v. Fadipe* Charge No. LPDC/IP/82 decided by LPDC in 1991

<sup>28</sup> See *Re Lowe & Le Richie* 1978 LT JO 226 and *NBA v. Ntero* BB/LPDC/081

<sup>29</sup> See *Re: A Solicitor Exparte Incorporated Law Society (1894) 1QB 254*. In *M.D.P.T. v. Okonkwo* (2001) 7 NWLR (Pt 711) 206

a professional respect, it would not come within the provision of rule 11(1) (a) LPA. But it may come within the provisions of Section 11(2) Legal Practitioners Act.<sup>30</sup>

Secondly, while some facts would apply to all professions, others would not. For instance, misappropriation of clients' money is a serious act of infamous conduct for legal practitioners who are expected to be absolutely trusted by clients with the safety of money or property which may come to the lawyer on the client's behalf.<sup>31</sup> Likewise, a legal practitioner who agrees to maintain a joint account with a non-lawyer and share legal fees with him is guilty of infamous conduct in a professional respect.<sup>32</sup> However, this offence may not be regarded so serious with Doctors, whose nature of professional work does not involve handling money for patients.

Finally, where a person who has been convicted of an offence which also constituted infamous conduct in a professional respect but has the conviction reversed on appeal purely on technical ground, he could still be proceeded against professionally for infamous conduct in a professional respect.<sup>33</sup>

There is need to expand this position and make it to accommodate other conducts which are becoming more rampant among lawyers now. For instance a terrible mess is now being made of front loading provisions for conduct of cases where lawyers in adumbrating, will seek to re-argue all the submissions in the process earlier filed. Frivolous appeals are being filed on regular basis on settled issues and this will eventually lead to the congestion of our courts. It is important to stress that some of these appeals are filed with some goals in view. These attitudes may be regarded and ought to be regarded as a variant of misconduct which should be sanctioned with at least warning in the first two instances and then may aggravate if such attitude persists.

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<sup>30</sup> Fee Re. Idowu Legal Practitioner (1971) 1 ALL NLR 126 and In the matter of Thomas James Wallace (1886) 16 ER 26

<sup>31</sup> See Onitiri v. FadipE (Supra)

<sup>32</sup> See NBA v. Mabawonku BB/LPDC/120

<sup>33</sup> See Re King (1845) 8 QB 129 15 ER

- (2) ***Conviction by any court in Nigeria, having power to award imprisonment, for an offence which is incompatible with the status of a legal practitioner.***<sup>34</sup> Offences involving financial dishonesty have always been regarded as incompatible with the status of a legal practitioner.<sup>35</sup> Offences which endanger the welfare of human beings or society generally would also come within the provision. For instance, a practitioner who allowed his house to be used as a brothel was convicted and struck off the roll.<sup>36</sup> Likewise, assisting a prisoner to escape from the country.<sup>37</sup>

It is important to point out that the offence in question need not be committed in a professional respect and it needs not be a serious offence. It is not the seriousness of the offence that is material but whether the person who commits the offence should remain a member of a learned profession.<sup>38</sup> However, the conviction must be by a Court in Nigeria as provided by the statute and no appeal must be pending against the conviction and or the time of appeal must have passed for this provision to be invoked.

- (3) ***Obtaining enrolment by fraud.***<sup>39</sup> This provision may be invoked where a person obtained enrolment by a misrepresentation of facts and if the true facts had been known he would not been enrolled. This would cover any of the conditions that must be fulfilled to be called to the Bar, since this is a precondition to enrolment.<sup>40</sup> It will also cover cases where a person obtained admission to the Nigerian Law School by fraudulent misrepresentation of academic status e.g producing forged Law Degree Certificate or representing that he possessed a Law degree when he did not.

- (4) ***Conduct incompatible with the status of legal practitioners.***<sup>41</sup> This is an omnibus ground and covers all residual cases where the

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<sup>34</sup> See Section 12 (1) (b) of the LPA

<sup>35</sup> See *Sagoe v R* (1963) 1 ALL NLR 290 (293) and *R v. Abuak* (1962) 1 ALL NLR 279

<sup>36</sup> See *Re Weare* (1893) 2 QB 290

<sup>37</sup> See *Re Valance* (1889) 24 LJ 638

<sup>38</sup> See *Re Weare* (Supra)

<sup>39</sup> See Section 12 (1) © of the LPA

<sup>40</sup> See Sections 4 (1) and 7 (1) of the LPA

<sup>41</sup> See Section 12 (2) of the LPA

conduct complained of could bring the profession into dishonour or dispute. Cases like seduction of a client's wife, habitual drunkenness in public, employment of very foul language in public, and taking part in street brawl would appear likely to bring the profession into dishonour or disrepute.<sup>42</sup>

### **The Role of LPDC in the Enforcement of Professional Ethics**

The LPDC is the tribunal responsible for the enforcement of the rules of professional ethics within the legal profession in Nigeria. The Committee, of which I am privileged to be a member, is a creature of the LPA and is charged<sup>43</sup> with the duty of considering and determining any case, where it is alleged that a legal practitioner has misconducted himself and should for any reason be the subject of disciplinary proceedings under the Act. The duty of the LPDC and all well-meaning lawyers is not only to correct the anomaly but also to ensure that the right message is sent to the society that, lawyers are not fraudsters but men of honour and repute.

To commence disciplinary proceedings against a legal practitioner before the LPDC, the complainant or aggrieved person shall forward a written complaint to any of the following persons:

- (a) the Chief Justice of Nigeria,
- (b) the Attorney General of the Federation,
- (c) the President, Court of Appeal or presiding Justice of the Court of Appeal.
- (d) the Chief Judge of the High Court of a State or the Chief Judge of the Federal High Court or the Chief Judge of the FCT
- (e) the Attorney General of a State,
- (f) the Chairman, Body of Benchers; and
- (g) the President, Nigerian Bar Association or Chairman of a branch of NBA.<sup>44</sup>

A person specified above who receives a complaint shall forward same to the Nigerian Bar Association (NBA) and the NBA shall cause the complaint to be investigated.<sup>45</sup> If after such investigation, NBA is of the opinion that a *prima facie* case has been made, the NBA shall forward a

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<sup>42</sup> See NBA v. Monyei BB/LPDC/091

<sup>43</sup> By section 10 (1) of the LPA

<sup>44</sup> See Rule 3(1) of the LPDC Rules 2006

<sup>45</sup> See Rule 3(2) of the LPDC Rules 2006

report of such case to the Secretary of the LPDC, together with all documents considered by the NBA, and a copy of the complaint.<sup>46</sup>

At the conclusion of hearing, the Committee may find that the allegations have not been proved, in which case, it shall record its finding.<sup>47</sup> However, if it finds that the allegations are proved, it may give any of the following directions:

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

Any such direction may, where appropriate, include a direction requiring the refund of moneys paid or the handing over of documents to a client or any other thing as the circumstances of the case may require.<sup>48</sup>

The proceedings and announcement of the Committee's decisions shall be held in public,<sup>49</sup> the proceedings before the Committee shall comply with the rules of natural justice<sup>50</sup> and the directions made by the Committee are to be gazetted.<sup>51</sup> A legal practitioner who is aggrieved by the decision of the LPDC may appeal to the Supreme Court.<sup>52</sup>

This provision for appeal to the Supreme Court was a subject of serious legal contestations in a number of cases<sup>53</sup> until recently when the Attorney General of the Federation came up with a supplement to the laws of the Federation and listed the omitted Decree from the original compilation of the laws of the Federation.

Besides, a Legal Practitioner whose name has been struck off the roll or who has been suspended may appeal for his name to be restored to the roll or that suspension be cancelled. An application for this purpose is usually made to the Disciplinary Committee but if the striking off or

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<sup>46</sup> See Rule 4 of the LPDC Rules 2006

<sup>47</sup> See Rule 16 of the LPDC Rules 2006

<sup>48</sup> See Section 11 of the LPA

<sup>49</sup> See Rule 13 of the LPDC Rules 2006

<sup>50</sup> See LPDC v Fawehinmi (1985) NWLR (pt. 7) 300; (1985) 2 NSCC 998

<sup>51</sup> See Rule 20 of the LPDC Rules 2006

<sup>52</sup> See Section 10 (e) of the LPDC

<sup>53</sup> Akintokun v LPDC and Aladejobi v NBA

suspension was ordered by the Chief Justice of the Supreme Court, then the application should be made to the Supreme Court.<sup>54</sup>

In deciding whether a name which is struck off should be restored or that a suspension be cancelled, the following factors are taken into consideration:

- (i) The gravity of the offence or offences necessitating the striking off of the applicant's name in the first place.
- (ii) Whether there is sufficient evidence of genuine remorse shown by the applicant in the period between the striking off of his name and the submission of the application.
- (iii) Whether in all the circumstances of the case, the Tribunal is satisfied that the applicant has in the intervening years become a fit and proper person to be re-incorporated as a member of the legal profession.<sup>55</sup>

The court and the Committee would usually exercise a high degree of care before ordering restoration or cancellation of a suspension.<sup>56</sup>

### **Challenges of Sustaining Best Ethical Practices within the Legal Profession**

Regrettably, the legal profession in Nigeria has witnessed in recent years, increasing reports of professional misconduct, corruption and sharp practices with attendant negative consequences on the administration of justice in our country. This view is strongly supported by the avalanche of allegations in the media and at the market places about the perceived indiscipline and corruption in the justice sector of our country. The sad decline in ethics of the profession is due to a number of factors, which have made the sustenance of best ethical practices in the legal profession in Nigeria a difficult task. These include:

- ***Incursion or encroachment of other professionals into the space of legal practice:*** The indirect practice of the profession by entity and persons that are not lawyers, such as accountants, chartered secretaries, surveyors and others is a serious mitigating factor. For years, the NBA has been making a lot of efforts to discourage these other professionals that have been making an accretion into the space of legal practice. The efforts have been with little or no success. This is

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<sup>54</sup> See section 14 of the LPA and Re A.C. Abuah (1962) 1 ALL NLR 279

<sup>55</sup> See Re A.B. Abuah (1973) II SE 41 at 43 and Adesanya v. AG Fed Unreported Suit No. SC 130/1964.

<sup>56</sup> See Fobur v. NBA BB/LPDC?103M

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 fit and proper test hurdle as lawyers. Aside from draining the limited legal work that is available from going round, it has the tendency of bringing down the already falling standard of the profession, by virtue of the sharp practices and lower standards that are likely to accompany their entry into the space. In this wise, there is need to do a very critical review of the laws and operations of the Corporate Affairs Commission (CAC) to ensure that the activities in the Commission is restricted to the legal profession in terms of filing and documentation.

- **Obsolete laws:** Our laws are not a match for the challenges of ensuring discipline in the legal profession in the 21<sup>st</sup> century. For instance, the RPC is presently tailored more in line with the practice of private lawyers in litigation, leaving out to a large extent, the solicitors and lawyers in politics and in government. Likewise, it fails to address some prevalent concepts of legal practice in the 21<sup>st</sup> century, such as advertising, out-sourcing and Pro-bono services.<sup>57</sup>
- ***The disciplinary process of erring members of the Bar:*** One of the major causes of the sad decline in ethics of the profession is the absence/lack of enforcement of our Rules of Professional Conduct.<sup>58</sup> The disciplinary process of erring lawyers have hitherto been ineffective. With the ever increasing population of those being called to the Bar and corresponding high ratio of professional ethics transgressors, the LPDC was unable to meet the legal profession's benchmark for response to infractions of our Rules of ethics. As a result, disciplinary proceedings before the LPDC suffered enormous delay, which had the effect of frustrating the complainants to abandon same. Likewise, it was not uncommon to find lawyers who are sympathetic to our errant or recalcitrant colleagues sweeping complaints of professional misconduct against lawyers under the carpet in the name of professional solidarity.

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<sup>57</sup> Fatima Kwaku, 'What is wrong with the Rules of Professional Conduct for Legal Practitioners?'

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However, between 2013 and now, the LPDC, which was reconstituted about March, 2013 has undertaken the trial of many cases of misconduct against many legal practitioners. Out of these matters it found about 20 legal practitioners liable for grave misconduct and ordered the removal of their names from the roll of practitioners. In about 10 other matters, the legal practitioners were suspended from the Bar for a period of five years each, while three others were admonished. Within the same period, seventeen allegations were found unproved and the practitioners were set free. The Tribunal had reason to strike out ten complaints because the complainants could not proceed with them due to lack of witnesses.

The high tempo of the Tribunal has been commended by many people because the Tribunal has done more work in the last three and half years, than it did in the previous thirty years or so. The zeal of the Committee was however, dampened by the decisions of the Supreme Court in the cases of *Akintokun v. Legal Practitioners Disciplinary Committee* and *Aladejobi v. Nigerian Bar Association*. In these decisions, the Supreme Court approved the erroneously compiled content of the old Legal Practitioners Act of 1975 contained in LFN 2004 because the recent legislation made in 1994 was omitted from the compilation of the LFN.

The said decision is to the effect that the Committee as presently constituted, was not in accordance with the law contained in the LFN, thereby creating an impasse. Thus, the Committee was unable to sit and adjudicate on cases of professional conduct until a solution was found. Thankfully, certain steps were taken by the Attorney-General of the Federation to remedy the situation and the Committee has now resumed its duty.

### **Conclusion/Recommendations**

As earlier alluded to, the legal profession has, since time immemorial, been regarded as a profession of highly qualified people and therefore, desires at all times, to prove to the end users of their services, that the members of the profession are not only professionally sound, but morally upright. A lawyer must therefore adhere to set standards and practices that do not impair the rendering of professional services of the highest skill and ability at all times.

To this end, the RPC and LPA have copiously set out the rules, principles of engagement and code of ethics that legal practitioners in Nigeria are expected to strictly adhere to, as well as the sanction attached to its breach. The LPA went further to establish the LPDC, vesting it with enormous powers and the necessary wherewithal to ensure that erring lawyers are appropriately sanctioned. Nevertheless, we must acknowledge the sad reality that our profession has witnessed in recent years, increasing reports of professional misconduct, corruption and sharp practices with the attendant negative consequences on the administration of justice.

Although there may be other reasons, it is apparent that the sad decline in adherence to the ethics of the legal profession by legal practitioners in Nigeria is not because of the absence of laws and regulations, but mainly as a result of inefficient and ineffective enforcement. Therefore the solution to the problem is not in the enactment of more laws and regulations per se, but the strengthening of the LPDC to enhance its enforcement capacity and the NBA for a more robust thorough and transparent investigation of complaints against lawyers. In other words, the onus of sustaining best ethical practices in the legal profession, lies to a large extent, on the NBA LPDC; and all legal practitioners.

From the foregoing, it is clear that, if ever there was a time for the LPDC to exhibit the highest level of proficiency and diligence in the sustenance of best ethical practice within the legal profession, now is such a time. It is strongly believed that the following recommendations will be of great assistance in achieving this:

- Observance of the rules of professional ethics should be sacrosanct. It is important for all stakeholders in the legal profession to realise that the rules of professional ethics must be complied with for sustainable growth and development of the legal profession in Nigeria.
- The legal space should be sanitized to ensure that non-lawyers do not make illegal incursions into law practice. Lawyers who collude with non-professionals to undermine the profession should be seriously sanctioned. In this regard the compulsory requirement of NBA stamp on all legal processes appears to be a step in the right direction.
- Rule of law and democratisation should be taught as a core course in all universities. Lawyers must stay on the side of the rule of law,

regardless of the shortcuts that clients might want to follow and undermining of rule of law by lawyers should be a specie of professional misconduct for which a lawyer should be sanctioned.

- The RPC should be amended to accommodate new concepts of legal practice, such as advertising, out-sourcing and Pro-bono services, which were hitherto not provided for.
- The investigating powers of the NBA should be strengthened and enhanced to be more effective.
- Those sanctioned for misconduct by the LPDC should be publicised as directed so that they will be identifiable. A database containing the names of lawyers whose names have been suspended or had their names struck of the roll should be created and made easily accessible to all stakeholders in the administration of justice.
- The LPDC should, in addition to any of the sanctions which it may impose, have the power to recommend in appropriate cases, that lawyers liable should be prosecuted if the act of misconduct amounts to a crime.
- We must address the issue of sweeping complaints of professional misconduct under the carpet to demonstrate to the society that we are not covering up for our errant or recalcitrant colleagues. The act of sweeping complaints under the carpet should be made a misconduct under the RPC. Anyone found engaging in such acts should also suffer the same fate like the person who has committed the misconduct.
- The RPC should be amended to make specific rules spelling out the acts of misconduct for lawyers who are not private practitioners, such as company secretaries and law teachers. For instance, a law lecturer who fails female students that refuses to engage in illicit affair with him or her should be sanctioned for misconduct. Likewise, a company secretary who does not follow the scale of payment of solicitors' fees to external solicitors, should face the music.

In a nutshell, we must all be ready to be guardians of the legal profession, such that we must all be whistle blowers on the unsavoury conducts of colleagues in the profession, we cannot afford to allow primordial sentiments or filial relationships to becloud our sense of justice or our love for the legal profession. It is either we do what is right or we say bye bye to our beloved and cherished profession. We

must all take a hint from the way policemen now treat lawyers. It wasn't like that when some of us entered the profession over three decades ago.

Let me close by thanking the organizers for the invitation extended to me to share my thoughts on this important topic and to thank you all for listening to me.