

**ETHICS AND THE LEGAL PROFESSION: BEING A LECTURE DELIVERED BY YUSUF ALI SAN AT THE NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES TRAINING COURSE ON LEADERSHIP, NEGOTIATION AND MANAGEMENT SKILLS FOR LEGAL PRACTITIONERS HELD AT ROCKVIEW HOTEL ABUJA ON 7<sup>TH</sup> NOVEMBER, 2016**

**1.00 INTRODUCTION:**

1.01 I express my deep appreciation to the organisers of this program, the Nigerian Institute of Advanced Legal Studies, for the time and effort that has gone into putting this programme together and for giving me the honour of inviting me to deliver the Keynote Address for this Course. I specifically commend the Institute for the new addition of the course on Leadership, Negotiation and Management Skills. The course is one which, in my opinion, is indispensable to lawyers as learned individuals because, as aptly put by John F. Kennedy **'leadership and learning are indispensable to each other'**

1.02 As the duty of a keynote speaker is to set the tone of the event, I would like to base my speech on the very relevant topic given to me by the organizers on ***Ethics and the Legal Profession***. I consider the theme of my speech fitting and apt because the legal profession has an ancient history and 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 the lawyers by the society. 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 equal the high degrees of public trustworthiness required of professionals. It is my hope that the participants in this course will leave with a renewed commitment to the ethics of the profession in their minds, which will help them excel in a modern competitive market, according to the purpose of the organizers of this course.

1.03 In delivering this speech, I will briefly elucidate the code of ethics which regulate and control the professional conduct of lawyers in Nigeria and the sanctions attached to its breach. A short discourse on the role of LPDC in enforcement of professional ethics will also be made. Cases decided by the Legal Practitioners' Disciplinary Committee will also be cited to further explain some points as the address proceeds.

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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

1.04 Ultimately, this address 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 only 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.

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

2.01 The main legislations which set out the code of ethics that 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.

2.02 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.

2.03 Ethics and professional responsibilities are inherent parts 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 only to rehash some of the rules whose breach could lead to disciplinary proceedings as taught in the Law School.

- ***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>2</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

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<sup>2</sup> See Rule I of the Rules of Professional Conduct 2007 (hereinafter referred to as the RPC)

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>3</sup>

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>4</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>5</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>6</sup>

Where a lawyer undertakes to defend a person accused of a crime, he shall exert himself, by all fair and honourable means, to

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<sup>3</sup> See Rule 4 (a) to (f) of the RPC

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

<sup>5</sup> See Rule 37 (6) of the RPC.

<sup>6</sup> See Rule 37 (5) of the RPC.

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>7</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>8</sup>

More importantly, a lawyer should always maintain a respectful attitude to the court in words and deed;<sup>9</sup> be candid and fair no matter the situation;<sup>10</sup> be properly dressed and maintain the correct decorum in Court;<sup>11</sup> and refrain from doing anything, or conduct himself in such a way as to give the impression that his act or conduct is calculated to gain or has the appearance of gaining special personal consideration or favour from a judge.<sup>12</sup>

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<sup>7</sup> See Rule 15 (3) (f) of the RPC.

<sup>8</sup> See Rule 37 (3) of the RPC.

<sup>9</sup> See Rule 31 of the RPC

<sup>10</sup> See Rule 32 of the RPC

<sup>11</sup> See Rule 36 of the RPC

<sup>12</sup> See Rule 34 of the RPC

- ***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>13</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>14</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>15</sup> In the case of **NBA V IBEBUNJO**<sup>16</sup>, the Respondent, putting himself forward as '**Barr. A. A. Ibebunjo**', fraudulently obtained from the Complainant the sum of N1.6 Million under the pretext that he sold to him 8 plots of land in 2002. However, the Complainant was unable to take

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<sup>13</sup> See Rule 24 of the RPC

<sup>14</sup> See Rule 22 of the RPC

<sup>15</sup> See Rule 23 of the RPC. See also NBA v. Kalu BB/LPDC/124 and NBA v. Ahembe BB/LPDC/116

<sup>16</sup> BB/LPDC/113



possession of the land or receive a refund of his money despite repeated demands. He was found liable of infamous conduct in the course of the performance of his duty as a legal practitioner.

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>17</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>18</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

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

<sup>18</sup> See Rule 54 of the RPC.

instructions.<sup>19</sup> In the case of **NBA V DOMINIC NTIERO**,<sup>20</sup> the Respondent was alleged amongst others, for collecting N10 Million on behalf of his client and failing/neglecting to account for same to the Client. He was guilty found liable for infamous conduct in the course of the performance of his duty as a legal practitioner.

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

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<sup>19</sup> See Rule 23 of the RPC. See NBA v. Eseyin BB/LPDC/114

<sup>20</sup> BB/LPDC/081

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

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 Yoruba adage "ati owo olowo ati owo eni ki ikanmati won wa ni nibe" (may we not lack either our money or somebody else's money). 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 Rules.

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

- ***Relationship with other lawyers***

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

2.04 Failure to observe the above mentioned duties makes the lawyer liable to be prosecuted before the Legal Practitioners' Disciplinary

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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

Committee (LPDC) set up under the LPA. Extensive discussion will be made on the powers and workings of the Committee shortly.

### 3.00 **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 liable. 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 liable for "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> In the case of **NBA V NTIERO (Supra)**, the Respondent

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<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

issued a dud cheque to his client for the sum of N6.3 Million. He was found to have contravened Rules 1 and 12 of the Rules of Professional Ethics and punishable under Section 12(1) (a) of the Legal practitioners' Act. However, where an infamous act was not done in 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.

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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

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, 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 acts 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.

- (2) ***Conviction by any court in Nigeria, having power to award imprisonment, for an offence which is incompatible with the status of***

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

**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

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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



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 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>

#### 4.00 **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

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

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

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

creation 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.

4.01 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

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

(g) the President, Nigerian Bar Association or Chairman of a branch of NBA.<sup>44</sup>

4.02 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 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>

4.03 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<sup>48</sup> 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<sup>49</sup>; or

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

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

<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 the cases of **NBA V TIMIPA OKPONIPERE (BB/LPDC/102)**, **NBA V ANOZIE A. IBEBUNJO (BB/LPDC/113)**, **NBA V DOMINIC E. NTIERO (BB/LPDC/081)**, **NBA V G. C. MONYEI (BB/LPDC/091)** and **NBA V J. A. AGWUNCHA (BB/LPDC/107)**.

iii. Admonishing the practitioner.

4.04 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>50</sup>

4.05 The proceedings and announcement of the Committee's decisions shall be held in public,<sup>51</sup> the proceedings before the Committee shall comply with the rules of natural justice<sup>52</sup> and the directions made by the Committee are to be gazetted.<sup>53</sup> A legal practitioner who is aggrieved by the decision of the LPDC may appeal to the Supreme Court.<sup>54</sup>

4.06 This provision for appeal to the Supreme Court was a subject of serious legal contestations in a number of cases<sup>55</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

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<sup>49</sup> See the case of **NBA V OLAWALE OJOGE-DANIEL (BB/LPDC/128)**, **NBA V LANRE MABAWONKU (BB/LPDC/120)** or **(2013) NWLR (PT 1379) 603**,

<sup>50</sup> See Section 11 of the LPA

<sup>51</sup> See Rule 13 of the LPDC Rules 2006

<sup>52</sup> See LPDC v Fawehinmi (1985) NWLR (pt. 7) 300; (1985) 2 NSCC 998

<sup>53</sup> See Rule 20 of the LPDC Rules 2006

<sup>54</sup> See Section 10 (e) of the LPDC

<sup>55</sup> Akintokun v LPDC and Aladejobi v NBA

contentious Decree from the original compilation of the laws of the Federation.

4.07 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<sup>56</sup> but if the striking off or suspension was ordered by the Chief Justice of the Supreme Court, then the application should be made to the Supreme Court.<sup>57</sup>

4.08 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 misconduct 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

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<sup>56</sup> As in the case of **DR YAKUBU FOBUR V NBA (BB/LPDC/103M)**

<sup>57</sup> See section 14 of the LPA and *Re A.C. Buah* (1962) 1 ALL NLR 279

become a fit and proper person to be re-incorporated as a member of the legal profession.<sup>58</sup>

4.09 The court and the Committee would usually exercise a high degree of care before ordering restoration or cancellation of a suspension.<sup>59</sup>

## 5.00 **CONCLUSION**

5.01 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.

5.02 It is clear that any fight against corruption by lawyers anywhere in the world will not be taken seriously by the general populace, except we are seen as having upheld our ethical principles and done battle against the perceived corruption within our ranks. This view is strongly supported by the avalanche of allegations in the media and at the market places about the perceived corruption in the justice sector of our country.

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<sup>58</sup> See *Re A.B. Abuah* (1973) II SE 41 at 43 and *Adesanya v. AG Fed Unreported Suit No. SC 130/1964*.

<sup>59</sup> See *Fobur v. NBA BB/LPDC?103M*

5.03 Therefore, if ever, there was a time to exhibit the highest level of proficiency and dignity in the discharge of the duties, which have been identified above, 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 the 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.
- Those suspended or disbarred for misconduct should be made to stay off practice pending the time they are able to clear their name through a successful appeal. This will ensure that sanctioned practitioners do not file an appeal and go to sleep on it while still practicing. On other words, filing of an appeal against the direction of the LPDC should not operate as a stay of proceedings anymore.
- The LPDC should, in addition to any of the sanctions which it may impose, have the power to recommend in appropriate cases, that lawyers found 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.

5.04 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 conduct of the few of our aberrant 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 joined the profession over three decades ago.

5.04 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. I wish you all success at the end of this training.

#### 6.00 **CASE STUDY**

6.01 As a new lawyer, Mr Kilimanjaro started with a practice limited to small claims cases, preparation of legal documents like Deeds of Transfer and Lease Agreement and giving of legal advice. He put up a solo practice law office with the aid of funds advanced by his neighbor/friend, Mike, a real estate manager. In order to repay the funds, an agreement was entered into to open a joint account with Mike, into which professional fees from Kilimanjaro's legal work will be paid and shared by half till the debt is liquidated. The office space rented by Kilimanjaro is located near the High Court premises. With this strategic location, he enjoys a lot of walk-in clients. One of the clients that approached him for legal services was Mr Ojo, who had a piece of land to sell, worth N5 Million. He

promised Mr Ojo to help him find a buyer for the property and also prepare the Deed of transfer in return for a percentage of the sale proceeds. He got a buyer who paid the agreed sum which Kilimanjaro paid into the joint account he was operating with Mike. He took from the proceeds of the sale to purchase a good heavy duty copier machine that reproduces quality documents and charges a reasonable fee for this service. When Mr Ojo demanded for the money from the proceeds of the sale, Kilimanjaro gave him only N3 Million stating that he took N2 Million as his professional fees since they never agreed on any particular sum.

6.02 Is Kilimanjaro's manner of carrying out his professional practice in keeping with appropriate ethical and professional practice? Identify the breach, if any of the Rules of Professional Conduct.

7.00 ANSWER

7.01 Participants should be able to identify the ethical issues involved i. e.

1. Rules 3 and 53 on sharing legal fees with a non-lawyer (**NBA V LANRE MABAWONKU**).

2. Rule 18 (2) On Failing to reduce important agreements between lawyer and client into writing (**NBA V LANRE MABAWONKU**).
3. Rule 7 (2) (a) on acting as a Commission Agent (**NBA V IBEBUNJO**).
4. Section 20 of the Legal Practitioners' Act on maintaining a Clients' Account. (**NBA V IBEBUNJO, NBA V NTIERO, NBA V MONYEI, NBA V AGWUNCHA**).
5. Rule 23 (2) on prompt delivery or reporting of money collected on client's behalf and not mixing such money with his own. (**NBA V IBEBUNJO, NBA V NTIERO, NBA V MONYEI, NBA V AGWUNCHA**).
6. Rule 7 on not Engaging in business. (**NBA V IBEBUNJO**).

## 8.00 *ETHICS TRIBUNAL IN NIGERIA*

8.01 As earlier stated, the tribunal responsible for the discipline of lawyers in Nigeria is called the Legal Practitioners' Disciplinary Committee (LPDC)..

8.02 Between January 2013 and October 2016, the Committee, which has undertaken the trial of 123 cases of misconduct against many legal practitioners. Out of these matters it found sixteen (16) legal practitioners liable for grave misconduct and ordered the removal of their names from the roll of practitioners. In ten (10) other matters, the legal practitioners were suspended from the Bar for a period of five (5) years each. Within the same period, thirty-five (35 ) allegations were found unproved and the practitioners were set free, while sixty-two petitions are still pending. The Tribunal had reason to strike out more than ten matters because the complainant could not proceed, 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 a short while, more than it did in the previous thirty years or so.

8.03 It should be noted that the imposition of sanction by the Tribunal is not a bar to an aggrieved client from pursuing other legal options against an erring legal practitioner.